



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976*:

- (a) to vary the operation of Governor's licences with respect to responsible serving and consumption of alcohol, and to make further provision with respect to the termination of such licences, and
- (b) to allow nightclubs to stage alcohol-free entertainment for minors, and
- (c) to make further provision with respect to transitional arrangements applying to the duty chargeable on profits derived from gaming machines kept in registered clubs during the duty period commencing on 1 December 1997, and
- (d) to re-enact certain provisions of the *Liquor Act 1982* and to make other amendments by way of statute law revision, and
- (e) to make other, minor amendments of an administrative character.

The Bill makes a consequential amendment to the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation, except for:

- (a) a provision amending section 51B of the *Liquor Act 1982* (which commences on the commencement of that section), and
- (b) provisions amending the *Liquor Act 1982* by way of statute law revision (which commence on the date of assent or on the commencement of the amended provision, as may be appropriate), and
- (c) provisions amending section 87 or 87AA of the *Registered Clubs Act 1976* or Schedule 2 to that Act (which commence on the commencement of Schedule 3 [9] or [18] to the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*).

Clause 3 is a formal provision giving effect to the amendments to the *Liquor Act 1982* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to the *Registered Clubs Act 1976* set out in Schedule 3.

Clause 5 repeals certain uncommenced provisions of the *Liquor and Registered Clubs Legislation Amendment Act 1997* that are superseded by the amendments contained in the proposed Act.

Schedule 1 Amendment of Liquor Act 1982

Governor's licences

Schedule 1 [3] amends section 19 of the Act so as to require an applicant for a Governor's licence to satisfy the Minister that responsible serving practices will be in place with respect to liquor served at the licensed premises while the licence is in force. **Schedule 1 [4]** and **[5]** amend sections 19 and 19A so as to provide that a Governor's licence ceases to be in force if the circumstances existing at the time of grant of the licence have changed fundamentally (such as through privatisation of the government body in respect of which it is issued).

Schedule 1 [11], which repeals and replaces existing sections 67–69 of the Act, inserts provisions relating to complaints that may be made in respect of a Governor's licence (proposed sections 67C and 68 (5) (c)) and the disciplinary action that may be taken by the Licensing Court in respect of such licences (proposed section 68E). The amendments made by **Schedule 1 [8]–[10]** are consequential.

Conditions of temporary on-licence (function)

Schedule 1 [7] amends section 51B of the Act, 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.

Provisional approval of a manager of licensed premises

Schedule 1 [12] repeals and replaces section 69D of the Act, which deals with the approval by the Licensing Court of a manager of premises licensed to a body corporate or partnership. The new section makes it possible for the court, if it has no reason to think the applicant unfit for appointment as the manager of licensed premises, to approve of the appointment on a provisional basis pending completion of such investigations as are necessary to a proper assessment of the applicant. (Under the section as it currently stands, the licensee cannot trade until those investigations are completed.)

Minors' functions at nightclubs

Schedule 1 [13] and **[14]** amend sections 111A and 111B of the Act in order to permit a minors functions authority to be granted to the holder of a nightclub licence as well as to the holder of a hotelier's licence.

Schedule 1 [15] amends section 111C of the Act to prescribe conditions applying to the holding of minors' functions on nightclub premises.

Schedule 1 [17] and **[18]** make consequential amendments.

Use by minors of licensed premises

Schedule 1 [16] amends section 112 of the Act, which deals with the power of the Liquor Administration Board to authorise a part of licensed premises to be used by minors. Under the section, application for such an authorisation may be made by the licensee or by the Commissioner of Police, and the

authorisation, if granted, is subject to conditions imposed by the Board or the Commissioner. The effect of the amendment is to withdraw the Commissioner's power to impose conditions on the authorisation.

False or misleading statements

Schedule 1 [20] amends section 139 of the Act, which prohibits the deliberate making of a false or misleading statement in an official document under the Act or the deliberate omission of relevant matter from it. The amendment dispenses with the requirement (for the purposes of establishing an offence under the section) to prove that the statement or omission was deliberate. Instead, it will be sufficient to convict the defendant if it is shown that the defendant either knew or ought to have known that the statement was false or that there was a material omission.

