



New South Wales

Liquor and Registered Clubs Legislation Amendment (Gaming) Act 1998 No 151

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Liquor and Registered Clubs Legislation Amendment (Gaming) Act 1998 No 151

Act No 151, 1998

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. [Assented to 14 December 1998]

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

- (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*.
- (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*.

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 (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).

[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).

[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:

- (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).

[4] Section 45 Grounds of objection

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

[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
- (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).

[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
- (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

[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:
- (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,
 - (b) the general manner in which gaming is or is to be conducted at the premises,
 - (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).

[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:
- (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
 - (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).

- (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:
- (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,
 - (b) the general manner in which gaming is to be conducted at the premises,
 - (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).

[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).

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:

- (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

- (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
- (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).

[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.
- (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
 - (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.

[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
- (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).

[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.

[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,

[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:
 - (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

- (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).

[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):

- (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
 - (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
 - (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.

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.

- (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.

[22] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

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

[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

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.
- (2) Accordingly, a direction may be given under section 101A in relation to a licence granted before the commencement of section 21AA.
- (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.

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.
- (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.
- (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.

68 Prohibition of letting and subletting of premises

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

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).

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

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:
 - (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.
- (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:
 - (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] Schedule 2, clause 79 (5) (a)

Omit the paragraph. Insert instead:

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

[6] Schedule 2, clause 80 (3)

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

[Minister's second reading speech made in—
Legislative Assembly on 11 November 1998
Legislative Council on 2 December 1998]

BY AUTHORITY