



New South Wales

Liquor and Registered Clubs Legislation Amendment (Gaming) Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Liquor Act 1982*:

- (a) to impose restrictions on the grant of a hotelier's licence, and the continued operation of such a licence, so as to ensure that the primary purpose of the business conducted in a hotel under the authority of such a licence is the sale of liquor by retail and that any use of approved gaming devices in a hotel does not detract unduly from the character of the hotel or from the enjoyment of persons ordinarily using the hotel (otherwise than for gaming), and
 - (b) to ensure that certain parts of hotel premises cannot be leased or subleased to any person other than the person who holds the licence to operate those premises as a hotel and that the right to supply any services in those premises cannot be leased or subleased, and
-

- (c) to provide for a court to impose an additional fee on a hotelier's licence, or an off-licence to sell liquor by retail, the conditions of which have been relaxed, and
- (d) to provide that a temporary on-licence (function) is subject to conditions similar to those to which a permanent on-licence (function) is subject, in relation to responsible service of alcohol, and
- (e) to effect statute law revision.

The Bill also makes some minor amendments to transitional provisions in the *Registered Clubs Act 1976*.

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.

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

Schedule 1 [1] makes a minor amendment to ensure that the definition of *function* in the *Liquor Act 1982* (which is proposed to be substituted by the *Liquor and Registered Clubs Legislation Amendment Act 1997* ("the 1997 Act")) includes race meetings.

Schedule 1 [2] makes a minor amendment of a statute law revision nature by omitting redundant words from a provision (which is proposed to be inserted by the 1997 Act).

Schedule 1 [3] makes it a condition of every hotelier's licence that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and that any use of approved gaming devices on the premises does not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [4]–[8] provide for the making of objections to the grant of an application for a hotelier's licence, or for the removal of a hotelier's licence, on the grounds that the statutory condition imposed on the licence under

proposed section 21AA would be breached. That is, a person may object on the ground that the primary purpose of the business to be conducted under the authority of the licence to which the application relates is not the sale of liquor by retail, or that the proposed use of approved gaming devices on the premises will detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [9] lists three factors that the court may have regard to for the purposes of determining the primary purpose of the business conducted under the authority of the licence, or the impact of the use of approved gaming devices. Those factors relate to the physical layout of facilities at the premises, the general manner in which gaming is conducted and the advertising of the premises and of the availability of the facilities available at the premises.

Schedule 1 [10] provides that an application for a hotelier's licence cannot be granted unless the court is satisfied that the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, an application must not be granted unless the court is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and that any proposed use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [11] makes a minor amendment of a statute law revision nature by correcting a cross-reference (in a provision which is proposed to be inserted by the 1997 Act).

Schedule 1 [12] provides that a temporary on-licence (function) is subject to conditions similar to those to which a permanent on-licence (function) is subject, in relation to responsible service of alcohol.

Schedule 1 [13] makes a minor amendment of a statute law revision nature.

Schedule 1 [14] provides for the imposition of an additional fee for a hotelier's licence, or an off-licence (retail), if the court grants an application for the variation of the conditions of such a licence by omitting any condition or reducing the restrictiveness of a condition. That fee is to be no more than the difference between the fee that would have been payable for the varied licence, if it were granted on the date of the order, and the fee actually paid for the licence.

Schedule 1 [15] provides that an application for the removal of a hotelier's licence must not be granted unless the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, the court must refuse to grant such an application unless the court is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and that any use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [18] provides that an application for the definition or redefinition of the boundaries of licensed premises under a licence to sell liquor cannot be granted unless the Board is satisfied that the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, an application may not be granted unless the Board is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence will be the sale of liquor by retail, and that any use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [20] prohibits a person (other than the licensee) from letting or subletting any part of licensed premises on which liquor is ordinarily sold or supplied, or on which an approved gaming device is ordinarily kept, used or operated, to any person other than the licensee for those premises. The amendment also prohibits such a person from letting or subletting any other part of licensed premises, or the right to supply any services in licensed premises, without the prior approval of the Board. **Schedule 1 [19]** makes a consequential amendment.

