

LIQUOR (AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Registered Clubs (Entertainment) Amendment Bill 1986.

The object of this Bill is to amend the Liquor Act 1982—

- (a) to exempt a person selling small amounts of liquor as part of a gift containing food or flowers from the need to obtain a licence under the Principal Act;
- (b) to enable the Licensing Court to classify an on-licence to sell liquor at a function as a special on-licence and so cause a fee of 10 per cent of liquor purchases to be paid rather than a nominal fee;
- (c) to make it an offence to sell or supply liquor to a minor, whether or not on licensed premises, and to obtain liquor for a minor from licensed premises;
- (d) to enable civil proceedings to be taken by a vendor of liquor against a person directly or indirectly interested in the profits of a business carried on at licensed premises if the licensee defaults in the payment of liquor purchased from the vendor; and
- (e) to make other miscellaneous amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS TO THE LIQUOR ACT 1982

Schedule 1 (1) amends section 6 of the Principal Act to exempt a person selling not more than 2 litres of liquor with a gift containing food or flowers from the requirement to obtain a licence under the Principal Act.

Schedule 1 (2) amends section 20 of the Principal Act to enable the Liquor Administration Board to vary a condition of a licence relating to the keeping, use and operation of approved amusement devices imposed by the Licensing Court. The Board may allow the keeping, use and operation of not more than 5 approved amusement devices, which is the same number as that which the Court is empowered to approve.

Schedule 1 (3) inserts proposed section 35A into the Principal Act to allow the Licensing Court to vary the trading hours of a vessel if adequate sleeping berths are provided on the vessel for the use of passengers.

Schedule 1 (4) amends section 38 of the Principal Act to provide that an applicant for an on-licence relating to a vessel or an aircraft must furnish an affidavit with the application stating the persons—

- (a) who are directly or indirectly interested in the application; or
- (b) who will be directly or indirectly interested in the business, or the profits of the business, to be carried on pursuant to the licence if the application is granted.

Schedule 1 (5) inserts proposed section 42A into the Principal Act to provide for a fee prescribed by the Governor-in-Council to accompany an application for the transfer of a licence. The fee for the transfer of the licence shall be reduced by the amount of the application fee.

Schedule 1 (6) amends section 51 of the Principal Act to enable the Licensing Court to classify an on-licence to sell liquor at a function as a special on-licence for which no fee is payable under section 56 of the Principal Act when the licence is issued.

Schedule 1 (7) and (8) amend sections 55 and 56 of the Principal Act in consequence of the amendment made by Schedule 1 (6).

Schedule 1 (9) amends section 61 of the Principal Act so as to remove the requirement that the records of a business carried on pursuant to a licence be produced on transfer of the licence if the persons directly or indirectly interested in the business after the transfer remain unchanged.

Schedule 1 (10) amends section 79 of the Principal Act to provide that a special on-licence does not cease to be in force at the end of a licensing period.

Schedule 1 (11) amends section 80 of the Principal Act to provide that the periodic licence fee for a special on-licence is 10 per cent of liquor sales at each function held pursuant to the licence.

Schedule 1 (12) amends section 82 of the Principal Act to give the secretary of the Liquor Administration Board, rather than the Board, the function of assessing licence fees. The secretary has power to refer any assessment to the Board for determination.

Schedule 1 (13) inserts proposed section 83A into the Principal Act to empower the Liquor Administration Board to give a refund of a licence fee if the licence is surrendered.

Schedule 1 (14) substitutes section 114 of the Principal Act to make it an offence to sell or supply liquor to a minor, whether or not on licensed premises, to obtain liquor for a minor from licensed premises and, in the case of a licensee, to allow liquor to be sold or supplied to a minor on the licensed premises. It is a defence if the defendant was the parent or guardian of the minor or was authorised by the parent or guardian or if the minor was of or above the age of 14 years and was believed by the defendant to be of or above the age of 18 years.

Schedule 1 (15) amends section 138C of the Principal Act so as to enable a person to sell approved amusement devices without the need to obtain a licence if the sale is in connection with the transfer of a hotelier's licence.

