

[Act 1999 No 27]



New South Wales

# Liquor and Registered Clubs Legislation Further Amendment Bill 1999

## 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 operation of Governor's licences with respect to responsible serving and consumption of alcohol, and
  - (b) to allow nightclubs to stage alcohol-free entertainment for minors, and
  - (c) to make further provision with respect to the presence of minors in registered clubs, and
  - (d) to make other, minor amendments of an administrative character.
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## 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 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

### Auction licences

**Schedule 1 [3]** amends section 6 of the Act so as to permit the sale of liquor by the holder of an auction licence to take place, in circumstances prescribed by the regulations, on premises other than licensed premises. **Schedule 1 [7]** amends section 22 of the Act so as to dispense with the requirement to give 7 days' notice to the Liquor Administration Board before a sale of liquor by auction takes place.

### Governor's licences

**Schedule 1 [4]** amends section 19 of the Act so as to require an applicant for a Governor's licence to satisfy the Minister that responsible serving practices will be in place with respect to liquor served at the licensed premises. **Schedule 1 [5]** and **[6]** amend sections 19 and 19A so as to provide that a Governor's licence ceases to be in force if the circumstances existing at the time of grant of the licence have changed fundamentally.

### Dine-or-drink authorities

**Schedule 1 [8]** amends section 37 of the Act to provide that an application for a dine-or-drink authority lodged in respect of a restaurant that is already licensed does not have to be advertised, except in circumstances where the regulations require some form of advertising.

**Schedule 1 [11]** amends section 56 of the Act so as to introduce a new fee scheme for dine-or-drink authorities. Under the new scheme, the restaurant licensee has 3 months from the time the authority is granted to pay one-quarter of the fee and another 9 months to pay the remainder of the fee.

#### **Racing club functions and surf life saving club functions**

**Schedule 1 [9]** and **[10]** amend section 51A of the Act, which regulates function licences. The amendments provide that, in addition to the 26 functions per annum authorised by an ordinary function licence, a racing club is authorised to serve liquor at race meetings held on any day and a surf life saving club is authorised to serve liquor at functions of which due notice has been given to the Commissioner of Police, the Director of Liquor and Gaming and local authorities, subject to conditions specified in the amendment. **Schedule 1 [1]** and **[2]** make consequential amendments.

#### **Provisional approval of a manager of licensed premises**

**Schedule 1 [12]** repeals and replaces section 69D of the Act, which deals with the approval by the Licensing Court of a manager of premises licensed to a body corporate or partnership. The new section makes it possible for the Court, if it has no reason to think the applicant unfit for appointment as the manager of licensed premises, to approve of the appointment on a provisional basis pending completion of such investigations as are necessary to be undertaken for a proper character assessment of the applicant. Under the section as it currently stands, the licensee cannot trade until those investigations are completed.

#### **Recovery of duty on approved gaming devices**

**Schedule 1 [13]** amends section 86JB of the Act so as to provide that unpaid gaming machine duty may be recovered either from the hotelier who keeps the machines or from a person interested in the business of a hotelier.

#### **Liquor accords and competition legislation**

**Schedule 1 [15]** inserts a new section 104E into the Act in order to remove the possibility that an arrangement entered into by licensees (or by licensees and registered clubs), with the approval of police, for the purpose of promoting responsible service of alcohol and regulating the behaviour of drinkers might infringe Commonwealth or State competition legislation.

### **Minors functions at nightclubs**

**Schedule 1 [16] and [17]** amend sections 111A and 111B of the Act in order to permit a minors functions authority to be granted to the holder of a nightclub licence as well as to the holder of a hotelier's licence.

**Schedule 1 [18]** amends section 111C of the Act to prescribe conditions applying to the holding of minors functions on nightclub premises.

**Schedule 1 [20] and [21]** make consequential amendments.

### **Use by minors of licensed premises**

**Schedule 1 [19]** amends section 112 of the Act, which deals with the power of the Liquor Administration Board to authorise a part of licensed premises to be used by minors. Under the section, application for such an authorisation may be made by the licensee or by the Commissioner of Police, and the authorisation, if granted, is subject to conditions imposed by the Board or the Commissioner. The effect of the amendment is to withdraw the Commissioner's power to impose conditions on the authorisation.

