

LIQUOR LEGISLATION AMENDMENT (STATUTORY REVIEW) BILL 2014

Bill introduced on motion by Mr Troy Grant, read a first time and printed.

Second Reading

Mr TROY GRANT (Dubbo—Minister for Hospitality, Gaming and Racing, and Minister for the Arts) [4.45 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Liquor Legislation Amendment (Statutory Review) Bill 2014. At the outset let me state that the New South Wales Liberals and Nationals are committed to reducing alcohol-related violence and the social harms caused from excessive alcohol consumption. And on this point the New South Wales Liberals and Nationals understand that we need to strike the right balance between individual and industry responsibility if we are to tackle this problem.

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.

In securing the objects of the Liquor Act, regulators and licensees must have due regard to the overarching principles of harm minimisation, responsible consumption, and safe sale and supply. These principles 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. The Government's response to the Liquor Act review supported 84 of the 91 recommendations made by the review either in full or in principle and noted five recommendations for further consideration. This bill forms a significant part of the actions 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.

I now turn to schedule 1 which amends the Liquor Act 2007. 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. This includes ensuring that alcohol is not sold or supplied to a minor or an intoxicated person; food and free water must be available; and persons selling or supplying alcohol at these events must have undertaken responsible service of alcohol training.

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 provides an effective response to any concerns about an organisation or the conduct of an event by allowing the Secretary of NSW 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 NSW 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 NSW 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 where 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.

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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.

I will now address the sales to minors and the 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. This will safeguard our young people and is of particular interest to me. I have worked closely with the department to develop an appropriately strong response. 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 NSW Trade and Investment

inviting the licensee to make a submission as to why his or her 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 the third offence occurs within 12 months of the first offence but more than 28 days after the second offence. Like a driver licence, a liquor licence is a privilege and not a right. This new penalty regime sends a strong message to industry about the importance of complying with the under-age drinking laws and that the unlawful supply of liquor to minors can have significant commercial consequences for licensed premises.

In regard to 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 NSW Trade and Investment. These guidelines, which will provide greater certainty for licensees and regulators, will recognise that licensees can implement a mix of measures.

The bill will also broaden the grounds where an offence is committed by a person who has been refused entry to a licensed premises, 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 he or she was intoxicated, violent, quarrelsome or disorderly. This issue has been problematic for licensees in dealing with persons attempting to re-enter their premises after they have 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.

I now turn to multi-occasion extended trading authorisations. 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 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 demand 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 wish to trade after midnight occasionally to meet local demand for limited late-night functions. Regulation is being drafted that will provide the detail of this scheme. Known as a multi-occasion extended trading authorisation, this extended trading will be subject to an annual fee and enable a venue to relinquish its permanent extended trading while still being allowed to trade up until 3.00 a.m. on up to 12 occasions annually.

Additionally, in announcing the outcome of the review of the Act I also announced the Government's intention to introduce a different type of licence for small wineries, distillers and craft brewers to better suit that sector's specific needs. This will reduce their annual fee from \$500 to \$200 and better align with their risk profile. This measure is being progressed via regulation in consultation with those producers.

In regard to precinct reforms the bill also makes fine-tuning amendments to the Kings Cross and Sydney central business district [CBD] precincts by enabling high-risk venues to apply for an exemption from the patron identification [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 antisocial behaviour or other alcohol-related harm in that precinct and after considering a recommendation made by the Secretary of NSW 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 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 were 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.

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The bill also enables the authority to issue a long-term banning order when a serious

indictable offence is committed on or in the vicinity of licensed premises in the Kings Cross or Sydney central business district precincts by the licensee or manager of the premises or by any person working for the licensee. The expanded banning order provisions will ensure that long-term banning orders can be applied in a broader range of circumstances when alcohol is a contributing factor in violent behaviour.

In relation to responsible supervision, the bill introduces a responsible supervision requirement when liquor is supplied to a minor away from licensed premises by a minor's parent or guardian or when 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 as well as the 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. The responsible supervision provisions in the bill are consistent with a recommendation made by the Legislative Assembly Social Policy Committee inquiry into the provision of alcohol to minors. Regarding the schedule 4 amendment, the bill also amends schedule 4 to the Liquor Act to enable the Secretary of NSW 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 when there is evidence that alcohol-related violence is occurring on the premises during that period.

Regarding reforms for beer and spirits producers, statutory review reforms in the bill will assist businesses, particularly those 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. Regarding red tape reforms and 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 when 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. In those 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 when a transfer application is not made within 28 days following a licensee being dispossessed by the business owner. These suspension provisions also will apply when 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 also is strengthened by the bill. The bill does that by clarifying matters that must be taken into account in considering whether a person is fit and proper to hold a liquor licence. Those 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.

Regarding industry training, I point out that to ensure a consistent regulatory approach the bill assigns responsibility for approving additional training courses for licensees and staff to the Secretary of NSW Trade and Investment. This is consistent with the secretary's current responsibility for approving training in relation to the responsible service of alcohol and responsible conduct of gambling 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. Those 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 will be developed with the assistance of an industry working group over the next 12 months.

To ensure that incident registers, which are required to be kept by licensees, properly complement enforcement and intelligence activities by the police and liquor inspectors, the bill assigns responsibility for approving the form of these registers to the Secretary of NSW 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 when 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 inspectors of the

Office of Liquor, Gaming and Racing to be given access to those registers at any time.

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, which also is 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 night.

In relation to amendments to the Gaming and Liquor Administration Act 2007, I now turn to schedule 2 to 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 that 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.

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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 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, maintain the highest standard of integrity.

Regarding 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 licenced 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 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.

I now turn to amendments to the Liquor Regulation 2008, which are contained in schedule 3 of the bill. In relation to the revocation of the responsible service of alcohol [RSA] competency card, the bill extends provisions currently applying in the Kings Cross and Sydney central business district [CBD] entertainment precincts which enable the Independent Liquor and Gaming Authority to suspend or revoke a person's responsible service of alcohol competency card or 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 to an intoxicated person. Consistent with procedural fairness principles applying in the Kings Cross and Sydney CBD entertainment precinct, a person whose competency card has been suspended or revoked or who has been suspended from holding a competency card can apply to the NSW 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. The NSW Liberal-Nationals understand that we need to strike the right balance between individual and industry responsibility in the development of alcohol policy, to the betterment of the entire community. I commend the bill to the House.

Debate adjourned on motion by Ms Tania Mihailuk and set down as an order of the day for a future day.