

Passed by both Houses



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2009

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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, , 2009*



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2009

Act No , 2009

An Act to amend the *Liquor Act 2007* to make further provision with respect to trading on restricted trading days, the sale of liquor under certain producer/wholesaler licences, dealing with disturbance complaints, and other miscellaneous matters; to amend the *Registered Clubs Act 1976* to make further provision with respect to the membership of clubs; 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 and Registered Clubs Legislation Amendment Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Liquor Act 2007 No 90

[1] Whole Act (except where otherwise amended by this Schedule)

Omit “Director” and “Director’s” wherever occurring.

Insert instead “Director-General” and “Director-General’s”, respectively.

[2] Section 4 Definitions

Omit the definition of *Director* from section 4 (1). Insert instead:

Director-General means the Director-General of Communities
NSW.

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

Insert “or is a registered club referred to in section 66 (3)” after “premises” in paragraph (b) of the definition.

[4] Section 14 Authorisation conferred by hotel licence

Insert “(including a restricted trading day)” after “on any day” in section 14 (2) (c).

[5] Section 14 (3) and (3A)

Omit section 14 (3). Insert instead:

(3) Restricted trading days

Despite subsection (2) (a), the times when liquor may be sold for consumption on the licensed premises on a restricted trading day are as follows:

- (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
- (b) between noon and 10 pm on that day.

- (3A) In the case of Christmas Day, liquor must not be sold for consumption on the licensed premises between noon and 10 pm unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.

[6] Section 25 Authorisation conferred by on-premises licence (generally)

Omit section 25 (3). Insert instead:

(3) Restricted trading days

Despite subsection (2), the times when liquor may be sold for consumption on the licensed premises on a restricted trading day are as follows:

- (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
- (b) between 5 am and noon on that day (but only if authorised by an extended trading authorisation and only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises),
- (c) between noon and 10 pm on that day (but only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises),
- (d) between 10 pm and midnight on that day (but only if authorised by an extended trading authorisation and only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises).

Note. Section 49 (7) restricts the granting of an extended trading authorisation for licensed public entertainment venues on restricted trading days.

[7] Section 25 (8) (a)

Insert “(including a restricted trading day)” after “on any day”.

[8] Section 25 (8)

Omit “However, subsection (3) applies in relation to any part of the licensed accommodation premises that operates as a public restaurant.”.

[9] Section 33 Producers of wine and similar products

Insert “or as a producer of cider, perry or mead” after “wine producer” in section 33 (1).

[10] Section 33 (2)

Insert “, or the sale or supply of cider, perry or mead,” after “wine”.

[11] Section 33 (3) (a)

Insert “or honey produced” after “fruit grown”.

[12] Section 33 (3) (c)

Insert at the end of section 33 (3) (b) (ii):

, or

- (c) in the case only of cider, perry or mead—it is uniquely the licensee’s (or a related corporation of the licensee’s) own product that has been produced:
 - (i) by or under the direction of the licensee (or a related corporation of the licensee) on the licensed premises, or
 - (ii) on the licensee’s behalf from fruit grown or honey produced by the licensee.

[13] Section 34 Producers of beer or spirits

Omit “small-scale producer of beer, spirits, cider, perry or mead” from section 34 (1).

Insert instead “producer of beer or spirits”.

[14] Section 34 (1) (b)

Omit “bottles”. Insert instead “containers”.

[15] Section 34 (2)

Omit the subsection. Insert instead:

- (2) For the purposes of subsection (1), a product is the *licensee’s product* only if:
 - (a) it has been produced on the licensed premises, and
 - (b) it is uniquely the licensee’s (or a related corporation of the licensee’s) own product.

[16] Section 34 (3)

Omit the subsection.

[17] Section 35 Miscellaneous provisions relating to producers of wine and similar products

Insert “or as a producer of cider, perry or mead” after “wine producer” in section 35 (1).

[18] Section 48 Community impact

Omit “(as referred to in section 49 (5) (b))” from the definition of *relevant application* in section 48 (2).

Insert instead “(as referred to in section 49 (5) (b) or (5A))”.