### **False or misleading statements**

**Schedule 1 [22]** amends section 139 of the Act, which prohibits the deliberate making of a false or misleading statement in an official document under the Act or the deliberate omission of relevant matter from it. The amendment dispenses with the requirement (for the purposes of establishing an offence under the section) to prove that the statement or omission was deliberate. Instead, it will be sufficient to convict the defendant if it is shown that the defendant either knew or could reasonably be expected to have known that the statement was false, or that there was a material omission.

### **Evidentiary matters**

**Schedule 1 [23] and [24]** amend section 140 of the Act, which deals with matters of evidence in proceedings under the Act. The object of the amendments is to make it clear that section 140 does not require an averment to be made in any particular terms.

The amendments also provide for the inclusion in the section of other matters of record that may be the subject of averments.

### **Applications for authority to keep gaming devices**

**Schedule 1 [25]** amends section 161 of the Act to permit an application for an authority to keep a gaming device to be verified by the manager of the licensed premises in certain cases.

### **Returns in respect of gaming devices connected to computerised monitoring system**

**Schedule 1 [27]** amends section 200AA of the Act, which provides for arrangements to be made for the furnishing of information required by the operator of a computerised monitoring system to carry out monitoring functions in relation to gaming machines for the purposes of both the *Liquor Act 1982* and the *Registered Clubs Act 1976*. The amendment provides that the arrangements may include provision for the time within which, and the person to whom, the relevant information is to be furnished. **Schedule 1 [14]** and **[26]** make consequential amendments.

### **Savings and transitional provisions**

**Schedule 1 [28]** and **[29]** amend Schedule 1 to the Act (Savings and transitional provisions) to provide for the transitional application of amendments made by the proposed Act and to allow any necessary regulations to be made as a consequence of those amendments.

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

### **Minors as guests of temporary club members**

**Schedule 2 [1]** repeals and replaces the definition of *guest* in section 4 of the Act, and **Schedule 2 [2]** inserts a definition of *responsible adult*, so as to permit a minor to enter and use the facilities of a registered club (other than bars and gaming machines) as the guest of a temporary member who, in relation to the minor, is a responsible adult (that is, a parent, guardian or other person having parental responsibility for the minor). **Schedule 2 [5]**, **[6]** and **[12]** make consequential amendments.

### **Rules regulating election of governing bodies of registered clubs**

**Schedule 2 [3]** and **[4]** amend section 30 of the Act, which contains certain rules applying to registered clubs. The amendments extend the operation of a particular rule to encompass biennial, as well as annual, elections of the governing body of a club, and is made for the sake of consistency with amendments made to the Act in 1997.

### **Minors in bar areas of clubs**

**Schedule 2 [7]** repeals section 51A of the Act (which provided a defence in respect of the offence of permitting a minor to be in a poker machine area) and **Schedule 2 [9]** inserts a new section 52AA of the Act which includes the defence provided by the repealed section 51A and another defence in relation to minors in bar areas. The defence in both cases consists in establishing that the minor was only passing through the area in order to get to another part of the club and was at all times in the company and immediate presence of a responsible adult.

**Schedule 2 [8]** inserts a new section 51B, which provides that it is an offence on the part of both a club and its secretary to allow a minor to serve liquor in any of the club's bars, unless the Liquor Administration Board has authorised it.

### **Other amendments**

**Schedule 2 [10]**, **[13]** and **[14]** make amendments concerning false or misleading statements, local liquor accords and connection of gaming devices to a centralised monitoring system. They are similar to the amendments made by **Schedule 1 [22]**, **[15]**, and **[14]**, respectively, in relation to premises licensed under the *Liquor Act 1982*.

**Schedule 2 [11]** amends section 66 of the Act so as to provide that payment of a penalty notice for an offence does not preclude the taking of disciplinary action under the Act in respect of the same matter.

**Schedule 2 [15]** and **[16]** amend Schedule 2 to the Act (Transitional provisions) to include a transitional provision and to allow any necessary regulations to be made as a consequence of the amendments made by the proposed Act.