Schedule 1 (16) amends section 140 of the Principal Act to provide that an allegation in an application, objection, information or complaint that specified hours are the trading hours of specified licensed premises is evidence of the truth of the allegation.

Schedule 1 (17) amends section 141 of the Principal Act to enable certificate evidence to be given as to the non-payment of an instalment of a licence fee or a penalty for late payment of a licence fee.

Schedule 1 (18) inserts proposed section 142A into the Principal Act to place on the defendant the onus of proving that the exemption referred to in Schedule 1 (1) applies.

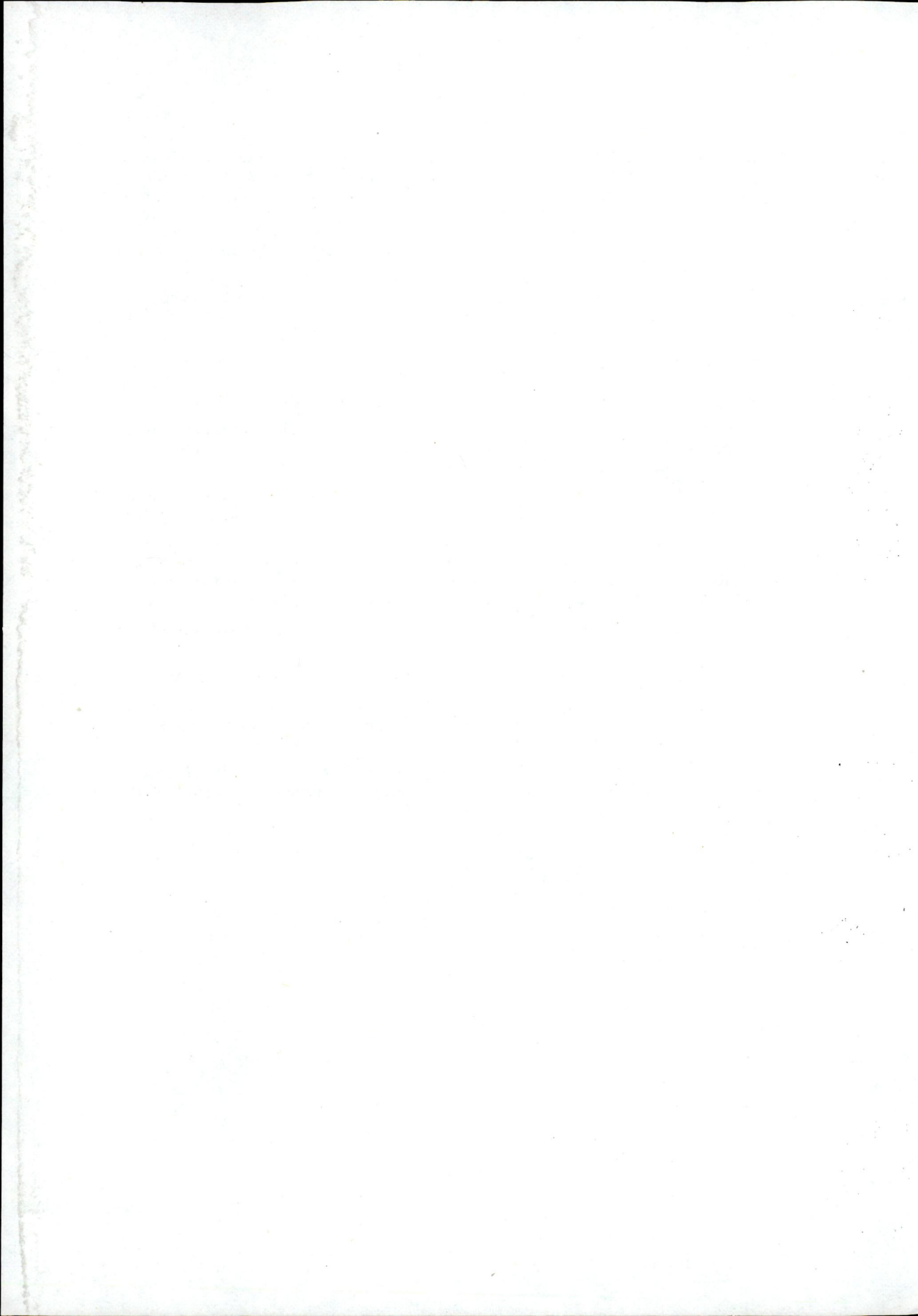
Schedule 1 (19) amends section 148 of the Principal Act to provide that the lodging of an appeal against the cancellation or suspension of a licence which authorises the sale of liquor does not act as a stay of the cancellation or suspension unless the Licensing Court of its own motion or on application being made to it otherwise directs.

