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LIQUOR LEGISLATION AMENDMENT (STATUTORY REVIEW) BILL 2014

Second Reading

The Hon. NIALL BLAIR (Parliamentary Secretary) [8.25 p.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Liquor Legislation Amendment (Statutory Review) Bill 2014.

This bill implements significant reforms identified in the Government's response to the 2013 statutory review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007.

That review examined whether the policy objectives of the Acts remain valid and whether the terms of the Acts remain appropriate for securing those objectives.

The review was informed by feedback and submissions provided by industry community advocates Government agencies local councils and the health sector.

The review found that the policy objectives of the Liquor Act remain valid and recommended that they continue.

Those objectives focus on regulating and controlling the sale, supply and consumption of liquor in a way that is consistent with the expectations needs and aspirations of the community.

In securing the objects of the Liquor Act regulators and licensees must have due regard to the need to:

- minimise harm associated with misuse and abuse of liquor including harm arising from violence and other anti-social behaviour,
- encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, and
- ensure that the sale, supply and consumption of liquor contributes to and does not detract from the amenity of community life.

These objects provide guidance to regulators, police, licensees and the community on the purpose and application of the liquor laws.

They recognise the importance of a properly regulated liquor industry that is able to develop in a way that is consistent with the public interest whereby the risk of harm arising from the sale, supply and consumption of alcohol is minimised.

They also recognise that the manufacture, sale and supply of alcohol and the operation of licensed premises make a significant contribution to society.

The Liquor Act review made 91 recommendations which focused on three key regulatory reform areas—transparency, efficiency and promoting a risk-based approach to enforcement and compliance.

Following further industry and community consultation in April 2014, the Government released its response to the review on 6 August.

The Government's response supported 84 of the 91 recommendations made by the review either in full or in principle and noted five recommendations for further consideration.

Two recommendations were not supported.

One of those recommended that standard trading hours of packaged liquor licences should remain unchanged.

This does not reflect the Government's reform that commenced in February 2014 to restrict all take-away liquor sales to 10.00 p.m.

The other recommendation that was not supported proposed a narrowing of the operation of the disciplinary provisions of the Liquor Act.

This recommendation was not consistent with the principle that these provisions should allow disciplinary action to be taken in a wide range of circumstances.

The first stage of implementation of the Government's response to the Liquor Act review occurred in January 2014 when Parliament passed the Liquor Amendment Act 2014.

That Act responded to a number of review recommendations by introducing trading hour controls, precinct-based reforms and a framework for the introduction of risk-based licence fees.

This bill forms a significant part of the second stage of action outlined in the Government's response to the Liquor Act review.

It introduces a number of new harm minimisation controls while also reducing costs and red tape and improving regulatory processes.

Amendments to the Liquor Act 2007

I now turn to schedule 1 of the bill which amends the Liquor Act 2007.

Exemption for non-profit community organisations.

The bill will reduce costs for non-profit community organisations by enabling liquor to be sold in limited circumstances at up to six fundraising events per year without the need to hold a liquor licence.

These exempted events will be subject to a range of responsible service and community protection safeguards to ensure they are conducted responsibly by legitimate community organisations.

These responsible service safeguards provide that:

fundamental responsible serving requirements apply to prohibit the sale and supply of liquor to a minor or an intoxicated person

- any person selling and supplying liquor at an event will be required to have completed responsible service of alcohol training;
- food and free water must be available at all times; and
- where minors are present there must be supervision of the bar area by an adult committee member of the non-profit community organisation who is not intoxicated.

To emphasise the fundraising nature of these small scale events they will be limited to:

- a maximum of 250 people;
- a maximum continuous liquor sales period of four continuous hours between 6.00 a.m. and midnight; and
- a single bar from which liquor is to be sold and supplied.

The bill will provide an effective response to any concerns about an organisation or the conduct of an event by allowing the Secretary of New South Wales Trade and Investment to prevent organisations from using this exemption and by allowing the secretary to issue directions or impose further controls on events.

As part of the notification requirements in the bill, non-profit organisations will be required to provide at least 14 days notice of an event to the Secretary of New South Wales Trade and Investment as well as to the local police and the local council.