Evidentiary matters

Schedule 1 [21]–[23] amend section 140 of the Act, which deals with matters of evidence in proceedings under the Act. The object of the amendments is to make it clear that the intended effect of section 140:

- (a) so far as it concerns any proceedings under the Act for an offence involving liquor, is that a defendant whose defence rests on an assertion that a liquid in question in the proceedings was not liquor bears the onus of proving that assertion, irrespective of whether the terms of the relevant information or complaint specifically allege (in the particular manner characteristic of averments) that the liquid is liquor, and
- (b) is not to require an averment to be made in any particular terms.

The amendments also provide for the inclusion in the section of other matters of record that may be the subject of averments.

Other amendments

Because the amendments proposed by the Bill require consequential amendment of sections 67–69 of the Act, the opportunity has been taken (at **Schedule 1 [11]**) to repeal these sections and replace them with a number of smaller sections, for ease of reading. The amendments made by **Schedule 1 [1], [2], [6], [19]** and **[24]** are consequential. The new provisions replacing sections 67–69 of the Act incorporate amendments made to that part of the

Act by the *Liquor and Registered Clubs Legislation Amendment Act 1997* (and corresponding provisions of that Act are repealed by proposed section 5).

Schedule 1 [25] amends section 161 of the Act to permit an application for an authority to keep a gaming device to be verified by the manager of the licensed premises in certain cases.

Schedule 1 [26] and **[27]** amend Schedule 1 to the Act (Savings and transitional provisions) to provide for the transitional application of amendments made by the proposed Act and to allow any necessary regulations to be made as a consequence of those amendments.

Schedule 2 Amendment of Liquor Act 1982 by way of statute law revision

Schedule 2 makes minor amendments to clarify the application of the definition of *close associate* in the Act and to replace outdated or incorrect references.

Schedule 3 Amendment of Registered Clubs Act 1976

Schedule 3 [1] and **[2]** amend section 30 of the Act, which contains certain rules applying to registered clubs. The amendments extend the operation of a particular rule to encompass biennial, as well as annual, elections of the governing body of a club, and are made for the sake of consistency with amendments made to the Act in 1997.

Schedule 3 [3] makes an amendment concerning false or misleading statements. It is similar to the amendment made by **Schedule 1 [20]** in relation to premises licensed under the *Liquor Act 1982*.

Schedule 3 [4] and **[5]** make minor amendments by way of statute law revision.

The remainder of the Schedule contains amendments to transitional provisions to be inserted in Schedule 2 to the Act 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*).

Explanatory note

Schedule 3 [6] and [7] 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 proposed clause 81 of Schedule 2 to the Act.)

Schedule 3 [8] 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 3 [9] 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 (to be 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) (to be 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).



New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 1998

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New South Wales

Liquor and Registered Clubs Legislation Amendment Bill 1998

No . , 1998

A Bill for

An Act to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976* with respect to Governor's licences and the provision of entertainment for minors at nightclubs; 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 Act 1998*.

2 Commencement

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- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [7] and Schedule 2 [5]–[7] commence, or are taken to have commenced, on the commencement of Schedule 2 to the *Liquor and Registered Clubs Legislation Amendment Act 1997*. 10
- (3) Schedule 2 [1]–[4] and [8] commence on the date of assent to this Act.
- (4) Schedule 3 [4] and [5] commence, or are taken to have commenced, on the commencement of Schedule 3 [9] to the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*. 15
- (5) Schedule 3 [6]–[9] commence, or are taken to have commenced, on the commencement of Schedule 3 [18] to the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*. 20

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedules 1 and 2.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedule 3. 25

5 Amendment of Liquor and Registered Clubs Legislation Amendment Act 1997 No 155

The *Liquor and Registered Clubs Legislation Amendment Act 1997* is amended by omitting Schedule 2 [12]–[20].

Schedule 1 Amendment of Liquor Act 1982

(Section 3)

[1] Section 9 Constitution of the court at first instance

Omit "section 67" from section 9 (4).
Insert instead "Division 8 of Part 3".

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[2] Section 16 Costs

Omit "section 68 (1) (d)" from section 16 (2).
Insert instead "section 67 (3) (p), 67B (3) (b) or 67C (3) (b)".

[3] Section 19 Governor may authorise issue of certain licences

Insert after section 19 (2):

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(2A) The Minister is not to make a recommendation under subsection (1) unless the Minister is satisfied, on information supplied by the Board or otherwise, that practices will be in place at the licensed premises as soon as the licence is issued that ensure, as far as reasonably practicable, that:

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- (a) liquor is sold, supplied and served responsibly on the premises, and
- (b) all reasonable steps are taken to prevent intoxication on the premises,

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and that those practices will remain in place while the licence is in force.

