



New South Wales

Liquor and Registered Clubs Legislation 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 make further provision with respect to the supply of liquor by a hotelier at a function held off the hotel premises, and
 - (ii) to enable the granting of Governor's licences in respect of premises occupied by a horse racing club, and
 - (iii) to make further provision with respect to the appointment of managers of licensed premises occupied by corporate licensees, and
 - (iv) to dispense with certain requirements relating to applications pertaining to special event licences, and
 - (v) to regulate sales of liquor over the telephone, by facsimile, by mail order or through the internet, and

- (b) to amend the *Registered Clubs Act 1976* with respect to:
- (i) appeals from findings of the Licensing Court as to the fitness of persons to be office-bearers in a registered club, and
 - (ii) payment of club membership fees.

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. With certain exceptions, its provisions commence on the date of assent to the proposed Act.

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

Liquor sales by hotelier at functions held at other premises

Under section 18 of the Act, a hotelier may be authorised by the Licensing Court to sell liquor at a function held away from the hotel premises. In such a case, the hotelier's licence operates as a function licence. **Schedule 1 [1]** and **[2]** amend the section to allow the regulations to prescribe circumstances in which such an authorisation cannot be granted, and to impose conditions on the licence in addition to those already imposed by the Act in relation to functions.

Governor's licences for racing clubs

Under section 19 of the Act, a Governor's licence authorising the sale of liquor may be held in relation to premises on Crown land or premises vested in a public authority (including some racing club premises), in railway stations or in a canteen at a public construction camp. **Schedule 1 [3]** amends the section to permit a Governor's licence to be granted in relation to the premises of any horse racing club, whether or not situated on land vested in the Crown.

Managers of premises licensed to corporate licensees

Division 8A of Part 3 of the Act provides for the appointment of individuals as managers of premises licensed to a body corporate. Such managers must be approved by the Licensing Court, which must be satisfied that they are fit and proper persons to be managers of licensed premises. **Schedule 1 [7]–[11]** amend the provisions of the Division to make it clearer that the court's function in relation to the appointment of a manager is one of approval of the person's fitness and aptitude to manage licensed premises, not of approval of a particular appointment, and to make it a requirement for the court's approval that the court be satisfied that the candidate for approval understands the responsibilities of the manager in implementing liquor-related harm minimisation practices and is capable of implementing them. Section 69E of the Act is also amended to require a manager appointed to manage particular premises to furnish a declaration to the Liquor Administration Board concerning his or her knowledge of and capacity to implement such practices in place at the premises concerned.

Remote sales of liquor

Schedule 1 [12] inserts a new section 128 into the Act, dealing with sales of liquor by telephone or facsimile or by mail order or from an internet site. The section will require any publicity associated with telephone, facsimile or mail order sales to include a reference to the licensee's licence number, and will require the licence number to be displayed on any internet site from which liquor is sold. Other requirements are prescribed in connection with recording the date of birth of a prospective purchaser. The new section also provides that, except in circumstances where a defence is available, an offence is committed under section 114 of the Act by any licensee whose liquor is delivered to a minor, by the person who delivered it and by the minor who takes delivery of the liquor.

Other amendments

Schedule 1 [4] amends section 38 of the Act to exempt applications for special event licences from the operation of the section. The object is to put special event licences on the same footing as Governor's licences so far as the section is concerned. (The section requires applications to be supported by an affidavit relating to financial interests in the licence, and currently does not apply to Governor's licences.)

Schedule 1 [5] amends section 40 of the Act, which permits the Licensing Court to grant a licence conditionally where the premises to which the licence will relate are under construction, or being structurally altered, in accordance with a plan submitted with the application. The court must be satisfied, in connection with the

plan, that any necessary development consent has been obtained or that such consent is not required by law in the instant case. The amendment provides that the court is only obliged to hear an objection concerning the status of the plan as a duly approved plan if the objection is made by the Director of Liquor and Gaming, the Commissioner of Police or the development consent authority (typically the local council).

Schedule 1 [6] makes a minor amendment to section 55 of the Act by way of statute law revision.

