

LIQUOR (AMENDMENT) ACT 1994 No. 42

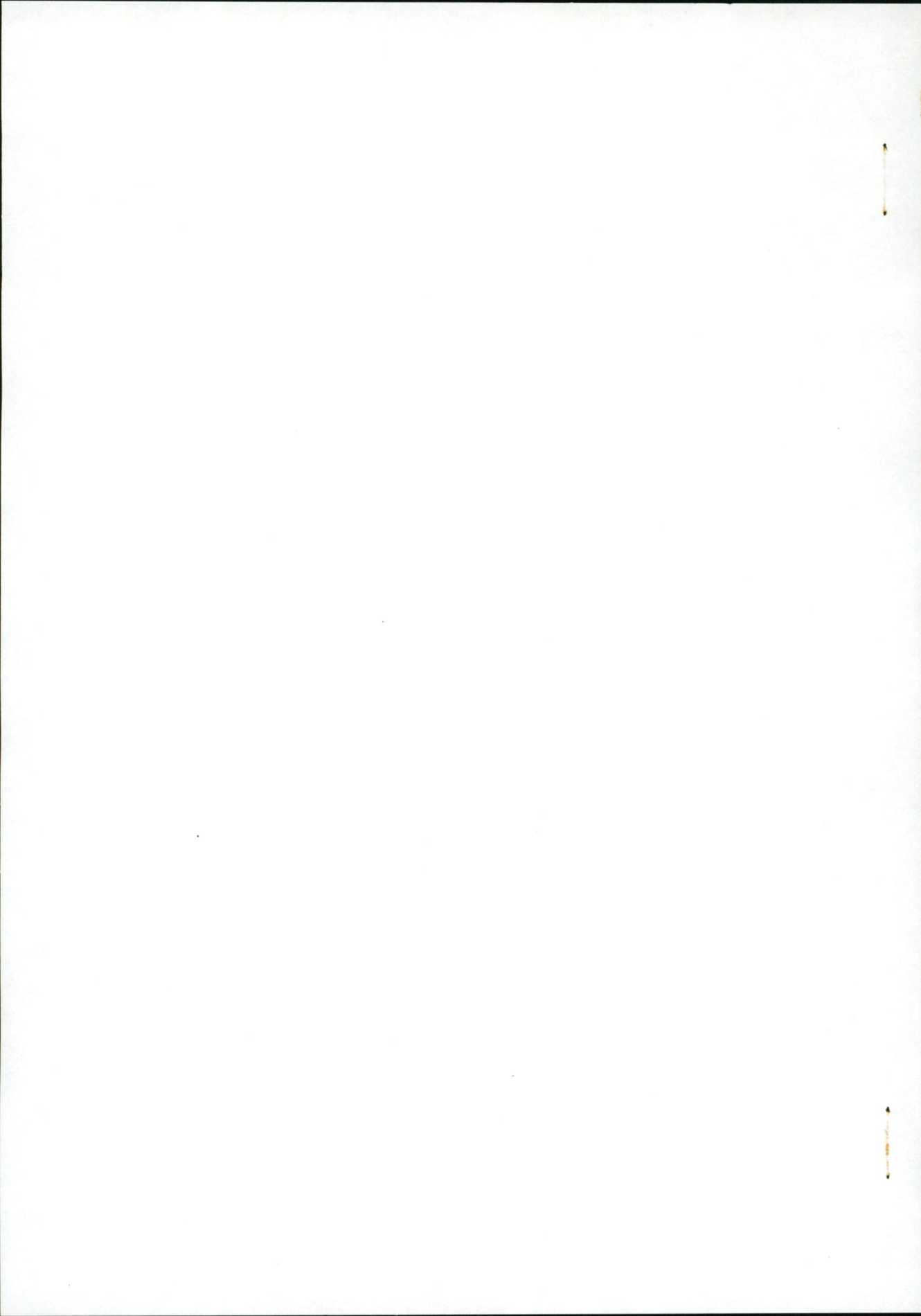
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



LIQUOR (AMENDMENT) ACT 1994 No. 42

NEW SOUTH WALES



Act No. 42, 1994

An Act to amend the Liquor Act 1982 to make further provision with respect to licence fees, the grant of licences, penalties, the duties of licensees, and minors; and for other purposes. [Assented to 2 June 1994]

See also Registered Clubs (Amendment) Act 1994.

