



New South Wales

# Liquor Legislation Amendment (Statutory Review) Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend various legislation to give effect to certain recommendations arising out of the statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* and to implement certain other reforms. In particular, the Bill:

- (a) modifies the grounds on which the Independent Liquor and Gaming Authority (the *Authority*) can issue long-term banning orders prohibiting persons from entering licensed premises in the Kings Cross or Sydney CBD precincts, and
- (b) provides for an escalating regime of sanctions (including automatic licence suspension or cancellation) for selling liquor to minors on licensed premises, and
- (c) provides that liquor may be supplied on unlicensed premises to a minor by a parent of the minor, or by a person authorised by a parent of the minor, only if the supply is consistent with the responsible supervision of the minor, and
- (d) provides that liquor may be sold or supplied without a licence at a fundraising function held by or on behalf of a non-proprietary association but only if certain requirements are complied with (including supervision and responsible service of alcohol requirements), and
- (e) enables beer and spirits producers to sell their products for consumption on their licensed premises or at industry shows, and
- (f) makes it clear that an authorisation granted to the holder of an on-premises licence to sell liquor otherwise than with, or ancillary to, the primary product or service provided on the licensed premises is subject to the requirement that the primary product or service must be available at all times when liquor is being sold under the authorisation, and

- (g) provides for a new type of extended trading authorisation that enables licensed premises to trade late outside of the standard trading period (but no later than 3 am) on up to 12 occasions over a 12-month period, and
- (h) enables the Minister to exempt venues in the Kings Cross and Sydney CBD precincts from the patron ID scanning requirements in certain circumstances, and
- (i) requires certain decisions by the Authority or the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services (the *Secretary*) under the liquor legislation, and the reasons for such decisions, to be published on the Authority's or Department's website, and
- (j) enables the Authority to suspend or revoke a person's RSA certification, or to disqualify a person from holding RSA certification for a specified period, if the person has contravened the person's obligations in relation to the responsible service of alcohol, and
- (k) provides an alternative process for the transfer of a licence in cases where the ownership of the business carried on under the licence remains unchanged, and
- (l) inserts objects into the *Gaming and Liquor Administration Act 2007*, and
- (m) makes a number of other amendments of an administrative or minor nature.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation:

## **Schedule 1    Amendment of Liquor Act 2007 No 90**

**Schedule 1 [1] and [2]** update provisions that contain references to the Director-General (these references are required by an administrative arrangements order under the *Constitution Act 1902* to be construed as references to the Secretary).

**Schedule 1 [3]** provides that the sale or supply of liquor at a fundraising function held by or on behalf of a non-proprietary association will be exempt from the licensing requirements under the Act if certain requirements are complied with. Only 6 such exempted functions can be held in any 12-month period and a non-proprietary association will not be eligible for the exemption if a limited licence is already held on its behalf or if the Secretary has declared that the association is not eligible for the exemption. The Secretary may also give directions to an association relating to the conduct of a function held in accordance with the proposed exemption.

**Schedule 1 [4]** omits a note that is no longer necessary.

**Schedule 1 [5], [6] and [26]** provide that any requirements prescribed by the regulations relating to the availability of food on licensed premises (including small bars) are to relate to the nature of the food but not to quality.

**Schedule 1 [7] and [8]** ensure that the primary purpose of the business or activity carried out on the licensed premises to which an on-premises licence applies must not at any time be the sale or supply of liquor and that any authorisation to sell liquor otherwise than with, or ancillary to, the primary product or service provided on the licensed premises is subject to the requirement that the primary product or service must be available at all times when liquor is being sold under the authorisation.

**Schedule 1 [9]–[22]** authorise beer and spirits producers to sell their products at producers' markets or fairs or at industry shows, or in accordance with a drink-on-premises authorisation, in the same manner as currently applies to wine producers. **Schedule 1 [33]** is a consequential amendment.

**Schedule 1 [23]** provides that the approval by the Authority of the functions that are held under a limited licence is no longer required. **Schedule 1 [24] and [25]** modify certain requirements relating to limited licences.

**Schedule 1 [27], [45] and [47]** make it clear that the fit and proper person test in relation to licence and other similar applications extends to the relevant person's competency to carry on the business under the licence or, in the case of a person who is applying for approval as manager of licensed premises, to the person's competency to manage licensed premises.

**Schedule 1 [28]** enables a licensee to apply to the Authority for the licence to be voluntarily suspended for a specified period.

**Schedule 1 [29]–[32]** provide for the granting by the Authority of a new kind of extended trading authorisation (a “multi-occasion” extended trading authorisation) that will allow venues to trade until 3 am on up to 12 occasions over a 12-month period. An application for a multi-occasion ETA will not need to be accompanied by a community impact statement if the venue is already authorised to trade late on a regular basis.

