

Passed by both Houses



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 2001

Act No , 2001

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Liquor and Registered Clubs Legislation Amendment Act 2001*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 1 [1], [2] and [12] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1 [13]–[16] commence on the commencement of Schedule 2 [11] to the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*.
- (4) Schedule 2 [4]–[7] commence on the commencement of Schedule 6 [9] to the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*.

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedule 1.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedule 2.

Schedule 1 Amendment of Liquor Act 1982

(Section 3)

[1] Section 18 Court may grant licences

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).

[2] Section 18 (6B) (c)

Insert “, and any conditions prescribed by the regulations,” after “sections 23AC and 29”.

[3] Section 19 Governor’s licences

Omit “or” where lastly occurring from section 19 (1) (b) and insert at the end of section 19 (1) (c):

or

- (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,

[4] Section 38 Affidavit as to interested persons

Insert “or a special event licence” after “Governor’s licence” in section 38 (1).

[5] Section 40 Application for conditional grant

Insert after section 40 (6):

- (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):

- (a) as to whether any plan on which the applicant relies is or is not an approved plan, or
- (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
- (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
- (d) generally as to any aspect of the validity or propriety of a plan or of any development consent or certificate accompanying it.

[6] Section 55 Issue of licence

Insert “or the Minister” after “Governor” in section 55 (1).

[7] Section 69B

Omit the section. Insert instead:

69B Appointment of managers

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.

Maximum penalty: 50 penalty units.

[8] Section 69D Court approval of manager

Omit section 69D (1) and (2). Insert instead:

- (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.

- (2) The court is not to give its approval unless it is satisfied that the person concerned:
- (a) is a fit and proper person to manage licensed premises, and
 - (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.

[9] Section 69E How appointments are made and revoked

Omit section 69E (1). Insert instead:

- (1) A licensee must give the Board notice of the appointment of a person as manager of licensed premises.

Maximum penalty: 20 penalty units.

[10] Section 69E (2)

Insert “, accompanied by the declaration referred to in subsection (5) (b)” after “section”.

[11] Section 69E (5)

Omit the subsection. Insert instead:

- (5) A notice under this section:
- (a) must be completed in writing in the form approved by the Board, and
 - (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:
 - (i) signifying his or her acceptance of the appointment, and
 - (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).

[12] Section 128

Insert after section 127:

128 Sale of liquor through internet or by other communication media

- (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.

Maximum penalty: 20 penalty units.

- (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.

Maximum penalty: 20 penalty units.

- (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:

(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, unless the prospective purchaser has previously supplied his or her date of birth to the licensee, and

(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

(c) must give written instructions to the person responsible for delivery of the liquor, requiring that the liquor be delivered:

(i) to the adult person who placed the order, or

(ii) to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order, or

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- (iii) if the delivery is made on a day after the day the order is taken, or the sale made through an internet site, otherwise in accordance with the customer's instructions.

Maximum penalty: 20 penalty units.

- (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.
Maximum penalty: 10 penalty units.
- (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.
- (9) A person must not order or request a minor to take delivery of liquor sold in a manner described in this section.
Maximum penalty: 20 penalty units.
- (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.
- (11) This section does not apply to or in respect of the sale of liquor to a person who is authorised to sell liquor.

[13] Section 158A Card-operated approved amusement devices

Insert “or accessed through” after “on” wherever occurring in subsection (3) (c) and (e) of section 158A (as inserted by the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*).

[14] Section 158A (3) (d)

Insert “and of accounts accessed through cards” after “of cards”.

[15] Section 158A (3) (g)

Insert “, or access to credit through,” after “credit on”.

[16] Section 158A (3) (g), (h) and (k)

Insert “or accessed through” after “stored on” wherever occurring.

[17] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Amendment Act 2001

[18] Schedule 1

Insert in appropriate order and with appropriate Part and clause numbers:

**Part Liquor and Registered Clubs Legislation
Amendment Act 2001**

Definition

In this Part, *amending Act* means the *Liquor and Registered Clubs Legislation Amendment Act 2001*.

Applications for conditional grant of licence

Section 40, as amended by the amending Act, extends to an application under that section that was lodged before the amendment took effect.

Notice of appointment of manager of licensed premises

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.

Schedule 2 Amendment of Registered Clubs Act 1976

(Section 4)

[1] Section 18 Conditional application in relation to new premises or premises to be added to or altered

Insert after section 18 (11):

- (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):
 - (a) as to whether any plan on which the applicant relies is or is not an approved plan, or
 - (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
 - (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
 - (d) generally as to any aspect of the validity or propriety of a plan or of any development consent or certificate accompanying it.

[2] Section 30 Rules of registered clubs

Insert “monthly,” before “quarterly” in section 30 (1) (j).

[3] Section 42B Appeal to Licensing Court

Omit section 42B (3). Insert instead:

- (3) Lodgment of an appeal under this section operates to stay the decision appealed against, except in the case of a decision:
 - (a) to uphold a complaint on the ground set out in section 17 (1AA) (a) (vii), or
 - (b) to make a declaration under section 17 (2) (f), or

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- (c) to uphold an objection on the ground set out in section 25 (1) (l), or
 - (d) to uphold an objection on the ground set out in section 33 (4), or
 - (e) to refuse, under subsection (4B) of section 33, to grant an application under that section, or
 - (f) to make a declaration under section 35 (4), or
 - (g) to uphold a complaint on the ground set out in section 108 (2) (e), (f) or (g) or (2A) (a), or
 - (h) to take any action based on any of the foregoing.

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.

[4] Section 77BA Card-operated approved poker machines

Insert “or accessed through” after “on” wherever occurring in subsection (3) (c) and (e) of section 77BA (as inserted by the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*).

[5] Section 77BA (3) (d)

Insert “and accounts accessed through cards” after “of cards”.

[6] Section 77BA (3) (g)

Insert “, or access to credit through,” after “credit on”.

[7] Section 77BA (3) (g), (h) and (k)

Insert “or accessed through” after “stored on” wherever occurring.

[8] Schedule 2 Transitional provisions

Insert at the end of clause 1A (1):

Liquor and Registered Clubs Legislation Amendment Act 2001

[9] Schedule 2

Insert in appropriate order and with appropriate Part and clause numbers:

**Part Liquor and Registered Clubs Legislation
 Amendment Act 2001**

Definition

In this Part, *amending Act* means the *Liquor and Registered Clubs Legislation Amendment Act 2001*.

Applications for conditional grant of licence

Section 18, as amended by the amending Act, extends to an application under that section that was lodged before the amendment took effect.

Appeals against decisions of Licensing Court

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.