Liquor (Amendment) Act 1994 No. 42

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Liquor (Amendment) Act 1994.

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 Schedule 1.

Amendment of Justices Act 1902 No. 27

4. The Justices Act 1902 is amended by inserting in alphabetical order in paragraph (a) of the definition of "penalty notice" in section 100I (1) the words "Liquor Act 1982, section 145A;".

Amendment of Liquor (Repeals and Savings) Act 1982 No. 148

5. Clause 9 of Schedule 4 to the Liquor (Repeals and Savings) Act 1982 is repealed.

Amendment of Liquor Regulation 1983

6. The Liquor Regulation 1983 is amended:
 - (a) by omitting clause 3C;
 - (b) by inserting after clause 11 (4) (d) the following clause:
 - (d1) application for removal of a licence to which section 21A (Australian wine licences) applies—\$500;
 - (c) by inserting after clause 11 (4) (e2) the following paragraph:
 - (e3) application for a variation of trading hours as referred to in section 25 (2B)—\$1,000;
 - (d) by omitting clause 33 (Evidence).

Repeal of Liquor (Australian Wine Licences) Regulation 1984

7. The Liquor (Australian Wine Licences) Regulation 1984 is repealed.

Explanatory notes

8. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.
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SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendments: licences for motels(1) Section 4 (**Definitions**):

After the definition of "minor" in section 4 (1), insert:

"motel" means premises that provide temporary accommodation to travellers, comprising bedrooms each with en-suite bathing and sanitary facilities, but does not include a hotel, guest-house, boarding house, lodging house, nursing home or caravan park, or any other form of residential accommodation declared by the regulations to not be a motel for the purposes of this Act;

"motel licence" means an on-licence granted in respect of a motel (not being an on-licence granted in respect of a restaurant where the licensed premises are defined to include a motel);

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

(a) After section 18 (4) (c), insert:

(c1) a motel;

(b) After section 18 (10), insert:

(10A) Subsections (1) and (2) do not authorise the court to grant an on-licence in relation to premises if the grant of the licence will result in there being an on-licence in force in relation to a motel at the same time as a separate on-licence is in force in relation to a restaurant at the motel.

(c) After section 18 (11), insert:

(12) The jurisdiction of the court to grant a motel licence may be exercised by the Principal Registrar if there is no objection to the grant of the licence.

(13) The following provisions of this Act and the regulations apply to and in respect of a motel licence in the same way as they apply to and in respect of a hotelier's licence:

(a) provisions of the regulations as to the making, advertising and lodging of an application for a licence and as to the documents required to accompany such an application;

(b) section 102 (Register of guests);

SCHEDULE 1—AMENDMENTS—*continued*

- (c) provisions of the regulations as to attendance or completion by an applicant for a licence at a course of instruction.

(3) Section 23 (**On-licence—miscellaneous conditions**):

After section 23 (6), insert:

(7) If an on-licence is a motel licence, liquor must not be sold or supplied on the licensed premises in contravention of any of the following restrictions:

- (a) liquor may only be sold or supplied by means of bar facilities (such as facilities known as a mini-bar) located in the accommodation in which the liquor is to be consumed;
- (b) liquor may only be sold or supplied to a person who is a bona fide traveller and accommodated at the motel in accommodation consisting of or including a bedroom with separate sanitary and bathing facilities, for consumption in that accommodation (whether by that person or by an invited guest of that person);
- (c) the volume of liquor sold or supplied to any one person on any one day must not exceed 2 litres.

(4) Section 53A:

After section 53, insert:

Grant of motel licence

53A. An application for a motel licence must not be granted unless the court is satisfied that the premises concerned are to be operated as a bona fide motel.

(5) Section 56 (**Fee for grant of licence**):

After section 56 (1) (j), insert:

- (j1) in the case of a motel licence—such fee, not exceeding \$500, as may be fixed by the Board;

(6) Section 61 (**Grant of transfer of licence**):

After section 61 (2), insert:

(2A) If there is no objection to an application under section 41 for the transfer of a motel licence, the application may be granted by the Principal Registrar.

SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Items (1)–(6) expand the class of on-licences (licences in which liquor purchased must be consumed on the premises) that may be issued under the Act to include a new licence for motels. Currently motels can be licensed premises but only as an endorsement on a restaurant licence.

