

[Act 2001 No 88]



New South Wales

# Liquor and Registered Clubs Legislation Further Amendment Bill 2001

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *Liquor Act 1982*:
    - (i) to allow liquor to be sold or supplied to residents of nursing homes and hospital in-patients without the need for a licence, and
    - (ii) to allow liquor to be sold on vessels while berthed at certain wharves prescribed by the regulations, and
    - (iii) to allow the Director of Liquor and Gaming to give certain directions to licensees in relation to the promotion of liquor where that promotion is considered to be undesirable because of its effect or its likely effect on minors, and
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- (iv) to omit two uncommenced provisions requiring the date of birth of a customer to be recorded on an invoice or delivery document that accompanies liquor sold through an internet site, over the telephone, by facsimile or by mail order, and
  - (v) to make it an offence to make materially false or misleading statements in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the Act, and
  - (vi) to provide a longer phasing-in of the requirements relating to the principal business of the licensee under a caterer's licence, and
  - (vii) to remove any doubt that certain licences are in force, and
  - (viii) to validate dine-or-drink authorities for which fees were paid late, and
- (b) to amend the *Registered Clubs Act 1976*:
- (i) to make it an offence to make materially false or misleading statements in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the Act, and
  - (ii) to allow the Director of Liquor and Gaming to give certain directions to registered clubs in relation to the promotion of liquor where that promotion is considered to be undesirable because of its effect or its likely effect on minors, and
  - (iii) to remove any doubt that certain certificates of registration are in force.

## 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, except proposed Schedule 1 [1], [2] and [5] and Schedule 2 [2], which commence on a day or days to be appointed by proclamation, Schedule 1 [6], which commences at the same time as the provision that it amends and Schedule 1 [10], which commences, or is taken to have commenced, on 25 November 2001.

**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**

### **Sale of liquor to residents of nursing homes and hospital in-patients**

The *Liquor Act 1982* regulates the sale and supply of liquor.

**Schedule 1 [2]** provides that nothing in the Act applies to or in respect of the sale or supply of liquor to adults who are residents of a nursing home, hospital in-patients or in-patients in other prescribed medical facilities.

**Schedule 1 [1]** makes a consequential amendment.

### **Sale of liquor on vessels**

Section 35 (2) of the *Liquor Act 1982* prohibits liquor from being sold or supplied to passengers on board a vessel while it is at its berth or while it is moored, if persons other than passengers and crew are being allowed on board.

**Schedule 1 [3]** enables liquor to be sold or supplied to passengers on board a vessel while it is at its berth if the berth is at a wharf prescribed by the regulations and if no persons other than passengers and crew are being allowed on board.

**Schedule 1 [4]** requires the concurrence of the Minister for Urban Affairs and Planning before the making of such regulations.

### **Undesirable promotion of liquor**

**Schedule 1 [5]** provides for the Director of Liquor and Gaming to give directions to a licensee about the promotion of liquor that the Director thinks is undesirable because of its effect on minors. The amendment makes it an offence for a licensee to fail to comply with a direction.

### **Sale of liquor through internet or by other communication media**

**Schedule 1 [6]** omits two uncommenced provisions requiring the date of birth of a customer to be recorded on an invoice or delivery document that accompanies liquor sold through an internet site, over the telephone, by facsimile or by mail order.

### **False or misleading information**

**Schedule 1 [7]** makes it an offence to make a statement that is false or misleading in a material particular in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the *Liquor Act 1982*.

## **Savings and transitional regulations**

**Schedule 1 [8]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

### **Caterer's licence**

Section 18 (2) (d) of the *Liquor Act 1982* provides for the issue of a caterer's licence, being a licence that authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises. Section 23A (3) requires that the principal business of the licensee under a caterer's licence, and the principal business of any person or body on whose behalf the licensee holds the licence, must be the business of providing catering services for fee, gain or reward. That requirement was inserted by the *Liquor Amendment Act 1999*, which provided for the new requirements to be phased-in within 2 years after the commencement of the provisions, that is, before 25 November 2001 (see clause 78 of Schedule 1 to the *Liquor Act 1982*).

**Schedule 1 [10]** extends the phasing-in period for another 3 years, until 25 November 2004, for those caterers who obtained their licence prior to 25 November 1999.

### **Status of certain licences**

**Schedule 1 [11]** makes it clear that any licence that was suspended for non-payment of licence fees immediately before the decision of the High Court in *Ha and another v State of New South Wales and others, Walter Hammond Associates Pty Ltd v State of New South Wales and others* (1997) 189 CLR 465 is, on and from the date of that decision, taken not to have been suspended.

**Schedule 1 [9]** omits a redundant provision.

### **Payments for dine-or-drink authorities accepted after the due date**

Section 56 (9) (a) of the *Liquor Act 1982* provides for the payment in instalments of the prescribed fee for dine-or-drink authorities. Section 56 (9) (a) (iv) provides that an authority is automatically cancelled on the first anniversary of its grant if any part of the fee for the authority remains unpaid at that time.

**Schedule 1 [11]** inserts a provision validating certain authorities for which fees have been accepted after the due date.

## **Schedule 2 Amendment of Registered Clubs Act 1976**

### **False or misleading information**

**Schedule 2 [1]** makes it an offence to make a statement that is false or misleading in a material particular in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the *Registered Clubs Act 1976*.

### **Undesirable promotion of liquor**

**Schedule 2 [2]** provides for the Director of Liquor and Gaming to give directions to a registered club about the promotion of liquor that the Director thinks is undesirable because of its effect on minors. The amendment makes it an offence for a registered club to fail to comply with a direction.

### **Savings and transitional regulations**

**Schedule 2 [3]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

### **Status of certain certificates of registration**

**Schedule 2 [5]** makes it clear that any certificate of registration that was suspended for non-payment of licence fees immediately before the decision of the High Court in *Ha and another v State of New South Wales and others, Walter Hammond Associates Pty Ltd v State of New South Wales and others* (1997) 189 CLR 465 is, on and from the date of that decision, taken not to have been suspended.

**Schedule 2 [4]** omits a redundant provision.