

Explanatory note

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

The following Bills are cognate with this Bill:

Casino, Liquor and Gaming Control Authority Bill 2007

Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Bill 2007

Overview of Bill

The object of this Bill is to replace the *Liquor Act 1982* with new legislation that simplifies the existing liquor licensing system and regulatory framework and enhances liquor harm minimisation measures. The proposed Act gives effect to a number of key reforms arising out of the NSW Summit on Alcohol Abuse and the National Competition Policy review of liquor licensing legislation (eg the removal of the remaining “needs” test provisions in relation to the granting of liquor licences).

The principal reforms made by the Bill are as follows:

(a) to provide for a more flexible liquor licensing system to be administered by the new Casino, Liquor and Gaming Control Authority (***the Authority***) which will take over the liquor licensing and regulatory functions of the Licensing Court and the Liquor Administration Board (both of which will be abolished by the proposed Act),

(b) to rationalise the types of liquor licences that may be granted by the Authority, including a new type of hotel licence (***a general bar licence***) for bars that will not be able to sell take-away liquor or have gaming machines,

(c) to bring registered clubs under the new liquor licensing system,

(d) to streamline the liquor licensing process by removing the practice of making formal objections against licence applications in court, while ensuring that applications for hotel, club and bottle shop licences, as well as other significant applications such as licence removals and authorisations for extended trading, are subject to proper assessment by the Authority and community-based consultation,

(e) to introduce a standard trading period (being 5 am to midnight, except for Sundays when it will be 10 am to 10 pm) that will apply to on-premises liquor sales as well as take-away liquor sales and to enable the Authority to authorise extended trading hours in certain circumstances,

(f) to enable the regulations to shorten the standard trading period in relation to specified classes of licensed premises and to provide for extended trading after midnight when special events are being held,

(g) to prohibit in all cases the take-away sale of liquor on Good Friday or Christmas Day,

(h) to introduce a number of new regulatory measures, including the making of late hour entry declarations to prevent patrons entering licensed premises during late trading times and providing for the sale, supply or consumption of liquor to be restricted in areas of the State that are declared to be restricted alcohol areas,

(i) to enable the Director of Liquor and Gaming to determine complaints about noise and disturbance in relation to licensed premises,

(j) to expand the existing prohibition on selling liquor products that are desirable to minors to cover liquor products that are indecent or offensive and to enable the Director of Liquor and Gaming to also restrict or prohibit the promotion of liquor in certain circumstances,

(k) to provide for the taking of disciplinary action by the Authority against licensees and certain other persons (including the imposition of a fine or the cancellation or suspension of the relevant licence),

(l) to provide for a review by the Administrative Decisions Tribunal of any disciplinary action taken by the Authority under the proposed Act,

(m) to provide for the establishment of local liquor accords with the aim of

eliminating or reducing alcohol-related violence or anti-social behaviour,
(n) to rationalise and extend the existing exemptions from liquor licensing requirements, in particular by allowing bed and breakfast establishments and retirement villages to supply liquor without a licence in certain circumstances,
(o) to continue the operation, under the new licensing scheme, of existing liquor licences and to preserve existing trading entitlements and authorisations.

The proposed Act will be part of the gaming and liquor legislation for the purposes of the proposed *Casino, Liquor and Gaming Control Authority Act 2007*. That Act, which constitutes the Authority, contains provisions that are relevant to the administration of the proposed Act, including provisions relating to investigations by police officers and inspectors and other enforcement powers as well as the probity of key officials.

Outline of provisions

Part 1 Preliminary

Part 1 (**clauses 1–6**) contains provisions dealing with the name, commencement and objects of the proposed Act and its interpretation, including a definition of **intoxicated** for the purposes of the proposed Act. The objects of the proposed Act recognise the need to minimise harm associated with misuse and abuse of liquor. The Part also includes specific exemptions from the operation of the proposed Act.

