



Legislative Council

Licensing And Registration (Uniform Procedures) Bill Hansard - Extract

12/06/2002

Second Reading

The Hon. CARMEL Tebbutt (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [9.22 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The Licensing and Registration (Uniform Procedures) Bill 2002 arises from the establishment of the NSW Government Licensing Project in July 2001.

This major Government initiative aims to provide a single IT system to administer licensing processes across NSW Government agencies.

A survey of licensing agencies conducted in 2000 found there are some 200 different types of licences issued in NSW. These are currently administered by 28 separate licensing authorities in NSW using in excess of 70 different IT systems. Many of these systems are nearing the end of their economic life and the cost to replace or enhance them individually would be prohibitive. Instead, providing a single IT system across all agencies is expected to save the people of NSW \$70 million in system replacement and enhancement costs.

This project is an important contribution to the Government's commitment to provide the people of NSW with the option of conducting their business with Government agencies electronically, if they so choose.

The NSW Government Licensing System will augment existing mail and counter services for licensees with Internet access to apply for and renew licences. It will also assist in consumer protection by allowing consumers to access public registers of licensees online. This will give consumers very ready access to information to confirm whether any person claiming to hold a particular licence actually does so.

The system will provide citizens and businesses of NSW with a consistent face of government in their dealings with NSW licensing agencies by applying uniform processes to the administration of licences.

The system will initially be implemented in:

- the Department of Fair Trading;
- the WorkCover Authority;
- the National Parks and Wildlife Service; and
- the Department of Gaming and Racing.

It will apply to a diverse range of business, occupational and other licences issued by these agencies such as building contractors licences, authorities to conduct charitable fundraising events and registration of items of plant and equipment.

The Licensing System will subsequently be implemented in the remaining licensing agencies following an analysis of their functional requirements against the system.

The licences which are to be administered using the Licensing System are issued under a range of licensing Acts which have differing provisions for very similar processes such as application and renewal. A more uniform legislative framework for these procedures is required in order to reduce the complexity and cost of the new system.

The Bill aims to

- remove any barriers to on-line transactions which may be inherent in existing licensing legislation;
- provide a consistent legislative framework to enable the development of a generic IT solution that will provide improvements and consistency in customer service across government; and
- facilitate future changes, for example the administrative procedures and system will already be in place for new licensing schemes.

The Bill has been drafted in close collaboration with the four initial agencies and the Department of Health. The remaining 24 identified licensing agencies were also included as part of a broad consultation process involving stakeholders across the broad range of licence types covered by the Bill. Overall, there has been very strong stakeholder support for the Bill.

The Bill provides the following:

- a standard set of uniform procedures to be used by agencies when assessing and issuing licences or registrations.
- clarification that certain provisions of the Electronic Transactions Act do apply to licensing transactions under the proposed legislation; and
- importantly, creation of an offence under the Crimes Act for the provision of false information in relation to a licensing transaction.

The Bill provides the uniform procedures in three separate Parts, each Part applying specifically to licensing schemes, registration schemes generally and to the registration of health professionals. The provisions of each of these Parts essentially mirror each other, with some changes in language to reflect the differences between a licensing and a registration system. For the sake of simplicity, in any further comment on this Bill I will refer to a licence as a generic term which includes both a licence and a registration.

The uniform provisions of the Bill replace the procedural provisions of each licensing or registration Act with a common procedural framework for all licences, that are to be administered using the NSW Government Licensing System. The Bill does not make any changes to the policy issues relating to licences such as the authority that is given to a licence holder, the eligibility requirements for holding a licence or the disciplinary procedures for a licensee who acts in breach of the licence. These are matters which are quite rightly left for the principal licensing Acts to deal with.

Under the Bill's uniform provisions, applications can be made to the relevant licensing authority by any individual, partnership or corporation that satisfies the requirements of the relevant licensing legislation. Applications cover new licences or an amendment, transfer, renewal or restoration of an existing licence.

The Bill provides for a licensee to apply to have a licence amended at any time while the licence is in force.

Where the relevant licensing legislation allows for a licence to be transferred, an application for transfer may be lodged at any time while the licence is in force. Such an application must be submitted jointly by the licence holder and the transferee.

An application for renewal of a licence may be made within a specified period before the licence expires. The specified period depends upon the original period of the licence. The application must also specify the term of licence sought if this is applicable to the type of licence in question.

A licence which has not been renewed prior to its expiry date may be restored provided that the application is lodged within three months of the date of expiry (or such other period as is set by the relevant licensing Act) and payment of a restoration fee is made.

An application for the replacement of a licence may be made if the licence is lost, damaged or destroyed.

To enable licensing transactions to be conducted on line, this Bill specifically provides for applications to be lodged either in writing or electronically. Written applications must be signed by the applicant and, for a transfer of licence, by the transferee. Electronic applications must be authenticated in a manner approved by the relevant licensing agency. This could be by use of a pin number or a digital signature certificate.