Schedule 1 (20) amends section 149 of the Principal Act in consequence of the amendment made by Schedule 1 (19).

Schedule 1 (21) inserts proposed sections 154A and 154B into the Principal Act.

Proposed section 154A allows a vendor of liquor to take proceedings against the persons directly or indirectly interested in a business carried on pursuant to a licence if the licensee defaults in the payment for liquor supplied by the vendor.

Proposed section 154B requires the holder of an amusement device seller's licence or an amusement device technician's licence to notify the Principal Registrar of the Licensing Court when changing employers.



LIQUOR (AMENDMENT) BILL 1986

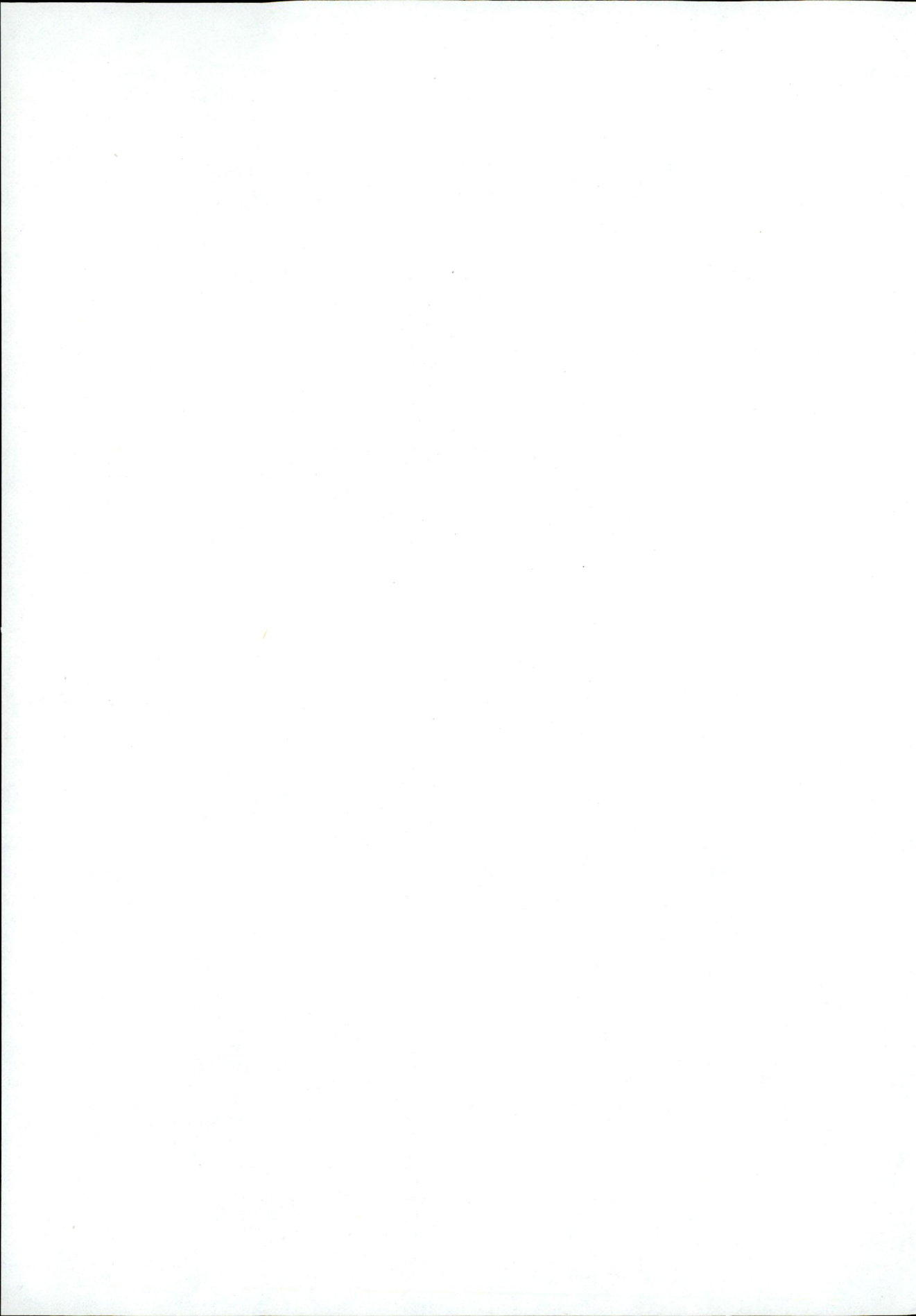
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 147, 1982
4. Savings