The new licence will not require the motel to have a restaurant, and will have the following features:

- It will authorise the sale of liquor for consumption by guests accommodated at the motel in suites having their own bathing and toilet facilities. Sales will be by means of mini-bar facilities in guests' suites and will be limited to 2 litres per person per day.
- If there is no objection to the grant of a motel licence, the Principal Registrar of the Licensing Court will be permitted to grant the licence.
- Provisions that cover conduct on licensed premises and restrict under-age drinking will apply to motel licences.

Amendments: caterers' licences**(7) Section 4 (Definitions):**

- (a) From section 4 (1), omit the definition of "caterer's licence", insert instead:

"caterer's licence" means a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises;

- (b) In section 4 (1), after paragraph (a) of the definition of "licensed premises", insert:

(a1) in the case of a caterer's licence:

- (i) premises or part of premises that comprise the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies; and
- (ii) premises or part of premises in which a function, occasion or event is being held and at which the holder of the licence is selling liquor under the authority of the licence; or

SCHEDULE 1—AMENDMENTS—*continued*

- (c) After section 4 (3), insert:
- (4) Where the situation of the licensed premises is relevant for any purpose relating to a caterer's licence, the licensed premises are taken to be situated at the commercial kitchen to which the licence applies.
- (8) Section 18 (**Court may grant licences**):
Omit section 18 (2) (d), insert instead:
- (d) a caterer's licence, being a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises.
- (9) Section 36 (**Restriction on certain applications**):
Omit section 36 (5A), insert instead:
- (5A) Application may not be made for a caterer's licence where the commercial kitchen to be specified in the licence is on a vessel or an aircraft.
- (5B) Application may not be made for the removal of a caterer's licence (that is, to change the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies).
- (10) Section 39 (**Production of agreement required**):
At the end of the section, insert:
- (2) In the application of this section to a caterer's licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence.
- (11) Section 54B:
Omit the section, insert instead:
- Grant of caterer's licence**
- 54B. (1) An application for a caterer's licence must not be granted unless the court is satisfied that:
- (a) the applicant carries on or is proposing to carry on the business of providing catering services and that business is or is proposed to be the applicant's principal business; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the applicant has such skills, qualifications and experience, and has undergone such training, as may be prescribed by the regulations as necessary for the holder of a caterer's licence; and
- (c) the applicant is or will be the occupier of a commercial kitchen which satisfies any applicable standards and requirements determined by the Board for commercial kitchens and for access to the kitchen by the licensee.

(2) A caterer's licence must specify, as the commercial kitchen to which the licence applies, the commercial kitchen occupied by the licensee as referred to in subsection (1). A particular commercial kitchen may not be specified in more than one caterer's licence.

(3) The Board may determine standards and requirements for commercial kitchens, or different classes of commercial kitchens, and for access to commercial kitchens, for the purposes of this section.

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

In section 80 (3) (d), after "function", insert "or a caterer's licence".

(13) Section 86 (**Records to be kept**):

In section 86 (3) (b) (ii) and (5) (a), after "licensed premises" wherever occurring, insert "or other place approved under subsection (2)".

(14) Section 101 (**Control of licensed premises**):

After section 101 (5), insert:

(6) In the application of this section to a caterer's licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence.

(15) Section 104 (**Quiet and good order of neighbourhood**):

After section 104 (7), insert:

- (8) In the application of this section to a caterer's licence:
 - (a) a reference to licensed premises does not include private domestic premises; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.

(16) Section 110 (**Powers of entry**):

After section 110 (3), insert:

(4) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.

(17) Section 114 (**Sale or supply of liquor to a minor**):

After section 114 (7), insert:

(8) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.

(18) Section 115 (**Consumption etc. of liquor by a minor**):

After section 115 (3), insert:

(4) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.

(19) Section 125 (**Conduct on licensed premises**):

After section 125 (4), insert:

(5) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises except in subsection (3).

Explanatory note

At present it is a requirement of the Act that a caterer must have a function room in order to be able to hold a caterer's licence. The holder of a caterer's licence is authorised to sell liquor when catering for a function in that function room or on any other premises on which the licensee provides catering services (whether or not occupied or controlled by the licensee).

Items (7)–(19) will remove this requirement so that a caterer will be able to hold a caterer's licence even though he or she does not provide catering services on his or her own premises. It will however be necessary for a caterer to have a commercial kitchen of a certain standard, both to ensure that the caterer is a bona fide caterer and to provide nominal "licensed premises" (the commercial kitchen) to assist in the operation of premises-based enforcement provisions of the Act.

