

FIRST PRINT

LIQUOR (MISCELLANEOUS AMENDMENTS) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Registered Clubs (Miscellaneous Amendments) Bill 1990 is cognate with this Bill.

The objects of this Bill are to amend the Liquor Act 1982:

- (a) to provide for more flexible proceedings in the Licensing Court;
- (b) to remove the present ceiling of \$20,000 on the fee for granting an off-licence to sell liquor by retail; and
- (c) to increase other fees; and
- (d) to collate within a separate Part of the Act the provisions relating to minors; and
- (e) to enable the police to serve on juveniles infringement notices like those provided for under the Summary Offences Act 1988.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 gives effect to the Schedules of amendments.

SCHEDULE 1—THE LICENSING COURT

Schedule 1 (1) enables any licensing magistrate sitting as, or as a member of, the Licensing Court constituted as at first instance to deliver a signed opinion of another magistrate who sat as, or as a member of, the Licensing Court hearing a matter at first instance.

Schedule 1 (2) enables any licensing magistrate sitting as a member of the Licensing Court constituted as for an appeal to deliver a signed opinion of another magistrate who sat as a member of the Licensing Court hearing an appeal.

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Schedule 1 (3) provides for the making of regulations conferring on the Principal Registrar of the Licensing Court the jurisdiction of the court in relation to a matter to which there has been no objection.

SCHEDULE 2—FEE FOR GRANT OF LICENCE

Schedule 2 (a) makes a formal amendment.

Schedule 2 (b) removes the \$20,000 ceiling on the present fee payable on the granting of an off-licence to sell liquor by retail.

Schedule 2 (c)–(q) increases the other fees payable on the grant of a licence.

Schedule 2 (r) makes a consequential amendment.

SCHEDULE 3—MINORS

This Schedule brings together as a new Part 7A of the Act all the present provisions relating to minors together with certain new provisions.

Schedule 3 (1) inserts in the Act definitions of “minor” and “responsible adult”.

Schedule 3 (2) repeals the present section 87 (Authority for use of part of premises by minor) and Schedule 3 (4) re-enacts it as section 112—the first provision of the new Part 7A.

Schedule 3 (3) provides for the heading for the new Part 7A.

Schedule 3 (4) repeals the present section 112 (to be re-enacted in Part 8 as section 125A) and replaces it with a re-enactment of the present section 87.

Schedule 3 (5) repeals the present section 113 (to be re-enacted in Part 8 as section 125B) and replaces it with a new provision creating an offence relating to the production of false evidence of age.

The present sections 114–116 relate to minors and will remain unchanged.

Schedule 3 (6) amends the present section 117 which enables a minor to be on licensed premises in the company of any person who is at least 18 years of age. By the proposed amendment, the minor would be required to be in the company of a “responsible adult”. The persons to be regarded as responsible adults are to be described in the regulations.

The present sections 117A and 117B relate to minors and will remain unchanged.

Schedule 3 (7) inserts proposed sections 117C–117G. Of these:

Proposed section 117C would be a re-enactment of the present section 125A (which penalises the holder of a hotelier’s licence if an approved amusement device on the licensed premises is used by a minor).

Proposed section 117D would be a re-enactment of the present section 125B (which penalises a minor who uses an approved amusement device on licensed premises).

Proposed section 117E is a new provision enabling the regulations to prescribe the kind of evidence that would be acceptable as proof of age.

Proposed section 117F follows the Summary Offences Act 1988 in enabling a police officer, instead of bringing proceedings in a court against a juvenile offender, to serve an infringement notice requiring payment by the offender of \$50.

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Proposed section 117G precludes the imprisonment or detention of a minor who fails to pay a penalty imposed under the Act.

Schedule 3 (8) repositions the present heading to Part 8 of the Act as a consequence of the inclusion in the new Part 7A of some of the provisions at present included in Part 8.

Schedule 3 (9) re-enacts, as sections 125A and 125B in Part 8, the present sections 112 and 113 which do not relate to minors and are, by Schedule 3 (4) and (5), to be repealed and replaced.

SCHEDULE 4—OTHER AMENDMENTS

Schedule 4 (1) (a) replaces the existing definition of "liquor" with a more modern version.

Schedule 4 (1) (b) expands the definition of "race-meeting" to cover the situation where a race-meeting is postponed or abandoned.

