



New South Wales

Liquor and Registered Clubs Legislation Amendment Act 1997 No 155

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New South Wales

Liquor and Registered Clubs Legislation Amendment Act 1997 No 155

Act No 155, 1997

An Act to amend the *Liquor Act 1982* with respect to licence fees, on-licences to sell liquor at functions and administrative matters; to amend the *Registered Clubs Act 1976* with respect to licence fees and administrative matters; and for other purposes. [Assented to 19 December 1997]

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

This Act is the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedules 1–3.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedules 4 and 5.

Schedule 1 Amendment of Liquor Act 1982 with respect to licence fees

(Section 3)

[1] Section 4 Definitions

Omit the definition of *assessment period* from section 4 (1).

[2] Section 4 (1), definitions of "licence fee" and "licensing period"

Omit the definitions.

[3] Part 3, Division 2, heading

Omit the heading to the Division.

Insert instead "**Division 2 Duration and conditions of licences**".

[4] Section 19A

Insert before section 20:

19A Duration of licences

- (1) A licence remains in force until its surrender in writing is accepted by the Board, except as provided by this section.
- (2) A temporary on-licence (function) expires at the latest time at which liquor may be sold or supplied under the licence.
- (3) A licence ceases to be in force:
 - (a) for the duration of the period of suspension, if it is suspended, or
 - (b) permanently, if it is cancelled,except as provided by section 149 or by the terms of any order made under Part 9.

[5] Section 22 Off-licence—miscellaneous conditions

Omit " , subject to this section," from section 22 (2).

[6] Section 22 (2A) and (3)

Omit the subsections.

[7] Section 36 Restrictions on liquor licence applications

Omit "otherwise than for non-payment of the licence fee" from section 36 (7).

[8] Section 55 Issue of licence etc

Omit "for the licence" from section 55 (3A).
Insert instead "prescribed under section 56".

[9] Section 61 Grant of transfer of licence

Omit section 61 (6), (6A) and (6B).

[10] Section 67 Summons to show cause against taking of disciplinary action

Omit section 67 (6).

[11] Section 68 Grounds for complaint

Omit "section 80 (2) (a) (ii)" from section 68 (1) (g) (i).
Insert instead "Division 4 of Part 5".

[12] Section 68 (1) (g) (ii)

Omit the subparagraph.

[13] Part 5, heading

Omit the heading to the Part.
Insert instead "**Part 5 Duty on gaming machines**".

[14] Part 5, Divisions 1 and 2

Omit the Divisions.

[15] Section 86J Application for reinstatement of cancelled AAD licence

Omit section 86J (6) and (7).

[16] Section 86JB Duty on approved gaming devices

Insert "the times for payment of duty, the payment of duty by instalments," before "the deferral" in section 86JB (2).

[17] Part 5, Division 5

Omit the Division.

[18] Section 141 Evidence of certain matters

Omit section 141 (1A).

[19] Section 154 Liability of lessor for proportion of licence fee

Omit the section.

[20] Section 154D

Insert after section 154C:

154D Records

- (1) A licensee must keep and maintain such records as the regulations may prescribe.

Maximum penalty: 20 penalty units.

- (2) Every holder of an off-licence to sell liquor to persons authorised to sell liquor and every holder of an off-licence for a brewer must keep and maintain records of:

- (a) the quantity of low alcohol liquor sold or supplied, and

- (b) amounts paid or payable for each such quantity sold or supplied.

Maximum penalty: 20 penalty units.

- (3) The regulations may prescribe the manner and form of any records required to be kept by or under this section.

[21] Section 156 Regulations

Omit “and the period in respect of which the information required by section 84 is to be furnished” from section 156 (1) (a).

Schedule 2 Amendment of Liquor Act 1982 with respect to on-licences to sell liquor at functions

(Section 3)

[1] Section 4 Definitions

Omit the definition of *function* from section 4 (1).

Insert instead:

function means any dinner, ball, convention, seminar, sporting event, exhibition, performance, trade fair or other fair, fete or carnival, or any similar event or activity, that is conducted for public amusement or entertainment.

[2] Section 4 (1)

Insert in alphabetical order:

on-licence to sell liquor at a function means:

- (a) a permanent on-licence (function), or
- (b) a temporary on-licence (function).

[3] Section 17 Registrars of the court

Insert after section 17 (4):

- (5) A reference in this Act to the court includes, if the jurisdiction of the court is exercised by a registrar in accordance with this Act or the regulations, a reference to the registrar, except as otherwise provided by this Act.
- (6) If a registrar grants a licence or exercises any other function of the court in accordance with this Act or the regulations, the registrar may impose any conditions that the court could impose in those circumstances, except as otherwise provided by this Act.