SCHEDULE 1—AMENDMENTS TO THE LIQUOR ACT 1982



LIQUOR (AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Liquor Act 1982 in relation to certain exemptions from that Act, the offence of selling liquor to a minor, the assessment of licence fees and in other respects.

Liquor (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Liquor (Amendment) Act 1986".

Commencement

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.
- 10 (2) The provisions of Schedule 1 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) Section 3, in its application to a provision of Schedule 1, shall commence on the day on which the provision commences.

15 Amendment of Act No. 147, 1982

3. The Liquor Act 1982 is amended in the manner set forth in Schedule 1.

Savings

4. The provisions of section 148 (3) and section 149 of the Liquor Act 20 1982 (as those provisions were in force immediately before their amendment by this Act) shall continue to apply to appeals against the suspension or cancellation of licences lodged before the commencement of the amendments.

SCHEDULE 1

25

(Sec. 3)

AMENDMENTS TO THE LIQUOR ACT 1982**(1) Section 6 (Application of Act)—****(a) Section 6 (g)—**

Omit "or" where lastly occurring.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*

(b) Section 6 (h), (i)—

At the end of section 6 (h), insert:

; or

(i) liquor where—

- 5 (i) the sale is made as part of a sale of flowers or food designed to be delivered as a gift to a person (not being the purchaser) specified by the purchaser;
- 10 (ii) the liquor is delivered together with the flowers or food to the person so specified at a place other than the premises at which the business of the vendor is conducted;
- (iii) the liquor has been purchased by the vendor from the holder of a hotelier's licence or an off-licence to sell liquor by retail; and
- 15 (iv) the volume of liquor supplied in respect of each gift delivered by the vendor does not exceed 2 litres.

(2) Section 20 (**Conditions of licences**)—

Section 20 (2B)—

After section 20 (2A), insert:

- 20 (2B) The Board may, subject to section 20A, vary a condition of a licence imposed by the court under subsection (2A) so as to authorise the keeping, use and operation of, in accordance with the provisions of this Act, not more than 5 approved amusement devices on premises to which the licence relates.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*

(3) Section 35A—

After section 35, insert:

On-licence (vessel)—variation of trading hours

5 35A. (1) Subject to this section, the court may, in respect of a particular vessel, and on payment of the prescribed fee, vary the trading hours specified in section 35 in such manner as it thinks desirable.

10 (2) The court may not grant an application for a variation of trading hours unless adequate sleeping berths for the use of passengers are provided on the vessel to which the application relates.

(3) If a variation of trading hours is granted in relation to a vessel, the variation ceases to have effect if adequate sleeping berths cease to be provided on the vessel for the use of passengers.

15 (4) The court may, at any time, on the application of the licensee or the licensing inspector—

(a) revoke a variation of trading hours granted under this section; or

20 (b) grant a further variation of trading hours varied under this section.