Schedule 1 [21] provides for the Director of Liquor and Gaming to give directions to a hotelier requiring the hotelier to take specified remedial action. Such a direction may only be given if the Director has reasonable cause to believe that the hotelier has failed to comply with the statutory condition imposed on the hotelier's licence under proposed section 21AA (that is, if the Director has reasonable cause to believe that the primary purpose of the business conducted in the hotel under the authority of the licence is not the sale of liquor by retail or that any use of approved gaming devices on the premises detracts unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises, otherwise than for gaming).

Schedule 1 [17] provides that a failure to comply with such a direction of the Director is a ground on which a complaint can be made under section 67 of the Act, which provides for the summoning of a licensee to show cause why disciplinary action should not be taken. (**Schedule 1 [16]** makes an analogous amendment to a section that is proposed to replace existing section 68.)

Schedule 1 [22] provides for the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [23] makes provisions of a savings and transitional nature consequent on the enactment of the proposed Act. Those provisions make it clear that the amendments made by the proposed Act apply to existing licences and to applications for licences, or for the removal of licences, that have been made but not been determined when the proposed amendments commence.

Schedule 2 Amendment of Registered Clubs Act 1976

Schedule 2 [1] and **[2]** make minor amendments to the *Registered Clubs Act 1976* ("the Act") by way of statute law revision.

The remainder of the Schedule contains amendments to transitional provisions inserted in Schedule 2 to the *Registered Clubs Act 1976* by the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*. They all concern the duty chargeable on the profits derived from gaming machines kept by registered clubs during the duty period that commenced on 1 December 1997 (the "relevant duty year").

Schedule 2 [3] and **[4]** amend clauses 77 and 78 of Schedule 2 to the Act, which prescribe the rates at which the first quarterly instalment of duty for the relevant duty year is chargeable on gaming machine profits from ordinary and multi-terminal gaming machines, respectively. The amendments increase the rates applicable to such profits to the extent that they exceed \$250,000 for the quarter. (The time for payment of the instalment being now past, the effect of the amendments will be to diminish the credit to which clubs are entitled under clause 81 of Schedule 2 to the Act.)

Schedule 2 [5] amends clause 79 of Schedule 2 to the Act, which concerns duty chargeable during the last three-quarters of the relevant duty year. The amendment corrects a typographical error.

Schedule 2 [6] amends clause 80 of Schedule 2 to the Act, which concerns duty concessions available to clubs. The clause currently provides that:

- (a) the concession provided by section 87F of the Act (repealed by the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*), calculated on a club's expenditure on community welfare, is to apply (to an extent prescribed by regulations) in respect of expenditure from profits derived in the months of December 1997 and January 1998, and

- (b) a new concession provided by section 87 (5) (inserted by Schedule 3 [9] to that Act), calculated on a club's expenditure on community development and support, is to apply in respect of expenditure from profits derived in the remainder of the relevant duty year.

The amendment has the effect of extending the latter concession so that it applies in respect of profits derived at any time during the year (and so applies, so far as profits derived in December 1997 or January 1998 are concerned, in addition to the former concession, but at a rate lower than the rate at which it will apply in subsequent duty years).

First print



New South Wales

Liquor and Registered Clubs Legislation Amendment (Gaming) Bill 1998

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Liquor Act 1982 No 147	2
4 Amendment of Registered Clubs Act 1976 No 31	2

Schedules

1 Amendment of Liquor Act 1982	3
2 Amendment of Registered Clubs Act 1976	12



New South Wales

Liquor and Registered Clubs Legislation Amendment (Gaming) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Liquor Act 1982* with respect to the business conducted in hotels, to impose limitations on the leasing or subleasing of hotel premises and to provide for the charging of certain additional fees when the conditions of certain licences are varied; to amend transitional provisions in the *Registered Clubs Act 1976*; and for other purposes.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Liquor and Registered Clubs Legislation Amendment (Gaming) Act 1998*.

