National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004

Explanatory note

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

Overview of Bill

The National Competition Policy (***NCP***) reform program was established on 11 April 1995 under the auspices of the Council of Australian Governments. The NCP is implemented through three agreements:

(a) the *Conduct Code Agreement*,

(b) the *Competition Principles Agreement*,

(c) the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*.

Under the *Competition Principles Agreement*, all governments agreed to put in place a range of structural reforms, including the review and reform of all legislation that restricts competition. Reform of legislation is required unless the benefits of restrictions to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

In return for complying with the obligations set out in the three NCP agreements, including legislation review and reform, the Commonwealth agreed to provide annual competition payments to the States and Territories. The NCP agreements recognised that while the States and Territories have responsibility for implementing the major competition reforms, much of the financial dividend from the economic growth arising out of NCP reforms accrues to the Commonwealth rather than the States and Territories through higher income tax receipts. Competition payments to the States and Territories represent their share of the financial benefits arising from the NCP reforms. In 2003–2004, New South Wales' maximum competition payment entitlement is $254.4 million.

The National Competition Council (***NCC***) has assessed New South Wales as having fulfilled all of its obligations under the three NCP agreements, with the exclusion of certain legislation review and reform activity. Among other areas, the Council has expressed dissatisfaction in relation to the degree of reform undertaken in the regulation of liquor.

The Commonwealth has accepted the NCC's recommendation to impose a penalty for New South Wales' 2003–04 competition payments of $50.8 million. $12.7 million of this penalty specifically applies to incomplete reform in respect of liquor regulation. The legislative amendments made by this Bill seek to ensure that this penalty is not imposed in future years.

The object of this Bill is to amend the *Liquor Act 1982* as follows:

(a) to remove the "needs test" that currently applies in relation to hotelier's licences and off-licences (retail) and to replace it with a social impact assessment process in connection with applications for the grant or removal of such licences,

(b) to provide that an off-licence (retail) that relates to a service station cannot be granted,

(c) to provide that the existing restrictions on granting an off-licence (retail) that apply in relation to convenience stores will also apply to other general stores such as mixed business shops, corner shops and milk bars,

(d) to provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations instead of being fixed by the Liquor Administration Board,

(e) to provide that an annual fee will be payable in respect of a hotelier's

licence or an off-licence (retail),
(f) to make other ancillary and consequential amendments.
Outline of provisions
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 1 July 2004, unless sooner commenced by proclamation.
Clause 3 is a formal provision that gives effect to the amendments to the *Liquor Act 1982* set out in Schedule 1.
Schedule 1 Amendments
Replacement of "needs test" with social impact assessment process
At present under section 45 (2) of the *Liquor Act 1982* (the ***Principal Act***), an objection to the grant by the Licensing Court of an application for, or for the removal of, a hotelier's licence or an off-licence to sell liquor by retail (eg a bottle shop) may be taken on the ground that the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood. **Schedule 1 [4]** omits section 45 (2) so as to remove the taking of an objection on such a ground. **Schedule 1 [2], [3], [5]–[7] and [16]** are consequential amendments.
In place of the current "needs test" in relation to hoteliers' licences and offlicences (retail), **Schedule 1 [17]** inserts a new Division 6A into Part 3 of the Principal Act that provides for a social impact assessment process in relation to applications for the grant or removal of such a licence. Under the new Division, the Licensing Court cannot grant such an application unless a social impact assessment has been provided to the Liquor Administration Board in connection with the application and the Board has approved the social impact assessment. The regulations may make provision with respect to the requirements of a social impact assessment and the applicant will be required to publicly advertise the matter. In approving a social impact assessment, the Board must be satisfied that the overall social impact of the application being granted will not be detrimental to the local community or the broader community.
Licences relating to general stores and service stations
At present under section 49C (2) of the Principal Act, an off-licence (retail) that relates to a convenience store or a service station may not be granted unless the Licensing Court is satisfied that no other take-away liquor service is reasonably available in the neighbourhood and the licence would not encourage drinkdriving or other liquor-related harm. **Schedule 1 [8]–[10]** amend section 49C in two respects. Firstly, service stations will be prevented from being granted an off-licence (retail) in any circumstances, and the definition of ***service station*** is replaced so that it refers to a building or place used primarily for the fuelling of motor vehicles. Secondly, the term ***convenience store*** is replaced with ***general store*** so that the restriction on granting an off-licence (retail) to such a store will extend to other similar stores such as mixed business shops, corner shops and milk bars regardless of their opening hours.
Licence fees
Schedule 1 [11] and [12] provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations. At present, the fee for the granting of such a licence is fixed by the Board. **Schedule 1 [13] and [14]** are consequential amendments.
Schedule 1 [15] provides that an annual fee prescribed by (or determined in accordance with) the regulations will be payable in respect of a hotelier's licence or an off-licence (retail). The fee will be payable within 21 days of 31 July in each year and the licence will be cancelled if the fee is not paid. **Schedule 1 [1]** is a consequential amendment.

Savings and transitional provisions

Schedule 1 [18] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act, and

Schedule 1 [19] provides that the proposed amendments that replace the "needs test" with the social impact assessment process will not apply to pending applications under the Act. The amendments relating to service stations and general stores will extend to pending applications under the Act.