[19] Section 49 Extended trading authorisation

Insert after section 49 (2):

(2A) Without limiting subsection (2), the Authority may, in the case of an on-premises licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during any of the following periods:

- (a) a specified period between 5 am and noon on a restricted trading day,
- (b) a specified period between 10 pm and midnight on a restricted trading day.

Note. The sale of liquor at these times is subject to the requirement that a meal is also served—see section 25 (3).

[20] Section 49 (5A)

Insert after section 49 (5):

(5A) Despite subsection (2) (a), the Authority may, in the case of a hotel licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during a specified period between midnight on a Sunday and 5 am on a Monday, but only on or in connection with a special occasion that takes place on a specified date.

[21] Section 49 (7)

Omit the subsection. Insert instead:

(7) Extended trading not permitted on or in relation to restricted trading days—hotels and licensed public entertainment venues

Despite any other provision of this section, an extended trading authorisation cannot, in the case of a hotel licence or an on-premises licence that relates to a public entertainment venue (other than a cinema or a theatre), be granted to authorise the sale or supply of liquor for consumption on the licensed premises during any of the following periods:

- (a) between 5 am and noon on a restricted trading day,
- (b) between 10 pm and midnight on a restricted trading day,
- (c) between midnight and 5 am on any day immediately following a restricted trading day.

[22] Section 49 (9)

Omit “subsection (5) (b)”. Insert instead “this section”.

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- [23] **Section 50 Drink on-premises authorisation for producers of wine and similar products**
Omit “who carries on business as a wine producer” from section 50 (1).
- [24] **Section 55 Requirement to provide information in relation to persons interested in licensee’s business**
Insert after section 55 (4):
(5) The regulations may create exceptions to this section.
- [25] **Section 56 Incident registers**
Insert “or that occur between midnight and 3 am in the case of a limited licence” after “outside of the standard trading period for the licensed premises” in section 56 (2).
- [26] **Section 61 Application for transfer of licence on dispossession of licensee**
Omit section 61 (1) (c). Insert instead:
(c) the licensee is no longer employed by the owner of the business carried on under the licence (*the business owner*) or in attendance at the premises in the capacity as licensee.
- [27] **Section 61 (2)**
Insert “or by the business owner” after “licensed premises”.
- [28] **Section 61 (3)**
Insert “, or the business owner (as the case requires),” after “possession of the premises”.
- [29] **Section 80**
Omit the section. Insert instead:
80 Dealing with complaints
(1) The Director-General may, after receiving a complaint under section 79, decide:
(a) to deal with the complaint in accordance with this Division, or
(b) to take no further action under this Division in relation to the complaint.

- (2) If the Director-General decides to deal with the complaint, the Director-General may:
 - (a) convene a conference to hear submissions in relation to the complaint, or
 - (b) invite written submissions from the licensee for the licensed premises to which the complaint relates, and from such other persons as the Director-General considers appropriate, and make a decision in relation to the complaint without convening a conference.
- (3) A conference, if convened, may deal with more than one complaint.
- (4) A complaint in relation to licensed premises that is being dealt with by the Director-General under this section may be extended to include other licensed premises if the Director-General is satisfied:
 - (a) that the evidence given in support of the complaint would support a complaint against the other licensed premises, or
 - (b) that, assuming that the complaint is shown to be justified, action taken in relation to the licensed premises the subject of the complaint will be ineffective unless similar action is taken in relation to the other licensed premises.
- (5) Any licensed premises in respect of which a complaint is extended as referred to in subsection (4) is, for the purposes of this Division, taken to be the subject of a complaint under this Division.
- (6) If, in relation to any such extended complaint, a conference is not convened, the Director-General must invite written submissions from the licensee for the licensed premises that are the subject of the extended complaint before making a decision in relation to the complaint.
- (7) If a conference is convened in relation to a complaint:
 - (a) notice of the time and place of the conference is to be given to all complainants and the licensee or licensees as specified by the Director-General, and
 - (b) the Director-General is not to make a decision in relation to the complaint unless each complainant and licensee who is present at the conference is given a reasonable opportunity to be heard.

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- (8) A conference under this section is to be presided over by the Director-General and the procedure at the conference is to be determined by the Director-General.
 - (9) Nothing in this section prevents the Director-General from taking other action in relation to a complaint under this Division or in relation to licensed premises that are the subject of a complaint under this Division.