[4] Section 19 (5)

Insert after section 19 (4):

(5) A licence issued under this section ceases to be in force:

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- (a) in the case of a licence authorising the sale of liquor at a specified railway station—if the railway station ceases to be regularly serviced by a passenger train (or a motor omnibus or other motor vehicle) operated by or on behalf of the State Rail Authority, or

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- (b) in the case of a licence authorising the sale of liquor on premises referred to in subsection (1) (b)—if the premises cease to be vested in the Crown or a public authority constituted by an Act, or 5
 - (c) in the case of a licence authorising the sale of liquor at a construction camp or works referred to in subsection (1) (c)—if the construction camp or works have ceased to exist, or
 - (d) on the expiry of a period of time, if the licence so provides, or 10
 - (e) on its surrender and acceptance in accordance with section 19A.

- [5] Section 19A Duration of licences**
Insert after section 19A (3): 15
 - (4) Subsection (3) extends to apply to a licence issued under section 19, and applies in addition to the provisions of section 19 (5).

- [6] Section 20 Conditions of licences**
Omit “section 67” from section 20 (2) (c). 20
Insert instead “Division 8 of Part 3”.

- [7] Section 51B Functions authorised by temporary on-licence (function) (as inserted 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

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- (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.
- [8] Section 66A Director may investigate licensee and others**
- Omit "a licensee, manager or close associate under section 67" from section 66A (1). 10
Insert instead "any person or body under this Division".
- [9] Section 66A (2)**
- Omit "licensee, manager or close associate to whom".
Insert instead "person or body to whom or to which". 15
- [10] Section 66A (3)**
- Omit "a licensee, a manager or a close associate who is the subject of an investigation under this section, or a close associate of such a licensee or manager".
Insert instead "a person or body who or which is the subject of an investigation under this section, or a close associate of such a person or body". 20
- [11] Sections 67-69**
- Omit the sections. Insert instead:
- 67 Complaints against licensees or managers** 25
- (1) A complaint against a licensee or manager may be made in writing by any of the following persons:
- (a) the owner of the licensed premises,
- (b) a person authorised in writing by 3 or more persons residing in the vicinity of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents, 30

- (c) the Commissioner of Police,
 - (d) a person authorised by the local consent authority for the licensed premises,
 - (e) a person authorised by an industrial organisation of employees registered under the *Industrial Relations Act 1996* or by an association of employees registered under the *Workplace Relations Act 1996* of the Commonwealth, 5
 - (f) the Director.
- (2) Such a complaint must specify the grounds on which it is made. 10
- (3) The grounds on which such a complaint may be made are any one or more of the following:
- (a) that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of: 15
 - (i) an offence specified in the complaint (other than an offence against this Act) for which he or she has been sentenced to imprisonment, or 20
 - (ii) an offence against this Act specified in the complaint,
 - (b) that the licensee or manager has been guilty of a breach of a condition of the licence concerned,
 - (c) that the licensee or manager has failed to comply with a direction or order of the Board or court given or made under this Act and specified in the complaint, 25
 - (d) that a requirement of the Director made under this Act in relation to the investigation of the licensee or manager and specified in the complaint has not been complied with, 30
 - (e) that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption), 35

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- (f) that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises,
- (g) that acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises, 5
- (h) that the licensee is not a fit and proper person to be the holder of a licence or the manager is not a fit and proper person to be the manager of the licensed premises, 10
- (i) that a person named in the complaint is a close associate of the licensee and is not a fit and proper person to be a close associate of a licensee,
- (j) that a person named in one of the following affidavits made in relation to the licence held by the licensee (or, where more than one such affidavit has been made, the later or latest of those affidavits), namely: 15
- (i) an affidavit, referred to in section 38 (3), that accompanied the application for the licence or an application for transfer of the licence, 20
- (ii) an affidavit, referred to in section 101 (4A), produced to the registrar, 25
- is not a fit and proper person to be directly or indirectly interested in the licence or the business, or the profits of the business, carried on pursuant to the licence,
- (k) in the case of a licence held by a body corporate— that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is the holder of a licence, 30

