

[Act 1996 No 41]



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 1995

Explanatory note

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

Overview of Bill

This Bill amends the *Liquor Act 1982* and the *Registered Clubs Act 1976* to achieve the following objects:

- (a) to provide explicitly that “harm minimisation” (the minimisation of harm associated with misuse and abuse of liquor) is a primary objective of each Act and to provide that due regard is to be had to the need for harm minimisation by persons exercising functions under the Acts, particularly when considering the public interest,
 - (b) to provide for responsible practices in the sale, supply, service and promotion of liquor (by preventing activities that encourage misuse or abuse of liquor and intoxication, and requiring licensees and staff to undergo courses of training in responsible service practices),
 - (c) to increase penalties for offences concerned with the sale or supply of liquor to minors, the exposure of minors to gaming devices, and intoxication and violent behaviour on licensed and club premises, to make miscellaneous and consequential amendments.
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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 proclaimed.

Clause 3 gives effect to the amendments to the *Liquor Act 1982* as set out in Schedule 1.

Clause 4 gives effect to the amendments to the *Registered Clubs Act 1976* as set out in Schedule 2.

Clause 5 amends the *Liquor Regulation 1983* to extend the training requirements that currently apply to applicants for a hotelier's licence to applicants for a motel licence.

Amendments (Schedules 1 and 2)

Harm minimisation

Both Acts are amended to provide that “harm minimisation” (the minimisation of harm associated with misuse and abuse of liquor) is a primary objective of each Act and to provide that persons having functions under the Acts (including the Licensing Court, the Liquor Administration Board, the Director of Liquor and Gaming and the Commissioner of Police) are required to have due regard to the need for harm minimisation when exercising those functions. In particular, due regard is to be had to the need for harm minimisation when considering the public interest. (See Schedules 1 [1] and 2 [1])

Responsible practices in the sale, supply, service and promotion of liquor

Both Acts are amended to provide for responsible practices in the sale, supply, service and promotion of liquor. The amendments will:

- (a) impose requirements for responsible service practices as a precondition to the grant of a liquor licence or club registration, or an extension of trading hours, (See Schedules 1 [10], [11], [12], [15], [21] and 2 [7])
- (b) allow the Licensing Court to impose conditions on liquor licences and club registrations to restrict activities (such as promotions) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption), (See Schedules 1 [8] and 2 [8])

- (c) provide new grounds for complaint against licensed premises and registered clubs, based on irresponsible liquor promotions, frequent intoxication on the premises (this already applies to registered clubs), and violent behaviour, (See Schedules 1 [23], [31] and 2 [9], [11])
- (d) introduce a new regulation making power that will authorise the making of regulations requiring or encouraging the adoption of responsible practices in the sale, supply, service and promotion of liquor (such as regulations prohibiting or restricting promotions and other activities (including discounting and supply of free liquor) likely to result in binge drinking or excessive consumption, and requiring licensees, managers and staff to undergo courses of training in responsible service practices). (See Schedules 1 [7], [42] and 2 [8], [23])

Increased penalties

Penalties under both Acts for offences concerned with the sale or supply of liquor to minors and exposure of minors to gaming machines are increased. Penalties for licensees and staff are increased from 10 and 20 penalty units (\$1,000 and \$2,000) to 50 penalty units (\$5,000). Penalties for other adults are increased from 10 penalty units (\$1,000) to 20 penalty units (\$2,000). In addition, a new higher penalty of 100 penalty units (\$10,000) and/or 12 months imprisonment will be available in the case of the offence of supplying liquor to a minor where the offence is so serious as to warrant a higher penalty (as, for example, in the case of the supply of large amounts of liquor, supply of "hard" liquor, or supply to very young children). Penalties for minors are currently 5 penalty units (\$500) and are not increased. (See Schedules 1 [32]–[39] and 2 [24]–[30]) Penalties are also increased from 20 to 50 penalty units (\$2,000 to \$5,000) for the offences of permitting intoxication or violent behaviour, or selling liquor to intoxicated persons, on licensed premises or club premises. (See Schedules 1 [40], [41] and 2 [22])

