



New South Wales

# **Liquor and Registered Clubs Legislation Further 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 allow liquor to be sold or supplied to residents of nursing homes and hospital in-patients without the need for a licence, and
  - (ii) to allow liquor to be sold on vessels while berthed at certain wharves prescribed by the regulations, and
  - (iii) to allow the Director of Liquor and Gaming to give certain directions to licensees in relation to the promotion of liquor where that promotion is considered to be undesirable because of its effect or its likely effect on minors, and

- (iv) to omit two uncommenced provisions requiring the date of birth of a customer to be recorded on an invoice or delivery document that accompanies liquor sold through an internet site, over the telephone, by facsimile or by mail order, and
- (v) to make it an offence to make materially false or misleading statements in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the Act, and
- (vi) to provide a longer phasing-in of the requirements relating to the principal business of the licensee under a caterer's licence, and
- (vii) to remove any doubt that certain licences are in force, and
- (viii) to validate dine-or-drink authorities for which fees were paid late, and
- (b) to amend the *Registered Clubs Act 1976*:
  - (i) to make it an offence to make materially false or misleading statements in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the Act, and
  - (ii) to allow the Director of Liquor and Gaming to give certain directions to registered clubs in relation to the promotion of liquor where that promotion is considered to be undesirable because of its effect or its likely effect on minors, and
  - (iii) to remove any doubt that certain certificates of registration are in force.

## 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 the date of assent, except proposed Schedule 1 [1], [2] and [5] and Schedule 2 [2], which commence on a day or days to be appointed by proclamation, Schedule 1 [6], which commences at the same time as the provision that it amends and Schedule 1 [10], which commences, or is taken to have commenced, on 25 November 2001.

**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**

### **Sale of liquor to residents of nursing homes and hospital in-patients**

The *Liquor Act 1982* regulates the sale and supply of liquor.

**Schedule 1 [2]** provides that nothing in the Act applies to or in respect of the sale or supply of liquor to adults who are residents of a nursing home, hospital in-patients or in-patients in other prescribed medical facilities.

**Schedule 1 [1]** makes a consequential amendment.

### **Sale of liquor on vessels**

Section 35 (2) of the *Liquor Act 1982* prohibits liquor from being sold or supplied to passengers on board a vessel while it is at its berth or while it is moored, if persons other than passengers and crew are being allowed on board.

**Schedule 1 [3]** enables liquor to be sold or supplied to passengers on board a vessel while it is at its berth if the berth is at a wharf prescribed by the regulations and if no persons other than passengers and crew are being allowed on board.

**Schedule 1 [4]** requires the concurrence of the Minister for Urban Affairs and Planning before the making of such regulations.

### **Undesirable promotion of liquor**

**Schedule 1 [5]** provides for the Director of Liquor and Gaming to give directions to a licensee about the promotion of liquor that the Director thinks is undesirable because of its effect on minors. The amendment makes it an offence for a licensee to fail to comply with a direction.

### **Sale of liquor through internet or by other communication media**

**Schedule 1 [6]** omits two uncommenced provisions requiring the date of birth of a customer to be recorded on an invoice or delivery document that accompanies liquor sold through an internet site, over the telephone, by facsimile or by mail order.

### **False or misleading information**

**Schedule 1 [7]** makes it an offence to make a statement that is false or misleading in a material particular in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the *Liquor Act 1982*.

### **Savings and transitional regulations**

**Schedule 1 [8]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

### **Caterer's licence**

Section 18 (2) (d) of the *Liquor Act 1982* provides for the issue of a caterer's licence, being a licence that authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises. Section 23A (3) requires that the principal business of the licensee under a caterer's licence, and the principal business of any person or body on whose behalf the licensee holds the licence, must be the business of providing catering services for fee, gain or reward. That requirement was inserted by the *Liquor Amendment Act 1999*, which provided for the new requirements to be phased-in within 2 years after the commencement of the provisions, that is, before 25 November 2001 (see clause 78 of Schedule 1 to the *Liquor Act 1982*).

**Schedule 1 [10]** extends the phasing-in period for another 3 years, until 25 November 2004, for those caterers who obtained their licence prior to 25 November 1999.

### **Status of certain licences**

**Schedule 1 [11]** makes it clear that any licence that was suspended for non-payment of licence fees immediately before the decision of the High Court in *Ha and another v State of New South Wales and others, Walter Hammond Associates Pty Ltd v State of New South Wales and others* (1997) 189 CLR 465 is, on and from the date of that decision, taken not to have been suspended.