- (l) that the licensee has failed to pay duty, or an instalment of duty, payable under Division 4 of Part 5, within the time required by this Act, or a penalty for late payment of that duty or an instalment of that duty, 5
 - (m) that entertainment has been conducted on the licensed premises otherwise than in accordance with the conditions of an approval under Part 1 of Chapter 7 of the *Local Government Act 1993* or the provisions of any regulation made under that Act, 10
 - (n) in the case of an on-licence relating to premises within a university—that a person has been obstructed, hindered or delayed in the exercise of powers conferred on the person by section 110 (6), 15
 - (o) that the authority conferred by the licence is considered not to have been exercised in the public interest,
 - (p) that the continuation of the licence is not in the public interest. 20
- (4) In addition, a complaint may be made against a licensee by a person authorised to do so by the relevant local consent authority referred to in subsection (1) (d), on the ground that the licensed premises are being opened for business even though the owner of the licensed premises has failed to comply with a direction or order of the local consent authority to carry out specified work on or in relation to the licensed premises. 25

67A Complaints against close associates

- (1) A complaint against a person who is a close associate of a licensee may be made in writing by the Commissioner of Police or the Director. 30
- (2) Such a complaint must specify the grounds on which it is made.

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- (3) The grounds on which such a complaint may be made are any one or more of the following:
- (a) that the close associate is not a fit and proper person to be a close associate of a licensee,
 - (b) that a complaint against the licensee under section 67 has been heard and found to be made out and that:
 - (i) the close associate knew or ought reasonably to have known that conduct of the kind to which the complaint relates was occurring or was likely to occur on the licensed premises, and
 - (ii) the close associate failed to take all reasonable steps to prevent conduct of that kind occurring on the licensed premises,
 - (c) that a requirement of the Director made under this Act in relation to the investigation of the close associate and specified in the complaint has not been complied with.
- (4) On the hearing and determination of the matter of a complaint under this section on the ground specified in subsection (3) (b), the onus is on the close associate to satisfy the court that the close associate took all reasonable steps to prevent conduct of the kind concerned occurring on the licensed premises.

67B Complaints against non-proprietary associations

- (1) A complaint against a non-proprietary association on whose behalf an on-licence to sell liquor at a function is or was held may be made in writing by any person mentioned in section 67 (1) (a)–(f).
- (2) Such a complaint must specify the grounds on which it is made.
- (3) The grounds on which such a complaint may be made are either or both of the following:

- (a) that the non-proprietary association did not exercise proper control and supervision over a function to which the licence applied,
 - (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. 5
 - (4) Nothing in this section precludes the making of a complaint under section 67 in relation to the holder of an on-licence to sell liquor at a function.
- 67C Complaints against persons responsible for Governor's licence** 10
- (1) A complaint against the responsible person or body in respect of a Governor's licence may be made in writing by any person referred to in section 67 (1) (a)–(f).
 - (2) Such a complaint must specify the grounds on which it is made. 15
 - (3) The grounds on which such a complaint may be made are either or both of the following:
 - (a) that the responsible person or body in respect of the licence did not exercise proper control and supervision over the sale or supply of liquor under the licence, 20
 - (b) that the continuation of the licence is not in the public interest.
 - (4) Nothing in this section precludes the making of a complaint under section 67 in relation to the licensee for a Governor's licence. 25
- 68 Issue of summons on complaint**
- (1) On the making of a complaint under this Division, a Magistrate or licensing magistrate, or the Principal Registrar, may summon the appropriate respondent to appear before the court to answer the complaint and show cause why disciplinary action should not be taken. 30