SCHEDULE 1—AMENDMENTS—*continued*

Consequential amendments are made to various provisions of the Act. In particular, the term “licensed premises” is defined to include any premises on which the holder of a caterer’s licence sells liquor under the authority of the licence (i.e. wherever he or she is catering for the time being). Some sections have been amended to exclude private domestic premises where it would not be appropriate to treat those premises as licensed premises.

Amendments: grant of licences to corporations etc.(20) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

“**manager**” or “**manager of licensed premises**” means a person appointed under Division 8A of Part 3 to manage licensed premises;

“**position of authority**” is defined in section 4B;

(21) Section 4B:

After section 4A, insert:

Corporate licences—interpretation

4B. (1) A reference in this Act to a position of authority in a body corporate is a reference to the position of chief executive officer, director or secretary of the body corporate.

(2) A person who occupies a position of authority in a body corporate is to be regarded as interested in an application for a licence made by the body and as interested in the business of the licensed premises to which a licence held by the body corporate relates.

(3) A person who is a shareholder in a body corporate is not (merely because of being a shareholder) to be regarded as a person who will be interested in an application for a licence made by the body corporate or in the business, or the profits or conduct of the business, to be carried on pursuant to the licence applied for or of the licensed premises to which a licence held by the body corporate relates.

(22) Section 36 (**Restrictions on liquor licence applications**):

Omit section 36 (1) and (1A), insert instead:

(1) This section does not apply to an application for a gaming-related licence.

SCHEDULE 1—AMENDMENTS—*continued*

(1A) An application for a licence may be made by:

- (a) a natural person; or
- (b) a body corporate.

(1B) An application for a licence may not be made by:

- (a) a natural person who is under the age of 18 years; or
- (b) a person who is disqualified from holding a licence or who holds a suspended licence.

(23) Section 36A:

After section 36, insert:

Restrictions on applications for gaming-related licences

36A. (1) An application for a gaming-related licence may be made by a natural person or by a body corporate, subject to the restrictions in subsection (2).

(2) The following restrictions apply as to who may apply for a gaming-related licence:

- (a) an application may not be made by a natural person who is under the age of 18 years;
- (b) an application may not be made by a person who is disqualified from holding a gaming-related licence or who holds a suspended gaming-related licence;
- (c) an application may not be made by a person who is within a class of persons prescribed by the regulations as being ineligible to apply for a gaming-related licence;
- (d) an application for an amusement device technician's licence may not be made by a body corporate.

(24) Section 39 (**Production of agreement required**):

At the end of the section, insert:

(3) This section does not apply in the case of an application for the grant of a licence to a body corporate.

(25) Section 45 (**Grounds of objection**):

- (a) After section 45 (1) (a1), insert:

SCHEDULE 1—AMENDMENTS—*continued*

- (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence;
- (b) In section 45 (3) (a) and (b), after “applicant” wherever occurring, insert “(or a person who occupies a position of authority in a body corporate that is the applicant)”.
- (c) In section 45 (4), after “(a1)”, insert “, (a2)”.
- (d) After section 45 (4) (a1), insert:
- (a2) in the case of an objection specified in subsection (1) (a2)—that the person to whom the objection relates is a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence;
- (26) Section 46 (**Taking of objection**):
- After section 46 (1) (b) (ia), insert:
- (ib) in the case of an objection specified in section 45 (1) (a2)—that the person to whom the objection relates is not a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence;
- (27) Section 47 (**Grant of application is discretionary in certain cases**):
- (a) In section 47 (2), omit “(a1) or (b)”, insert instead “(a1), (a2) or (b)”.
- (b) After section 47 (2) (a1), insert:
- (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence;
- (28) Section 66A (**Director may investigate licensee and others**):
- After “licensee” wherever occurring, insert “or manager”.

SCHEDULE 1—AMENDMENTS—*continued*(29) Section 67 (**Summons to show cause against taking of disciplinary action**):

In section 67 (1), (2) and (3), after “licensee” wherever occurring, insert “or manager”.

(30) Section 68 (**Grounds for complaint**):

(a) In section 68 (1), after “licensee” where firstly occurring, insert “or a manager of licensed premises”.