Schedule 4 (2) requires one month's notice to be given before certain objections may be made, or certain questions raised, in proceedings before the Licensing Court.

Schedule 4 (3) renders discretionary, rather than mandatory, a refund of part of the fee for a licence cancelled after a complaint and provides for the deduction of a cancellation fee.

Schedule 4 (4) simplifies the procedure for obtaining a duplicate of a licence.

Schedule 4 (5) provides for the recovery, as a debt due to the Crown, of so much of a licence fee, or an instalment of a licence fee, as consists of unpaid duty payable in respect of an approved amusement device.

Schedule 4 (6) renders discretionary, rather than mandatory, a refund of part of the fee for a surrendered licence and provides for the deduction of a surrender fee.

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NEW SOUTH WALES



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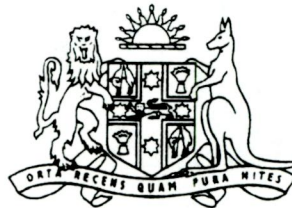
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LIQUOR (MISCELLANEOUS AMENDMENTS) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Liquor Act 1982 with respect to the supply of liquor to minors; to increase certain fees; and for other purposes.

See also: Registered Clubs (Miscellaneous Amendments) Bill 1990.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Liquor (Miscellaneous Amendments) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Liquor Act 1982 No. 147

3. The Liquor Act 1982 is amended as set out in Schedules 1–4.
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SCHEDULE 1—THE LICENSING COURT

(Sec. 3)

(1) Section 9 (Constitution of court at first instance):

After section 9 (4), insert:

(5) A signed opinion of a member of the court sitting as constituted under this section may be delivered by any licensing magistrate, whether or not the licensing magistrate who delivers the opinion is the magistrate, or one of the magistrates, who signed the opinion.

(2) Section 10 (Constitution of the court on appeal):

After section 10 (3), insert:

(4) A signed opinion of a member of the court sitting as constituted under this section may be delivered by any licensing magistrate, whether or not the licensing magistrate who delivers the opinion is the magistrate, or one of the magistrates, who signed the opinion.

SCHEDULE 1—THE LICENSING COURT—*continued***(3) Section 17 (Registrars of the court):**

After section 17 (3), insert:

(4) The regulations may provide for the exercise by the Principal Registrar of the jurisdiction of the court in relation to a matter to which there has been no objection.

SCHEDULE 2—FEE FOR GRANT OF LICENCE

(Sec. 3)

Section 56 (Fee for grant of licence etc.):

- (a) From section 56 (1), omit “prescribed fee for a licence is”, insert instead “prescribed fees for the granting of licences are as follows”.
- (b) From section 56 (1) (b), omit “, not exceeding \$20,000,”.
- (c) From section 56 (1) (c), omit “\$500”, insert instead “\$1,000”.
- (d) From section 56 (1) (d), omit “\$1,000”, insert instead “\$2,000”.
- (e) From section 56 (1) (e), omit “\$1,000”, insert instead “\$2,000”.
- (f) From section 56 (1) (f), omit “\$1,000”, insert instead “\$2,000”.
- (g) From section 56 (1) (g), omit “\$250”, insert instead “\$500”.
- (h) From section 56 (1) (h) (i), omit “\$25”, insert instead “\$50”.
- (i) From section 56 (1) (h) (ii), omit “\$250”, insert instead “\$500”.
- (j) From section 56 (1) (i), omit “\$250”, insert instead “\$500”.
- (k) From section 56 (1) (j) (i), omit “\$250”, insert instead “\$500”.
- (l) From section 56 (1) (j) (ii), omit “\$1,000”, insert instead “\$2,000”.
- (m) From section 56 (1) (j) (iii), omit “\$2,000”, insert instead “\$4,000”.
- (n) From section 56 (1) (k), omit “\$250”, insert instead “\$500”.

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SCHEDULE 2—FEE FOR GRANT OF LICENCE—*continued*

- (o) From section 56 (1) (l), omit “\$250”, insert instead “\$500”.
- (p) From section 56 (1) (m), omit “\$250”, insert instead “\$500”.
- (q) From section 56 (3), omit “\$250” wherever occurring, insert instead “\$500”.
- (r) From section 56 (4), omit “paragraph (a) excepted”, insert instead “except paragraphs (a) and (b)”.

