



New South Wales

Liquor Amendment (Small Bars and Restaurants) Bill 2007

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*:

- (a) to enable a new class of on-licence (referred to as a ***small bar licence***) to be granted for premises where the predominant activity carried out is the sale or supply of liquor for consumption on the premises and where the number of patrons is limited to 120, and
- (b) to replace the primary purpose test in relation to a licensed restaurant (namely that the premises must operate at all times as a restaurant) with a requirement that a licensed restaurant operates predominantly (but not exclusively) as a restaurant and tables and chairs are provided for at least 70% of its patrons.

The amendments relating to the granting of small bar licences are designed to allow low-impact venues to operate as licensed bars without having to operate as a business in respect of which the sale of liquor is ancillary to some other purpose or activity (which is the requirement that currently applies to other classes of on-licences).

The amendments relating to the basis on which restaurants can operate as licensed premises will allow liquor to be sold and consumed in a restaurant without patrons necessarily having to consume a meal. As a consequence, it will no longer be

necessary for restaurants to have a dine-or-drink authority to be able to sell liquor to patrons who are not actually consuming (or intending to consume) a meal.

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 the date of assent to the proposed Act.

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

Clause 4 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Amendments relating to small bars

Schedule 1 [3] enables the Licensing Court to grant a small bar licence that authorises the licensee to sell liquor for consumption on the premises only. **Schedule 1 [2]** defines the new class of on-licence and **Schedule 1 [4]** distinguishes small bar licences from other existing classes of on-licences (eg those that relate to restaurants, theatres or cinemas or that authorise the sale of liquor at functions).

Schedule 1 [6] specifies certain requirements that will apply to small bar licences. The predominant activity carried out on the licensed premises must be the sale or supply of liquor for consumption on the premises. This requirement does not prevent other activities from being carried out on the premises, such as the provision of entertainment or food, so long as the premises operate predominantly as a place where people go to have a drink. Another special requirement for small bars is that they are restricted to a maximum of 120 patrons. **Schedule 1 [5]** provides that a contravention of these requirements is a breach of the conditions of the small bar licence.

Schedule 1 [14] specifies the general trading hours for small bars and enables these trading hours to be varied by the court in any particular case. An application for variation of trading hours for a small bar will need to be advertised under the regulations and local councils and the police will be able to apply for the revocation of any variation of trading hours that has been granted by the court. **Schedule 1 [20]** provides that the fee for a variation of the trading hours for a small bar is \$100.

Schedule 1 [18] provides that the court must not grant an application for a small bar licence unless the premises have proper facilities to operate as a licensed bar and have sufficient sanitary facilities (eg toilets). The sanitary facilities may be located away from the licensed premises in certain circumstances. **Schedule 1 [24]** makes it clear that any sanitary facilities for a small bar that are located away from the licensed

premises are, when it comes to law enforcement officers exercising their power to enter and inspect licensed premises, taken to be part of the licensed premises concerned. **Schedule 1 [30]** enables regulations to be made in relation to the sanitary facilities that are required to be provided for small bars.

Schedule 1 [19] provides that the fee for the grant of a small bar licence by the court is \$500.

Amendments relating to licensed restaurants

At present under the Act, it is a condition of a restaurant licence that the primary purpose of the premises is to be a restaurant. Accordingly, licensed restaurants (even those with a dine-or-drink authority) must at all times be operated consistently with this primary purpose. As a result, licensed restaurants generally cannot sell or supply liquor except with, or ancillary to, a meal consumed at a table.

Schedule 1 [7] replaces the primary purpose test for restaurants with a requirement that the predominant activity carried out on the licensed premises must be the preparation and serving of meals. Another new requirement for licensed restaurants will be that tables and chairs must be provided for at least 70% of the restaurant's patrons. As a result of these changes, licensed restaurants will no longer require the authority conferred by a dine-or-drink authority in order to sell or supply liquor to patrons who are not eating (or intending to eat) a meal. Accordingly, the amendments made by **Schedule 1 [8]–[12], [15]–[17], [21], [22], [25]–[29] and [31]** remove any connection under the Act between restaurant licences and dine-or-drink authorities, as well as removing various provisions relating to the primary purpose test for restaurants. Dine-or-drink authorities will continue to be relevant only in the case of nightclub licences.

Schedule 1 [13] repeals section 23AE of the Act which currently allows a person in a restaurant to consume liquor away from a table so long as there is a seat at a table for the person. The section will be redundant once licensed restaurants are no longer required to operate exclusively as places where people are required to eat. For the same reason, **Schedule 1 [23]** repeals section 88 of the Act which currently provides for an authorisation to sell or supply liquor in the reception area of a licensed restaurant.

Schedule 1 [1] removes definitions that are no longer required as a result of the above amendments.

Schedule 1 [32] makes it clear that the amendments made by the proposed Act extend to existing restaurant licences and to pending restaurant licence applications.