(b) From section 68 (1) (a), omit “that the licensee has, while holding a licence, been convicted:”, insert instead “that the licensee or manager has, while holding a licence or managing licensed premises, been convicted:”.

(c) Omit section 68 (1) (b), insert instead:

(b) that the licensee or manager has been guilty of a breach of a condition of the licence concerned;

(d) In section 68 (1) (c) and (c1), after “licensee” wherever occurring, insert “or manager”.

(e) In section 68 (1) (e), after “licence”, insert “or the manager is not a fit and proper person to be the manager of the licensed premises”.

(f) After section 68 (1) (f), insert:

(f1) in the case of a licence held by a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is the holder of a licence;

(g) In section 68 (2), after “licensee”, insert “or the manager of licensed premises”.

(31) Section 69 (**Disciplinary powers of court**):

(a) In section 69 (1), after “licensee” where firstly occurring, insert “or manager of licensed premises”.

(b) In section 69 (1) (a) and (b), after “licensee” wherever else occurring, insert “or manager”.

(c) After section 69 (1) (f), insert:

(f1) withdraw the manager’s approval by the court to manage licensed premises;

(f2) disqualify the manager from being the holder of an approval to manage licensed premises;

SCHEDULE 1—AMENDMENTS—*continued*

(d) At the end of section 69 (1A) (a) (i), insert:

or

(ia) a person who occupies a position of authority in the body corporate that holds the licence (if the licence is held by a body corporate); or

(e) In section 69 (1A) (c) (i), after “licence”, insert “or a person who occupies a position of authority in a body corporate that holds a licence”.

(32) Part 3, Division 8A:

After Division 8 of Part 3, insert:

Division 8A—Special provisions for body corporate licensees

Division does not apply to gaming-related licences

69A. This Division does not apply to a licensee under a gaming-related licence.

Appointment of managers

69B. A body corporate that is a licensee must appoint a manager for the licensed premises and must not cause or permit the conduct of business under the licence for a period in excess of 14 days unless there is an appointment of a manager of the licensed premises in force under this Division.

Maximum penalty: 50 penalty units.

Restrictions on who may be appointed as manager

69C. (1) The following restrictions apply to the appointment of a manager of licensed premises:

(a) A person may not be appointed as the manager of licensed premises unless the person is approved by the court to manage licensed premises and the approval applies to the premises concerned.

(b) Only a natural person may be appointed to manage licensed premises.

SCHEDULE 1—AMENDMENTS—*continued*

(c) A person cannot be appointed as manager of licensed premises if at the time of the appointment he or she already holds an appointment as manager of other licensed premises.

(2) An appointment in contravention of this section is void for the purposes of this Part.

Court approval of manager

69D. (1) The court is not to approve a person to manage licensed premises unless satisfied that the person is a fit and proper person to manage licensed premises.

(2) The approval of the court of a person to manage licensed premises may be given so as to apply to particular licensed premises, to all licensed premises of a specified class or to all licensed premises, as the court thinks fit.

(3) An application for the court's approval is to be made in the form approved by the Board.

How appointments are made and revoked

69E. (1) A licensee must give the Board notice of the appointment of a person as manager of licensed premises. The notice must give the name, address and date of birth of the person appointed and must be signed by the appointee as evidence of consent to his or her appointment as manager.

Maximum penalty: 20 penalty units.

(2) The appointment of a manager is not in force until the licensee has given the Board notice of the appointment as required by this section.

(3) The appointment of a manager is revoked by the licensee giving notice under this section of the appointment of a new manager or by the licensee or manager giving the Board notice of the manager's ceasing to act as manager.

(4) A notice of appointment of or of ceasing to act as manager may specify a day that is later than the day the notice is given as the day the notice is to take effect, and the notice takes effect accordingly.

(5) A notice under this section must be in writing in the form approved by the Board.

SCHEDULE 1—AMENDMENTS—*continued*

(6) In any proceedings in which the question of whether notice was given to the Board under this section is at issue, the party alleged to have given the notice bears the onus of establishing on the balance of probabilities that the notice was given.

Responsibilities and liabilities of managers of licensed premises

69F. (1) The person appointed as manager of licensed premises is responsible for the personal supervision and management of the conduct of the business under the licence on licensed premises.

(2) If an element of an offence under a provision of this Act is an act or omission by a licensee, a person who is manager of the licensed premises is responsible as though that person were also a licensee of those premises and is liable for the offence accordingly.