[4] Section 18 Court may grant licences

Omit section 18 (5). Insert instead:

- (5) An on-licence to sell liquor at a function may be:
 - (a) an on-licence (referred to in this Act as a *permanent on-licence (function)*) that is granted on a permanent basis for the purposes of functions to be held while the licence is in force, or
 - (b) an on-licence (referred to in this Act as a *temporary on-licence (function)*) that is granted on a temporary basis for the purposes of not more than 3 functions to be held during the year in which the licence is in force, none of which is a large scale function.
- (5A) An on-licence to sell liquor at a function may only be granted to:
 - (a) a person on behalf of a non-proprietary association, or
 - (b) a person in respect of a trade fair.
- (5B) A permanent on-licence (function) authorises the licensee to sell and supply liquor at:
 - (a) the functions approved by the court when granting the licence to be held within the first year during which the licence is in force, and
 - (b) any additional functions approved by the court on application subsequently made by the licensee.
- (5C) A temporary on-licence (function) authorises the licensee to sell and supply liquor at not more than 3 functions approved by the court when granting the licence.

[5] Section 20 Conditions of licences

Omit "or 23AA" from section 20 (3).
Insert instead ", 23AA or 23AB".

[6] Section 23 On-licence—miscellaneous conditions

Omit section 23 (1).

[7] Sections 23AB and 23AC

Insert after section 23AA:

23AB On-licence to sell liquor at function—miscellaneous conditions

- (1) Liquor must not be sold or supplied under the authority of an on-licence to sell liquor at a function except at, or as ancillary to, a function to which the licence relates.
- (2) Liquor must not be sold or supplied on the licensed premises to which an on-licence to sell liquor at a function relates except by way of opened cans, opened bottles or other opened containers.
- (3) It is a condition of an on-licence to sell liquor at a function that a notice complying with subsection (4) must, at all times when the function is being held, be prominently displayed on a part of the licensed premises accessible to all persons attending the function.
- (4) The notice must be in a form approved by the Board in relation to the function (or to the class of functions to which the function belongs), must include any information required by the form and must include the following details:
 - (a) the date of the court's approval for the function,
 - (b) the approved date for the function,
 - (c) the approved trading hours for the function,
 - (d) the approved location for the function,
 - (e) the approved nature of the function.

In paragraphs (b)–(e), *approved* means approved by the court.

- (5) Liquor must not be sold or supplied on the licensed premises to which an on-licence to sell liquor at a function relates unless:
- (a) the licensee is present on those premises at all times while liquor is being provided under the authority of the licence (except when a person referred to in paragraph (b) is present in the circumstances referred to in that paragraph), or
 - (b) a person nominated under section 23AC by the licensee as the person in charge of the sale and supply of liquor at the function is present on the premises at any time when the licensee cannot, because of exceptional circumstances, be present on those premises.
- (6) If liquor is sold or supplied on the licensed premises to which an on-licence to sell liquor at a function relates:
- (a) neither the licensee nor any nominee under section 23AC is to be intoxicated while liquor is being provided at the function, and
 - (b) the licensee and any such nominee must maintain proper and responsible supervision and control over the sale and supply of liquor at the function, and
 - (c) no person who is intoxicated, or who is under the age of 18 years, is to be involved in selling, supplying or serving liquor at the function.

23AC On-licence to sell liquor at function—nominee of licensee in exceptional circumstances

- (1) For the purposes of exercising the authority of an on-licence to sell liquor at a function from which (or at any time during which) the licensee, by reason of exceptional circumstances, is obliged to be absent, the licensee may, at any time before his or her absence, nominate any person who consents to do so to take the place of the licensee and to be in charge of the sale and supply of liquor at the function in the absence of the licensee.

- (2) A person nominated in accordance with this section is taken to be the licensee for the purposes of this Act in respect of the function (or, if the nomination relates only to a portion of the function, that portion).
- (3) In any proceedings, a licensee relying on a nomination under this section bears the onus of establishing that the nomination was in all respects authorised by and effected in accordance with this section.

[8] Section 36 Restrictions on liquor licence applications

Omit section 36 (4).

[9] Sections 37A and 37B

Insert after section 37:

37A On-licence to sell liquor at function—applicant for licence

An application for an on-licence to sell liquor at a function other than a trade fair may be made only by a person acting on behalf of, and with the authority of, a non-proprietary association and only in respect of a function of the association.

37B On-licence to sell liquor at function (other than a trade fair)—application for licence or additional function

- (1) This section applies to:
 - (a) an application for an on-licence to sell liquor at a function, or
 - (b) an application for approval to conduct an additional function under a permanent on-licence (function),

being a function that is not a trade fair.