(4) Section 38 (**Affidavit as to interested persons**)—

Section 38 (1)—

Omit “relating to a vessel or an aircraft or”.

(5) Section 42A—

25 After section 42, insert:

Fee for application of transfer of licence

30 42A. An application for a transfer of a licence under section 41 or 42 shall be accompanied by the amount of the prescribed fee for the application and, if the application is granted, the fee prescribed by section 61 (8) or (9), as the case may be, is reduced by that amount.

SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*(6) Section 51 (**Grant of on-licence (function)**)—

Section 51 (4)—

After section 51 (3), insert:

5 (4) The court may, if it thinks it appropriate to do so, when granting an application for an on-licence to sell liquor at a function, classify the licence as a special on-licence to sell liquor at a function.

(7) Section 55 (**Issue of licence, etc.**)—

Section 55 (1)—

10 After “fee”, insert “(if any)”.

(8) Section 56 (**Fee for grant of licence, etc.**)—

(a) Section 56 (1) (h)—

After “function”, insert “, other than a special on-licence referred to in section 51 (4)”.

15 (b) Section 56 (3)—

After “function”, insert “, other than a special on-licence referred to in section 51 (4)”.

(9) Section 61 (**Grant of transfer of licence**)—

Section 61 (6B)—

20 After section 61 (6A), insert:

25 (6B) Subsection (6) (a) does not apply to or in respect of the transfer of a licence if the persons interested, as referred to in section 38 (3), in the business or profits of the business carried on pursuant to the licence are the same persons specified in the affidavit accompanying the application for the transfer who will be so interested in the business or profits of the business if the application is granted.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*(10) Section 79 (**Duration of licence**)—

(a) Section 79 (1)—

Omit “, (3), (4) and (5)”, insert instead “and (3)”.

(b) Section 79 (2)—

5 After “function”, insert “, other than a function for which a special on-licence referred to in section 51 (4) has been granted,”.

(c) Section 79 (3)—

After “subsection (2)”, insert “or a special on-licence referred to in section 51 (4)”.

10 (11) Section 80 (**Periodic licence fee**)—

(a) Section 80 (1)—

After “(3)”, insert “or 51 (4)”.

(b) Section 80 (1A)—

After section 80 (1), insert:

15 (1A) A fee is payable to the Board for a special on-licence referred to in section 51 (4) while the licence is in force or under suspension and is so payable in respect of each period that is prescribed for the purposes of subsection (1) and succeeds the grant of the licence, including the period so prescribed during
20 which the licence is granted.

(c) Section 80 (2)—

After “subsection (1)”, insert “or (1A)”.

(12) Section 82 (**Assessment of fee**)—

(a) Section 82 (1), (4)–(5)—

25 Before “Board” wherever occurring, insert “secretary of the”.

(b) Section 82 (2) (b)—

Before “Board”, insert “secretary of the”.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*

(c) Section 82 (2)—

Omit “it” wherever occurring, insert instead “the secretary”.

(d) Section 82 (2)—

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Omit “the Board” where secondly occurring, insert instead “the secretary”.

(e) Section 82 (6)—

After section 82 (5), insert:

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(6) The secretary of the Board may refer any assessment of the amount of a licence fee to the Board for determination and the other provisions of this section shall apply to the assessment of the amount of a licence fee by the Board in the same way as they apply to the assessment of the amount of a licence fee by the secretary of the Board.

(13) Section 83A—

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After section 83, insert:

Refund of fee

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83A. If the surrender in writing of a licence is accepted by the Board after payment of the licence fee for the licensing period that next succeeds the licensing period during which the surrender was accepted, the Board shall, on application, refund to the person who, in the opinion of the Board, is entitled to the refund such part of the licence fee so paid as is proportionate to the unexpired portion of the licensing period in respect of which the payment was made.

25 (14) Section 114—

Omit the section, insert instead:

Sale or supply of liquor to a minor

114. (1) A person shall not sell or supply liquor to a person under the age of 18 years.