The bill precludes non-profit organisations from selling liquor at an event under the exemption provisions in certain circumstances including where:

- a limited liquor licence is already held by the organisation;

- the Secretary of New South Wales Trade and Investment has issued an order declaring the organisation ineligible to be exempt;
- an order made by the Independent Liquor and Gaming Authority that a limited licence is not to be granted to any person on behalf of the organisation is in force; or
- disciplinary action has been taken under the liquor laws in the previous six months against a person who held a limited licence for the organisation.

The bill also contains an important red tape reduction measure for non-profit organisations that sell liquor under a limited liquor licence by removing the requirement for these organisations to obtain approval from the Independent Liquor and Gaming Authority for each function.

Instead non-profit organisations will be required to notify local police at least 14 days before a function is held.

Escalating penalty regime

The bill amends the Liquor Act to introduce a new escalating penalty regime for the offence of selling liquor to minors on licensed premises.

Under this regime significant penalties including suspension and cancellation of a liquor licence will apply where an offence is proven at court, a penalty notice is paid or an enforcement order is issued by the State Debt Recovery Office where a penalty notice has not been paid.

For a first offence a notice will be issued by the Secretary of New South Wales Trade and Investment inviting the licensee to make a submission as to why their liquor licence should not be suspended for up to 28 days.

In determining whether to suspend a licence after a first offence the secretary will take into consideration the compliance history of the licensed premises.

For a second offence the licence will be automatically suspended for 28 days where the second offence occurs more than 28 days after but within 12 months of the first offence.

For a third offence a licence will be automatically cancelled and the licensee disqualified from holding a liquor licence for 12 months where a third offence occurs within 12 months of the first offence but more than 28 days after the second offence.

This new penalty regime sends a strong message to industry about the importance of complying with the underage drinking laws and that the unlawful supply of liquor to minors can have significant commercial consequences for licensed premises.

Intoxication reforms

The bill introduces new harm minimisation controls and improves existing controls in the Liquor Act.

The intoxication provisions of the Liquor Act will be strengthened by requiring licensees to prevent intoxication through steps that will be set out in guidelines issued by the Secretary of New South Wales Trade and Investment.

These guidelines, which will provide greater certainty for licensees and regulators, will recognise that licensees can implement a mix of measures.

These could include preventative measures that are taken at a point in time such as additional industry training for high-risk venues as well as ongoing measures that are in place at all times such as drink restrictions and enhanced supervision of patrons.

These guidelines will assist licensees to understand the practical and effective measures that reduce the potential for intoxication on licensed premises and will assist with enforcement of the intoxication provisions of the Liquor Act.

The bill will also broaden the grounds where an offence is committed by a person who has been refused entry to a licensed premises and attempts to re-enter the premises or fails to leave the vicinity of the licensed premises.

Currently those grounds are generally limited to where a person has been refused entry because they are intoxicated, violent, quarrelsome or disorderly.

This anomaly had the potential to undermine the lockout provisions applying to declared premises under schedule 4 of the Liquor Act and to premises in the Sydney CBD Entertainment and Kings Cross precincts where a 1.30 a.m. lockout applies.

It has also been problematic for licensees in dealing with persons attempting to re-enter their premises after they had been asked to leave the premises on other grounds provided by the Act such as the possession of a prohibited plant or substance.

The bill makes it clear that an offence is committed where a person attempts to re-enter the premises or fails to leave the vicinity of the licensed premises for any reason provided by the Liquor Act.

Multi occasion extended trading authorisation

Amendments made to the Liquor Act in January this year will result in a periodic licence fee scheme commencing in 2015.

All licensees will be required to pay an annual fee under that scheme to assist in offsetting the costs of liquor regulation.

That annual fee includes a base fee ranging from \$100 to up to \$2,000 per liquor licence depending upon the type of liquor licence and other circumstances.

In addition, venues that are authorised to trade after midnight on a permanent basis will pay a late trading risk loading of up to \$5,000.

The Government recognises that for some venues that only trade after midnight occasionally the late trading risk loading may have a significant impact.

This is a particular issue for licensees in regional and rural areas of New South Wales where the local club or hotel may be the only venue that can meet a limited demand for late night facilities to cater for important local functions.

The commercial viability of maintaining full extended trading rights to meet demands for a limited number of late night functions may be questionable where a late trading risk loading applies.

Therefore the bill establishes a new type of extended trading authorisation for licensed premises that are located outside the Sydney, Central Coast, Newcastle, Blue Mountains and Wollongong regions that wish to trade after midnight occasionally to meet local demands for limited late night functions.