- (2) An application to which this section applies may be made only in respect of a function that:
 - (a) is conducted under the auspices of the non-proprietary association concerned, and
 - (b) is in conformity with the association's constitution or any law that governs its activities, and
 - (c) will directly promote specific objects or purposes of the association.
- (3) Except as provided by subsection (4), an application to which this section applies must be made no later than 28 days before any function to which the application relates is to be held.
- (4) The court or person determining an application to which this section applies may permit the application to be made at a later time than the period referred to in subsection (3), but only if satisfied that the special circumstances of the case warrant the shorter period.
- (5) An application to which this section applies may not be made if the date on which the function or any function to which the application relates is to be held is more than 18 months after the date of the application.

[10] Sections 51, 51A and 51B

Omit section 51. Insert instead:

51 Grant of on-licence to sell liquor at function or of approval for additional function

- (1) An application for a permanent on-licence (function), a temporary on-licence (function) or approval to conduct an additional function under a permanent on-licence (function) may be granted by the court or:
 - (a) in the case of a temporary on-licence (function) to which no objection is made, by the registrar, or
 - (b) in the case of an approval to conduct an additional function under a permanent on-licence (function) to which no objection is made, by the Principal Registrar.

- (2) An application for a permanent on-licence (function) must not be granted unless the court is satisfied that more than 3 functions are proposed to be held, under the authority conferred by the licence, within the first year during which the licence is in force.
- (3) An application for a temporary on-licence (function) or for approval to conduct an additional function under a permanent on-licence (function) must not be granted unless the court or person granting the application:
 - (a) is satisfied that both the local consent authority and the local police have been provided, in such manner (if any) as is prescribed by the regulations, with a copy of the application, or
 - (b) is satisfied that, in the circumstances of the case, it is not necessary for the local consent authority or police to be given a copy and has waived that requirement.
- (4) An application for a permanent on-licence (function), a temporary on-licence (function) or approval to conduct an additional function under a permanent on-licence (function) may not be granted if it is proposed to sell or supply liquor at the function concerned after midnight, unless the court or person determining the application is satisfied that the granting of the application will not result in undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
- (5) An applicant for approval to conduct an additional function under a permanent on-licence (function) may be required to provide a description of the additional function, state the date on which it is to be held and provide such other information as the court or person determining the application may require.
- (6) An application for an on-licence to sell liquor at a function or for approval to conduct an additional function under a permanent on-licence (function) must not be granted unless the court or person determining the

application is satisfied that any approval required under Part 1 of Chapter 7 of the *Local Government Act 1993* in respect of the premises to which the application relates is in force.

51A Functions authorised by permanent on-licence (function)

- (1) A permanent on-licence (function) authorises the sale and supply of liquor at:
 - (a) functions that are specified in the licence when granted, and
 - (b) additional functions that are approved after the licence has been granted.
- (2) The number of functions at which liquor may be sold or supplied under the licence is not to exceed the following limits:
 - (a) not more than 1 function during any period of 7 days and not more than 26 functions during any period of one year,
 - (b) such other limits as to the number of functions as may be specified by the court in relation to the licence.
- (3) The Principal Registrar, when acting under the power conferred by section 51 (1) (b), may not exceed any limits specified under subsection (2) (b).
- (4) The licence is subject to:
 - (a) a condition that the licensee must ensure that liquor 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 that encourage misuse or abuse of liquor (such as binge drinking or excessive consumption), and

- (c) such other conditions as may be prescribed by the regulations, or as are imposed by the court when granting the licence or by the Principal Registrar when granting an approval to conduct an additional function.
- (5) An approval to conduct additional functions under the licence has effect as if it were part of the authority conferred under the licence.
- (6) Any condition in force under this section in relation to an additional function is, for the purposes of this Act, taken to be a condition to which the permanent on-licence (function) is subject.
- (7) The premises at which an additional function is being held are, for the purposes of this Act, taken to be licensed premises when the additional function is being held.

51B Functions authorised by temporary on-licence (function)

The authority conferred by a temporary on-licence (function) is limited to the function or functions to which the licence relates. The function or functions are to be specified by the court or registrar when granting the licence.

[11] Section 56 Fee for grant of licence

Omit section 56 (1) (h). Insert instead:

- (h) in the case of a permanent on-licence (function)—
\$500,

[12] Section 66A Director may investigate licensee and others

Omit “or close associate” from section 66A (1).

Insert instead “, close associate or non-proprietary association”.

[13] Section 66A (2)

Omit “or close associate to whom”.

Insert instead “, close associate or non-proprietary association to whom or to which”.

[14] Section 66A (3)

Omit “or a close associate who”.

Insert instead “, a close associate or a non-proprietary association who or which”.

[15] Section 67 Summons to show cause against taking of disciplinary action

Omit section 67 (1C). Insert instead:

(1C) A complaint in relation to a non-proprietary association is an authorised complaint for the purposes of this section if:

- (a) it is made in writing by a person referred to in subsection (1), and
- (b) it specifies, as the ground on which it is made, either or both of the grounds specified in section 68 (3).