Miscellaneous and consequential amendments

The following miscellaneous and consequential amendments are made:

- (a) The *Liquor Act 1982* currently defines *beer* to include any fermented liquor made from sugar or saccharine matter. The amendments delete this inclusion from the definition (so as to prevent the unintended inclusion of some alcoholic fruit drinks) and replace it with an inclusion of any fermented liquor that is made from hops or that is held out to be beer. (See Schedule 1 [2])

- (b) An amendment is made to the definition of *premises* in the *Liquor Act 1982* to allow a tram car to be licensed under the Act for the sale of liquor. (See Schedule 1 [4])
- (c) The *Liquor Act 1982* currently allows the regulations to require an applicant for any licence to attend a prescribed course of instruction. Another provision requires an applicant for a motel licence to comply with the same requirements as to attendance at a course of instruction as apply to an applicant for a hotel licence. These provisions are amended to delete the requirement that an applicant for a motel licence attend the same course as a hotel applicant, and to provide that the regulations may require an applicant for a licence to attend a course of instruction approved by the Liquor Administration Board (as an alternative to the regulations actually specifying a course). The regulations under the Act are also amended to provide that an applicant for a motel licence is required to complete an appropriate course of instruction. (See proposed clause 5 and Schedule 1 [6] and [44])
- (d) Currently the *Liquor Act 1982* requires an applicant for a licence to keep the Registrar of the Licensing Court informed of any changes in circumstances affecting the application, pending a decision on that application. Those requirements are extended so that they also apply to an applicant for a transfer of a licence, pending the final disposal of the application. (See Schedule 1 [16] and [17])
- (e) Currently the *Liquor Act 1982* allows the Liquor Administration Board to recover any duty or penalty in respect of late payment of licence fee from the licensee. An amendment is made to allow the Board to also recover any such duty or penalty from any person who has a direct interest in the business being conducted pursuant to the licence. (See Schedule 1 [24])
- (f) Under the *Liquor Act 1982* the boundaries of licensed premises in respect of which there is an on-licence for a restaurant can be redefined to include an adjoining motel. An amendment increases the maximum fee for this redefinition so that it corresponds with the fee for the grant of an on-licence for premises that include a motel. This corrects an anomaly whereby the fee payable for a motel endorsement for an on-licence differed depending on whether the endorsement was granted at the same time as the on-licence application was granted or subsequently pursuant to a separate application. (See Schedule 1 [28])

- (g) At present the *Liquor Act 1982* allows a person who holds a hotelier's licence in respect of premises rented by him or her to deduct from the rent payable for the premises a proportion of the licence fee payable under the Act. This provision is amended to make it clear that a lessee is not entitled to deduct any proportion of the duty payable by the lessee on approved amusement devices. The amendment is consequential on amendments to the licence fee provisions made in 1994. Accordingly, the amendment is made to apply in respect of rent payable by a lessee on or after the commencement of those 1994 amendments. (See Schedule 1 [45] and [48])
- (h) At present the holder of an approved amusement device dealer's licence or a gaming-related licence is required to wear visible identification when servicing, repairing or maintaining an approved amusement device or poker machine on licensed or registered club premises. This requirement is clarified so that, if the licensee is a corporation, the requirement applies to any person who acts under the authority of the licence. (See Schedules 1 [46] and 2 [35])
- (i) Both Acts prohibit the possession, keeping, use or operation of an approved amusement device or poker machine except in certain circumstances. An exception allows the possession, keeping, use or operation of such a device or machine if it is being used for educational, cultural or promotional purposes. The amendments make it clear that such promotional purposes must relate to promotion of the device or machine itself, not other goods and services. (See Schedules 1 [47] and 2 [36])
- (j) A provision in the *Registered Clubs Act 1976* relating to disclosure under the *Corporations Law* by a director of a registered club of an interest in a contract proposed to be entered into by the club is amended to provide that disclosure is still required (even though the requirement under the *Corporations Law* now only applies to proprietary companies). (See Schedule 2 [20] and [21])
- (k) Certain provisions of both Acts currently give local councils a role in relation to applications, functions, authorities, complaints and variations of trading hours. Those provisions are amended to permit other development consent authorities to perform a similar role. (See Schedules 1 [3], [9], [20], [30] and 2 [2], [3], [9], [12], [13], [14], [16]–[19], [34])