Known as a multi-occasion extended trading authorisation, this extended trading will be subject to a \$1,000 annual fee and enable a venue to relinquish their permanent extended trading while still being allowed to trade up until 3.00 a.m. on up to 12 occasions annually.

This option will be attractive to eligible registered clubs that have historical 24 hour trading entitlements that wish to surrender those trading rights to reduce their late trading risk loading from next year.

Where a registered club surrenders permanent extended trading rights and applies for a multi-occasion extended trading authorisation within six months a community impact statement will not be required on the basis that trading rights are being reduced.

For other licences a community impact statement will not be required where the trading hours of the premises at the time the application is made are equal to or more than the trading hours under the proposed multi-occasion extended trading authorisation.

In other circumstances a category A community impact statement will be required to be submitted with a multi-occasion extended trading application.

Precinct reforms

The bill also makes a finetuning amendment to the precinct intervention laws applying in Kings Cross and the Sydney CBD by enabling high-risk venues to apply for an exemption from the patron ID scanning requirements for the whole or part of the premises.

However an exemption can only be granted where the Minister responsible for the administration of the Liquor Act is satisfied that it is unlikely to increase alcohol-related violence or anti-social behaviour or other alcohol-related harm in that precinct and after considering a recommendation made by the Secretary of New South Wales Trade and Investment.

The bill also expands the grounds upon which the Independent Liquor and Gaming Authority can impose a long-term banning order on a person in the Kings Cross or Sydney CBD precincts.

The existing law relating to long-term banning orders has been read to mean the offender must be affected by alcohol.

This excludes for example serious assaults on intoxicated victims or assaults by staff of licensed premises who were not themselves alcohol affected.

This has resulted in long-term banning orders being revoked or refused in cases where the Commissioner of Police has strong grounds to believe the individuals do present a real threat of violence in high-risk venues.

To address this problem the bill will enable a long-term banning order to be imposed where a person has been charged with or found guilty of a serious indictable offence involving violence that was committed while either the offender or the victim was affected by alcohol.

This will include an offence that is committed:

- in any public place;
- on licensed premises;
- on premises declared by the courts under the Restricted Premises Act 1943, which can include premises on which liquor or a drug is unlawfully sold or supplied or where drunkenness or disorderly or indecent conduct has taken place; or
- on premises used for the activities of a criminal group.

The bill also enables the authority to issue a long-term banning order where a serious indictable offence was committed on or in the vicinity of licensed premises in the Kings Cross or Sydney CBD precincts by the licensee or manager of the premises or by any person working for the licensee.

These expanded banning order provisions will ensure that long-term banning orders can be applied in a broader range of circumstances where alcohol is a contributing factor in violent behaviour.

Responsible supervision

The bill introduces a responsible supervision requirement where liquor is supplied to a minor away from licensed premises by a minor's parent or guardian or where liquor is supplied by another person with the consent of a minor's parent or guardian.

The matters that are considered to be relevant when determining whether the supply of liquor to a minor is consistent with responsible supervision include:

- the age of the minor;
- whether the person supplying the minor with liquor is intoxicated;
- whether the minor is consuming the liquor with food;
- whether the person supplying the liquor is responsibly supervising the minor's consumption of the liquor; and
- the quantity and type of liquor supplied and the period of time over which it is supplied.

A regulation-making power has been included should it be necessary to prescribe additional matters at a later stage.

Importantly the bill makes it clear that the supply of liquor to a minor who is intoxicated is not in any circumstances consistent with the responsible supervision of the minor.

These responsible supervision provisions in the bill are consistent with a recommendation made by the Legislative Assembly Social Policy Committee's inquiry into the provision of alcohol to minors.

Schedule 4 amendment

The bill also amends schedule 4 of the Liquor Act to enable the Secretary of New South Wales Trade and Investment to extend the restricted trading period that applies to violent venues listed in that schedule for up to two hours before midnight.

This will enable the special licence conditions such as glass and drink restrictions to be imposed on violent venues before midnight where there is evidence that alcohol-related violence is occurring on the premises during that period.

Reforms for beer and spirits producers

Statutory review reforms in the bill will assist businesses particularly in regional areas by providing parity for all producers of liquor through an extension of the existing regulatory framework that applies to wine producers so that it also applies to the producers of beer and spirits.