Part 2 Principal offences relating to sale and supply of liquor

Part 2 (**clauses 7–9**) sets out the principal offences in relation to the sale and supply of liquor. Clause 7 makes it an offence to sell liquor without a licence under the proposed Act. Clause 8 makes it an offence to open, keep or use premises for selling liquor unless the premises are licensed premises. Clause 9 makes it an offence for a licensee or an employee or agent of a licensee to sell or supply liquor, or cause or permit liquor to be sold or supplied, in contravention of a licence.

Part 3 Liquor licences

Division 1 Preliminary

Division 1 (**clauses 10–13**) sets out the types of licences that may be granted and held under the proposed Act and deals generally with licence conditions (including making it an offence for not complying with the conditions of a licence). The Division defines **standard trading period** for the purposes of the proposed Act and also allows the regulations to prescribe extended trading periods for hotels and clubs when special events are held.

Division 2 Hotel licences

Division 2 (**clauses 14–17**) describes the authority conferred by a hotel licence, specifies the primary purpose test and other general criteria for the granting of hotel licences and sets out miscellaneous conditions relating specifically to hotel licences. Certain hotel licences may be designated by the Authority as **general bar licences** if such a hotel licence is sought by the applicant. A hotel licence that is so designated cannot have gaming machines or sell liquor for consumption away from the licensed premises.

Division 3 Club licences

Division 3 (**clauses 18–20**) describes the authority conferred by a club licence (which can only be granted to a club that meets the requirements specified in section 10 (1) of the *Registered Clubs Act 1976*), specifies the criteria for the granting of club licences and sets out miscellaneous conditions relating specifically to club licences.

Division 4 On-premises licences

Division 4 (**clauses 21–28**) enables the regulations to specify the type of businesses or premises that cannot have an on-premises licence (rather than, as is the case at present, on-premises licences being limited to specified types of businesses or premises). The Division also describes the authority conferred by an on-premises licence and sets out miscellaneous conditions relating specifically to on-premises

licences. An on-premises licence may be granted only if the primary purpose of the business or activity carried out on the premises concerned is not the sale or supply of liquor and the sale or supply of liquor must be ancillary to some other product or service.

Division 5 Packaged liquor licences

Division 5 (**clauses 29–31**) describes the authority conferred by a packaged liquor licence (which is the type of licence that relates to a bottle shop) and specifies the criteria for the granting of packaged liquor licences.

Division 6 Producer/wholesaler licences

Division 6 (**clauses 32–35**) describes the authority conferred by a producer/wholesaler licence (including those cases where the licensee concerned carries on business as a wine producer or as a small-scale producer of beer or spirits) and sets out miscellaneous conditions that apply to wine producers.

Division 7 Limited licences

Division 7 (**clauses 36–39**) describes the authority conferred by a limited licence (known as function licences under the former Act), specifies the criteria for the granting of limited licences and sets out miscellaneous conditions relating specifically to limited licences.

Part 4 Licensing procedures and related matters

Division 1 Licence applications and granting of licences

Division 1 (**clauses 40–47**) provides for the making of applications for licences to the Casino, Liquor and Gaming Control Authority and matters relating to the assessment and granting of those applications by the Authority and the submissions that may be made in relation to licence applications.

Division 2 Miscellaneous provisions relating to licences and licence-related authorisations

Division 2 (**clauses 48–58**) provides for the Authority to take into consideration the impact that the granting of certain licences or authorisations will have on the local community and requires the Authority to be satisfied that the overall social impact of the licence or authorisation being granted will not be detrimental to the well-being of the community. The Division provides for the granting of authorisations by the Authority in connection with the sale and supply of liquor under certain licences (such as extended trading authorisations for selling liquor beyond the standard trading period and drink on-premises authorisations to allow licensed wine producers to sell liquor for consumption on licensed premises). The Division also contains provisions dealing with applications for licences and licence-related authorisations, the conditions that may be imposed by the Authority and the Director of Liquor and Gaming on licences, the provision of information about persons interested in the business of a licensee, the keeping of incident registers by licensees who operate late-trading venues and requirements relating to courses of training and instruction.