Introduced by Ms Clover Moore, MP

First print



New South Wales

Liquor Amendment (Small Bars and Restaurants) Bill 2007

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New South Wales

Liquor Amendment (Small Bars and Restaurants) Bill 2007

No. , 2007

A Bill for

An Act to amend the *Liquor Act 1982* to enable on-licences to be granted for small venues that operate predominantly as bars and to change the basis on which licensed restaurants are authorised to sell and supply liquor; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Liquor Amendment (Small Bars and Restaurants) Act 2007</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Liquor Act 1982 No 147	7
The <i>Liquor Act 1982</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Omit the definitions of <i>reception area</i> and <i>restaurant restricted period</i> from section 4 (1).	4 5
[2]	Section 4 (1), definition of “small bar licence”	6
	Insert in alphabetical order:	7
	<i>small bar licence</i> means an on-licence that relates to premises other than premises referred to in section 18 (4) or premises to which an on-licence to sell liquor at a function relates.	8 9 10
[3]	Section 18 Court may grant licences	11
	Insert “(including a small bar licence)” after “on-licence” in section 18 (2) (c).	12
[4]	Section 18 (4)	13
	Insert “a small bar licence or” after “other than”.	14
[5]	Section 20 Conditions of licences	15
	Insert “22A,” after “22,” in section 20 (3).	16
[6]	Section 22A	17
	Insert after section 22:	18
22A	Small bar licence—miscellaneous conditions	19
	(1) Predominant activity	20
	The predominant activity carried out on the premises to which a small bar licence relates must be the sale or supply of liquor for consumption on the premises.	21 22 23
	(2) Maximum number of patrons	24
	Liquor must not be sold or supplied on the premises to which a small bar licence relates if the number of patrons on the premises exceeds 120.	25 26 27

[7] Section 23 On-licence—miscellaneous conditions	1
Omit section 23 (2A) and (3). Insert instead:	2
(3) Restaurant licence—predominant activity	3
If the licensed premises to which an on-licence relates are a restaurant:	4
(a) the predominant activity carried out on the licensed premises must be the preparation and serving of meals for consumption on the premises, and	5
(b) tables and chairs must be placed in a position on the licensed premises so as to be available for at least 70% of the patrons on the premises at any one time.	6
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[8] Section 23 (3A)	12
Insert “a general on-licence,” after “nightclub licence,”.	13
[9] Section 23AD Nightclub licence—dine-or-drink authority	14
Omit “restaurant licence or” from section 23AD (1).	15
[10] Section 23AD (1) and (2) (a)	16
Omit “restaurant or” wherever occurring.	17
[11] Section 23AD (2) (b) and (6) (c) and (d)	18
Omit the paragraphs.	19
[12] Section 23AD (8)	20
Omit the subsection.	21
[13] Section 23AE Restaurant licence—consumption of liquor away from table	22
Omit the section.	23
	24
[14] Sections 27A and 27B	25
Insert after section 27:	26
27A Small bar licence—trading hours	27
(1) Liquor may be sold or supplied on premises to which a small bar licence relates at the following times only:	28
(a) on a Monday, Tuesday, Wednesday or Thursday that is not a restricted trading day—from 7 am to 11 pm,	29
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(b)	on a Friday or Saturday that is not a restricted trading day—from 7 am to 1 am on the following day,	1 2
(c)	on a Sunday that is not a restricted trading day—from 10 am to 11 pm,	3 4
(d)	on a restricted trading day—from noon to 10 pm.	5
(2)	Despite subsection (1), liquor may be sold or supplied on premises to which a small bar licence relates on a day that is 31 December from the time the premises are authorised to sell or supply liquor on that day to 2 am on the following day.	6 7 8 9
(3)	This section is subject to section 27B.	10
27B	Small bar licence—variation of trading hours	11
(1)	The court may, as provided by this section, vary the trading hours for particular premises to which a small bar licence relates in such manner as the court thinks fit.	12 13 14
(2)	The court may grant a variation under this section only if satisfied that to do so would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.	15 16 17 18
(3)	An application for an extension of trading hours must not be granted under this section unless the court is satisfied that practices are in place and will remain in place at the licensed premises that ensure, as far as reasonably practicable, that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises.	19 20 21 22 23 24 25
(4)	The court may, at any time on the application of the licensee, the local consent authority, the Director or the Commissioner of Police:	26 27 28
(a)	revoke a variation of trading hours granted under this section, or	29 30
(b)	grant a different variation of trading hours.	31
(5)	An application by the licensee under this section for an extension of trading hours must be advertised in the same manner as an application under section 32 (1) is, under the regulations, required to be advertised.	32 33 34 35
(6)	If an application under this section for extended trading hours is refused, or if an extension of trading hours is revoked or reduced:	36 37
(a)	on the application of the local consent authority, the Director or the Commissioner of Police, or	38 39