(3) This section does not affect any liability of a licensee for a contravention by the licensee of a provision of this Act.

Liability of licensee for contravention by manager

69G. The licensee of licensed premises is taken to have contravened any provision of this Act or the regulations that the manager of the licensed premises contravened as a result of section 69F unless the licensee establishes that the licensee:

- (a) did not authorise or knowingly permit the contravention by the manager; and
- (b) maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention occurring.

Liability of directors etc. of body corporate licensee

69H. (1) If a licensee that is a body corporate contravenes (whether by act or omission) any provision of this Act or the regulations, each person who occupies a position of authority in the body is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

SCHEDULE 1—AMENDMENTS—*continued*

(2) If a licensee that is a body corporate is taken to have contravened (whether by act or omission) any provision of this Act or the regulations by reason of a contravention by the manager of the licensed premises, each person who occupies a position of authority in the body is taken to have contravened the same provision unless he or she establishes that he or she:

- (a) was not knowingly a party to any authorisation by the body corporate of the contravention by the manager; and
- (b) took all reasonable steps (within the scope of his or her authority) to ensure that the body corporate maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention by the manager occurring.

(3) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the body corporate or manager of the licensed premises has been proceeded against or convicted.

(4) This section does not affect any liability imposed on a body corporate or the manager of licensed premises for an offence committed by the body corporate or manager against this Act or the regulations.

(5) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the body corporate had that intention at that time.

(33) Section 101 (**Control of licensed premises**):

At the end of section 101, insert:

(7) Subsections (1) (a) and (b), (2) and (4) (b) do not apply to or in respect of a licence held by a body corporate. Subsection (3) does not apply to or in respect of a licence held by a body corporate unless the licence is a gaming-related licence.

SCHEDULE 1—AMENDMENTS—*continued***(34) Section 125B (Holding more than one licence etc.):**

At the end of the section, insert:

(2) This section does not apply to a licensee that is a body corporate.

(35) Section 144 (Licensee liable for act of employee etc.):

(a) After “holder of a licence” wherever occurring, insert “or the manager of licensed premises”.

(b) After “licensee”, insert “or manager”.

Explanatory note

Items (20)–(35) permit the grant of a liquor licence to a body corporate. Currently a liquor licence cannot be granted to a body corporate (except a licence for a brewer).

The amendments will also provide for the compulsory appointment by a body corporate licensee of a manager to manage and supervise the conduct of the licensed premises. Managers will be responsible in the same way as licensees for the conduct of business under the licence. The body corporate licensee will also be responsible for any contravention by the manager unless able to establish that the licensee did not authorise or knowingly permit the contravention by the manager and maintained control over and supervision of the manager.

Provision is also included which makes persons holding positions of authority in a body corporate that holds a licence responsible for contraventions by the body corporate or a manager appointed by the body corporate.

Various consequential amendments are made to existing provisions of the Act, including provision for objections to the grant of licences and complaints about licensees on the grounds that a person occupying a position of authority in a body corporate applicant or licensee is not a fit and proper person to hold such a position.

Amendments: restaurant sanitary facilities**(36) Section 32 (On-licence (restaurant)—variation of trading hours):**

After section 32 (3A), insert:

(3B) A variation of trading hours is not available under subsection (3) in respect of a restaurant if any sanitary facilities for the restaurant are not located within the restaurant.

SCHEDULE 1—AMENDMENTS—*continued*(37) Section 53 (**Grant of on-licence (restaurant)**):

(a) Omit section 53 (1) (b), insert instead:

(b) the court is satisfied that sanitary facilities for both sexes of at least the standard prescribed by the regulations are located within, or in immediate proximity to, the restaurant and there are any additional sanitary facilities that the court thinks should, in the circumstances of the case, be provided.

(b) After section 53 (2), insert:

(3) An application for an on-licence relating to a restaurant is not to be granted where any sanitary facilities for the restaurant are proposed by the applicant for the licence to be located in immediate proximity to the restaurant (and not within the restaurant) unless the court is satisfied that:

- (a) there are special circumstances that prevent those facilities being located within the restaurant; and
- (b) the facilities are sufficiently near to the restaurant for convenient use by its patrons; and
- (c) the facilities will be fully accessible to the patrons during the trading hours of the restaurant and will not be available for use by other persons during those hours; and
- (d) the safety of patrons will not be jeopardised by reason of the location of the facilities; and
- (e) the applicant for the on-licence has entered into a written agreement or made other appropriate arrangements with the owner or occupier of the premises in which the facilities are located for the maintenance of the cleanliness of the facilities during the trading hours of the restaurant; and
- (f) the grant of the licence is necessary to meet the needs of tourists and tourism or other special needs.

