



New South Wales

Alcoholic Beverages Advertising Prohibition Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to encourage a healthier lifestyle:

- (a) by prohibiting advertising and other promotional activities aimed at assisting the sale of alcoholic beverages and consequently reducing the incentive for people to consume alcohol, and
- (b) by providing for the declaration of local option areas within which the purchase, sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.

The Bill also establishes the Alcohol Advertising Prohibition Committee which will be required to prepare a timetable for the removal of advertisements promoting alcoholic beverages and the termination of sponsorships related to the promotion of any such beverages.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 provides that the proposed Act will bind the Crown.

Clause 4 states the purposes of the proposed Act as the following:

- (a) the discouragement of alcohol consumption by:
 - (i) persuading young people not to drink and not to abuse alcoholic beverages,
 - (ii) limiting exposure of young people and children to persuasion to drink alcoholic beverages,
 - (iii) encouraging drinkers of other beverages not to start drinking alcoholic beverages,
 - (iv) assisting those who wish to limit or give up alcohol consumption,
- (b) the reduction of alcohol-related:
 - (i) domestic violence,
 - (ii) deaths,
 - (iii) road accidents,
 - (iv) crimes and other violence,
- (c) the prevention of alcohol-related illness (such as cirrhosis of the liver),
- (d) the reduction of the harmful impact of alcohol in the home and in workplaces and industry generally.

Clause 5 defines certain terms used in the proposed Act.

Part 2 Offences relating to promotion of alcoholic beverages

Clause 6 prohibits the commercial advertising of alcoholic beverages:

- (a) where the advertisement can be seen or heard from a public place, or
- (b) on radio or television, if there is a material benefit to the owner of the radio or television station, or
- (c) on unsolicited things distributed to the public, or
- (d) by means of articles (such as newspapers or books) sold, hired or supplied for some benefit,

but does not prohibit any such advertising that is done within 5 years after the introduction of this Bill into Parliament (or within such shorter period as may be

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fixed by a regulation) if it is done in accordance with a contract or arrangement made before the introduction of this Bill into Parliament, or any such advertising that is:

- (e) in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book, or
- (f) in or on a package or carton containing an alcoholic beverage, or
- (g) in a shop or similar retail outlet where alcoholic beverages are offered or exposed for sale, or
- (h) on documents used in the ordinary course of business, or
- (i) otherwise exempted under the proposed Act.

The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,500) and for subsequent offences is 100 penalty units (currently \$11,000).

The maximum penalty for a first offence, if committed by a body corporate, is 200 penalty units (currently \$22,000) and for subsequent offences is 400 penalty units (currently \$44,000).

An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a body corporate) may be imposed in the case of a continuing offence.

Clause 7 prohibits promotional "competitions" and other prescribed schemes designed to promote the sale, or generally to promote the drinking of, alcoholic beverages.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.

Clause 8 prohibits the offering, giving or distributing of free samples of alcoholic beverages to promote the sale of such products, except to manufacturers, distributors or retailers of alcoholic beverages or their employees or at wineries, vineyards or breweries.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.

Clause 9 prohibits the promotion of, or agreements to promote, alcoholic beverages or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on those terms, subject to certain exceptions and exemptions.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.

Clause 10 allows the Minister to grant exemptions from the requirements of proposed section 6 or 9 in limited circumstances. No exemption will be effective after the fifth anniversary of the date of introduction of this Bill into Parliament.

Part 3 Reintroduction of local option

Clause 11 allows a request for the declaration of a local option area to be made to the Minister, but only if it is supported by a petition signed by at least 10% of the enfranchised residents of the proposed area or, if the proposed area is part of a ward, of the whole of the ward.

Clause 12 empowers the Minister to declare a local option area, but only with the agreement of the local council that there exists a particular alcohol-related problem in the proposed area.

Clause 13 empowers the Minister to rescind a declaration of a local option area, but only with the consent of the local council and after it has been in force for at least 6 months.

Clause 14 requires notice of the declaration of a local option area, and of any rescission of such a declaration, to be published in the Gazette before it is effective.

Clause 15 provides that a local option area will be effective for the period of not less than 3 nor more than 5 years specified in the declaration of the area, unless sooner rescinded.

Clause 16 creates an offence if, in a declared local option area and while the relevant declaration is in force, anyone buys, sells or (for a material benefit) delivers, an alcoholic beverage or consumes any such drink in a public place. Any drink the subject of such an offence, and any bottle or other container in which it is contained, is forfeited to the Crown. A licensee under the *Liquor Act 2007* will lose the licence if prohibited sales are made from the licensed premises.

The regulations may create specific exemptions from such an offence.

Part 4 Alcohol Advertising Prohibition Committee

Clause 17 establishes the Alcohol Advertising Prohibition Committee which will consist of 5 members appointed by the Minister.

Clause 18 requires the Committee to provide the Minister with a timetable for the progressive withdrawal of advertising and promotional activities relating to alcoholic beverages.

Clause 19 requires the Minister to promote regulations providing for the progressive withdrawal of such advertising and promotional activities.

Clause 20 provides for the Director-General of the Ministry of Health to provide the Committee with the resources necessary for it to exercise its functions.

Part 5 Enforcement

Clause 21 allows the Local Court to order the removal of an advertisement for an alcoholic beverage that is displayed in contravention of the proposed Act, or that was originally lawfully displayed but is required to be removed under the scheme for removal of such advertisements provided by the proposed Act.

Clause 22 empowers the entry of premises (unless used for a dwelling) to remove advertisements under such an order.

Clause 23 creates an offence if an *authorised officer* who is required by such an order to remove an advertisement is intimidated or obstructed in giving effect to the order.

Clause 24 requires the consent of the Director-General of the Ministry of Health to proceedings for an offence against the proposed Act.

Clause 25 fixes maximum penalties for certain of the offences against the proposed Act.

Clause 26 provides that those offences may be dealt with summarily before the Local Court or on indictment.

Clause 27 allows prosecution of the persons involved in the management of a body corporate for offences committed by the body corporate.

Part 6 General

Clause 28 bars civil proceedings against a person for doing, or omitting to do, anything which is done or omitted to be done in compliance with the proposed Act.

Clause 29 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 30 requires health warnings to be displayed on packaging for alcoholic beverages in accordance with the regulations.

Clause 31 provides that, before 4 years expire after assent to the proposed Act, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

Schedule 1 Provisions relating to Alcohol Advertising Prohibition Committee

Clause 1 requires nominations for membership of the Committee to be sought by the Minister.

Clause 2 allows a member a term of office of not more than 4 years, fixed by the Minister.

Clause 3 fixes a quorum of 3 members for a meeting of the Committee.

Clause 4 requires the Chairperson of the Committee to preside over its meetings.

Clause 5 states how decisions of the Committee are made.

Clause 6 requires the Minister to call the first meeting of the Committee.

Clause 7 allows the Committee to fix the procedure for its meetings.