This will enable brewers and distillers that hold a producer/wholesaler licence to apply for an

authorisation to sell liquor for consumption on their licensed premises if they wish to operate a restaurant bar or accommodation facility.

This authorisation, which is currently available to wine producers, is subject to standard provisions under the Act relating to issues such as application processes, trading hours and responsible service of alcohol requirements.

The bill also provides that brewers and distillers will be able to conduct tastings and sell their products at a producer's market or at industry shows.

Red tape reforms—licence transfers

The bill contains a number of reforms that remove red tape and improve service delivery.

The bill will introduce an alternative streamlined liquor licence transfer process where the business ownership does not change hands, the licence is being transferred to a person who is a current licensee or has previously held the same licence type within a three-year period and the person has not committed a serious offence under the Liquor Act in that time.

This red tape reform will benefit those businesses that operate multiple liquor licences and regularly move their staff from one outlet to another as part of their corporate and professional development programs.

In these circumstances a transfer will be able to be considered without the need for approval by the Independent Liquor and Gaming Authority.

Instead, notice of the proposed transfer will need to be provided to the authority, which can endorse the transfer.

The bill also reforms certain liquor licence transfer provisions to provide certainty for industry and regulators on the operation of the Liquor Act.

In particular the bill makes it clear that a licence is suspended where a transfer application is not made within 28 days following a licensee being dispossessed by the business owner.

These suspension provisions will also apply where a transfer application is refused by the authority until such time that a licence transfer to another person has been approved by the Independent Liquor and Gaming Authority.

The fit and proper person test that must be considered by the Independent Liquor and Gaming Authority for liquor licence applicants is also strengthened by the bill.

The bill does this by clarifying the matters that must be taken into account in considering whether a person is fit and proper to hold a liquor licence.

These matters are whether the person is of good repute having regard to character honesty and integrity and whether the person is competent to carry on that business.

Industry training

To ensure a consistent regulatory approach the bill assigns responsibility for approving additional training courses for licensees and staff to the Secretary of New South Wales Trade and Investment.

This is consistent with the secretary's current responsibility for approving responsible service of alcohol and responsible conduct of gambling training under the liquor and gaming machine laws.

The bill also contains regulation-making powers to require licensees and staff to undertake any additional training courses approved by the secretary.

These regulation-making powers are consistent with the Government's intention to introduce a tiered training framework that provides appropriate competencies for different industry sectors and reflects the risks of operating different types of liquor licences.

This framework is being developed with the assistance of an industry working group over the next 12 months.

Incident registers

To ensure incident registers required to be kept by licensees properly complement enforcement and intelligence activities by police and liquor inspectors, the bill assigns responsibility for approving the form of these registers to the Secretary of New South Wales Trade and Investment.

This will enable the use of incident registers to be expanded to record details of other types of incidents

occurring on or near the premises including where a person is refused entry to a licensed premises.

The bill also requires any information in an incident register to be retained for at least three years and for police and Office of Liquor, Gaming and Racing inspectors to be given access to those registers at any time.

Primary purpose test

The bill amends the Liquor Act to clarify that the primary purpose of the business or activity of an on-premises licence such as a restaurant must not be the sale or supply of liquor at any time.

This will address concerns that some licensed restaurants with an authorisation under section 24(3) of the Liquor Act 2007, also known as a primary service authorisation that enables liquor to be served without meals, trade as restaurants by day and then morph into bars later in the night.

Amendments to the Gaming and Liquor Administration Act 2007

I now turn to schedule 2 of the bill which amends the Gaming and Liquor Administration Act.

The bill implements a recommendation of the 2013 Liquor Act review that specific objects should be inserted into the Gaming and Liquor Administration Act 2007.

That Act constitutes the Independent Liquor and Gaming Authority, which has regulatory responsibilities under the Liquor Act 2007, the Casino Control Act 1992, the Gaming Machines Act 2001, the Gaming Machine Tax Act 2001 and the Registered Clubs Act 1976.

The bill amends the Gaming and Liquor Administration Act to introduce new objects that:

- ensure the probity of public officials who are engaged in the administration of the gaming and liquor legislation;
- ensure that the authority is accessible and responsive to the needs of all persons and bodies who deal with the authority;
- promote fair and transparent decision-making under the gaming and liquor legislation;
- require matters under the gaming and liquor legislation to be dealt with and decided in an informal and expeditious matter; and
- promote public confidence in the authority's decision-making and in the conduct of its members.