SCHEDULE 3—MINORS

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) In section 4 (1), after the definition of “meal”, insert:
 “**minor**” means a person who has not attained the age of 18 years;
- (b) In section 4 (1), after the definition of “regulations”, insert:
 “**responsible adult**”, in relation to a minor, means a person described by the regulations as being a responsible adult for the purposes of this Act, whether the description is given:
 - (a) by reference to the relationship between the person and the minor; or
 - (b) in some other manner;

(2) Section 87 (**Authority for use of part of premises by minor**):
 Omit the section.

(3) Part 8:

- (a) Omit the heading, insert instead:

PART 7A—MINORS

- (b) Omit the heading to Division 1.

SCHEDULE 3—MINORS—*continued*

(4) Section 112:

Omit the section, insert instead:

Authority for use of part of premises by minor

112. (1) The Board may, on the application of the licensee or the Commissioner of Police and subject to any conditions that the Board or Commissioner may impose, authorise:

- (a) the use by a minor in the company of a responsible adult of a part of the premises to which a hotelier's licence relates; or
- (b) the use by minors under adult supervision of a part of the premises to which a hotelier's licence relates.

(2) An authorisation under subsection (1) (b) must be subject to a condition as to the required level of adult supervision of minors using a part of licensed premises pursuant to the authorisation.

(3) Authorisations may be granted under both paragraphs (a) and (b) of subsection (1) in respect of the same part of premises.

(4) If an authorisation under subsection (1) (b) is operating to authorise the use by a minor of a part of premises, any authorisation under subsection (1) (a) has no operation to the extent that it applies to that part of the premises.

(5) The Board may, on the application of the licensee or the Director or the Commissioner of Police:

- (a) revoke or vary an authorisation under subsection (1); or
- (b) impose any condition, or any further condition, to which such an authorisation is to be subject; or
- (c) revoke or vary any condition imposed under subsection (1) or paragraph (b).

(6) An authorisation under subsection (1) is in force only while all conditions to which it is subject are being complied with.

(7) On the commencement of this section, an authorisation that was in force under section 87 immediately before that commencement takes effect:

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SCHEDULE 3—MINORS—*continued*

- (a) if it was an authorisation under section 87 (1) (a)—as if it were an authorisation under subsection (1) (a) of this section; or
- (b) if it was an authorisation under section 87 (1) (b)—as if it were an authorisation under subsection (1) (b) of this section.

(5) Section 113:

Omit the section, insert instead:

Minor using false evidence of age

113. A minor who uses any evidence purporting to be evidence of his or her age in order to obtain entry to, remain in, or obtain liquor from, licensed premises, is guilty of an offence if the evidence is false in a material particular in relation to the minor.

Maximum penalty: 10 penalty units.

(6) Section 117 (**Minors on licensed premises**):

- (a) From section 117 (3), (4) (b), (4A) (a), (4B) and (5) (b), omit “87” wherever occurring, insert instead “112”.
- (b) From section 117 (3), omit “except”, insert instead “unless he or she does so”.
- (c) From section 117 (4) (b), omit “otherwise than”, insert instead “and does not do so”.
- (d) From section 117 (5) (b), omit “otherwise than”, insert instead “and is not”.
- (e) From section 117 (3), (4) (b), (5) (b) and (7), omit “person of or above that age” wherever occurring, insert instead “responsible adult”.

(7) Sections 117C–117G:

After section 117B, insert:

Licensee liable for use of approved amusement device by minor

117C. (1) If a person under the age of 18 years uses or operates an approved amusement device on premises to which a hotelier’s licence relates, the holder of the hotelier’s licence is guilty of an offence.

Maximum penalty: 20 penalty units.

SCHEDULE 3—MINORS—continued

(2) It is a defence to a prosecution for an offence under this section if it is proved that the person under the age of 18 years was over the age of 14 years and that:

- (a) before the commission of the offence; or
- (b) while the offence was being committed,

there was produced to the licensee, or to an employee or agent of the licensee, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was at least 18 years of age.

Use of approved amusement device by minor prohibited

117D. (1) A person who, while under the age of 18 years, uses or operates an approved amusement device kept on licensed premises is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under this section if it is proved that the person who used or operated the approved amusement device did so under the supervision of the holder of an approved amusement device technician's licence for the purpose only of receiving training and instruction in respect of the servicing, repair or maintenance of approved amusement devices.

