

[Act 1997 No 155]



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 1997 (No 2)

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 dispense with ad valorem periodic licence fees under that Act and to provide for annual licence fees, and
 - (ii) to replace the existing licensing scheme for selling liquor at functions with a new scheme that provides for two classes of function licences, namely:
 - permanent on-licence (function), which authorises the sale of liquor at more than 3 functions, and
 - temporary on-licence (function), which authorises the sale of liquor at up to a maximum of 3 functions, and

* Amended in committee—see table at end of volume.

- (iii) to remove dealcoholised wine from the reach of the definition of *liquor*, and
- (iv) to allow holders of Australian wine licences to sell spirits (in addition to wine and beer) for consumption on their licensed premises, and
- (v) to ensure that liquor sold by hotels after midnight on New Year's Eve is for consumption on the licensed premises only, and
- (vi) to make other miscellaneous amendments, and
- (b) to amend the *Registered Clubs Act 1976*:
 - (i) to dispense with ad valorem periodic registration fees under that Act and to provide for annual registration fees, and
 - (ii) to vary the provisions relating to the payment by instalments on gaming machines, and
 - (iii) to make other miscellaneous amendments of an administrative character.

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 Schedules 1–3.

Clause 4 is a formal provision giving effect to the amendments to the *Registered Clubs Act 1976* set out in Schedules 4 and 5.

Schedule 1 Amendment of Liquor Act 1982 with respect to licence fees

Schedule 1 [14] repeals Division 1 of Part 5 of the Act, which provides for ad valorem licence fees based on liquor sales, and replaces it with a new section 78 that provides for annual fees to be paid by licensees in an amount to be determined by regulation. The regulations may also determine the time within which the fees are to be paid and make provision for payment by instalments, penalties for late payment and other incidental matters.

The other amendments made by this Schedule are consequential.

Schedule 2 Amendment of Liquor Act 1982 with respect to on-licences to sell liquor at functions

Schedule 2 [1] amends section 4 of the Act by replacing the definition of *function*. The revised definition removes some examples of functions that are not necessary to be included in the definition and introduces a reference to social functions, which are relevant for the purposes of permanent on-licences (function).

Schedule 2 [2] amends section 4 of the Act by inserting a new definition of *on-licence to sell liquor at a function* to specify that it covers permanent and temporary on-licences (function).

Schedule 2 [3] amends section 17 of the Act to provide that, in cases where registrars can exercise functions of the Licensing Court, references to the Court extend to such a registrar. Similarly, the section is amended to make it clear that a registrar exercising functions of the Court can impose any conditions the Court could impose.

Schedule 2 [4] amends section 18 of the Act to set out the two kinds of on-licences (function). Either kind authorises the sale of liquor at functions approved by the court. A temporary on-licence (function) is limited to at most 3 functions. A permanent on-licence (function) may be extended to cover functions other than those originally approved.

Schedule 2 [5] and **[6]** make amendments that are consequential on the amendment made by Schedule 2 [7].

Schedule 2 [7] inserts new sections 23AB and 23AC.

Proposed section 23AB sets out various conditions applicable to on-licences (function). These include conditions that liquor can be served only in opened bottles or other opened containers, that a notice relating to the function has to be displayed prominently and that the licensee (or a nominee of the licensee in limited circumstances) must be present at all times during the function.

Proposed section 23AC contains provisions relating to nominees of licensees.

Schedule 2 [8] amends section 29 of the Act, which deals with trading hours for licensed premises, to provide that the section does not apply in the case of social functions conducted under a permanent on-licence (function).

Schedule 2 [9] repeals section 36 (4) of the Act. It is to be substantially re-enacted as section 37A.

Schedule 2 [10] inserts new sections 37A and 37B.

Proposed section 37A provides that an application for an on-licence (function) can only be made on behalf of a non-proprietary association (which is in effect a non-profit organisation) unless it is for a trade fair.

Proposed section 37B deals with applications for on-licences (function) on behalf of such an association, and also for additional functions under a permanent on-licence (function), and imposes restrictions on the nature of the functions that can be conducted and the time within which applications can be made.

Schedule 2 [11] repeals and re-enacts section 51 of the Act and inserts sections 51A and 51B.

Proposed section 51 provides that on-licences (function) can only be granted by the Court, but temporary on-licences (function) can also be granted by a registrar of the Court if there has been no objection. Applications for approval to conduct additional functions under a permanent on-licence (function) can be granted by the Court, or by the Principal Registrar if there has been no objection. Various other restrictions on grants are contained in the section.

Proposed section 51A deals with the functions that can be conducted under a permanent on-licence (function). Functions can be classified as general functions and social functions (the latter are restricted as to nature and can only be conducted between noon and 10 pm). Various restrictions are imposed on the conduct of functions.

Proposed section 51B states that the function or functions covered by a temporary on-licence (function) must be specified when the on-licence is granted.

Schedule 2 [12] amends section 56 of the Act to provide that the fee for granting a permanent on-licence (function) is \$500.

Schedule 2 [13]–[21] contain amendments to various provisions of the Act relating to the investigation and discipline of non-proprietary associations in the context of on-licences (function).

Schedule 2 [22] amends section 101 of the Act to make a minor amendment relating to the way an on-licence to sell liquor at a function is described in the provision.

Schedule 2 [23] amends section 140 of the Act to allow assertions to be made in evidence to assist in establishing that a person is or was the secretary or an office holder of a non-proprietary association or that a person is or was the holder of an on-licence (function).

Schedule 3 Miscellaneous amendments of Liquor Act 1982

Schedule 3 [1] amends the definition of *liquor* in section 4 of the Act to remove dealcoholised wine from the reach of the definition.