(1D) Complaints that are severally made:

- (a) against a licensee and a close associate, or
- (b) against a licensee holding an on-licence to sell liquor at a function and the non-proprietary association on whose behalf the licence was held,

and any other several complaints that are in some manner associated may, if it appears to the court to be just and expedient so to proceed, be heard and determined together.

[16] Section 67 (5) (d)

Insert after section 67 (5) (c):

- (d) if the complaint is in relation to a non-proprietary association—on the person who holds or held the licence on behalf of the association,

[17] Section 68 Grounds for complaint

Insert after section 68 (2):

- (3) The grounds on which a complaint may be made under section 67 (1C) in relation to a non-proprietary association on whose behalf an on-licence to sell liquor at a function is or was held are:
- (a) that the non-proprietary association did not exercise proper control and supervision over a function to which the licence applied, or
 - (b) that it is not in the public interest for liquor to be sold or supplied at functions conducted by or under the auspices of the association.

[18] Section 69 Disciplinary powers of court

Insert after section 69 (1AA):

- (1AB) On the appearance of a person appearing to be authorised by the association concerned in response to a summons under section 67, or after proof of service of the summons on the association by service on the secretary or other proper officer or in any other manner authorised by law, the court may proceed to hear and determine the matter of a complaint made under section 67 (1C) in relation to a non-proprietary association on whose behalf an on-licence to sell liquor at a function is held. If it is satisfied that the ground on which the complaint was made has been made out, the court may do any one or more of the following:
- (a) suspend or cancel the licence,
 - (b) order that an on-licence to sell liquor at a function must not, at any time during a period of not more than 3 years from the making of the order, be granted to any person on behalf of the non-proprietary association,
 - (c) reprimand the non-proprietary association,
 - (d) give directions as to the conduct of functions to which such an on-licence relates,

- (e) take no action, if the court is of the opinion that other action under this subsection is not warranted in the circumstances.

(1AC) In the case of a complaint referred to in subsection (1AB), a Magistrate or licensing magistrate, or the Principal Registrar, may summon the secretary or another office holder of the non-proprietary association to which the complaint relates to appear before the court to answer the complaint and show cause why an order should not be made under that subsection.

(1AD) If the court makes an order under subsection (1AB) preventing any person from being granted an on-licence to sell liquor at a function on behalf of a non-proprietary association, an application may be made by or on behalf of the non-proprietary association to the court for the revocation of the order. However, the court must not revoke the order unless it is satisfied that:

- (a) the persons responsible for the management of the non-proprietary association will be able to exercise proper control and supervision over any function of the kind for which the on-licence is required, and
- (b) the circumstances of the case justify the revocation of the order.

[19] Section 69 (1A)

Insert "or (1AB)" after "subsection (1)".

[20] Section 69 (1A) (a) (i)

Omit "(b) or (c)". Insert instead "(b), (c) or (d)".

[21] Section 101 Control of licensed premises

Omit "to sell" from section 101 (5).

Insert instead "to or in respect of an on-licence to sell".

[22] Section 140 Averments

Insert after section 140 (1) (c1):

- (c2) that a specified person is or was the secretary or an office holder of a specified non-proprietary association at a specified time or during a specified period,
- (c3) that a specified on-licence to sell liquor at a function is or was held by a specified person on behalf of a specified non-proprietary association at a specified time or during a specified period,

Schedule 3 Miscellaneous amendments of Liquor Act 1982

(Section 3)

[1] Section 4 Definitions

Omit “, wine” from paragraph (b) of the definition of *liquor* in section 4 (1).

[2] Sections 8, 9, 10 and 75

Omit “stipendiary magistrate” wherever occurring in sections 8 (1), (4) and (8), 9 (1) (b), 10 (1) (b) and 75 (1).

Insert instead “Magistrate”.

[3] Section 21A Australian wine licences

Insert “or spirits (or both)” after “beer” in section 21A (3).

[4] Section 21A (4A)

Insert after section 21A (4):

- (4A) If the court has granted an application under subsection (3) in respect of an Australian wine licence before the commencement of this subsection, the grant of the application has, in addition to varying the conditions of the licence so as to permit the sale of beer on the licensed premises for consumption on those premises, the effect of varying the conditions so as to permit the sale of spirits on the licensed premises for consumption on those premises.

[5] Section 24 Hotelier's licence—trading hours

Insert after section 24 (2):

- (2A) The sale or supply of liquor on the licensed premises is permitted between midnight on 31 December and 2 am on the next succeeding day only if the liquor is sold or supplied for consumption on the licensed premises.

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

Insert after section 57 (1):

- (1A) The court is to refuse an application for removal of a hotelier's licence unless the court is satisfied that:
- (a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied and served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
 - (b) those practices will remain in place.
- (1B) The court is to refuse an application for removal of an off-licence to sell liquor by retail unless the court is satisfied that:
- (a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold and supplied responsibly on those premises, and
 - (b) those practices will remain in place.

