



New South Wales

24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *24-Hour Economy Commissioner Bill 2023* is cognate with this Bill.

Overview of Bill

The objects of this Bill are to amend the *Gaming and Liquor Administration Act 2007* (the *Gaming and Liquor Act*), the *Liquor Act 2007* (the *Liquor Act*) and the *Liquor Regulation 2018* (the *Liquor Regulation*) to make miscellaneous amendments to increase the vibrancy of the night-time economy and to make consequential amendments to other legislation.

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.

Schedule 1 **Amendment of Gaming and Liquor Administration Act 2007 No 91**

Schedule 1[1] allows the Secretary of the Department of Enterprise, Investment and Trade (the *Secretary*) and the Independent Liquor and Gaming Authority (the *Authority*) to enter into an arrangement with the Commissioner of Police for the supply of information contained in the records of the NSW Police Force to assist in the effectual administration of gaming and liquor legislation.

Schedule 1[2] enables an inspector or police officer, on any premises lawfully entered, to photograph, film or video a part of the premises or an article or thing on the premises.

Schedule 1[3] provides an inspector or police officer with a power to require, by written notice, a person to attend at a specified place and time to answer questions under the Gaming and Liquor Act, section 30 if attendance at the place is reasonably required for the questions to be properly asked and answered. The inspector or police officer may authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the inspector or police officer.

Schedule 1[4] inserts proposed section 34A permitting the Secretary to give a gaming and liquor licensee, or an employee or agent of a gaming and liquor licensee, a written direction about any matter relating to the licensed premises. This includes conduct on the licensed premises and the supervision or control of the licensed premises. Proposed section 34A(4) makes it an offence for a licensee, employee or agent to whom a direction is given under the proposed section to fail to comply with the direction.

Schedule 1[5] imposes a limitation period of 12 months after the date on which an offence is alleged to have been committed for starting proceedings for an offence under the Gaming and Liquor Act or the *Gaming and Liquor Administration Regulation 2016*.

Schedule 2 Amendment of Liquor Act 2007 No 90

Schedule 2[1] inserts certain definitions to give effect to the amendments. **Schedule 2[2]** amends the definition of *liquor*.

Schedule 2[3] provides that the *standard trading period* for the purposes of the Liquor Act is the period from 5am to midnight or a shorter period prescribed by the regulations. **Schedule 2[4]** extends the standard trading period for a small bar by allowing trading from 10am to midnight on any day of the week. **Schedule 2[5]** allows for an exception to the proposed standard trading period in Schedule 2[3] and sets out the standard trading period for a Sunday for certain premises as 10am to 10pm and for a Sunday that is on 24 or 31 December as ending at midnight.

Schedule 2[6] inserts proposed section 12A to provide for an extension of the trading hours for certain prescribed venues that would otherwise be subject to the Liquor Act, section 12 or an applicable extended trading authorisation. Prescribed venues include live music venues, live performance venues, venues located in a special entertainment precinct and venues participating in an incentivised event. The extension allowed under proposed section 12A depends on the type of prescribed venue and is subject to certain conditions.

Schedule 2[7] allows the Minister for Gaming and Racing to, by notice published in the Gazette, declare a period during which liquor may be sold or supplied on relevant licensed premises. The period may only be in relation to a specified day on which a special event is to be held or that immediately follows the day on which a special event is to be held.

Schedule 2[8] provides that a small bar licence authorises the licensee to sell liquor by retail on the licensed premises in sealed containers for consumption away from the licensed premises in accordance with an authorisation under proposed section 25A. **Schedule 2[9]** provides for the trading hours during which liquor may be sold by retail on premises to which a small bar licence for consumption away from the licensed premises.

Schedule 2[10] inserts proposed section 25A to provide that an on-premises licence that relates to a restaurant or a small bar licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises for consumption away from the licensed premises if the licence is, on application by the licensee, endorsed by the Authority with an authorisation under the proposed section. Proposed section 25A also makes provision for certain matters relating to the authorisation, including conditions that may be imposed on the authorisation and matters that may be prescribed by the regulations.

Schedule 2[11] amends section 33 to expand the authorisation conferred by a producer/wholesaler licence to include a primary producer. **Schedule 2[12]** amends the criteria to determine whether a product is classed as the licensee's product for beer or spirits or where the liquor product is

uniquely the licensee's own product. **Schedule 2[13]** defines *primary producer* and *producers' market or fair*.

Schedule 2[15] provides that, for a producer of cider, perry, mead, beer or spirits, the licensed premises to which a producer/wholesaler licence relates may comprise more than one set of premises if each set of premises is operated by the licensee and the premises are within the relevant prescribed distance of each other. **Schedule 2[16]** provides definitions for the purposes of Schedule 2[19]. **Schedule 2[14]** makes a consequential amendment.

Schedule 2[17] amends the test for determining whether an event is a special event for the purposes of the Liquor Act, section 39. An event is a special event if—

- (a) the event is of an infrequent or temporary nature, and
- (b) in the Authority's opinion, the event is genuine and holding the event is in the public interest.