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- (2) The summons must specify the grounds of the complaint on which it is issued, and where a ground of complaint is the ground referred to in section 67 (3) (h), (i), (j), (k), (o) or (p), section 67A (3) (a), section 67B (3) (b) or section 67C (3) (b), must specify the reasons given by the complainant for making the complaint on that ground. 5
- (3) A copy of the complaint must be served:
- (a) on the appropriate respondent and, if that person is not the licensee, on the licensee, and 10
 - (b) if the licensee occupies the licensed premises under a lease—on the lessor, and
 - (c) on each person named:
 - (i) in the affidavit referred to in section 38 (3) that accompanied the application for the licence, and 15
 - (ii) if an affidavit accompanied an application for transfer of the licence as referred to in section 41 (4) or has been produced to the registrar under section 101 (4A)—in the later or latest of those affidavits, and 20
 - (d) if the complaint is against a licensee on the ground that a person named in the complaint is a close associate of the licensee and is not a fit and proper person to be a close associate of a licensee—on that person, and 25
 - (e) if the complaint relates to an on-licence for premises within a university—on the university.
- (4) A summons or a copy of the complaint:
- (a) may be served personally or by post (or, in the case of a university or other body corporate, by leaving it at the office of the university or body corporate), and 30
 - (b) must be served not less than 14 days before the day appointed for the hearing of the complaint (unless the court, with the consent of the parties to the proceedings, otherwise orders). 35
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- (5) In this section, the *appropriate respondent* means:
- (a) in the case of a complaint against a licensee or manager of licensed premises—the licensee or manager, and
 - (b) in the case of a complaint against a non-proprietary association—the secretary or another officer of the association, and 5
 - (c) in the case of a complaint in respect of a Governor's licence—a person or body who appears to the Magistrate, licensing magistrate or Principal Registrar, as the case may be, by whom the summons is issued, to be the responsible person or body in respect of the licence. 10

68A Hearing of complaint

- (1) On the appearance of a person summoned under section 68, or (on due proof of service of the summons) in the person's absence, the court may proceed to hear and determine the matter of a complaint. 15
- (2) Each person summoned may, at the hearing of the complaint, be represented and be heard. 20
- (3) When hearing and determining the matter of a complaint against a licensee or manager of licensed premises, or against a close associate of a licensee, the court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the court. 25
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- (4) 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, or 35

- (c) against the licensee of a Governor's licence and the responsible person or body in respect of the licence,

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. 5

68B Disciplinary powers in relation to complaints against licensees

- (1) The court, if satisfied that the ground of a complaint under section 67 has been made out, may do any one or more of the following: 10
- (a) reprimand the licensee or manager,
 - (b) order the licensee or manager to pay to the Crown a monetary penalty not exceeding 500 penalty units in the case of a corporation or 200 penalty units in any other case, 15
 - (c) impose a condition to which the licence or a minors functions authority held by the licensee is to be subject or revoke or vary a condition to which the licence or a minors functions authority held by the licensee is subject, 20
 - (d) suspend the licence or a minors functions authority held by the licensee for such period, not exceeding 12 months, as the court thinks fit, 25
 - (e) cancel the licence or a minors functions authority held by the licensee,
 - (f) disqualify the licensee from holding a licence for such period as the court thinks fit,
 - (g) in the case of a manager of licensed premises where a body corporate is the licensee, withdraw the manager's approval by the court to manage licensed premises, 30
 - (h) in the case of a manager of licensed premises where a body corporate is the licensee, disqualify the manager from being the holder of an approval to manage licensed premises, 35

- (i) disqualify a person from being a manager of licensed premises in a special area for such period as the court thinks fit,
 - (j) if the ground made out is the ground referred to in section 67 (3) (o) or (p), give such directions as to the exercise of the licence as it thinks fit, 5
 - (k) take no action.
- (2) The court may, in addition to or instead of taking other action:
- (a) reprimand any of the persons who were required by section 68 (3) to be served with a copy of the complaint, or 10
 - (b) if the licence is held by a body corporate, reprimand a person who occupies a position of authority in the body corporate, or 15
 - (c) reprimand a director of, or shareholder in, a proprietary company that was required by section 68 (3) to be served with a copy of the complaint, or
 - (d) reprimand a director of, or shareholder in, a corporation that, within the meaning of the *Corporations Law*, is a related corporation of a proprietary company referred to in paragraph (c), or 20
 - (e) order any person, director or shareholder referred to in any of paragraphs (a)–(d) to pay to the Crown a monetary penalty not exceeding 500 penalty units in the case of a corporation or 200 penalty units in any other case, or 25
 - (f) disqualify, for a period commencing on a specified day, any such person, director or shareholder from being: 30
 - (i) a person interested in a business, or in the profits of a business, carried on pursuant to a licence (within the meaning of section 38 (4)) or a person who occupies a position of authority in a body corporate that holds a licence, or 35