[7] Section 61A

Insert after section 61:

**61A Refusal of application for transfer of licence—
responsible service standards**

The court is to refuse an application for the transfer of a licence unless satisfied:

- (a) that practices will be in place at the licensed premises of the transferee as soon as the licence is transferred that ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
- (b) that those practices will remain in place.

[8] Sections 67, 105 and 151

Omit “licensing or stipendiary magistrate” wherever occurring in sections 67 (2), 105 and 151 (4).

Insert instead “Magistrate or licensing magistrate”.

[9] Section 67 (5) (b) (ii)

Omit “section 101 (4)”. Insert instead “section 101 (4A)”.

[10] Section 86NA

Insert after section 86N:

86NA Reassessment of duty on approved gaming devices

- (1) The Board may, from time to time, reassess a return by a licensee under section 86L in order to determine the duty payable on approved gaming devices kept by the hotelier during the period in respect of which the return was required.

- (2) The Board may carry out a reassessment for such reasons as it thinks fit (including where it is of the opinion that the information provided in the return might be incorrect).
- (3) The Board may, after making such inquiries as it thinks fit and taking into account such information as may be available to it, reassess the return provided under section 86L and determine the amount of duty that is payable by the licensee for the duty period concerned.
- (4) The amount of duty payable by a licensee as determined by the Board under this section is, for the purposes of this Division, the amount that is payable by the licensee, and is payable within the period specified by the Board in its determination.
- (5) Section 86M does not apply to duty determined under this section.
- (6) If the amount of duty as determined by the Board under this section is less than the amount paid by the licensee for the duty period concerned, the Board is required to hold the money in credit for the licensee or to refund the difference to the licensee or to any person who, in the opinion of the Board is entitled to it, as determined by the Board.
- (7) If:
 - (a) the amount of duty as determined by the Board under this section would, but for this subsection, be greater than the amount of duty paid by the licensee for the duty period concerned, and
 - (b) the information in the return is incorrect and the Board is of the opinion that there was no reasonable excuse for its being incorrect,the Board may determine the duty at an amount not exceeding the sum of:
 - (c) the amount at which, but for this subsection, the duty would have been determined, and
 - (d) an amount not exceeding the difference between the amount of duty paid and the amount referred to in paragraph (c).

- (8) If:
- (a) the amount of duty as determined by the Board under this section after the licensee has paid the duty as previously determined for the duty period concerned, and
 - (b) at the time the Board notifies the determination under this section:
 - (i) the premises to which the licence related are no longer licensed premises, or
 - (ii) the licensee at that time is not the same person as the licensee at the time of payment of the duty previously determined,
- responsibility for payment to the Board of the amount of the duty previously determined and the duty determined under this section may be apportioned by the Board, in such manner as it thinks fit, between any one or more of the following:
- (c) the licensee at the time the duty was previously determined,
 - (d) the persons who, at the time of payment of the duty previously determined, were directly or indirectly interested in the business, or the profits of the business, carried on under the licence at the time of payment of the duty previously determined,
 - (e) the person who furnished the incorrect information.
- (9) Each amount apportioned under subsection (8) is a debt due to the Crown by the person to whom the amount is so apportioned.
- (10) A reference in this section:
- (a) to a previous determination of duty extends to a previous determination of the duty under this section, and
 - (b) to a licensee includes a reference to a former licensee.

[11] Section 101 Control of licensed premises

Omit "(4)" from section 101 (5). Insert instead "(4A)".

[12] Section 116A Offences by minors in hotels and nightclub premises

Insert after section 116A (1):

- (1A) It is a defence to a prosecution for an offence arising under subsection (1) if it is proved that the minor concerned was, at the material time, an apprentice or trainee (within the meaning of the *Industrial and Commercial Training Act 1989*) and that the minor entered or remained in the restricted area for the purpose only of receiving trade training (not being training in the sale, supply or service of liquor) as such an apprentice or trainee.

[13] Section 116B Offences by licensees in relation to minors

Insert after section 116B (3):

- (4) It is a defence to a prosecution for an offence arising under subsection (1) (a) or (2) (a) if it is proved that the minor concerned was, at the material time, an apprentice or trainee (within the meaning of the *Industrial and Commercial Training Act 1989*) and that the minor entered or was in the restricted area for the purpose only of receiving trade training (not being training in the sale, supply or service of liquor) as such an apprentice or trainee.

[14] Section 117C Licensees liable for use of approved amusement device by minor

Insert after section 117C (2):

- (3) It is a defence to a prosecution for an offence arising under this section if it is proved that the person who used or operated the approved amusement device did so under the supervision of the holder of an amusement device technician's licence for the purpose only of receiving training and instruction in respect of the servicing, repair or maintenance of approved amusement devices.

[15] Section 156 Regulations

Insert after section 156 (2A):

- (2B) A regulation may apply, adopt or incorporate any publication as in force from time to time.

