

## LIQUOR (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Registered Clubs (Liquor) Amendment Bill 1989 is cognate with this Bill.

The objects of this Bill are—

- (a) to extend the present trading hours of hotels and of retail (“take-away”) liquor stores; and
- (b) to enable the Licensing Court, in certain circumstances, to permit the sale of liquor in hotels and retail liquor stores at other times; and
- (c) to waive the present requirements relating to the minimum catering capacity of a licensed restaurant before it may be authorised to sell or supply liquor from 11 p.m. to 3 a.m. otherwise than with or as ancillary to a meal but while a meal is available on the premises; and
- (d) to simplify the procedure for resolving complaints of undue disturbance of the neighbourhood of licensed premises; and
- (e) to provide stricter controls in relation to access to liquor by minors; and
- (f) to increase existing penalties for offences against the Principal Act; and
- (g) to make minor, consequential and ancillary provisions.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedules of amendments.

**Clause 4** preserves conditions of licences where the conditions might otherwise have been revoked as a consequence of the proposed amendments. A licensee will need to approach the Licensing Court for any adjustments to these conditions.

#### SCHEDULE 1—AMENDMENTS RELATING TO TRADING HOURS

**Schedule 1 (1)** makes an amendment consequential on Schedule 1 (3).

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**Schedule 1 (2)** amends section 24 to extend the present normal trading hours for hotels. The times proposed are—

- (a) on a day other than a Sunday, Good Friday or Christmas Day—5 a.m. to midnight instead of 10 a.m. to 11 p.m.; and
- (b) on a Sunday (unless it is Christmas Day)—from 10 a.m. to 10 p.m. instead of noon to 10 p.m.

It is not proposed to change the normal hotel trading hours at present fixed by the Act for Good Friday or Christmas Day (noon to 10 p.m. with meals) or for trading commenced on New Year's Eve (to 2 a.m. on New Year's Day).

**Schedule 1 (3)** substitutes section 25 to enable the Licensing Court to extend the normal trading hours proposed by the amendments referred to in Schedule 1 (2) but, between midnight and 5 a.m., only for the sale of liquor for consumption on the licensed premises in a part of the premises specified by the Licensing Court when granting the extension. An extension must not be granted if it would result in frequent undue disturbance to the neighbourhood. In addition, certain extensions may be granted for a Sunday only to meet the needs of tourists and tourism or some other special need.

**Schedule 1 (4)** amends section 26 to extend the present trading hours for retail ("take-away") outlets. The times proposed are—

- (a) except on Sunday, Good Friday and Christmas Day—5 a.m. to midnight instead of 8 a.m. to 8 p.m. (or to 9 p.m. on late shopping night in the area); and
- (b) on Sunday (other than Christmas Day) from 10 a.m. to 10 p.m. instead of noon to 8 p.m.

**Schedule 1 (5)** substitutes section 27 to enable the Licensing Court to extend the normal trading hours proposed by the amendments referred to in Schedule 1 (4) for retail outlets. An extension would permit "take-away" sales on Sunday (other than Christmas Day) from a time earlier than 10 a.m. but not earlier than 5 a.m. and to a time later than 10 p.m. but not later than midnight but may be granted only to meet the needs of tourists and tourism or other special needs and if it would not result in frequent undue disturbance to the neighbourhood of the licensed premises.

**Schedule 1 (6)** amends section 32 of the Principal Act which at present enables liquor to be sold in a licensed restaurant otherwise than with or as ancillary to a meal from 11 p.m. on one day (not Sunday, Good Friday or Christmas Day) to 3 a.m. on the next day. This is at present conditional on the ability to cater at all times for at least 150 people present at the same time and the provision between 11 p.m. and 3 a.m. of entertainment by at least 2 persons. The proposed amendment would remove the condition relating to catering capacity but would retain the present condition requiring a meal to be available on the premises between those times. Entertainment would still be required but its provision by one person would be sufficient.

**Schedule 1 (7), (8) and (9)** make consequential amendments.

#### **SCHEDULE 2—AMENDMENTS RELATING TO NEIGHBOURHOOD DISTURBANCES**

**Schedule 2 (1)** makes an amendment consequential on Schedule 2 (2).

**Schedule 2 (2)** proposes to replace the present section 104 of the Principal Act providing a remedy for the frequent undue disturbance of the neighbourhood of licensed premises. The present section 104 requires the matter to be heard and determined by the Licensing Court following a complaint and issue of a summons. It is proposed to replace this procedure with a conference presided over by a member of the Liquor Administration Board who would be authorised to impose on a licence the same conditions as may be imposed by the Licensing Court under the present provision.

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**SCHEDULE 3—AMENDMENTS RELATING TO MINORS**

**Schedule 3 (1)** proposes amendment of the present statutory defence to a charge under section 114 of selling liquor to a minor by requiring, instead of a reasonable belief that the age of the person to whom the liquor was sold was at least 18, the prior production of reasonable documentary evidence of an acceptable age.

**Schedule 3 (2)** replaces to the present statutory defence to a charge under section 117 relating to a minor being in a prohibited part of a hotel by providing as the only defence for the licensee proof that reasonable documentary evidence of an acceptable age had been produced.

**Schedule 3 (3)** inserts proposed sections 117A and 117B.

Proposed section 117A enables a licensee, an employee or a member of the police force to require a minor (or a person reasonably suspected of being a minor) who is reasonably suspected of committing an offence against the Act to provide his or her name, residential address and documentary evidence of age.

Proposed section 117B requires a licensee or employee to refuse entry to a part of the licensed premises by a person reasonably suspected of being a minor, if entry to that part by a minor would be an offence, unless satisfactory documentary evidence as to age is produced.

**Schedule 3 (4)** replaces the present statutory defence to a charge under section 125A relating to a minor using an amusement device in a hotel by providing as the only defence for the licensee proof that reasonably acceptable documentary evidence of an acceptable age had been produced.

**SCHEDULE 4—AMENDMENTS INCREASING PENALTIES**

This Schedule proposes increases in the present penalties for offences against the Principal Act.

**SCHEDULE 5—OTHER AMENDMENTS**

**Schedule 5 (1)** is designed to overcome doubts that have arisen as to the interpretation of provisions of the Principal Act relating to plans and specifications approved when granting a conditional application under the Liquor Act 1912 before its repeal.

**Schedule 5 (2)** increases from \$2,000 to \$5,000 the amount the Licensing Court may require a licensee to pay as a disciplinary measure as distinct from a penalty for an offence. An unpaid amount would be recoverable as a debt, unlike a penalty resulting from a prosecution where default in payment is punishable by imprisonment.

**Schedule 5 (3)** requires a direction by a Licensing Court consisting of at least 3 Magistrates in order to stay proceedings pending the hearing of an appeal to the Court as so constituted.

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