Reasonable evidence of age

117E. Without precluding any other evidence that might reasonably be accepted as evidence that a person is at least 18 years of age, the regulations may make provision for the kind of evidence that, for the purposes of this Act, would be evidence to that effect.

Infringement notices for minors

117F. (1) A police officer to whom it appears that a minor has committed an offence under this Part may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served may, within a time specified in the notice, pay \$50 to a police officer so specified.

(2) A notice under this section may be served personally or by post.

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SCHEDULE 3—MINORS—*continued*

(3) If the amount of \$50 for an offence under this Part is paid under this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) This section is to be read as supplementing, and not as derogating from:

- (a) any other provision of this Act or any provision of the regulations; or
- (b) a provision of any other Act or of a regulation, by-law or ordinance under any other Act,

in relation to proceedings which may be taken in respect of offences.

Certain minors not to be detained

117G. A minor under the age of 16 years may not be imprisoned, or detained in a detention centre, as a consequence of a failure to pay a penalty under this Act.

(8) Part 8, headings:

Before section 118, insert:

PART 8—OFFENCES ETC.

Division 1—Offences

(9) Sections 125A, 125B:

Omit the sections, insert instead:

Production of licence

125A. (1) The holder of a licence who fails, without reasonable excuse, to produce the licence on demand being made on the licensed premises by:

- (a) a police officer; or
- (b) a special inspector,

is guilty of an offence.

Maximum penalty: 5 penalty units.

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SCHEDULE 3—MINORS—*continued*

(2) The onus of proving a reasonable excuse for the purposes of this section is on the licensee.

Holding more than one licence etc.

125B. A person who, at any one time:

- (a) holds more than one hotelier's licence; or
- (b) without the consent of the Board, has a financial interest in a hotelier's licence and a restaurant (whether or not it is a licensed restaurant); or
- (c) holds an off-licence to sell liquor by retail and an off-licence for a vigneron,

is guilty of an offence.

Maximum penalty: 5 penalty units.

SCHEDULE 4—OTHER AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) From section 4 (1), omit the definition of "liquor", insert instead:

"liquor" includes:

- (a) a beverage which, at 20° Celsius, contains more than 1.15 per cent ethanol by volume; and
- (b) anything that is not a beverage referred to in paragraph (a) but, for the purposes of sale, is held out to be beer, wine or spirits; and
- (c) any other substance prescribed by the regulations as liquor;

- (b) From section 4 (1), omit the definition of "race-meeting", insert instead:

"race-meeting" means:

- (a) a race-meeting within the meaning of the Gaming and Betting Act 1912; or
- (b) a meeting of people on a race-course:
 - (i) that takes place on a day arranged for a race-meeting referred to in paragraph (a) that has been, or is, postponed or abandoned; and

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SCHEDULE 4—OTHER AMENDMENTS—*continued*

- (ii) that, but for being postponed or abandoned, would have been the race-meeting arranged for that day at the race-course;

(2) Section 18 (**Court may grant licences**):

After section 18 (10), insert:

(11) Unless at least 1 month's notice of intention to do so is given as prescribed, an objection or question based on subsection (9) or (10) may not be made or raised at the hearing of an application.

(3) Section 67 (**Summons to show cause against taking of disciplinary action**):

- (a) From section 67 (6), omit "shall", insert instead "may".
- (b) In section 67 (6), after "holder of the licence", insert ", after deducting a cancellation fee fixed by the Board for the licence,".
- (c) From section 67 (7), omit "his or her", insert instead "the".

(4) Section 71:

Omit the section, insert instead:

Duplicate licence

71. The registrar may, on payment of the prescribed fee, issue a duplicate of a licence.

(5) Section 80 (**Periodic licence fee**):

After section 80 (6), insert:

(7) The Board may recover from a licensee, or a former licensee, as a debt due to the Crown:

- (a) an amount comprising so much of a licence fee, or an instalment of a licence fee, as consists of duty referred to in subsection (2) (a) (iii) and was not paid by the due date; and
- (b) any penalty accruing for failure to pay the amount by the due date.

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SCHEDULE 4—OTHER AMENDMENTS—*continued*

(6) Section 83A (**Refund of fee**):

- (a) Omit “shall, on application”, insert instead “may, on application and after deducting a surrender fee fixed by the Board for the licence,”.
 - (b) After “paid”, insert “excluding any amount of duty referred to in section 80 (2) (a) (iii)”.
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