2 Commencement

5

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Section 3, Schedule 1 [1], [2] and [11]–[13], and Schedule 1 [23] to the extent to which it inserts clause 65 (3) in Schedule 1 to the *Liquor Act 1982*, commence, or are taken to have commenced, on the date of commencement of Schedule 2 to the *Liquor and Registered Clubs Legislation Amendment Act 1997*. 10
- (3) Section 4 and Schedule 2 are taken to have commenced on 29 May 1998.

Note. The amendments made to the *Registered Clubs Act 1976* are taken to have commenced on 29 May 1998, which is the date of commencement of Schedule 3 [9] and [18] to the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*. 15

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedule 1. 20

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 (as amended by Schedule 2 [1] to the Liquor and Registered Clubs Legislation Amendment Act 1997)

Insert "race meeting," after "sporting event," in the definition of *function* in section 4 (1). 5

[2] Section 18 Court may grant licences (as amended by Schedule 2 [4] to the Liquor and Registered Clubs Legislation Amendment Act 1997)

Omit ", none of which is a large scale function" from section 18 (5) (b). 10

[3] Section 21AA

Insert after section 21:

21AA Statutory condition of every hotelier's licence

It is a condition of a hotelier's licence that: 15

(a) the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and

(b) any use of approved gaming devices on the premises does not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming). 20

[4] Section 45 Grounds of objection

Insert "(2AA)," after "(2)," in section 45 (1) (c). 25

[5] Section 45 (2)

Insert ", (2AA)" after "(1)".

[6] Section 45 (2AA)

Insert after section 45 (2):

- (2AA) Objection to the grant of an application for, or for the removal of, a hotelier's licence may be taken (whether or not an objection is also taken on a ground specified in subsection (1), (2) or (3)) on the ground that:
- (a) the primary purpose of the business to be conducted under the authority of the licence to which the application relates is not the sale of liquor by retail, or 5 10
 - (b) the proposed use of approved gaming devices on the premises will detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming). 15

[7] Section 45 (4)

Insert “, (2AA)” after “(2)”.

[8] Section 45 (4) (c1) and (c2)

Insert after section 45 (4) (c):

- (c1) in the case of an objection on the ground specified in subsection (2AA) (a)—that the primary purpose of the business to be conducted under the authority of the licence, or the licence to which the application relates, is not the sale of liquor by retail, or 20 25
- (c2) in the case of an objection on the ground specified in subsection (2AA) (b)—that the proposed use of approved gaming devices on the premises will detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming), or 30

[9] Section 45 (7)

Insert after section 45 (6):

- (7) Without limiting the factors to which a court may have regard in determining the primary purpose of the business conducted under the authority of the licence, or the impact of the use of approved gaming devices, for the purposes of dealing with an objection on either of the grounds specified in subsection (2AA), the court may have regard to any or all of the following: 5
- (a) the proposed or actual physical layout of facilities at the premises, including the positioning of any approved gaming devices kept, used or operated on the premises. 10
- (b) the general manner in which gaming is or is to be conducted at the premises. 15
- (c) the advertising of the premises, and of the availability of gaming facilities at the premises (including, for example, whether the premises are advertised as a hotel or as premises where gaming devices are kept, used or operated). 20

[10] Section 49A

Insert after section 49:

49A Grant of hotelier's licence—operations involving approved gaming devices

- (1) An application for a hotelier's licence may not be granted unless the court is satisfied that: 25
- (a) the primary purpose of the business to be conducted under the authority of the licence to which the application relates is the sale of liquor by retail, and 30
- (b) any proposed use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming). 35

- (2) Without limiting the factors to which the court may have regard in determining the primary purpose of the business conducted under the authority of the licence, or the impact of the use of approved gaming devices, the court may have regard to any or all of the following: 5
- (a) the proposed or actual physical layout of facilities at the premises, including the positioning of any approved gaming devices kept, used or operated on the premises. 10
- (b) the general manner in which gaming is to be conducted at the premises. 10
- (c) the advertising of the premises, and of the availability of gaming facilities at the premises (including, for example, whether the premises are advertised as a hotel or as premises where gaming devices are kept, used or operated). 15

[11] Section 51A Functions authorised by permanent on-licence (function) (as amended by Schedule 2 [10] to the Liquor and Registered Clubs Legislation Amendment Act 1997)

Omit "subsection (2) (b)" from section 51A (3). 20
Insert instead "subsection (2) (a)".