Schedule 3 [2] and [8] update references to magistrates by removing the description “stipendiary”.

Schedule 3 [3] amends section 21A of the Act to allow holders of Australian wine licences to apply for and be granted authority to sell spirits (in addition to wine and beer) for consumption on their licensed premises.

Schedule 3 [4] amends section 21A of the Act to provide that if, before the commencement of the amendment, the holder of an Australian wine licence has been granted authority to sell beer, that authority automatically extends to authorise the sale of spirits.

Schedule 3 [5] amends section 24 of the Act to make it clear that any sale of liquor by a hotel after midnight on New Year’s Eve is limited to the sale of liquor for consumption only on the licensed premises. The Act currently allows hotels to trade up to 2 am on New Year’s Day, but the intention is that the extra trading is limited to the sale of liquor for consumption on the premises only (ie take-away sales are prohibited).

Schedule 3 [6] and [7] amend section 57 of the Act and insert new section 61A, to provide that the Court is to refuse an application for the removal of a hotelier’s licence (or an off-licence to sell liquor by retail) from one set of premises to another, or for the transfer of a licence from one person to another, unless the Court is satisfied that responsible serving practices and standards are in place at the alternative premises (or the premises of the alternative licensee). The same restriction currently applies in respect of applications for licences.

Schedule 3 [9] makes a minor amendment to section 67 of the Act by way of statute law revision.

Schedule 3 [10] inserts a new section 86NA to enable the Board to reassess licensees’ returns in respect of gaming machine duty.

Schedule 3 [11] makes a minor amendment to section 101 of the Act by way of statute law revision.

Schedule 3 [12] amends section 116A of the Act in respect of a prosecution of a minor for entering into or remaining in a restricted area of a hotel. The amendment provides a defence if the minor is there as a trainee undergoing work training (other than as a trainee in the sale, supply or service of liquor).

Schedule 3 [13] amends section 116B of the Act in respect of a prosecution of a licensee for allowing a minor to enter into or remain in a restricted area of a hotel and similar offences. The amendment provides the same defence as a minor has under the last preceding amendment.

Schedule 3 [14] amends section 117C of the Act in respect of a prosecution of a licensee for allowing a minor to use a gaming machine. The amendment provides the licensee with a similar defence to the one now available under section 117D—namely, that the minor is there as a trainee undergoing work training (other than as a trainee in the sale, supply or service of liquor) from the holder of an amusement device technician's licence.

Schedule 3 [15] amends section 156 of the Act so as (when read together with section 69 of the *Interpretation Act 1987*) to allow the regulations to adopt, apply or incorporate publications as in force from time to time.

Schedule 3 [16] and **[17]** amend Schedule 1 to the Act in respect of transitional matters arising from amendments contained in the proposed Act.

Schedule 4 Amendment of Registered Clubs Act 1976 with respect to licence fees

Schedule 4 [5] repeals section 15 of the Act, which provides for ad valorem registration fees based on liquor sales, and replaces it with a new section 15 that provides for annual fees to be paid by registered clubs in an amount to be determined by regulation. The regulations may also determine the time within which the fees are to be paid and make provision for payment by instalments, penalties for late payment and other incidental matters.

The other amendments made by this Schedule are consequential.

Schedule 5 Miscellaneous amendments of Registered Clubs Act 1976

Schedule 5 [1] amends section 17 of the Act by way of statute law revision.

Schedule 5 [2]–[4] and **[8]** amend sections 18, 19, 19A and 33 of the Act to provide that the Court must not grant an application for new club premises, for the removal of club premises to other premises, for the acquisition of additional club premises, or for the approval of a club secretary, unless the Court is satisfied that responsible serving practices and standards are in place at the premises concerned. The same restriction currently applies in respect of applications for certificates of registration for clubs.

Schedule 5 [5], [6], [13]–[15],[17]–[22],[25] and [27] update references to poker machines to the new generic term “approved gaming devices” (this term covers both poker machines and approved amusement devices). These amendments are consequential on the amendments made by the *Liquor and Registered Clubs Legislation Further Amendment Act 1996*.

Schedule 5 [7] amends section 26 of the Act to provide that an objection may be taken against the granting of an application for an approval under section 22A of the Act (which allows for access to club premises by junior members). Such a provision is currently contained in the *Registered Clubs Regulation 1996*, and it is included in the Act mainly for reasons of consistency.

Schedule 5 [9]–[12] enable trainees (as well as apprentices) who are under 18 to have access to certain restricted areas (eg bar areas) in registered clubs for the purpose of receiving trade training, and also provide a defence to registered clubs and other persons in cases where apprentices and trainees who are under 18 happen to be present in those restricted areas for the purpose of receiving trade training. The defence afforded by the amendments does not apply where the training concerned is training in the sale, supply or service of liquor.

Schedule 5 [16] amends section 73 of the Act so as (when read together with section 69 of the *Interpretation Act 1987*) to allow the regulations to adopt, apply or incorporate publications as in force from time to time.

Schedule 5 [23] amends section 87A of the Act so as to vary the amount of instalments of gaming machine duty payable, in certain cases, by registered clubs. The amendments are consequential on amendments to duty rates made by the *State Revenue Legislation Amendment Act 1997*.

Schedule 5 [26] inserts a new section 87EA to enable the Board to reassess a registered club’s returns in respect of gaming machine duty. **Schedule 5** [24] and [28] make minor changes with respect to those returns.

Schedule 5 [29] clarifies the operation of section 97 of the Act, which relates to objections to applications for gaming-related licences.

Schedule 5 [30] and [31] deal with transitional issues arising from the amendments contained in the Bill. In particular, special provision is made with respect to instalment payments of gaming machine duty in the quarter commencing 1 December 1997.