[16] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Amendment Act 1997

[17] Schedule 1, Part 11

Insert after Part 10:

Part 11 Liquor and Registered Clubs Legislation Amendment Act 1997

52 Definitions

In this Part:

ad valorem licence fee means a fee, calculated as a proportion of the amount paid or payable for any liquor, in respect of a licence.

amending Act means the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

53 Duration of licences

The repeal by the amending Act of any provision of Part 5 does not affect the duration or suspension of any licence.

54 Records

Records that, immediately before the repeal by the amending Act of sections 86 and 86A, were required to be kept under those sections must be retained until a date prescribed by the regulations.

55 Abolition of ad valorem licence fees

- (1) Nothing in this Act is to be construed as requiring or having required the payment, assessment or collection of:
 - (a) the whole or part of any ad valorem licence fee, or
 - (b) any part of a fee prescribed by or under section 80 (2) (b) or (c) or 82 (4A),after 6 August 1997.
- (2) It is not the duty of the Board to reassess any licence fee in pursuance of an application for reassessment made after 6 August 1997 (whether made before or after the commencement of this clause).
- (3) Nothing in this clause affects:
 - (a) the suspension or cancellation of a licence, or
 - (b) the imposition or collection of any penalty,at any time after 6 August 1997 on account of a failure to pay, or to pay in due time, a fee or any portion of a fee that was payable before that date.

56 Existing on-licences to sell liquor at function

- (1) An on-licence to sell liquor at a function that was in force immediately before the amendment made by the amending Act to section 18 took effect, being an on-licence to sell liquor at more than 3 functions, is taken to be a permanent on-licence (function) and has effect as if it had been granted under this Act as amended by the amending Act.
- (2) This Act applies to any other on-licence to sell liquor at a function that was in force immediately before the amendment made by the amending Act to section 18 took effect as if that amendment (and the other amendments contained in Schedule 2 to the amending Act) had not been made.

57 Pending applications

- (1) The amendments contained in Schedule 2 to the amending Act extend to an application for an on-licence to sell liquor at a function that was made, but had not been granted, before the amendment made by that Act to section 18 took effect. Any such application is to be dealt with as if it had been made under this Act as amended by the amending Act.
- (2) An application that was pending under section 21A (3) immediately before the amendment made to that section by the amending Act took effect is taken to be an application relating to spirits as well as to beer.
- (3) The amendments made to sections 57 and 61A by the amending Act do not apply to an application that was pending under this Act at the time the amendments concerned took effect.

Schedule 4 Amendment of Registered Clubs Act 1976 with respect to licence fees

(Section 4)

[1] Section 4 Definitions

Omit the definition of *assessment period* from section 4 (1).

[2] Section 4 (1), definitions of “registration fee” and “registration period”.

Omit the definitions.

[3] Section 4AA Freight costs to brewers’ regional depots not to be included in price of beer

Omit the section.

[4] Sections 15–15AA

Omit the sections.

[5] Section 16 Duration of certificate of registration

Omit section 16 (3) and (4).

[6] Section 17 Determination of complaints against registered clubs

Omit section 17 (1AA) (a) (xia).

[7] Part 2, Division 1A

Omit the Division.

[8] Section 23A Procedure for grant of functions authority

Omit “15 January” from section 23A (4).
Insert instead “the prescribed date”.

[9] Section 27 Statement of liquor purchases

Omit the section.

[10] Sections 27A and 27B

Omit the sections. Insert instead:

27A Records

- (1) A registered club must keep and maintain such records as the regulations may prescribe.

Maximum penalty: 20 penalty units.

- (2) The regulations may prescribe the manner and form of any records required to be kept under this section.

[11] Section 63 Evidentiary provisions

Omit section 63 (2).

[12] Sections 69 and 70

Omit the sections.

Schedule 5 Miscellaneous amendments of Registered Clubs Act 1976

(Section 4)

[1] Section 17 Determination of complaints against registered clubs

Omit "licensing or stipendiary magistrate" from section 17 (1).
Insert instead "Magistrate or licensing magistrate".

[2] Section 18 Conditional application in relation to new premises or premises to be added to or altered

Insert at the end of section 18 (4) (b):

, and

- (c) it is satisfied that practices will be in place at the new premises (or at the premises as added to or altered) as soon as the application is granted to ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

[3] Section 19 Removal of club to other existing premises

Insert after section 19 (3):

- (3A) The Licensing Court must not grant the application unless satisfied that practices will be in place at the other premises as soon as the application is granted to ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

[4] Section 19A Acquisition of additional existing premises

Insert at the end of section 19A (4) (b):

, and

- (c) it is satisfied that practices will be in place at the additional premises as soon as the application is granted to ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

[5] Section 22A Access to club premises by junior members

Omit “poker machines” from section 22A (6) (d).
Insert instead “approved gaming devices”.