[12] Section 51B Functions authorised by temporary on-licence (function) (as amended by Schedule 2 [10] to the Liquor and Registered Clubs Legislation Amendment Act 1997)

Insert at the end of section 51B: 25

- (2) The licence is subject to:
- (a) a condition that the licensee must ensure that liquor sold or supplied under the authority of the licence is sold or supplied in accordance with any regulations made for the purposes of section 125C, and 30

-
- (b) a condition that the licensee must not permit activities at the function or functions to which the licence relates that encourage misuse or abuse of liquor (such as binge drinking or excessive consumption), and 5
- (c) such other conditions as are prescribed by the regulations, or as are imposed by the court or the registrar when granting the licence.
- [13] Section 56 Fee for grant of licence**
- Omit section 56 (3). 10
- [14] Section 56A**
- Insert after section 56:
- 56A Additional fees payable on variation of conditions of certain licences**
- (1) If the court grants an application for the variation of the conditions of a hotelier's licence or of an off-licence to sell liquor by retail by omitting any condition or reducing the restrictiveness of a condition, the court may make an order that the variation does not take effect until any fee determined by the Board has been paid. 15
20
- (2) If the court makes such an order:
- (a) the Board may determine a fee, being no more than the difference between the fee that would have been payable for the varied licence, if it were granted on the date of the order, and the fee paid for the licence, and 25
- (b) the Board must make any such determination within 14 days after the order has been made, and
- (c) the variation does not take effect until any fee determined under this subsection within that time has been paid to the Principal Registrar or another registrar. 30

[15] Section 57 Removal of hotelier's licence or off-licence (retail)

Insert at the end of section 57 (1A) (b):

. and

- (c) the primary purpose of the business to be conducted under the authority of the licence to which the application relates is the sale of liquor by retail, and 5
- (d) any proposed use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming). 10

[16] Section 67 Complaints against licensees or managers (as amended by Schedule 1 [11] to the Liquor and Registered Clubs Legislation Amendment Act 1998)

Insert after section 67 (3) (p):

- (q) that the licensee has failed to comply with a direction of the Director, given under section 101A. 15

[17] Section 68 Grounds for complaint

Insert after section 68 (1) (c1):

- (c2) that the licensee has failed to comply with a direction of the Director, given under section 101A. 20

[18] Section 90 Boundaries of licensed premises

Insert after section 90 (3):

- (4) The Board must not define or redefine the boundaries of licensed premises or proposed licensed premises in relation to a hotelier's licence unless it is satisfied that after the definition or redefinition: 25
 - (a) the primary purpose of the business to be conducted in the hotel under the authority of the licence will be the sale of liquor by retail, and 30

-
- (b) any use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

5

[19] Section 101 Control of licensed premises

Insert "or on which approved gaming devices are ordinarily kept, used or operated" after "supplied" in section 101 (1) (d).

[20] Section 101 (8)

Insert after section 101 (7):

10

- (8) A person (other than a licensee) must not:

- (a) let or sublet any part of his or her premises that are licensed premises on which liquor is ordinarily sold or supplied, or on which an approved gaming device is ordinarily kept, used or operated, to any person other than the licensee for those premises, or

15

- (b) without the previous written consent of the Board, let or sublet any other part of his or her premises that are licensed premises, to any person other than the licensee for those premises, or

20

- (c) without the previous written consent of the Board, let or sublet the right to supply any services in his or her premises that are licensed premises, to any person other than the licensee for those premises.

25

Maximum penalty (subsection (8)): 50 penalty units.