Division 3 Licence removals and transfers

Division 3 (**clauses 59–64**) provides for the removal of a licence to premises other than those specified in the licence. An application for a licence removal is to be dealt with as if it were an application for the granting of a licence relating to those other premises. The Division also contains provisions dealing with the transfer of licences (including club licences) and for the continuation of a licensee's business in certain circumstances.

Division 4 Special provisions relating to corporate licensees

Division 4 (**clauses 65–72**) contains provisions relating to licences held by corporations (including registered clubs), in particular the appointment of managers to run licensed premises in the case of a corporate licence.

Part 5 Regulation and control of licensed premises

Division 1 Conduct on licensed premises

Division 1 (**clauses 73–75**) contains provisions prohibiting excessive consumption

of alcohol on licensed premises and the use or sale of prohibited drugs, and the sale of stolen goods, on licensed premises. The Director will also have the power to give directions to licensees and staff of licensed premises in relation to conduct on licensed premises.

Division 2 Exclusion of persons from licensed premises

Division 2 (**clauses 76–78**) enables a person to enter into a self-exclusion agreement that prevents the person from entering or remaining on licensed premises, authorises licensees, staff and police officers to exclude persons from licensed premises because of their behaviour or state of intoxication (as well as in other circumstances) and allows the Authority to make banning orders that prohibit persons from entering or remaining on licensed premises.

Division 3 Disturbance complaints

Division 3 (**clauses 79–81**) provides for the Director to deal with complaints about undue noise and disturbance caused by licensed premises and to impose conditions in response to such a complaint. The Director is required to consider the order of occupancy between the licensed premises and the complainant in dealing with an undue disturbance or noise complaint.

Division 4 Closure orders

Division 4 (**clauses 82–86**) provides for the making of closure orders by authorised officers and the Authority in certain circumstances. The Local Court will also be able to order the closure of licensed premises for a specified period, on application by any person if satisfied that there is, or is likely to be, a breach of peace in the neighbourhood of the licensed premises.

Division 5 Late hour entry declarations

Division 5 (**clauses 87–90**) enables the Director to make a late hour entry declaration that prevents patrons from entering licensed premises during late trading hours even though the premises are authorised to trade during that time. If such declaration applies to licensed premises, the licensee must not permit patrons to enter the premises (but persons will be permitted to leave or remain on the premises).

Division 6 General provisions relating to licensed premises

Division 6 (**clauses 91–98**) contains general provisions applying to licensed premises, including provisions specifying the persons who are responsible for the conduct of business on licensed premises, restricting the leasing or subleasing of licensed premises, enabling the specified boundaries of licensed premises to be changed by the Authority and enabling business to be carried on by a licensee on temporary premises.

Part 6 Miscellaneous offences and regulatory controls

Division 1 General

Division 1 (**clauses 99–114**) makes provision for the responsible service of alcohol and includes a number of miscellaneous offences, including selling or supplying undesirable liquor products (including liquor products that the Minister or the Director considers to be indecent or offensive), undesirable liquor promotions, taking liquor away from licensed premises outside of trading hours or from premises to which an on-premises licence relates and carrying liquor about for the purpose of sale.

Division 2 Restricted alcohol areas

Division 2 (**clauses 115 and 116**) enables the regulations to declare an area of the State to be an area in which the sale, supply or consumption of liquor on any premises is to be restricted or prohibited in accordance with the regulations. Certain consultation requirements must be complied with before any such regulation can be made.

Part 7 Special provisions relating to minors

Division 1 Underage drinking

Division 1 (**clauses 117–120**) contains offences preventing the sale or supply of liquor to persons under the age of 18 years and the consumption of liquor by minors on licensed premises.