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- (ii) a director of, or shareholder in, a proprietary company so interested or a corporation that, within the meaning of the *Corporations Law* is a related corporation of such a proprietary company, 5
- unless it is proved that the person, director or shareholder had no knowledge of the matter constituting the ground of the complaint and used all due diligence to obviate the necessity for such a complaint.
- (3) In the case of a complaint on the ground referred to in section 67 (4), the court may, in addition to or instead of taking other action, suspend the licence until: 10
- (a) the work to which the complaint relates has been carried out, or
- (b) the licence is removed to other premises, or 15
- (c) the licence ceases to have effect for any reason other than suspension.
- (4) This section has effect subject to section 68F (Circumstances of aggravation).
- 68C Disciplinary powers in relation to complaints against close associates** 20
- (1) The court, if satisfied that the ground of a complaint under section 67A has been made out, may do any one or more of the following:
- (a) reprimand the person, 25
- (b) disqualify the person from being a close associate of a licensee for such period as the court thinks fit,
- (c) disqualify the person from holding a licence for such period as the court thinks fit,
- (d) order the person to pay to the Crown a monetary penalty not exceeding 500 penalty units in the case of a corporation or 200 penalty units in any other case, 30
- (e) take no action.

- (2) While a person is disqualified by the court from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act and the *Registered Clubs Act 1976* to be a person who is not a fit and proper person to be a close associate of a licensee under either Act or of a registered club. 5

- (3) The taking of action under this section in respect of a complaint does not prevent or limit the taking of any other action under this section in respect of any other complaint against a licensee or manager (whether or not that other complaint is heard together with the complaint under this section). 10

68D Disciplinary powers in relation to complaints against non-proprietary associations

- (1) The court, if satisfied that the ground of a complaint under section 67B has been made out, may do any one or more of the following: 15
 - (a) reprimand the non-proprietary association,
 - (b) suspend or cancel the licence,
 - (c) 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, 20
 - (d) give directions as to the conduct of functions to which such an on-licence relates, 25
 - (e) take no action.

- (2) If the court makes an order under this section 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: 30

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- (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 5
 - (b) the circumstances of the case justify the revocation of the order.

68E Disciplinary powers in relation to complaints against responsible persons in respect of Governor's licence

The court, if satisfied that the ground on which a complaint under section 67C was made has been made out, may do any one or more of the following: 10

- (a) reprimand the responsible person or body referred to in that section,
- (b) suspend or cancel the licence, 15
- (c) take no action.

68F Circumstances of aggravation

(1) A complaint concerning a contravention of section 125 or 125E may allege that, for reasons specified in the complaint, the matter of the complaint occurred in circumstances of aggravation. 20

(2) The court, in finding that the ground of such a complaint has been made out, is to decide, having regard to any matter such as:

- (a) the number of contraventions of the Act involved, or 25
- (b) the seriousness of the contravention involved, or
- (c) the number of people involved in the contravention, or
- (d) the seriousness of the outcome of the contravention, 30

or any other relevant consideration, whether the matter of the complaint occurred in circumstances of aggravation.

- (3) On a finding by the court that the matter of the complaint occurred in circumstances of aggravation:
- (a) the maximum amount of monetary penalty that the court may order to be paid under section 68B (1) (b) or (2) (e) is 1,000 penalty units in the case of a corporation or 400 penalty units in any other case, and 5
 - (b) the maximum period for which the court may suspend a licence or minors functions authority under section 68B (1) (d) is 24 months. 10

68G Enforcement of monetary penalties

If an order for the payment of money is made under this Division and the prescribed documents are filed in the office of the Local Court having jurisdiction under the *Local Courts (Civil Claims) Act 1970* at or nearest the prescribed place at which the complaint that led to the order was heard, the order may be enforced as a judgment of a Local Court for the payment of the money in accordance with the order. 15

68H Transfer of licence from disqualified licensee 20

If a licensee is disqualified under this Division from holding a licence, the court may, on application by the spouse of the licensee, a member of the family of the licensee of or above the age of 18 years, the owner of the licensed premises or a person directly or indirectly interested in the business or the profits of the business carried on under the licence, transfer the licence to that spouse or member of the family or to some other person approved by the court. 25

[12] Section 69D 30

Omit the section. Insert instead:

69D Court approval of manager

- (1) An application for the court's approval of a person's appointment as the manager of licensed premises is to be made in the form approved by the Board. 35