Schedule 1 [13]–[16] make minor amendments to section 158A of the Act (as inserted by the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*), dealing with regulation of card-operated gaming machines. The amendments are necessary in response to newer technology that allows access to financial resources of the player otherwise than by storage of information on the card.

Schedule 1 [17] and **[18]** contain savings and transitional provisions ancillary to the amendments contained in the proposed Act, and allow provisions of a similar kind to be made by regulation.

Schedule 2 Amendment of Registered Clubs Act 1976

Appeals from findings concerning fitness of persons to hold office in registered clubs

Under various provisions of the Act the Licensing Court is able to make findings to the effect that a person is not suitable to hold office as secretary or member of the governing board of a registered club. Section 42B of the Act provides for an appeal from decisions of the court and, under subsection (3) of that section, the lodgment of an appeal stays the decision until the appeal is determined. **Schedule 2 [3]** amends the section so as to reverse the operation of subsection (3) in relation to such findings against persons who are or would be office-bearers of a club, unless the court otherwise orders—that is, the finding is not stayed by lodgment of an appeal unless the court by order declares that it is.

Other amendments

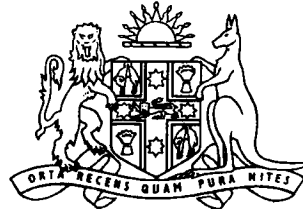
Schedule 2 [1] amends section 18 of the Act, which permits the Licensing Court to issue or amend a certificate of registration of a club conditionally where the premises to which the certificate or amendment relate are under construction, or being structurally altered, in accordance with a plan submitted with the application.

The court must be satisfied, in connection with the plan, that any necessary development consent has been obtained or that such consent is not required by law in the instant case. The amendment provides that the court is only obliged to hear an objection concerning the status of the plan as a duly approved plan if the objection is made by the Director of Liquor and Gaming, the Commissioner of Police or the development consent authority (typically the local council).

Schedule 2 [2] amends section 30 (1) (j) of the Act to allow club membership fees to be payable, if the rules so provide, by monthly instalments.

Schedule 2 [4]–[7] make minor amendments to section 77BA of the Act (as inserted by the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*), dealing with regulation of card-operated gaming machines. The amendments are necessary in response to newer technology that allows access to financial resources of the player otherwise than by storage of information on the card.

Schedule 2 [8] and **[9]** contain savings and transitional provisions ancillary to the amendments contained in the proposed Act, and allow provisions of a similar kind to be made by regulation.



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Liquor Act 1982 No 147	2
4 Amendment of Registered Clubs Act 1976 No 31	2
Schedules	
1 Amendment of Liquor Act 1982	3
2 Amendment of Registered Clubs Act 1976	10



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Liquor Act 1982* to make further provision with respect to the sale of liquor, the grant of liquor licences and the management of licensed premises; to amend the *Registered Clubs Act 1976* with respect to office-bearers of registered clubs and payment of club membership fees; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Liquor and Registered Clubs Legislation Amendment Act 2001</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent, except as provided by this section.	6 7
(2) Schedule 1 [1], [2] and [12] commence on a day or days to be appointed by proclamation.	8 9
(3) Schedule 1 [13]–[16] commence on the commencement of Schedule 2 [11] to the <i>Gambling Legislation Amendment (Responsible Gambling) Act 1999</i> .	10 11 12
(4) Schedule 2 [4]–[7] commence on the commencement of Schedule 6 [9] to the <i>Gambling Legislation Amendment (Responsible Gambling) Act 1999</i> .	13 14 15
3 Amendment of Liquor Act 1982 No 147	16
The <i>Liquor Act 1982</i> is amended as set out in Schedule 1.	17
4 Amendment of Registered Clubs Act 1976 No 31	18
The <i>Registered Clubs Act 1976</i> is amended as set out in Schedule 2.	19