(b) under section 104 (Quiet and good order of neighbourhood),	1
	2
an application for an extension of trading hours for the same premises may not be made during the next 6 months, except with the leave of the court granted on the ground that there has been a material change in the facts or circumstances on which the refusal, revocation or reduction was based.	3
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(7) An application for an extension of trading hours may be granted for a trial period of up to 6 months ending on a specified date and, on application made at least 1 month before that date, the court may:	8
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	11
(a) confirm the extension of trading hours, or	12
(b) postpone expiration of the trial period, or	13
(c) refuse the application.	14
(8) Nothing in this Act prevents the court from considering an application for a variation of trading hours under this section when considering the application for the grant of the small bar licence concerned.	15
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[15] Section 36 Restrictions on liquor licence applications	19
Omit “(other than an on-licence that relates to a restaurant and that is endorsed with a dine-or-drink authority)” from section 36 (5).	20
	21
[16] Section 37 Making of application	22
Omit section 37 (1A).	23
[17] Section 53 Grant of on-licence (restaurant) and associated matters	24
Omit section 53 (4) and (5).	25
[18] Section 53B	26
Insert after section 53A:	27
53B Grant of small bar licence	28
(1) An application for a small bar licence must not be granted unless the court is satisfied that:	29
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(a) the premises to which the application relates have proper facilities available for the sale, supply and consumption of liquor, and	31
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(b) sufficient sanitary facilities for the convenient use of customers are located on, or in immediate proximity to, the premises.	34
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(2)	An application for a small bar licence must not be granted if any sanitary facilities for the premises to which the application relates (<i>the licensed premises</i>) are proposed by the applicant to be located in immediate proximity to the licensed premises (and not on the licensed premises) unless the court is satisfied that:	1 2 3 4 5
(a)	there are special circumstances that prevent those facilities being located on the licensed premises, and	6 7
(b)	the facilities are sufficiently near to the licensed premises for convenient use by its customers, and	8 9
(c)	the facilities will be fully accessible to the customers during the trading hours of the licensed premises, and	10 11
(d)	the safety of customers will not be jeopardised by reason of the location of the facilities, and	12 13
(e)	the applicant for the licence has entered into a written agreement or made other appropriate arrangements with the owner or occupier of the other premises in which the facilities are located for the maintenance of the cleanliness of the facilities during the trading hours of the licensed premises.	14 15 16 17 18 19
[19]	Section 56 Fee for grant of licence	20
	Insert after section 56 (1) (f):	21
	(f1) in the case of a small bar licence—\$500,	22
[20]	Section 56 (5A)	23
	Insert after section 56 (5):	24
	(5A) For the purposes of subsection (5), the prescribed fee for a variation of trading hours to extend the trading hours for premises to which a small bar licence relates is \$100.	25 26 27
[21]	Section 56 (9) (a) (i) and (ii), (b) and (c)	28
	Omit the subparagraphs and paragraphs.	29
[22]	Section 68 Grounds for complaint	30
	Omit section 68 (1) (i).	31
[23]	Section 88 Reception areas	32
	Omit the section.	33

[24] Section 110 Powers of entry, inspection and seizure	1
Insert after section 110 (7):	2
(8) In the case of a small bar licence relating to licensed premises with sanitary facilities located in immediate proximity to the licensed premises, the part of any premises that comprises those facilities, and any part of premises necessary for access to those facilities, is to be treated as part of the licensed premises for the purposes of this section.	3 4 5 6 7 8
[25] Section 116A Offences by minors in hotels, nightclubs and restaurants	9
Omit section 116A (5).	10
[26] Section 116B Offences by licensees in relation to minors	11
Omit section 116B (1) (d) and (2) (d).	12
[27] Section 116B (3)	13
Omit “or dine-or-drink authority” wherever occurring.	14
[28] Section 116C Notices to be displayed	15
Omit section 116C (3A).	16
[29] Section 140 Averments	17
Omit section 140 (1) (d10).	18
[30] Section 156 Regulations	19
Insert “or premises to which a small bar licence relates” after “restaurant” in section 156 (1) (i).	20 21
[31] Section 156 (1) (j)	22
Omit the paragraph.	23
[32] Schedule 1 Savings and transitional provisions	24
Insert after Part 21:	25
Part 22 Liquor Amendment (Small Bars and Restaurants) Act 2007	26 27
95 Existing restaurant licences	28
(1) In this clause, <i>amending Act</i> means the <i>Liquor Amendment (Small Bars and Restaurants) Act 2007</i> .	29 30

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- (2) The amendments made by the amending Act extend: 1
- (a) to any restaurant licence in force as at the commencement 2
of the amending Act, and 3
 - (b) to any application for a restaurant licence made, but not 4
finally determined, before the commencement of the 5
amending Act. 6
- (3) For the avoidance of any doubt, liquor may be sold or supplied on 7
the premises to which a restaurant licence relates (whether in 8
force before or after the commencement of the amending Act) in 9
accordance with this Act and otherwise than with or ancillary to 10
a meal consumed at a table in the restaurant without the 11
authorisation conferred by a dine-or-drink authority. 12