(38) Section 92 (**Cleanliness of licensed and related premises**):

(a) In section 92 (b), after “on-licence”, insert “(other than an on-licence to which paragraph (c1) relates)”;

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 92 (c), insert:

(c1) in the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant—ensure that the sanitary facilities are maintained in a good and sanitary condition and take all reasonable steps to ensure that those facilities are furnished with proper sanitary appliances sufficient for the business carried on pursuant to the licence;

(39) Section 110 (**Powers of entry**):

After section 110 (6), insert:

(7) In the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant, the part of any premises that comprises those facilities and any part of premises necessary for access to those facilities is to be treated as part of the licensed premises for the purposes of this section.

(40) Section 156 (**Regulations**):

After section 156 (1) (h), insert:

(i) the control and cleanliness of, and access to, sanitary facilities for licensed premises (being a restaurant) located within, or in immediate proximity to, the licensed premises;

Explanatory note

At present, section 53 (1) (b) of the Liquor Act 1982 provides that an on-licence relating to a restaurant cannot be granted unless there are appropriate sanitary facilities within the premises.

Item (37) makes amendments which provide that a licence may be granted for a restaurant with sanitary facilities located in immediate proximity to the restaurant instead of within the restaurant, but only if:

- (a) special circumstances prevent the facilities being in the restaurant; and
- (b) the facilities are nearby, convenient, safe and accessible to patrons and not available to other persons; and
- (c) there are satisfactory arrangements for the cleaning of the facilities; and
- (d) the licence is needed to meet the needs of tourists, tourism or other special needs.

Items (38)–(40) make amendments that:

- (a) require licensees to ensure that such facilities are maintained in a sanitary condition and properly supplied; and

*Liquor (Amendment) Act 1994 No. 42*SCHEDULE 1—AMENDMENTS—*continued*

- (b) enable police officers and special inspectors to exercise, in relation to the sanitary facilities, the powers of entry conferred on them in respect of licensed premises; and
- (c) enable regulations to be made with respect to the control and cleanliness of, and access to, sanitary facilities (whether located within, or in immediate proximity to, a restaurant).

Item (36) prevents a variation in trading hours for such a restaurant.

Amendment: function licences(41) Section 4 (**Definitions**):

Omit the definition of “function” in section 4 (1), insert instead:

“**function**” means any function that comprises, or comprises a combination of, a dinner, ball, convention, seminar, sporting event, race-meeting, regatta, agricultural show, horticultural show, pastoral show, industrial show, trade or other fair, fete, carnival, or any event or activity that is similar to an event or activity specified in this definition and is conducted for public amusement or entertainment;

Explanatory note

Item (41) substitutes the definition of “function” in the Act so as to update and clarify the range of activities and events that will qualify for the grant of a function licence under the Act. The new definition refers to the same activities and events as the current definition but removes the distinction between functions held in buildings or not in buildings, and makes it clear that a function can comprise a combination of any of the activities or events mentioned in the definition.

Amendments: licence fees payable by wholesalers and brewers(42) Section 18 (**Court may grant licences**):

From section 18 (8), omit “to the extent referred to in section 22 (3)”, insert instead “to the extent provided in section 22”.

(43) Section 22 (**Off-licence—miscellaneous conditions**):

- (a) From section 22 (2), omit “subject to subsection (3)”, insert instead “subject to this section”.

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 22 (2), insert:

(2A) Liquor must not be sold or supplied pursuant to an off-licence to persons referred to in paragraph (c1) or (d) of the definition of “person authorised to sell liquor” in section 4 (1) or to employees of the licensee if:

- (a) the off-licence is a licence to sell liquor to persons authorised to sell liquor or is a licence for a brewer; and
- (b) an off-licence to sell liquor by retail is held in respect of the same premises.

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

(a) Omit section 80 (2) (c), insert instead:

(c) in the case of an off-licence to sell liquor to persons authorised to sell liquor or an off-licence for a brewer—\$1,000 plus 13 per cent of the applicable amount prescribed by subsection (3) plus 7 per cent of the applicable amount prescribed by subsection (3A);
or

(b) From section 80 (3) (b), omit “, where in either case an off-licence to sell liquor by retail is not held in respect of the same premises”.