Schedule 1	Amendment of Liquor Act 1982	1
	(Section 3)	2
[1]	Section 18 Court may grant licences	3
	Insert “The application must be dealt with as prescribed by the regulations and is to be granted only if the court or the registrar is satisfied that the circumstances in which the function concerned is proposed to be held comply with any prescribed requirements.” after “relates.” in section 18 (6).	4 5 6 7
[2]	Section 18 (6B) (c)	8
	Insert “, and any conditions prescribed by the regulations,” after “sections 23AC and 29”.	9 10
[3]	Section 19 Governor’s licences	11
	Omit “or” where lastly occurring from section 19 (1) (b) and insert at the end of section 19 (1) (c):	12 13
	or	14
	(d) at premises occupied by a body (whether incorporated or unincorporated) registered as a racing club by the NSW Thoroughbred Racing Board or Harness Racing New South Wales,	15 16 17 18
[4]	Section 38 Affidavit as to interested persons	19
	Insert “or a special event licence” after “Governor’s licence” in section 38 (1).	20 21
[5]	Section 40 Application for conditional grant	22
	Insert after section 40 (6):	23
	(7) In proceedings under this section, the court is not bound to hear any submission made or receive any evidence adduced by any person (other than the Director, the Commissioner of Police or the local consent authority):	24 25 26 27

(a)	as to whether any plan on which the applicant relies is or is not an approved plan, or	1 2
(b)	as to whether a development consent or certificate accompanying any plan on which the applicant relies was issued before or after the date of lodgment of the application, or	3 4 5 6
(c)	as to any alleged omission, error, defect or insufficiency in any such plan or any alleged discrepancy between the plan and any approved plan, or	7 8 9
(d)	generally as to any aspect of the validity or propriety of a plan or of any development consent or certificate accompanying it.	10 11 12
[6]	Section 55 Issue of licence	13
	Insert “or the Minister” after “Governor” in section 55 (1).	14
[7]	Section 69B	15
	Omit the section. Insert instead:	16
	69B Appointment of managers	17
	A body corporate that is a licensee must appoint a manager approved by the court under this Division for the licensed premises and must not cause or permit the conduct of business under the licence for a period in excess of 14 days except under the management of a person so approved.	18 19 20 21 22
	Maximum penalty: 50 penalty units.	23
[8]	Section 69D Court approval of manager	24
	Omit section 69D (1) and (2). Insert instead:	25
	(1) An application for the court’s approval of a person to manage licensed premises is to be made in the form approved by the Board.	26 27 28

(2) The court is not to give its approval unless it is satisfied that the person concerned:	1
(a) is a fit and proper person to manage licensed premises, and	2
(b) understands his or her responsibilities in relation to, and is capable of implementing, practices in place at licensed premises for ensuring the responsible sale, supply and service of liquor and the prevention of intoxication.	3
	4
	5
	6
	7
	8
	9
[9] Section 69E How appointments are made and revoked	10
Omit section 69E (1). Insert instead:	11
(1) A licensee must give the Board notice of the appointment of a person as manager of licensed premises.	12
Maximum penalty: 20 penalty units.	13
	14
[10] Section 69E (2)	15
Insert “, accompanied by the declaration referred to in subsection (5) (b)” after “section”.	16
	17
[11] Section 69E (5)	18
Omit the subsection. Insert instead:	19
(5) A notice under this section:	20
(a) must be completed in writing in the form approved by the Board, and	21
(b) must be accompanied by a declaration in writing, in a form approved by the Board, of the person to be appointed as manager of the premises concerned:	22
(i) signifying his or her acceptance of the appointment, and	23
(ii) certifying such matters as the form of notice may require (including matters relating to the person’s responsibilities in relation to, and capacity to implement, practices in place at the premises for ensuring the responsible sale, supply and service of liquor, and the prevention of intoxication, on the premises).	24
	25
	26
	27
	28
	29
	30
	31
	32
	33
	34