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- (2) The court is not to give its approval unless satisfied that the person concerned is a fit and proper person to manage licensed premises.
- (3) If the court is satisfied on the information before it that there is nothing that might preclude it from giving its approval, but requires more information before making a final decision, the court may give a provisional approval of the person to be such a manager. 5
- (4) A provisional approval is sufficient warrant for appointment of the person, in accordance with section 69E, as manager of the licensed premises concerned for a period specified by the court. Any such appointment lapses, however, unless the court confirms its approval within that period (or within such extension of that period as the court may allow). 10 15
- (5) An approval or provisional approval may be given so as to apply in relation to particular licensed premises, to all licensed premises of a specified class or to all licensed premises, as the court thinks fit.
- [13] Section 111A Functions for minors on licensed premises** 20
- Insert "or a nightclub licence" after "hotelier's licence" in section 111A (1).
- [14] Section 111B Procedure for grant of minors functions authority**
- Insert "or a nightclub licence" after "hotelier's licence" in section 111B (1). 25
- [15] Section 111C Conditions of minors functions authority**
- Insert after section 111C (2):
- (2A) In addition to conditions imposed by or under subsections (1) and (2), a minors functions authority in force in relation to the licensed premises of a nightclub is subject to the following conditions: 30

- (a) no liquor is to be sold or supplied on the premises while any function is being held pursuant to the authority,
 - (b) a period of one hour (or such longer period as the court may approve) must elapse, following the conclusion of any such function, before the resumption of any sale or supply of liquor on the premises. 5

- [16] Section 112 Authority for use of part of premises by minor in company of responsible adult** 10

Omit "or the Commissioner" where secondly occurring in section 112 (1).

- [17] Section 116A Offences by minors in hotels and nightclub premises** 15

Omit "subsection (1) and (2)" from section 116A (3).
Insert instead "this section".

- [18] Section 116B Offences by licensees in relation to minors**

Insert after section 116B (4):

 - (5) Subsections (1) (c) and (2) (c) do not apply to that part of any licensed premises to which a minors functions authority under section 111A applies and in which, at the material time, a function was being held in pursuance of the authority. 20

- [19] Section 125D** 25

Insert after section 125C:

125D Breach of condition of licence

 - (1) A licensee who fails to comply with a condition of the licence is guilty of an offence against this Act.

- (2) The same failure to comply with a condition of a licence may not be the subject both of proceedings under this section and a complaint on the ground referred to in section 67 (3) (a) or (b).

[20] Section 139 False or misleading statements

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Insert “, or could reasonably be expected to know” after “knows” in section 139 (1).

[21] Section 140 Averments

Insert “(however expressed)” after “allegation” where firstly occurring in section 140 (1).

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[22] Section 140 (1) (d8)–(d13)

Insert after section 140 (1) (d7):

- (d8) that a minors functions authority is in force in respect of a specified part of any premises,
- (d9) that an authorisation under section 112 is in force in respect of a specified part of any premises, 15
- (d10) that a specified area is a reception area,
- (d11) that a specified condition has been, and remains, imposed on a specified licence,
- (d12) that a specified person has been approved under Division 8A of Part 3 as the manager of specified licensed premises, 20
- (d13) that a specified gaming device is an approved gaming device,

[23] Section 140 (3)

Insert after section 140 (2):

- (3) If, in any proceedings under this Act, the application, objection, information or complaint by which the proceedings were instituted contains an allegation (however expressed) that a person: 5
- (a) was in possession of, or consumed, any liquor, or
 - (b) sold or supplied any liquor, or
 - (c) otherwise used, treated or dealt with, any liquor, any liquid established in the proceedings to have been possessed, consumed, sold, supplied, or otherwise treated, used or dealt with by the person in a manner and circumstances conforming to the allegation is presumed to have been liquor, unless the contrary is proven. 10

[24] Section 149A Review of disqualification of more than 3 years 15

Omit "section 69 or 143A" from section 149A (1).
Insert instead "Division 8 of Part 3 or section 143A".

[25] Section 161 Authority to keep approved gaming devices

Insert after section 161 (12):

- (13) If the hotelier's licence is held by a body corporate or a partnership, an application under this section may be lodged, and supporting information may be furnished and verified, on the hotelier's behalf by the manager approved by the court under Division 8A of Part 3. 20

[26] Schedule 1 Savings and transitional provisions 25

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Amendment Act 1998.