The level of fees will continue to be set by the primary licensing Act. The Bill does however, require agencies to identify that portion of an application which is a processing fee, separate from the annual licence fee. It also provides for the processing fee to be retained by the agency if the application is cancelled. Agencies currently have different practices in relation to the refund of application fees. This provision provides applicants with consistent expectations about the refund of fees.

For some licence types, there may be a reduction in application fees when the application is lodged electronically. The fee reduction is aimed at encouraging the uptake of the electronic option and to reflect any resulting reduction in data entry costs for licensing agencies.

The agency may request in writing any additional information which it may require to make a decision on the application. If the applicant fails to provide the information within 14 days after the request [or such other period as is set by the primary licensing Act] the agency may choose to refuse the application. In this case the licence fee [but not the processing fee] would be refunded and the applicant would have no right of review regarding refusal of the application.

Where the primary licensing legislation requires an application to be advertised by the agency or the applicant, this must be in at least one daily newspaper circulating throughout NSW. The notice must indicate that any person may make a written submission on the application and indicate the procedure for doing so. The closing date must be between 14 and 28 days from the date the notice is published.

The applicant may withdraw an application before a decision is made. The application fees [except processing fees] are to be refunded in these circumstances.

For the purposes of lodging an appeal, where the agency has not made a decision on the application within 14 days of lodgement [or such other period as is set by the licensing legislation], the application is deemed to have been refused. The agency is not prevented from continuing to assess the application after this time. A "stop the clock" mechanism exists during any period where:

- additional information is requested from the applicant;

- there is an advertised period for making objections; or
- the agency is required to refer to a third party for consideration of some part of the application or for assessment.

Notice of the decision on an application must be provided to the applicant and any objector within 14 days of the decision [or such other period as is set by the licensing legislation]. Where an application is refused the applicant or an objector may request written reasons for the decision.

Licences will be issued in a form approved by the principal officer of the agency and will contain specified particulars. Licences may be issued for a fixed period or as a continuing licence. Agencies will have the flexibility to determine the specific periods which may be offered in relation to a type of licence or for a specific licensee.

Where the application is refused the application fee [except for the processing fee] will be refunded.

Where the primary licensing legislation provides a right of review in relation to a licensing decision this will continue to apply. Where no review mechanism currently exists a right of review by the Administrative Decisions Tribunal will be available. The right of review extends to an applicant for any licensing process or for an objector in relation to an advertised application, who is aggrieved by the licensing decision.

Licence holders will be required to notify any changes to their licence particulars within 14 days of the change occurring [or such other period as set by the licensing legislation].

In the past it has been difficult for agencies to determine the currency of information held about continuing licences. These licences are issued once and remain valid for the lifetime of the person or the piece of plant and equipment to which they relate. Holders of continuing licences will be required to provide a periodic return confirming that licence particulars have not changed. Licensing agencies will be able to determine how frequently such returns should be completed. This requirement ensures that licensing databases relating to continuing licences remain current.

A periodic administration fee will be paid by holders of continuing licences.

An evidentiary certificate issued by the licensing agency, stating the status of a licence on any particular date or period, will be admissible as evidence in legal proceedings.

Uniform requirements for legal service of notices relating to the licence process will apply. These reflect current practice for the service of notices and also incorporate new mechanisms for the applicant or licensee to elect to receive these electronically.

Facsimile applications will have the same legal effect as an original.

The licensing agency will have the power, if it so chooses, to recover unpaid licensing fees as a debt in any court of the appropriate jurisdiction.

The principal officer of the licensing agency may authorise another person to exercise his or her authority in relation to licensing procedures under the Bill.

The Bill confirms that the methods specified by the Electronic Transactions Act for verification of the sending and receiving of a document electronically will apply to licensing transactions.

The Bill includes amendments to the Business Names Act so that the date, place of birth and residential address of the person who registers the business name do not form part of the public register. This protects the privacy of this personal information and allows their use as part of the procedures to verify the identity of the person when conducting subsequent transactions in relation to the registration of their business name.

The Bill also amends the Business Names Act to remove any barriers to conducting transactions online. The Business Names Registration System will not be replaced by the Government Licensing System in the initial phases of the project. Rather, these amendments to the Act will enable an online capacity to be attached to the existing business names system.

The Bill also proposes the removal of any requirements for information to be provided in the form of statutory declarations as these would constitute a barrier to electronic transactions. To support this change a new penalty for the provision of false information in relation to licensing is proposed under the Crimes Act 1900. The maximum penalty for this offence will be 2 years imprisonment or a fine of \$22,000, or both. These are increased penalties which are more in line with the type of penalties applicable under the Oaths Act in relation to the provision of false information in a statutory declaration.

In summary, the Bill reflects current practice, while providing a consistent legislative framework for the procedural aspects of licensing schemes without impacting on the policy issues that the licensing schemes were established to address. The changes will provide some consistency of procedures to make system design viable across such a broad range of licence and registration types without making significant impacts on licence holders.

Most importantly, the Bill will enable licensing transactions to be conducted online in NSW. Yet another example of this Government's commitment to the innovative use of information technology to enhance the economic and social wellbeing of the State.

I commend the Bill to the House.