30

Penalty: \$1,000.

Liquor (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*

(2) If it is proved in proceedings for an offence under subsection (1) that the sale or supply to which the offence relates took place on licensed premises and that the defendant was not the licensee, the maximum penalty for the offence is \$500.

5 (3) A licensee shall not, on the licensed premises, allow liquor to be sold or supplied to a person under the age of 18 years.

Penalty: \$1,000.

(4) A person shall not obtain liquor from licensed premises on behalf of a person under the age of 18 years.

10 Penalty: \$1,000.

15 (5) It is a defence to a prosecution for an offence under subsection (1) or (4) if it is proved that the person to whom the liquor was sold or supplied, or on whose behalf it was obtained, was of or above the age of 14 years and was, on reasonable grounds, believed by the defendant to be of or above the age of 18 years.

20 (6) It is a defence to a prosecution for an offence under subsection (1) (except in the case of a sale or supply which took place on licensed premises) if it is proved that the defendant was a parent or guardian of the person to whom the liquor was sold or supplied or was authorised to sell or supply liquor to the person by the parent or guardian.

25 (7) It is a defence to a prosecution for an offence under subsection (4) if it is proved that the defendant was a parent or guardian of the person on whose behalf the liquor was obtained or was authorised to obtain liquor on behalf of the person by the parent or guardian.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*(15) Section 138C (**Supply of approved amusement devices**)—

Section 138C (6)—

After section 138C (5), insert:

- 5 (6) This section does not apply to the supply or sale, in connection with the transfer of a hotelier's licence, of an approved amusement device by the transferor to the transferee or to a person who will be directly or indirectly interested in the business, or the profits of the business, after the transfer is effected.

(16) Section 140 (**Averments**)—

10 Section 140 (1) (d6)—

After section 140 (1) (d5), insert:

- (d6) that specified hours are the trading hours of specified licensed premises;

(17) Section 141 (**Evidence of certain matters**)—

15 Section 141 (1A) (a)—

After "specified licence", insert ", an instalment of the fee or a penalty for late payment of the fee".

(18) Section 142A—

Before section 143, insert:

20 **Proof of certain matters**

142A. In any proceedings for an offence under this Act, the defendant shall have the onus of proving that, because of section 6 (i), this Act does not apply to or in respect of the act or omission which constitutes the offence.

*Liquor (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*(19) Section 148 (**Appeal to Licensing Court**)—

Section 148 (3)—

Omit the subsection, insert instead:

5 (3) If the court cancels or suspends a licence (being a licence which authorises the sale of liquor) and an appeal is lodged against the decision, the lodging of the appeal does not operate to stay the cancellation or suspension unless the court, on application being made to it or of its own motion, otherwise directs.

(20) Section 149 (**Appeal against suspension or cancellation of licence**)—

10 (a) Section 149—

Omit “Subject to section 148 (3), where”, insert instead “Where”.

(b) Section 149—

After “licence”, insert “(not being a licence which authorises the sale of liquor)”.

15 (21) Sections 154A, 154B—

After section 154, insert:

Civil proceedings

20 154A. (1) A contract made with a licensee to sell liquor in accordance with this Act to the licensee shall be deemed, for the purposes only of subsection (2), to be a contract made jointly and severally with the licensee and the persons directly or indirectly interested in the profits of the business carried on pursuant to the licence.

Liquor (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE LIQUOR ACT 1982—*continued*

5 (2) If liquor is sold to a licensee under a contract referred to in subsection (1) and the licensee defaults in payment for the liquor, civil proceedings may be taken by the vendor of the liquor against all or any of the persons so referred to for recovery of the unpaid amount.

Notification of change of employer

10 154B. Where a person who is the holder of an amusement device seller's licence or an amusement device technician's licence commences or ceases employment with the holder of an amusement device dealer's licence, the person shall, before the commencement of or within 7 days after the cessation of the employment, as the case may be, give to the Principal Registrar notification in a form approved by the Principal Registrar of the commencement or cessation of the employment.