- (l) Under section 16 of the *Liquor Act 1982* as currently worded, the Licensing Court may award costs against parties to proceedings before the Court. The section is amended to enable the Court also to award costs against persons that have a direct interest in an applicant's liquor business or application. (See Schedule 1 [5])
- (m) Section 35 of the *Liquor Act 1982* restricts the serving of liquor on a vessel that has an on-licence to when the vessel has left its berth (ie is on a cruise). The section is amended to provide that liquor may not be served while the vessel is moored during a cruise (after it has left its berth) if persons other than passengers or crew are permitted to board the vessel while it is moored. The section is also amended to clarify the prohibition on selling liquor while on a voyage in Sydney Harbour so that the prohibition applies only to public passenger services (public and private ferries). (See Schedule 1 [13] and [14])
- (n) When a licensee is evicted from licensed premises or the owner of the premises is entitled to exclusive possession of them, an application for a licence in respect of the premises under section 42 of the *Liquor Act 1982* is currently not required to include details of persons that have an interest in the application or business. The section is amended to apply such a requirement to those applications. (See Schedule 1 [18] and [19])
- (o) In calculating for liquor licence fee purposes the price of beer sold by a licensee, the freight costs involved in transporting the beer from a brewery to a regional depot of the brewer are currently excluded (section 78A of the *Liquor Act 1982* and section 4AA of the *Registered Clubs Act 1976*). Those sections are amended to make it clear that costs of transport from an interstate brewery to a regional (NSW) depot are also to be excluded from that calculation. (See Schedules 1 [25]–[27] and 2 [4]–[6])
- (p) Section 97 of the *Liquor Act 1982* and section 68 of the *Registered Clubs Act 1976* refer to the service and maintenance of breath testing devices on licensed premises in accordance with the relevant Australian Standard. The provisions are amended to require the device to comply with the Standard (rather than by requiring its service or maintenance to be in accordance with the Standard). This is because the Standard refers to the characteristics of the device rather than its service or maintenance. (See Schedules 1 [29] and 2 [32])

- (q) Section 55 of the *Registered Clubs Act 1976* currently prohibits the making of false or misleading statements in applications and other instruments provided to the Court or the registrar. The section is extended to statements made to the Board and to other documents submitted to the Court, the Director, the registrar or the Board for the purposes of the Act. (See Schedule 2 [31]) The penalty for the offence is increased to 20 penalty units (\$2,000) to bring it into line with the corresponding offence under the *Liquor Act 1982*. The corresponding offence under the *Liquor Act 1982* (which currently applies only to false and misleading statements in affidavits and statutory declarations) is extended to bring it into line with the new broader offence under the *Registered Clubs Act 1976*. (See Schedule 1 [43])
- (r) Section 85 (8) of the *Registered Clubs Act 1976* requires poker machine duty to be paid to the Housing Account under the *Housing Act 1912* and the Hospitals Fund under the *Public Hospitals Act 1929*. This requirement is omitted as the purposes of those accounts are now served by other arrangements. (See Schedule 2 [33])
- (s) A statute law revision amendment is made to the *Liquor Act 1982* to provide that a reference in certain disciplinary provisions to a manager of licensed premises includes a reference to a former manager. The amendment will complement an existing provision that provides that a reference in those disciplinary provisions to a licensee includes a reference to a former licensee. (See Schedule 1 [22])