[12] Section 128	1
Insert after section 127:	2
128 Sale of liquor through internet or by other communication media	3 4
(1) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must cause the licence number to be displayed in any advertisement or information published in writing or electronically in connection with such sales.	5 6 7 8
Maximum penalty: 20 penalty units.	9
(2) A licensee who sells liquor through an internet site must ensure that the licence number is prominently displayed on the site and in any advertisement or information published in writing or electronically in connection with such sales.	10 11 12 13
Maximum penalty: 20 penalty units.	14
(3) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order, or who sells liquor through an internet site:	15 16 17
(a) must, at the time at which an agreement for sale is made, require the prospective purchaser to supply his or her date of birth so as to confirm that the prospective purchaser is of or above the age of 18 years, and	18 19 20 21
(b) must record the date of birth on an invoice or delivery docket that accompanies the liquor when delivered to the premises specified by the purchaser, and	22 23 24
(c) must give written instructions to the person responsible for delivery of the liquor, requiring that the liquor be delivered only to:	25 26 27
(i) the adult person who placed the order, or	28
(ii) another adult person at those premises who undertakes to accept it on behalf of the person who placed the order.	29 30 31
Maximum penalty: 20 penalty units.	32

-
- (4) If delivery of any liquor sold in a manner described in this section is taken by a minor:
- (a) the delivery is taken to constitute a supply to which section 114 (1) applies, and
 - (b) the licensee, and any person by whom the liquor was delivered on the licensee's behalf, are each taken to have supplied the liquor contrary to section 114 (1), and
 - (c) the other provisions of section 114 apply accordingly.
- (5) A licensee who, in accordance with subsection (4), is prosecuted for an offence under section 114 (1) has (in addition to any other defence available under section 114) a defence under this subsection if it is proved that the licensee:
- (a) complied with the requirements of subsection (3) in relation to the supply concerned, and
 - (b) at the time of the alleged offence did not know, and could not reasonably be expected to have known, that the alleged offence was committed.
- (6) A person (not being a licensee) who, in accordance with subsection (4), is prosecuted for an offence under section 114 (1) has (instead of the defence available under section 114 (5), but in addition to any other defence available under section 114) a defence under this subsection if it is proved that:
- (a) the person to whom the liquor was delivered was of or above the age of 14 years and, before the liquor was delivered, there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was of or above the age of 18 years, and
 - (b) the date of birth indicated in that documentary evidence corresponded to the date of birth recorded on the invoice or delivery docket that accompanied the delivery, and
 - (c) at the time of the alleged offence the defendant did not know, and could not reasonably be expected to have known, that the alleged offence was committed.

(7) A minor must not take delivery of any liquor sold in a manner described in this section.	1 2
Maximum penalty: 10 penalty units.	3
(8) A minor prosecuted for an offence under subsection (7) has a defence if it is proved that he or she was ordered or requested by his or her parent or guardian to take delivery of the liquor.	4 5 6
(9) A person must not order or request a minor to take delivery of liquor sold in a manner described in this section.	7 8
Maximum penalty: 20 penalty units.	9
(10) This section does not preclude or limit the operation, in respect of the sale or supply of liquor in a manner described in this section, of any other prohibition or requirement contained in this Act or the regulations, in so far as the nature of the prohibition or requirement is applicable to the sale or supply.	10 11 12 13 14
[13] Section 158A Card-operated approved amusement devices	15
Insert “or accessed through” after “on” wherever occurring in subsection (3) (c) and (e) of section 158A (as inserted by the <i>Gambling Legislation Amendment (Responsible Gambling) Act 1999</i>).	16 17 18
[14] Section 158A (3) (d)	19
Insert “and of accounts accessed through cards” after “of cards”.	20
[15] Section 158A (3) (g)	21
Insert “, or access to credit through,” after “credit on”.	22
[16] Section 158A (3) (g), (h) and (k)	23
Insert “or accessed through” after “stored on” wherever occurring.	24
[17] Schedule 1 Savings and transitional provisions	25
Insert at the end of clause 1 (1):	26
<i>Liquor and Registered Clubs Legislation Amendment Act 2001</i>	27