[30] Section 81 Decision by Director-General in relation to complaint

Omit section 81 (1). Insert instead:

- (1) The Director-General may, after dealing with a complaint in accordance with section 80, decide to do any one or more of the following:
 - (a) impose a condition on the licence for the licensed premises the subject of the complaint,
 - (b) vary or revoke a condition to which the licence is subject,
 - (c) if a conference has been convened in relation to the complaint—adjourn the conference subject to implementation and continuation of undertakings given by the licensee,
 - (d) issue a warning to the licensee,
 - (e) take no further action in relation to the complaint.

[31] Section 81 (3)

Omit “under subsection (2)”. Insert instead “under this section”.

[32] Section 92 Control of business conducted on licensed premises

Insert after section 92 (2):

- (3) This section does not prevent a person who:
 - (a) is the licensee of any premises that are situated in a shopping centre, and
 - (b) is the owner of each of the premises comprising the shopping centre,from leasing or subleasing, with the approval of the Authority, any part of the licensed premises on which liquor is sold or supplied for consumption on the premises.
- (4) The person to whom any such part of the licensed premises is leased or subleased in accordance with subsection (3) is, for the purposes of this Act, taken to be an agent of the licensee.

[33] Section 93 Cessation of trade

Insert at the end of the section:

- (2) This section does not apply in relation to limited licences.

[34] Section 148 Additional penalties may be imposed by court

Omit “or revoke or vary a condition to which a licence is subject” from section 148 (b).

[35] Section 148 (2)

Insert at the end of section 148:

- (2) Any condition imposed on a licence by a court under subsection (1) (b) may be revoked or varied by the court on application by the licensee, the Authority, the Director-General or the Commissioner of Police.

[36] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Amendment Act 2009,
to the extent that it amends this Act

[37] Schedule 1, clause 8A

Insert after clause 8:

8A Restricted trading days—existing on-licences

- (1) Without limiting clauses 7 and 8, if the licensed premises to which an existing on-premises licence relates were authorised under the former Act to trade between 5 am and noon, or between 10 pm and midnight, on a restricted trading day, an extended trading authorisation that relates to the period concerned is taken to be in force in relation to the licensed premises.
- (2) Except as otherwise provided under this Act, liquor must not be sold for consumption on the licensed premises during any such extended trading period on a restricted trading day unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.

[38] **Schedule 1, clause 25A**

Insert after clause 25:

25A Further transitional provisions relating to pending SIAs and other matters under former Act

- (1) The Authority may determine a pending SIA in accordance with Division 6A of Part 3 of the former Act as if that Division had not been repealed by this Act. For that purpose, a reference in that Division to the Board is taken to include a reference to the Authority.
- (2) If the pending SIA was provided in connection with a matter that is the subject of pending proceedings as referred to in clause 25 (2) and (3), that matter may, following the Authority's determination of the pending SIA, be determined as provided by those subclauses.
- (3) If, in any other case, the pending SIA is approved by the Authority, an application for a licence to which the pending SIA relates may be determined by the Authority in accordance with this Act.
- (4) Sections 40 (4) (c) and 48 of this Act, and such other provisions of this Act as may be prescribed by the regulations, do not apply to or in respect of an application referred to in subclause (3).
- (5) Without limiting the operation of subclause (1), if any matter that the former Board was authorised or required to determine under the former Act was not determined as at the commencement of this clause, the matter may, to the extent that it relates to a licence, approval or authorisation that may be granted under this or the former Act, be determined by the Authority.
- (6) In this clause:
pending SIA means a social impact assessment under Division 6A of Part 3 of the former Act that was provided to the former Board before the relevant repeal date but that had not been approved or otherwise determined as at the commencement of this clause.

[39] Schedule 1

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

**Part Provisions consequent on enactment of
Liquor and Registered Clubs Legislation
Amendment Act 2009**

Disturbance complaints

The amendments made by the *Liquor and Registered Clubs Legislation Amendment Act 2009 (the amending Act)* to the provisions of Division 3 of Part 5 of this Act extend to complaints made, but not determined, before the commencement of the amending Act.