[6] Section 23AA Conditions of functions authority

Omit “poker machine” from section 23AA (2) (a).
Insert instead “approved gaming device”.

[7] Section 26 Taking of objection

Insert “, 22A” after “22” in section 26 (1) (g).

[8] Section 33 Approval of secretary of registered club

Insert after section 33 (3):

- (3A) The Licensing Court must not grant the application unless satisfied that practices will be in place at the registered club as soon as the application is granted to ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

[9] Sections 45 and 51

Insert "or trainee" after "apprentice" wherever occurring in sections 45 (3) and 51 (3).

[10] Section 50 Restrictions on sales etc of liquor by registered clubs

Insert after section 50 (3):

- (4) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (b) if it is proved that the minor concerned was, at the material time, an apprentice or trainee (within the meaning of the *Industrial and Commercial Training Act 1989*) and that the minor was present in the bar for the purpose only of receiving trade training (not being training in the sale, supply or service of liquor) as such an apprentice or trainee.

[11] Section 50A Minors not permitted in poker machine areas

Insert after section 50A (2):

- (3) It is a sufficient defence to a prosecution for an offence arising under subsection (1) if it is proved that the minor concerned was, at the material time, an apprentice or trainee (within the meaning of the *Industrial and Commercial Training Act 1989*) and that the minor was present in the poker machine area for the purpose only of receiving trade training (not being training in the sale, supply or service of liquor) as such an apprentice or trainee.

[12] Section 52 Prohibition on persons under 18 years being in bars

Omit section 52 (3). Insert instead:

- (3) It is a sufficient defence to a prosecution for an offence arising under subsection (1) if it is proved that the minor concerned was, at the material time, an apprentice or trainee (within the meaning of the *Industrial and Commercial Training Act 1989*) and that the minor was present in the bar for the purpose only of receiving trade training (not being training in the sale, supply or service of liquor) as such an apprentice or trainee.

[13] Section 73 Regulations

Omit "poker machines" wherever occurring from section 73 (1A).
Insert instead "approved gaming devices".

[14] Section 73 (1A) (m), (n) and (t)

Omit "a poker machine" wherever occurring.
Insert instead "an approved gaming device".

[15] Section 73 (1A) (n)

Omit "the machine". Insert instead "the device".

[16] Section 73 (2B)

Insert after section 73 (2A):

(2B) A regulation may apply, adopt or incorporate any publication as in force from time to time.

[17] Part 10, heading

Omit "poker machines".
Insert instead "approved gaming devices".

[18] Part 10, Division 2, heading

Omit "poker machines".
Insert instead "approved gaming devices".

[19] Section 85 Duty on approved gaming devices

Omit "poker machines" from section 85 (1).
Insert instead "approved gaming devices".

[20] Section 86 Definitions

Omit "the machine" from the definition of *jackpot payment* in section 86 (1).
Insert instead "the device".

[21] Section 86 (1), definitions of "cancelled credits payment" and "jackpot payment"

Omit "a poker machine" wherever occurring.
Insert instead "an approved gaming device".

[22] Section 86 (2)

Omit "a poker machine" and "the machine" wherever occurring.
Insert instead "an approved gaming device" and "the device" respectively.

[23] Section 87A Payment by instalments

Omit section 87A (4A) and (4B). Insert instead:

(4A) If the profits from all approved gaming devices kept by a registered club in an instalment period exceed \$50,000 but do not exceed \$250,000, the instalment payable is:

- (a) the sum of \$250, and
- (b) an amount equal to 22.5% of the amount by which the profits exceed \$50,000 but do not exceed \$250,000.

(4B) If the profits from all approved gaming devices kept by a registered club in an instalment period exceed \$250,000, the instalment payable is:

- (a) the sum of \$45,250, and
- (b) an amount equal to 30% of the amount by which the profits exceed \$250,000.

[24] Section 87D Penalty for late return or payment of duty

Insert "(if any)" after "instalment" in section 87D (2).

[25] Sections 87E-87H

Omit "poker machines" wherever occurring.
Insert instead "approved gaming devices".

[26] Section 87EA

Insert after section 87E:

87EA Reassessment of duty on approved gaming devices

- (1) The Board may, from time to time, reassess a return by a registered club under section 87H in order to determine the duty payable on approved gaming devices kept by the registered club during the period in respect of which the return was required.
- (2) The Board may carry out a reassessment for such reasons as it thinks fit (including where it is of the opinion that the information provided in the return might be incorrect).
- (3) The Board may, after making such inquiries as it thinks fit and taking into account such information as may be available to it, reassess the return provided under section 87H and determine the amount of duty that is payable by the registered club for the duty period concerned.
- (4) The amount of duty payable by a registered club as determined by the Board under this section is, for the purposes of this Division, the amount that is payable by the registered club, and is payable within the period specified by the Board in its determination.
- (5) Section 87D does not apply to duty determined under this section.
- (6) If the amount of duty as determined by the Board under this section is less than the amount paid by the registered club for the duty period concerned, the Board is required to hold the money in credit for the registered club or to refund the difference to the registered club, as determined by the Board.
- (7) If:
 - (a) the amount of duty as determined by the Board under this section would, but for this subsection, be greater than the amount of duty paid by the registered club for the duty period concerned, and