[27] Schedule 1, Part 12

Insert after Part 11:

**Part 12 Liquor and Registered Clubs Legislation
Amendment Act 1998**

58 Definition

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

59 Authorisation and cancellation of Governor's licences

(1) Section 19 (2A) extends to apply in respect of an application for a Governor's licence that was made before the date on which that subsection commenced, if the application had not been determined before that date. 10

(2) A Governor's licence:

(a) that is of a kind referred to in paragraph (a), (b) or (c) of section 19 (5), and 15

(b) in respect of which an event of the kind referred to in any of those paragraphs occurred before the commencement of that subsection, and

(c) under which liquor is still being sold or supplied at the commencement of that subsection, 20

ceases to be in force 2 years after the commencement of that subsection, unless sooner surrendered or cancelled in accordance with this Act.

60 Approval of managers of licensed premises

The provisions of section 69D, as inserted by the amending Act, extend to apply in respect of an application for approval that was lodged before the date on which those provisions commenced but that was not determined before that date. 25

61 Authority for use of part of premises by minor

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The amendment made by the amending Act to section 112 does not affect any condition imposed on an authorisation granted under that section before the amendment took effect.

Schedule 2 Amendment of Liquor Act 1982 by way of statute law revision

(Section 3)

- [1] **Section 4A Meaning of "close associate"**
Omit "sections 68, 105A and 105B" from section 4A (1).
Insert instead "this Act".
- [2] **Sections 12 (1) (b) and (4), 16 (3) and 99 (4)**
Omit "court of petty sessions" wherever occurring.
Insert instead "Local Court".
- [3] **Sections 16 (3) and 99 (4)**
Omit "*Courts of Petty Sessions (Civil Claims) Act 1970*" wherever occurring.
Insert instead "*Local Courts (Civil Claims) Act 1970*".
- [4] **Section 17 Registrars of the court**
Omit "petty sessions" from section 17 (2).
Insert instead "the Local Court".
- [5] **Section 18 (5) (b) (as inserted by Schedule 2 [4] to the Liquor and Registered Clubs Legislation Amendment Act 1997)**
Omit ", none of which is a large scale function".
- [6] **Section 51A (3) (as inserted by Schedule 2 [10] to the Liquor and Registered Clubs Legislation Amendment Act 1997)**
Omit "subsection (2) (b)". Insert instead "subsection (2) (a)".

[7] Section 56 Fee for grant of licence

Omit section 56 (3).

[8] Section 161 Authority to keep approved gaming devices

Omit "hotel, that:" from section 161 (11).

Insert instead "hotel:".

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Schedule 3 Amendment of Registered Clubs Act 1976

(Section 4)

- [1] Section 30 Rules of registered clubs** 5
Insert "(or a subclass of full members determined by a rule of the kind referred to in subsection (9))" before "are entitled" in section 30 (1) (a).
- [2] Section 30 (9) (a)**
Omit "annual".
- [3] Section 55 False or misleading statements** 10
Insert ", or could reasonably be expected to know" after "knows" in section 55 (1).
- [4] Section 87 Rate of duty for gaming machines (as inserted by Schedule 3 [9] to the Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998)** 15
Omit "subsection (7)" from section 87 (5).
Insert instead "subsection (10)".
- [5] Section 87AA Problem gambling policy (as inserted by Schedule 3 [9] to the Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998)** 20
Omit "section 87 (8) and (9)" from section 87AA (2).
Insert instead "section 87 (11) and (12)".
- [6] Schedule 2 Transitional provisions (as amended by Schedule 3 [18] to the Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998)** 25
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: 30

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- (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: 5
- (a) the sum of \$132,453, and 10
- (b) an amount equal to 25.22% of the amount by which the profits so derived exceed \$625,000.
- [7] Schedule 2, clause 78 (5) (as inserted by Schedule 3 [18] to the Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998)** 15
- 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%. 20
- [8] Schedule 2, clause 79 (5) (a) (as inserted by Schedule 3 [18] to the Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998)** 25
- Omit the paragraph. Insert instead:
- (a) in the sum of \$120,750, and

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Schedule 3 Amendment of Registered Clubs Act 1976

**[9] Schedule 2, clause 80 (3) (as inserted by Schedule 3 [18] to the
Liquor and Registered Clubs Legislation Amendment
(Community Partnership) Act 1998)**

Omit “(apart from the months of December 1997 and January
1998)” from clause 80 (3).

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