Schedule 2 Amendment of Registered Clubs Act 1976 No 31

[1] Section 10 Requirements to be met by clubs

Omit section 10 (1) (c).

[2] Section 10 (2)

Omit the subsection. Insert instead:

- (2) For the purposes of determining whether a club is conducted in good faith as a club, as required by subsection (1) (a), regard is to be had to the nature of the premises of the club.

[3] Section 10 (4)

Omit the subsection.

[4] Section 11 Calculation of maximum number of full members

Omit the section.

[5] Section 13 Exempt clubs

Omit “or (4)” from section 13 (1) (a).

[6] Section 30 Rules of registered clubs

Insert “or in section 30B” after “subsection (10)” in section 30 (2) (l) and (m), wherever occurring.

[7] Section 30 (2) (n)

Insert after section 30 (2) (m):

- (n) A register of persons who are admitted as temporary members of the club for an extended period as referred to in section 30B is to be kept in accordance with section 31 either as a separate register or as part of the register referred to in paragraph (l).

[8] Section 30B

Insert after section 30A:

30B Admission of temporary members for extended period

- (1) If the rules of a registered club provide for the admission of temporary members, the rules are taken to include a rule that persons may be admitted as temporary members of the club for a period of up to, but not exceeding, 7 consecutive days (or for such

longer period as the Authority may approve in writing in relation to that club).

- (2) The Authority cannot, under subsection (1), approve a period that is more than 30 consecutive days.

[9] Section 31 Manner of keeping registers relating to members and guests

Insert after section 31 (1) (e):

- (f) section 30 (2) (n) in relation to temporary members referred to in section 30B is to have entered in it, when any such temporary member enters the club premises for the first time, the full name, or the surname and initials, and the address, of the temporary member together with his or her signature.

Note. A person who is admitted as a temporary member for an extended period under section 30B does not have to sign in each time the person enters the club's premises as such a member.

[10] Section 45 Unauthorised persons using club premises

Insert "(other than a temporary member referred to in section 30B)" after "member of the club" in section 45 (1) (b).

[11] Section 45 (1) (b1)

Insert after section 45 (1) (b):

- (b1) is a temporary member of the club (as referred to in section 30B) and the particulars required by section 31 (1) (f) have not been entered in the register of temporary members kept by the club in accordance with the rule of the club referred to in section 30 (2) (n), or

[12] Section 73 Regulations

Omit "under section 17A" from section 73 (1) (o).

Insert instead "as referred to in Division 1A of Part 2".

[13] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Liquor and Registered Clubs Legislation Amendment Act 2009,
to the extent that it amends this Act

Schedule 3 Amendment of Casino, Liquor and Gaming Control Authority Act 2007 No 91

[1] Section 3 Definitions

Omit the definition of *Director* from section 3 (1). Insert instead:

Director-General means the Director-General of Communities
NSW.

**[2] Sections 3 (1) (definition of “inspector”), 20 (2), 36 (2) (definition of
“official document”) and 37 (b)**

Omit “Director” wherever occurring. Insert instead “Director-General”.

[3] Section 3 (1), definition of “key official”

Omit paragraph (c) of the definition. Insert instead:

(c) the Director-General,

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

Omit “Patrol Commander” from paragraph (f) of the definition.

Insert instead “Local Area Commander”.

[5] Section 16 Restrictions relating to key officials and former key officials

Insert at the end of section 16 (1) (e):

, or

(f) be a close associate of a person known by the official to be
an applicant for, or the holder of, a gaming or liquor
licence.

[6] Section 21 Requirement to provide information and records

Omit section 21 (1). Insert instead:

(1) The Authority or an inspector or police officer may, by notice in
writing given to a person, require the person to furnish to the
Authority, inspector or police officer such information or records
(or both) as the Authority, inspector or officer requires by the
notice in connection with any matter arising under or in
connection with the gaming and liquor legislation.

[7] Sections 30 (1) and 31

Insert “or police officer” after “inspector” wherever occurring.

Liquor and Registered Clubs Legislation Amendment Bill 2009

Schedule 3 Amendment of Casino, Liquor and Gaming Control Authority Act 2007
No 91

[8] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Amendment Act 2009,
to the extent that it amends this Act