These objects are based on those contained in the Civil and Administrative Tribunal Act 2013.

The bill also makes amendments that are consequential on recent administrative changes including the commencement of the Government Sector Employment Act 2013.

These amendments distinguish between staff of the authority who are public service employees that are employed to enable the authority to exercise its functions and other public service employees who are engaged in the administration of the liquor and gaming laws.

The authority will continue to have responsibility for ensuring that designated members of staff of the authority, including inspectors who exercise additional functions in relation to the casino, have the highest standard of integrity.

The bill provides the Secretary of New South Wales Trade and Investment with similar responsibilities for other public service employees engaged in the administration of the gaming and liquor legislation.

The bill also enables the authority to delegate any of its functions to any member of the authority including public service employees.

This reform supports the Gaming and Liquor Administration Act's new objectives and will help improve service delivery.

The bill will also provide that decisions made by the Secretary of New South Wales Trade and Investment under sections 102A and 136E of the Liquor Act can be reviewed by the authority.

Those decisions relate to orders restricting or prohibiting activities by licensees that encourage the misuse or abuse of liquor and the imposition of licence conditions which require licensees to participate in a precinct or community event liquor accord.

To provide greater transparency in decision-making for licensing matters that have a strong public interest the bill requires the authority and the Secretary of New South Wales Trade and Investment to publish decisions in contentious and high impact licensing decisions and regulatory interventions.

The information that will be required to be published includes a statement of reasons for any such decision and the details of any penalty or sanction imposed or any remedial action taken.

Amendments to the Gaming and Liquor Administration Regulation 2008

The decisions that will be required to be published by the authority and the secretary are prescribed by the bill and included in the Gaming and Liquor Administration Regulation.

The decisions of the authority and the secretary that are required to be published include:

- a decision by the secretary relating to a noise disturbance complaint;
- a decision by the secretary or the authority to impose a strike against a licensed premises under the three strikes disciplinary scheme;
- a decision by the authority under section 36A of the Gaming and Liquor Administration Act relating to the review of a decision made by the secretary;
- a decision by the authority relating to a short-term or a long-term closure order of licensed premises;
- a decision by the authority in determining a disciplinary complaint taken under section 141 of the Liquor Act; and
- any decision by the authority under the Liquor Act relating to the granting of a licence authorisation or approval where a category B community impact statement is required to be lodged with the application.

A category B community impact statement is required for high-impact licensing proposals including an application for a hotel licence, a packaged liquor licence to operate a bottle shop and permanent extended trading hours.

The bill also enables an interested party to request reasons for decisions relating to licence applications for extended trading hours requiring a category A community impact statement.

An interested party includes any person or body required to be consulted in relation to a licence application and any person who made a submission to the authority in relation to an application.

Reforms in the bill amend schedule 1 of the Gaming and Liquor Administration Regulation to include local councils and other consent authorities in the list of bodies that are exempt from the Act's secrecy provisions.

This will facilitate information exchange between councils and police at the local level on licensing proposals.

Amendments to the Liquor Regulation 2008

I now turn to amendments to the Liquor Regulation 2008 which are contained in schedule 3 of the bill.

Revocation of RSA competency card

The bill extends provisions currently applying in the Kings Cross and Sydney CBD entertainment precincts that enable the Independent Liquor and Gaming Authority to suspend or revoke a person's responsible service of alcohol competency card or to disqualify a person from holding a responsible service of alcohol competency card for up to 12 months if the person is found to have contravened their responsible service of alcohol obligations.

These provisions, which will operate throughout the State, will apply where a staff member has contravened fundamental responsible serving obligations such as serving liquor to a minor or an intoxicated person.

Consistent with procedural fairness principles applying in the Kings Cross and Sydney CBD entertainment precincts a person whose competency card has been suspended or revoked or who has been disqualified from holding a competency card can apply to the Civil and Administrative Tribunal for a review of the authority's decision.

Finally the bill makes a number of consequential amendments to the Liquor Regulation including the addition of various application and other related fees and penalty notice amounts arising from amendments made to the Liquor Act.

I commend the bill to the House.