**Schedule 1 [9]** omits a redundant provision.

### **Payments for dine-or-drink authorities accepted after the due date**

Section 56 (9) (a) of the *Liquor Act 1982* provides for the payment in instalments of the prescribed fee for dine-or-drink authorities. Section 56 (9) (a) (iv) provides that an authority is automatically cancelled on the first anniversary of its grant if any part of the fee for the authority remains unpaid at that time.

**Schedule 1 [11]** inserts a provision validating certain authorities for which fees have been accepted after the due date.

## **Schedule 2    Amendment of Registered Clubs Act 1976**

### **False or misleading information**

**Schedule 2 [1]** makes it an offence to make a statement that is false or misleading in a material particular in, or omit material matter from, documents submitted or otherwise given to the Minister for Gaming and Racing for the purposes of the *Registered Clubs Act 1976*.

### **Undesirable promotion of liquor**

**Schedule 2 [2]** provides for the Director of Liquor and Gaming to give directions to a registered club about the promotion of liquor that the Director thinks is undesirable because of its effect on minors. The amendment makes it an offence for a registered club to fail to comply with a direction.

### **Savings and transitional regulations**

**Schedule 2 [3]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

### **Status of certain certificates of registration**

**Schedule 2 [5]** makes it clear that any certificate of registration that was suspended for non-payment of licence fees immediately before the decision of the High Court in *Ha and another v State of New South Wales and others, Walter Hammond Associates Pty Ltd v State of New South Wales and others* (1997) 189 CLR 465 is, on and from the date of that decision, taken not to have been suspended.

**Schedule 2 [4]** omits a redundant provision.



New South Wales

# Liquor and Registered Clubs Legislation Further Amendment Bill 2001

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New South Wales

# **Liquor and Registered Clubs Legislation Further Amendment Bill 2001**

No , 2001

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## **A Bill for**

An Act to amend the *Liquor Act 1982* in respect of the sale and supply of liquor in nursing homes and hospitals, the sale of liquor on vessels, the promotion of liquor to minors and caterer's licences; to amend the *Registered Clubs Act 1976* in relation to the promotion of liquor to minors; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

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

**2 Commencement**

- (1) Except as provided by subsections (2)–(4), this Act commences on the date of assent.
- (2) Schedule 1 [1], [2] and [5] and Schedule 2 [2] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1 [6] commences on the date of commencement of Schedule 1 [12] to the *Liquor and Registered Clubs Legislation Amendment Act 2001*.
- (4) Schedule 1 [10] commences, or is taken to have commenced, on 25 November 2001.

**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 4 Definitions

Omit “section 6 (c)–(f)” from paragraph (c1) of the definition of *person authorised to sell liquor* in section 4 (1).

Insert instead “section 6 (1) (c)–(f) or (2)”.

### [2] Section 6 Application of Act

Insert at the end of section 6:

(2) Nothing in this Act applies to or in respect of the sale or supply of liquor:

(a) to a person who is not a minor and who is a resident of a nursing home within the meaning of the *Nursing Homes Act 1988*, if the liquor is sold or supplied by a person in charge of, or a person acting with the authority of a person in charge of, the nursing home, or

(b) to a person who is not a minor and:

(i) who is an in-patient of a public hospital within the meaning of the *Health Services Act 1997*, or

(ii) who is a patient of a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, or

(iii) who is an in-patient of any other medical facility of a class prescribed by the regulations,

if the liquor is sold or supplied by a person in charge of, or a person acting with the authority of a person in charge of, the hospital or facility.

### [3] Section 35 On-licence (vessel or aircraft)—trading hours

Insert “unless the berth is at a wharf prescribed by the regulations and no persons other than passengers and crew are being allowed on board,” after “passage, “ in section 35 (2) (a).

<b>[4]    Section 35 (4)</b>	1
Insert after section 35 (3):	2
(4)    A regulation is not to be made under subsection (2) (a) unless	3
the Minister administering the <i>Environmental Planning and</i>	4
<i>Assessment Act 1979</i> has concurred in the making of the	5
regulation. The validity of a regulation under that subsection is	6
not affected by a failure to comply with this subsection.	7
<b>[5]    Section 117J</b>	8
Insert after section 117I:	9
<b>117J    Director may prohibit undesirable promotion of liquor</b>	10
(1)    The Director may, by order in writing served on a licensee,	11
prohibit the licensee from carrying on or being involved in an	12
activity involving the promotion of liquor described in the	13
order if the Director considers:	14
(a)    that the promotion is likely to have a special appeal to	15
minors:	16
(i)    because of the use of designs, motifs or	17
characters in the promotion that are, or are likely	18
to be, attractive to minors, or	19
(ii)    for any other reason, and	20
(b)    that it is desirable in the public interest to prohibit the	21
carrying on of or involvement in the activity.	22
(2)    Before making an order under this section, the Director must	23
have regard to any relevant guidelines concerning the making	24
of orders or the promotion of liquor approved by the Minister	25
for the purposes of this section.	26
(3)    A licensee who, without reasonable excuse, fails to comply	27
with an order under this section is guilty of an offence.	28
Maximum penalty: 50 penalty units.	29
<b>[6]    Section 128 Sale of liquor through internet or by other communication</b>	30
<b>media</b>	31
Omit section 128 (3) (b) and (6) (b) (as proposed to be inserted by Schedule	32
1 [12] to the <i>Liquor and Registered Clubs Legislation Amendment</i>	33
<i>Act 2001</i> ).	34