Division 2 Minors on licensed premises

Division 2 (**clauses 121–127**) provides for the granting of minors area authorisations (which allow minors to be in a hotel in the company of a responsible adult) and minors functions authorisations (which allow minors to attend functions in a hotel or licensed public entertainment venue). The Division also contains offences relating to minors being on licensed premises otherwise than as permitted under the proposed Act.

Division 3 Other provisions relating to minors

Division 3 (**clauses 128–130**) requires minors to provide their name and show their evidence of age documents if they are suspected of committing an offence under the proposed Act. The Division makes it an offence to use false evidence of age.

Part 8 Local liquor accords

Part 8 (**clauses 131–136**) provides for the making of local liquor accords between licensees and other parties (for example, the Director of Liquor and Gaming, the NSW Police Force, local councils, bodies representing business interests in the locality and community groups). Local liquor accords are voluntary codes of practice, memorandums of understanding or other arrangements that affect the supply of liquor, the opening and closing of licensed premises or other aspects of the management of or conduct of business on those premises and that are entered into for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.

Part 9 Disciplinary action

Part 9 (**clauses 137–144**) provides for complaints to be made to the Authority by the Director, the Commissioner of Police or other persons prescribed by the regulations about licensees, managers and close associates of licensees on certain grounds. The Director will be able to carry out inquiries and investigations in relation to the making of a complaint. If the Authority is satisfied that the grounds of the complaint have been made out, the Authority will be able to take disciplinary action against the licensee, manager or close associate (or other person interested in the business of the licence). The action that may be taken includes cancelling the licence, imposing conditions on the licence, ordering the licensee or manager to pay a monetary penalty or disqualifying persons from being involved in the business conducted under the licence. Before taking any disciplinary action, the Authority is required to invite the licensee, manager or close associate (or other interested person) to show cause why the Authority should not take the proposed action.

In determining a complaint (including the decision whether or not to take any disciplinary action), a member of the Authority who has been an Australian lawyer for at least 7 years must be present at the meeting. Decisions by the Authority in relation to disciplinary action are reviewable by the Administrative Decisions Tribunal.

Part 10 Criminal proceedings and related matters

Part 10 (**clauses 145–152**) deals with the manner in which proceedings for offences under the proposed Act may be brought and provides a limitation period of 12 months for most offences (or 3 years for certain offences). The Part contains provisions dealing with the circumstances when the higher range of maximum penalties for offences can be imposed by courts and enables courts to impose additional penalties in certain cases. The Part also makes licensees and managers of licensed premises liable for offences relating to the sale or supply of liquor committed by their employees or agents and provides for penalty notices to be issued for offences under the proposed Act.

Part 11 Miscellaneous provisions

Part 11 (**clauses 153–162**) contains miscellaneous provisions for the purposes of the proposed Act, such as reviews by the Authority of certain decisions by the Director under the proposed Act, reporting requirements in relation to liquor licensing, ensuring that the Crown is not liable to pay compensation because of the proposed Act, a general regulation-making power, the repeal of the *Liquor Act 1982* and certain other related legislation, the review of the proposed Act after 5 years. The Part also provides that formal hearings are not required in relation to applications or other matters dealt with by the Authority or the Director (including the taking of disciplinary action under proposed Part 9).

Schedule 1 (Savings and transitional provisions) contains savings and transitional provisions consequential on the enactment of the proposed Act, and empowers regulations under the proposed Act to make further provision of a savings or transitional nature. In particular, provision is made for existing liquor licences to be continued under the proposed Act. The Schedule also expressly abolishes the Licensing Court and the Liquor Administration Board and provides for pending applications and proceedings before the former court to be dealt with and determined by the Local Court as if it were sitting as the former court.

Schedules 2 and 3 contain descriptions of the Kings Cross and Oxford Street–Darlinghurst precincts for the purposes of section 49 (3) of the proposed Act (which allows hotels in those areas to apply for an extended trading authorisation for the hours between midnight on a Sunday and 5 am on a Monday).