**Schedule 1 [34]** provides that the Secretary, rather than the Authority, is to approve the form of the incident registers required to be maintained by late trading venues or those venues that are subject to the special licence conditions under Schedule 4 to the Act. **Schedule 1 [35] and [75]** provide that any such incident register must be made available for inspection by police officers and inspectors and that any information in an incident register must be retained for at least 3 years. **Schedule 1 [76]** is a consequential amendment.

**Schedule 1 [36]** provides that the Secretary, rather than the Authority, is to approve the courses of training or instruction required to be completed by licence applicants and persons applying for approval as manager of licensed premises.

**Schedule 1 [37]** provides that the regulations may require licensees and their employees to undertake and complete courses of training or instruction approved by the Secretary. At present the Authority may require such courses to be undertaken and completed.

**Schedule 1 [38]** provides that if a licence has been suspended because the periodic licence fee for the licence has not been paid within the required time, the suspension may be lifted if a late payment fee is paid. **Schedule 1 [39]** provides that non-payment of the late payment fee will result in the cancellation of the suspended licence.

**Schedule 1 [40]** is a minor amendment to ensure consistency of terminology in the Act.

**Schedule 1 [41]** provides an alternative process for licences to be transferred, without the need to apply to the Authority for approval, if there is no change in the ownership of the business carried on under the licence. However such a transfer does not have effect until the licence is endorsed by the Authority to the effect that is held by the transferee.

**Schedule 1 [42] and [43]** provide that the owner of licensed premises, or the owner of the business carried on under a licence, may apply to the Authority for the transfer of the licence to another person if the licensee is not complying (or is unable to comply) with the requirement to be responsible at all times for the personal supervision and management of the business of the licensed premises.

**Schedule 1 [44] and [46]** provide that if an application for the transfer of a licence under section 61 of the Act, or for an endorsement of a licence under section 62 of the Act, is not made within the required time or is refused by the Authority, the licence is suspended until such time as it is transferred to some other person.

**Schedule 1 [48]–[50]** provide that a licensee is taken not to have permitted intoxication on the licensed premises if the licensee complies with the Secretary's guidelines relating to the prevention of intoxication on licensed premises.

**Schedule 1 [51]** provides that a person who has been refused entry to, or turned out of, licensed premises for any reason (and not just because the person was intoxicated, violent, quarrelsome or disorderly) is prohibited from re-entering or remaining in the vicinity of the premises.

**Schedule 1 [52]** removes the requirement that the Secretary cannot restrict or prohibit the sale or supply of certain liquor products unless the Secretary is satisfied that the premises are situated in an area where there are significant concerns regarding intoxication or underage or irresponsible drinking.

**Schedule 1 [53] and [57]** enable the Minister, after considering a recommendation by the Secretary, to exempt licensed premises in the Kings Cross or Sydney CBD precincts from the patron ID scanning requirements that are designed to prevent persons subject to banning orders from entering licensed premises in those precincts.

**Schedule 1 [54]–[56] and [58]–[60]** enable the Authority to impose a long-term banning order on a person (which has the effect of prohibiting the person from entering licensed premises in the Kings Cross or Sydney CBD precinct for up to 12 months) if the person has been charged with or found guilty of a serious indictable offence involving violence that was committed in any public place, or on licensed premises, declared premises under the *Restricted Premises Act 1943* or premises used for the activities of a criminal group, while the person or any victim of the offence was affected by alcohol. Such a banning order may also be imposed if the serious indictable offence was committed on or in the vicinity of licensed premises by the licensee or manager of the premises or by any person working or performing services on the premises.

**Schedule 1 [61]** recasts the offence of supplying liquor to a minor on premises other than licensed premises so that the supply must be consistent with the responsible supervision of the minor. The amendment includes matters that are considered to be relevant for the purposes of determining whether the supply of liquor to a minor is consistent with the responsible supervision of the minor.

**Schedule 1 [62]** provides additional sanctions for the offence of selling liquor to minors on licensed premises. Under the proposed scheme, escalating sanctions will apply. For a first offence, the Secretary may suspend the licence for a period of up to 28 days. For a second offence committed at least 28 days after the first offence, the licence is automatically suspended for 28 days. For a third offence within 12 months of the previous 2 offences, the licence is automatically cancelled.

**Schedule 1 [63]–[67]** modify provisions relating to local liquor accords. Such accords will no longer need to be approved by the Secretary but will be required to be registered by the Secretary.