The assessment of public interest should have regard to the objects of the Liquor Act.

Schedule 2[19] provides that a contract or other agreement that purports to extinguish the right of a person under the Liquor Act, section 44(1) to make a submission to the Authority in relation to an application for a licence is, to the extent of the purported extinguishment, void.

Schedule 2[20] inserts proposed section 48 to provide that the Authority must not grant a relevant application unless the Authority is satisfied that the overall impact of the licence, authorisation or approval that is the subject of the relevant application will not be detrimental to the wellbeing of the local or broader community. Relevant applications, as defined in the proposed section, must be accompanied by a statement of risk of harm and other potential impacts that addresses the factors listed. **Schedule 2[18] and [27]** make a consequential amendment.

Schedule 2[23] provides that the Authority may grant an extended trading authorisation for a hotel licence if certain criteria pertaining to live music performances or other arts and cultural events are met and gaming machines are not in operation on the licensed premises. **Schedule 2[21] and [22]** make miscellaneous amendments to trading periods under the Liquor Act, section 49.

Schedule 2[24] provides that a contract or other agreement that purports to extinguish the right of a person under the Liquor Act, section 53(5) to make a submission to the Authority is, to the extent of the purported extinguishment, void.

Schedule 2[25] provides that, where information is required to be recorded in an incident register under the Liquor Act, section 56, the licensee must ensure the information is recorded as soon as practicable, but no later than 24 hours, after the incident occurs.

Schedule 2[26] inserts proposed section 59A to provide for applications to remove an unrestricted club licence under the Liquor Act, section 59 in relation to certain premises.

Schedule 2[29] amends section 75 to provide that a police officer or a marine authority may issue an improvement notice to a relevant person if the police officer or marine authority reasonably believes that noise is being emitted from certain licensed premises in contravention of the Liquor Act, the regulations or any condition applying to the licence for the licensed premises. **Schedule 2[28] and [30]–[34]** make consequential amendments.

Schedule 2[36] inserts proposed sections 79–79B, which make it clear that a licence does not authorise business to be conducted on licensed premises in a way that unduly disturbs the quiet and good order of the neighbourhood in which the licensed premises are located. The proposed sections also provide for the process of making a disturbance complaint. **Schedule 2[35] and [37]** make consequential amendments.

Schedule 2[38] enables the Secretary to deal with a disturbance complaint only if the person making the complaint demonstrates that the person has tried to address the complaint directly with the licensee for the licensed premises the subject of the complaint or an employee or agent of the licensee. **Schedule 2[39]** provides grounds on which the Secretary may uphold a disturbance complaint. **Schedule 2[40]** enables the Secretary to impose a condition relating to noise abatement

when dealing with a complaint under the Liquor Act, Part 5, Division 3. **Schedule 2[41]** requires the Secretary to publish, on a NSW Government website, guidelines that set out the matters to which the Secretary may have regard in making a decision about a complaint.

Schedule 2[42] repeals a restriction on an applicant for temporary boundary changes for outdoor spaces from seeking to increase the patron capacity of the licensed premises.

Schedule 2[43] extends the Secretary's current power to restrict or prohibit a licensee carrying on certain activities to include a licensee or other person. **Schedule 2[44]** inserts a definition of *liquor* for the purposes of the Liquor Act, section 102.

Schedule 2[46] provides for an offence that prohibits a responsible person for licensed premises from doing either of the following for the purpose of enabling another person to gamble on the licensed premises—

- (a) providing money as part of a transaction involving a credit card or debit card, or
- (b) extending another form of credit to the other person.

Schedule 2[45] makes a consequential amendment.

Schedule 2[47] inserts proposed section 108A to require that a record be made of credit transactions and extensions if a responsible person for licensed premises provides money as part of a transaction involving a credit card or debit card or extends another form of credit to another person on the licensed premises. Proposed section 108A includes a penalty for failing to make a record under the proposed section.

Schedule 2[48] and [49] update certain language in the Liquor Act, section 109.

Schedule 2[50] repeals 2 provisions relating to ID scanning. **Schedule 2[60]** makes a consequential amendment.

Schedule 2[51] provides that minors must not enter or remain in an area of licensed premises related to a packaged liquor licence or dedicated to the sale of liquor by retail in sealed containers on the licensed premises for consumption away from the licensed premises, unless they are in the company of a responsible adult. **Schedule 2[52]** makes further provisions related to minors entering or remaining in certain licensed premises, including when the minor is in the area of the licensed premises in the minor's capacity as an employee.

Schedule 2[53] and [54] prescribe further circumstances related to minors entering and remaining in licensed premises where the licensee is subject to a penalty.

Schedule 2[55] includes packaged liquor premises in the list of licensed premises where a responsible adult accompanying a minor is subject to a penalty in certain circumstances. **Schedule 2[56]** updates the reference to the licensed premises to also include part of the premises for the purposes of the penalty. **Schedule 2[57]** inserts a definition of *packaged liquor premises*.