[18] Schedule 1	1
Insert in appropriate order and with appropriate Part and clause numbers:	2
Part Liquor and Registered Clubs Legislation Amendment Act 2001	3 4
Definition	5
In this Part, <i>amending Act</i> means the <i>Liquor and Registered Clubs Legislation Amendment Act 2001</i> .	6 7
Applications for conditional grant of licence	8
Section 40, as amended by the amending Act, extends to an application under that section that was lodged before the amendment took effect.	9 10 11
Notice of appointment of manager of licensed premises	12
A form of notice that, immediately before the amendments made by the amending Act to section 69E took effect, was the form approved for the purposes of section 69E (5) is taken to be the form approved for the purposes of subsection (5) (a) of that section, as amended by the amending Act, until such time as another form is approved.	13 14 15 16 17 18

Schedule 2 Amendment of Registered Clubs Act 1976	1
(Section 4)	2
[1] Section 18 Conditional application in relation to new premises or premises to be added to or altered	3 4
Insert after section 18 (11):	5
(12) In proceedings under this section, the court is not bound to hear any submission made or receive any evidence adduced by any person (other than the Director, the Commissioner of Police or the local consent authority):	6 7 8 9
(a) as to whether any plan on which the applicant relies is or is not an approved plan, or	10 11
(b) as to whether a development consent or certificate accompanying any plan on which the applicant relies was issued before or after the date of lodgment of the application, or	12 13 14 15
(c) as to any alleged omission, error, defect or insufficiency in any such plan or any alleged discrepancy between the plan and any approved plan, or	16 17 18
(d) generally as to any aspect of the validity or propriety of a plan or of any development consent or certificate accompanying it.	19 20 21
[2] Section 30 Rules of registered clubs	22
Insert “monthly,” before “quarterly” in section 30 (1) (j).	23
[3] Section 42B Appeal to Licensing Court	24
Omit section 42B (3). Insert instead:	25
(3) Lodgment of an appeal under this section operates to stay the decision appealed against, except in the case of a decision:	26 27
(a) to uphold a complaint on the ground set out in section 17 (1AA) (a) (vii), or	28 29
(b) to make a declaration under section 17 (2) (f), or	30

(c)	to uphold an objection on the ground set out in section 25 (1) (l), or	1 2
(d)	to uphold an objection on the ground set out in section 33 (4), or	3 4
(e)	to refuse, under subsection (4B) of section 33, to grant an application under that section, or	5 6
(f)	to make a declaration under section 35 (4), or	7
(g)	to uphold a complaint on the ground set out in section 108 (2) (e), (f) or (g) or (2A) (a), or	8 9
(h)	to take any action based on any of the foregoing.	10
	In such a case, lodgment of the appeal does not stay the decision unless the Licensing Court, on application or of its own motion, otherwise directs.	11 12 13
[4]	Section 77BA Card-operated approved poker machines	14
	Insert “or accessed through” after “on” wherever occurring in subsection (3) (c) and (e) of section 77BA (as inserted by the <i>Gambling Legislation Amendment (Responsible Gambling) Act 1999</i>).	15 16 17
[5]	Section 77BA (3) (d)	18
	Insert “and accounts accessed through cards” after “of cards”.	19
[6]	Section 77BA (3) (g)	20
	Insert “, or access to credit through,” after “credit on”.	21
[7]	Section 77BA (3) (g), (h) and (k)	22
	Insert “or accessed through” after “stored on” wherever occurring.	23
[8]	Schedule 2 Transitional provisions	24
	Insert at the end of clause 1A (1):	25
	<i>Liquor and Registered Clubs Legislation Amendment Act 2001</i>	26

[9] Schedule 2	1
Insert in appropriate order and with appropriate Part and clause numbers:	2
Part Liquor and Registered Clubs Legislation Amendment Act 2001	3 4
Definition	5
In this Part, <i>amending Act</i> means the <i>Liquor and Registered Clubs Legislation Amendment Act 2001</i> .	6 7
Applications for conditional grant of licence	8
Section 18, as amended by the amending Act, extends to an application under that section that was lodged before the amendment took effect.	9 10 11
Appeals against decisions of Licensing Court	12
The amendments made by the amending Act to section 42B do not apply in respect of a decision of the Licensing Court that was made before the amendments took effect.	13 14 15