**Schedule 1 [68]–[70]** provide that the disciplinary action that may be taken by the Authority in relation to complaints will include a wider range of disqualifications of persons from certain activities or roles.

**Schedule 1 [71] and [72]** provide for allegations of certain matters in proceedings for offences under the Act to be evidence of the truth of the matter unless the contrary is proven.

**Schedule 1 [73]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

**Schedule 1 [74] and [78]** provide that the Secretary may extend the restricted trading period that applies to premises subject to special licence conditions in Schedule 4 to the Act for up to 2 hours before midnight if alcohol-related violence has occurred on the premises during that period.

**Schedule 1 [77]** omits a redundant provision.

## **Schedule 2      Amendment of Gaming and Liquor Administration Act 2007 No 91**

**Schedule 2 [1]** inserts objects in the Act which will include promoting fair and transparent decision making under the gaming and liquor legislation.

**Schedule 2 [2]–[5], [9]–[11], [13]–[19] and [23]–[26]** make amendments that are consequential on recent administrative changes, including the enactment of the *Government Sector Employment Act 2013* which replaced the *Public Sector Employment and Management Act 2002*. The amendments also create a distinction between the members of staff of the Authority (being those Public Service employees who are employed to enable the Authority to exercise its functions) and other Public Service employees who are engaged in the administration of the gaming and liquor legislation. 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 and for determining which members of staff are key officials for the purposes of the gaming and liquor legislation. The Secretary will have a similar responsibility in relation to other Public Service employees who are engaged in the administration of the gaming and liquor legislation.

**Schedule 2 [8]** ensures that the provisions of the *Gaming Machine Tax Act 2001* which relate to the ClubGRANTS scheme and which are currently administered by the Minister for Hospitality, Gaming and Racing (ie Part 4 and Schedule 1) are subject to the investigation and enforcement powers under the *Gaming and Liquor Administration Act 2007*. **Schedule 2 [6] and [7]** are consequential amendments.

**Schedule 2 [12]** enables the Authority to delegate any of its functions to a member of the Authority and to Public Service employees.

**Schedule 2 [20] and [21]** provide that decisions by the Secretary under section 102A of the *Liquor Act 2007* to restrict or prohibit activities by licensees that encourage misuse or abuse of liquor, and decisions by the Secretary under section 136E of that Act to impose licence conditions requiring licensees to participate in precinct or community event liquor accords, are subject to review by the Authority.

**Schedule 2 [22]** requires notice of certain decisions by the Authority and the Secretary to be published on the respective websites of the Authority and the Department. The notice is to include a statement of reasons for any such decision and details of any penalty or sanction imposed or any remedial action taken.

**Schedule 2 [27]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

### **Schedule 3     Amendment of other legislation**

**Schedule 3.1** amends the *Gaming and Liquor Administration Regulation 2008* as follows:

- (a) to specify the decisions by the Authority or the Secretary that are required to be notified in accordance with the requirement under proposed section 36C of the *Gaming and Liquor Administration Act 2007* (to be inserted by **Schedule 2 [22]**),
- (b) to provide that certain offences under the Act (namely, failing to comply with a requirement to provide information and records and to answer questions in connection with an investigation, and impersonating an inspector) may be dealt with by way of a penalty notice,
- (c) to update various references as a consequence of recent administrative changes.

**Schedule 3.2** amends the *Liquor Regulation 2008* as follows:

- (a) to enable the Authority to suspend or revoke a person's RSA certification, or to disqualify a person from holding RSA certification for a specified period of up to 12 months, if the person has contravened the person's obligations in relation to the responsible service of alcohol and to enable any such person to apply to the Civil and Administrative Tribunal for a review of any such decision by the Authority,
- (b) to specify additional circumstances in which an application for a multi-occasion extended trading authorisation is not required to be accompanied by a community impact statement,

- (c) to make a number of other amendments that are consequential on the amendments made by Schedule 1 to the proposed Act (including the addition of various application and other related fees, and penalty notice amounts, arising from those amendments),
- (d) to update various references as a consequence of recent administrative changes.

**Schedule 3.3** amends the *Registered Clubs Act 1976* to make it clear that those club premises which have preserved unrestricted trading hours (and accordingly are subject to the late trading risk loading element under the periodic licence fee system) forfeit the unrestricted trading entitlement if the club chooses to only trade late under a multi-occasion extended trading authorisation granted under the *Liquor Act 2007*. Clubs may also, in order to avoid the late trading risk loading element, request the Secretary to impose a licence condition to restrict the trading hours to the standard trading period, but if that condition is subsequently revoked at the club's request the premises will revert to the previously preserved unrestricted trading hours.