Schedule 2[59] inserts proposed Part 9B, section 144ZJ in relation to enforceable undertakings (*undertakings*) the Secretary may accept from the licensee. The proposed part makes provision for undertakings, including setting out what matters an undertaking may provide for, that the Secretary may require or invite the licensee to give an undertaking and when the Secretary may certify a failure to comply with an undertaking to the Supreme Court. **Schedule 2[58]** makes a related amendment.

Schedule 2[61] repeals provisions relating to reporting on licensing, planning and certain other liquor legislation.

Schedule 2[62]–[68] update the Liquor Act, Part 12 to remove references to COVID-19 and insert proposed provisions with the intention of allowing local councils to encourage the use of outdoor space for outdoor dining and performances.

Schedule 2[69] and [70] make amendments of a savings and transitional nature.

Schedule 3 Amendment of Liquor Regulation 2018

Schedule 3[4]–[7] make changes to the venues that may attract an 80% reduction in the base fee element or the trading hours risk loading element applicable to certain venues and repeal provisions that meant the reduction would otherwise expire on 31 December 2024.

Schedule 3[8] removes the location risk loading element payable for a licence if the licensed premises are within a prescribed precinct. **Schedule 3[2] and [3]** make consequential amendments.

Schedule 3[9] substitutes the definition of *neighbouring premises* in the Liquor Regulation and inserts definitions for *full notification application*, *limited notification application* and *neighbouring premises*.

Schedule 3[10] inserts proposed clauses 21–22A to set out the notification requirements on the making of a limited or full notification application. The proposed clause provides for the government and non-government stakeholders that must be notified of the making of an application and the form the notice must take.

Schedule 3[11] inserts proposed Part 3, Division 2 consequent on the amendment made by Schedule 2[25] related to statements of risk of harm or other potential impacts (*statements*). Proposed clause 27 defines a relevant application, for the purposes of the Liquor Act, section 48(7), as a limited notification application or a full notification application. Proposed clause 28 provides that matters relating to gambling on the licensed premises must be addressed by a statement accompanying an application for an extended trading authorisation for a hotel licence. Proposed clause 28A prescribes certain circumstances where a statement is not required for an application for a small bar licence and provides a definition of excluded application for the purposes of the proposed clause. Proposed clause 29 sets out parties an applicant may consult with, if appropriate, when preparing a statement. **Schedule 3[12]–[15]** make other amendments consequent on the amendment made by Schedule 2[25].

Schedule 3[16] inserts a definition of *commercial catering services*.

Schedule 3[17] inserts proposed clause 46A to prescribe certain circumstances where an authorisation may be given to allow the selling of liquor for consumption away from licensed premises and to set out restrictions on the type and quantity of liquor that may be sold under an authorisation.

Schedule 3[18] removes the prescribed definition of *producers' market or fair* as a consequence of the amendment made by Schedule 2[17].

Schedule 3[19] provides for certain venues located in a special entertainment precinct to be included on the list of live music and performance venues. **Schedule 3[20]** makes a consequential amendment.

Schedule 3[21] provides for the circumstances in which a person may renew an expired RSA endorsement and an expired licensee endorsement.

Schedule 3[22] clarifies that, in relation to the suspension or revocation of recognised competency card endorsements, the Authority may make one or more of the orders set out in clause 76(1). **Schedule 3[23]** prescribes a maximum period that an order may suspend a recognised competency card, and all of its endorsements, or a recognised competency card endorsement. **Schedule 3[24]** allows an order to be made declaring that a person is permanently disqualified from holding a recognised competency card or a particular recognised competency card endorsement. **Schedule 3[25]** prescribes that, if making an order under clause 76(1) because the Authority is satisfied that a person has been charged with, or found guilty of, a serious indictable offence involving violence on or in the immediate vicinity of licensed premises, the Authority must also be of the opinion that there is a significant risk of, or potential for, harm to another person associated with the person's employment on the licensed premises. **Schedule 3[27]** enables the Authority to suspend a recognised competency card, or a particular recognised competency card endorsement, pending a

determination under clause 76(1) if notice has been provided to the person who is the subject of an application for an order.

Schedule 3[29] omits provisions related to patron ID scanning and the prescribed precinct ID scanner system and is consequent on the amendments made by Schedule 2. **Schedule 3[26], [28], [33] and [34]** make consequential amendments.

Schedule 3[30] provides for the designation of incentivised events by notice published on a NSW Government website. **Schedule 3[1]** makes a consequential amendment.

Schedule 3[31] provides for a definition of *metropolitan area* for the purposes of the Liquor Act, sections 35(6) and 66, consequent on the amendment made in Schedule 2[20].

Schedule 3[32] makes an amendments to certain temporary boundary changes on land that is exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Schedule 4 Amendment of other legislation

Schedule 4 consequentially amends the following Acts and regulations—

- (a) the *Environmental Planning and Assessment Act 1979*,
- (b) the *Environmental Planning and Assessment Regulation 2021*,
- (c) the *Gaming and Liquor Administration Regulation 2016*,
- (d) the *Local Government Act 1993*,
- (e) the *Protection of the Environment Operations (General) Regulation 2022*.