- (b) the information in the return is incorrect and the Board is of the opinion that the person who furnished the information knew, or ought to have known, it to be incorrect or that the information was furnished with reckless indifference as to whether it was correct or incorrect,

the Board may determine the duty at an amount not exceeding the sum of:

- (c) the amount at which, but for this subsection, the duty would have been determined, and
- (d) an amount not exceeding the difference between the amount of duty paid and the amount referred to in paragraph (c).
- (8) An amalgamated club is liable for the payment of the amount of any duty as determined by the Board under this section that has not been paid by a registered club that was a party to the amalgamation.
- (9) An amalgamated club is entitled to any amount of refund to which a registered club that was a party to the amalgamation was entitled, but which was not paid before the cancellation of registration of that registered club.

[27] Section 87H Records and returns

Omit "poker machine" from section 87H (5).
Insert instead "approved gaming device".

[28] Section 87H (5)

Omit "time when each quarterly instalment is payable in accordance with this Division".
Insert instead "end of each instalment period".

[29] Section 97 Who may object

Omit "under this Act" from section 97 (1).
Insert instead "for a gaming-related licence".

[30] Schedule 2 Transitional provisions

Insert at the end of clause 1A (1):

Liquor and Registered Clubs Legislation Amendment Act 1997

[31] Schedule 2, Part 12

Insert after Part 11:

Part 12 Liquor and Registered Clubs Legislation Amendment Act 1997

71 Definitions

In this Part:

ad valorem registration fee means a fee, calculated as a proportion of the amount paid or payable for any liquor, in respect of a certificate of registration.

amending Act means the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

72 Records

Records that, immediately before the repeal by the amending Act of sections 27A and 27B, were required to be kept under those sections must be retained until a date prescribed by the regulations.

73 Abolition of ad valorem registration fees

- (1) Nothing in this Act is to be construed as requiring or having required the payment, assessment or collection of the whole or part of any ad valorem registration fee after 6 August 1997.
- (2) It is not the duty of the Board to reassess any registration fee in pursuance of an application for reassessment made after 6 August 1997 (whether made before or after the commencement of this clause).

- (3) Nothing in this clause affects:
- (a) the suspension or cancellation of registration, or
 - (b) the imposition or collection of any penalty,
- at any time after 6 August 1997 on account of a failure to pay, or to pay in due time, a fee or any portion of a fee that was payable before that date.

74 Duty on poker machines—instalment for the quarter ending 28 February 1998

- (1) This clause applies to the payment of an instalment of duty on profits derived from approved gaming devices kept by a registered club in the period commencing on 1 December 1997 and ending on 28 February 1998 (the *relevant instalment period*), and so applies to the exclusion of section 87A (4A) and (4B).
- (2) Unless section 87A (3) or (4) applies to the relevant instalment period, the instalment payable in respect of that period is the sum of the amounts payable under subclauses (3)–(6).
- (3) If the profits from all approved gaming devices kept by a registered club in the period commencing on 1 December 1997 and ending on 31 January 1998 exceed \$33,333 but do not exceed \$416,667, the amount payable under this subclause is:
- (a) the sum of \$167, and
 - (b) an amount equal to 22.5% of the amount by which the profits exceed \$33,333 but do not exceed \$416,667.
- (4) If the profits from all approved gaming devices kept by a registered club in the period referred to in subclause (3) exceed \$416,667, the amount payable under this subclause is:
- (a) the sum of \$86,417, and
 - (b) an amount equal to 24.75% of the amount by which the profits exceed \$416,667.

- (5) If the profits from all approved gaming devices kept by a registered club in the month of February 1998 exceed \$16,667 but do not exceed \$83,333, the amount payable under this subclause is:
- (a) the sum of \$83, and
 - (b) an amount equal to 22.5% of the amount by which the profits exceed \$16,667 but do not exceed \$83,333.
- (6) If the profits from all approved gaming devices kept by a registered club in the month of February 1998 exceed \$83,333, the amount payable under this subclause is:
- (a) the sum of \$15,083, and
 - (b) an amount equal to 30% of the amount by which the profits exceed \$83,333.

75 Effect of amending Act on pending applications

The amendments made to sections 18, 19, 19A and 33 by the amending Act do not apply to an application that was pending under this Act when those amendments took effect.

[Minister's second reading speech made in—
Legislative Assembly on 19 December 1997
Legislative Council on 4 December 1997]

BY AUTHORITY