<b>[7] Section 139 False or misleading statements</b>	1
Insert “, or submitted or otherwise given to the Minister” after “registrar” in section 139 (2).	2 3
<b>[8] Schedule 1 Savings and transitional provisions</b>	4
Insert at the end of clause 1 (1):	5
<i>Liquor and Registered Clubs Legislation Further Amendment Act 2001</i>	6 7
<b>[9] Schedule 1, clause 55 (3) (a)</b>	8
Omit the paragraph.	9
<b>[10] Schedule 1, clause 78</b>	10
Omit “for 2 years after that commencement”.	11
Insert instead “until 25 November 2004”.	12
<b>[11] Schedule 1</b>	13
Insert in Schedule 1 (with appropriate Part and clause numbers):	14
 <b>Part Liquor and Registered Clubs Legislation Further Amendment Act 2001</b>	15 16
<b>Provision consequent on the decision of the High Court in Ha v New South Wales</b>	17 18
(1) This clause applies to a licence that was, immediately before 5 August 1997, suspended under section 83 (7) (as in force immediately before its repeal) because a reassessed licence fee had not been paid in full.	19 20 21 22
(2) A licence to which this clause applies is, on and from 5 August 1997, taken not to have been suspended by reason of failure to pay a reassessed licence fee in full.	23 24 25

**Validation of dine-or-drink authority**

Despite section 56 (9) (a) (iv):

- (a) a dine-or-drink authority is taken not to have been automatically cancelled on the first anniversary of its grant if any part of the fee for the authority remained unpaid at that time, and
- (b) if full payment of the fee is made at some time after the first anniversary of its grant and before the commencement of this clause, a dine-or-drink authority is taken to have been in force between the anniversary and the time that payment was made.

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<b>Schedule 2</b>	<b>Amendment of Registered Clubs Act 1976</b>	1
	(Section 4)	2
<b>[1]</b>	<b>Section 55 False or misleading statements</b>	3
	Insert “, or submitted or otherwise given to the Minister” after “registrar” in section 55 (2).	4 5
<b>[2]</b>	<b>Section 57D</b>	6
	Insert after section 57C:	7
	<b>57D Director may prohibit undesirable promotion of liquor</b>	8
	(1) The Director may, by order in writing served on a registered club, prohibit the registered club from carrying on or being involved in an activity involving the promotion of liquor described in the order if the Director considers:	9 10 11 12
	(a) that the promotion is likely to have a special appeal to minors:	13 14
	(i) because of the use of designs, motifs or characters in the promotion that are, or are likely to be, attractive to minors, or	15 16 17
	(ii) for any other reason, and	18
	(b) that it is desirable in the public interest to prohibit the carrying on of or involvement in the activity.	19 20
	(2) Before making an order under this section, the Director must have regard to any relevant guidelines concerning the making of orders or the promotion of liquor approved by the Minister for the purposes of this section.	21 22 23 24
	(3) A registered club that, without reasonable excuse, fails to comply with an order under this section is guilty of an offence.	25 26
	Maximum penalty: 50 penalty units.	27
<b>[3]</b>	<b>Schedule 2 Transitional provisions</b>	28
	Insert at the end of clause 1A (1):	29
	<i>Liquor and Registered Clubs Legislation Further Amendment Act 2001</i>	30 31

<b>[4]    Schedule 2, clause 73 (3) (a)</b>	1
Omit the paragraph.	2
<b>[5]    Schedule 2</b>	3
Insert in Schedule 2 (with appropriate Part and clause numbers):	4
 <b>Part    Liquor and Registered Clubs Legislation</b>	5
<b>        Further Amendment Act 2001</b>	6
 <b>        Provision consequent on the decision of the High Court in Ha v</b>	7
<b>        New South Wales</b>	8
(1) This clause applies to a certificate of registration that was,	9
immediately before 5 August 1997, suspended under section	10
15 (8) (as in force immediately before its repeal) because a	11
registration fee had not been paid in full.	12
(2) A certificate of registration to which this clause applies is, on	13
and from 5 August 1997, taken not to have been suspended by	14
reason of failure to pay a registration fee in full.	15