[21] Section 101A

Insert after section 101:

101A Directions as to character of licensed premises

- (1) This section applies if the Director has reasonable cause to believe that a hotelier has failed to comply with the condition imposed on the licence by section 21AA. Without limiting the factors to which the Director may have regard for that purpose, the Director may have regard to the factors to which a court may have regard under section 49A.

30

35

Schedule 1 Amendment of Liquor Act 1982

- (2) The Director may give any direction to a hotelier requiring the hotelier to take remedial action specified in the direction within the time specified in the direction.
- (3) A direction must be in writing.
- (4) The Director may revoke or vary a direction given under this section. 5

[22] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Liquor and Registered Clubs Legislation Amendment
(Gaming) Act 1998.* 10

[23] Schedule 1, Part 14, clause 64–68

Insert in Schedule 1:

**Part 14 Liquor and Registered Clubs Legislation Amendment
(Gaming) Act 1998**

64 Definition 15

In this Part, *amending Act* means the *Liquor and Registered Clubs Legislation Amendment (Gaming) Act 1998*.

65 Application of statutory conditions

- (1) The condition imposed by section 21AA is imposed on every hotelier's licence, whether it was granted before or after the commencement of that section. 20
- (2) Accordingly, a direction may be given under section 101A in relation to a licence granted before the commencement of section 21AA. 25
- (3) The condition imposed by section 51B (2) is imposed on every temporary on-licence (function), whether it was granted before or after the commencement of the subsection.

66 Charging of additional fees

Section 56A extends to apply in respect of licences in force before the commencement of that section, but does not apply to a variation of a licence that occurred before that commencement.

5

67 Existing applications

(1) The amendments made to section 45 by the amending Act extend to an application for a licence, or for removal of a licence, that had not been determined immediately before the date of commencement of the amendments.

10

(2) Section 49A extends to an application for a hotelier's licence that had not been determined immediately before the date of commencement of the section.

(3) The amendment made to section 57 by the amending Act extends to an application for removal of a licence made under that section that had not been determined immediately before the date of commencement of the amendment.

15

(4) The amendment made to section 90 by the amending Act extends to an application made under that section that had not been determined immediately before the date of commencement of the amendment.

20

68 Prohibition of letting and subletting of premises

Section 101 (8) does not affect a lease or sublease in force before its commencement.

25

Schedule 2 Amendment of Registered Clubs Act 1976

(Section 4)

[1] Section 87 Rate of duty for gaming machines

Omit "subsection (7)" from section 87 (5). 5
Insert instead "subsection (10)".

[2] Section 87AA Problem gambling policy

Omit "section 87 (8) and (9)" from section 87AA (2).
Insert instead "section 87 (11) and (12)".

[3] Schedule 2 Transitional provisions

10

Omit clause 77 (5) and (6). Insert instead:

(5) If the profits from all approved gaming devices (other than multi-terminal gaming machines) kept on the premises of a registered club during the relevant instalment period exceed \$250,000 but do not exceed \$625,000, the duty payable on those profits is: 15

- (a) the sum of \$43,690, and
- (b) an amount equal to 23.67% of the amount by which the profits so derived exceed \$250,000 but do not exceed \$625,000. 20

(6) If the profits from all approved gaming devices (other than multi-terminal gaming machines) kept on the premises of a registered club during the relevant instalment period exceed \$625,000, the duty payable on those profits is: 25

- (a) the sum of \$132,453, and
- (b) an amount equal to 25.22% of the amount by which the profits so derived exceed \$625,000.

[4] Schedule 2, clause 78 (5)

Omit the subclause. Insert instead:

- (5) If the profits from all approved gaming devices kept on the premises of a registered club during the relevant instalment period exceed \$250,000, duty is payable on so much of those profits as was derived from the operation of multi-terminal gaming machines at the rate of 28.83%.

5

[5] Schedule 2, clause 79 (5) (a)

Omit the paragraph. Insert instead:

- (a) in the sum of \$120,750, and

10

[6] Schedule 2, clause 80 (3)

Omit "(apart from the months of December 1997 and January 1998)".