Explanatory note

Items (42) and (43) clarify restrictions on the sale of liquor under a wholesaler’s licence or brewer’s licence where a retail licence is held in respect of the same premises. The amendment will ensure that a wholesaler’s licence will not authorise the sale of liquor to employees or to certain other persons that the wholesaler is currently authorised to sell to (such as the State Rail Authority), and a brewer’s licence will not authorise the sale of liquor to employees, when a retail licence is held concurrently. Those sales will have to be made under the retail licence.

Item (44) will remove the current distinction in the Act (for the purposes of the calculation of licence fees) between wholesalers and brewers who also hold retail licences and those who do not. The licence fee for wholesalers and brewers who also hold a retail licence is currently a flat \$1,000, whereas the licence fee for other wholesalers and brewers is \$1,000 or a percentage of liquor sales, whichever is greater. The amendment will make the licence fee for all wholesalers and brewers \$1,000 plus a percentage of liquor sales.

SCHEDULE 1—AMENDMENTS—*continued***Amendments: names of licensed premises**

(45) Section 54C:

After section 54B, insert:

Application to be refused if name objectionable

54C. An application for a licence is to be refused if the court is of the opinion that the proposed name for the licensed premises is objectionable, inappropriate or misleading or is a name that is a prohibited name for the licensed premises under section 91 (Name of licensed premises).

(46) Section 91 (Name of licensed premises):

(a) Omit section 91 (1) (a), insert instead:

(a) a name for the licensed premises (not being a name that is a prohibited name for the licensed premises under this section); and

(b) Omit section 91 (2) (a), insert instead:

(a) the Board has approved in writing of the proposed new name; and

(c) After section 91 (2), insert:

(2A) The Board must not approve an alteration of the name of licensed premises if the name as proposed to be altered is a prohibited name for the licensed premises under this section.

(2B) A licensee must not cause or permit the use on any sign displayed on the exterior of the licensed premises or in any advertising with respect to the licensed premises of a name that is a prohibited name for the licensed premises under this section.

Maximum penalty: 5 penalty units.

(2C) A name is a prohibited name for licensed premises under this section if:

(a) it is a name or a name of a kind, or contains words or words of a kind, prescribed by the regulations as prohibited, either in relation to all licensed premises or in relation to the particular class of licensed premises of which the licensed premises forms part; or

SCHEDULE 1—AMENDMENTS—*continued*

(b) it is a name that the Board has notified the licensee in writing is prohibited as being objectionable, inappropriate or misleading.

(2D) A regulation for the purposes of subsection (2C) may be made so as to apply to licensed premises generally or so as to apply only to a specified class or specified classes of licensed premises.

(2E) A name may not be prohibited in respect of licensed premises by notification under this section if the regulations provide that the name is permitted for use in relation to the licensed premises concerned or in relation to the particular class of licensed premises concerned.

(47) Section 91A:

After section 91, insert:

Restrictions on use of “casino” etc. to advertise licensed premises

91A. (1) A licensee must not cause or permit the licensed premises or any part of the licensed premises to be described, promoted or referred to (whether on any sign or in any advertising with respect to the licensed premises or otherwise) as a casino or by use of any other description that is prescribed as a prohibited description for licensed premises.

Maximum penalty: 5 penalty units.

(2) Subsection (1) does not apply to the contents of any sign or advertising or promotional material if the sign is not visible, and the material is not visible or audible, from any public place outside the licensed premises concerned.

(3) The regulations may provide for the circumstances in which use of the word “casino” or any other specified word in a name or description of licensed premises or a part of the premises is not a contravention of this section.

Explanatory note

Item (45) provides that the Licensing Court is to refuse an application for a liquor licence if of the opinion that the proposed name of the premises is objectionable, inappropriate or misleading or is prohibited by the regulations or a direction of the Board provided for under item (46). This formalises an existing implied power of the court.

*Liquor (Amendment) Act 1994 No. 42***SCHEDULE 1—AMENDMENTS—*continued***

Item (46) alters an existing provision of the Act that prevents the use of a name for licensed premises if the Board had directed that the proposed new name not be used. As amended, the provision will prevent the use of a name that is prohibited by the regulations or is a name that the Board has prohibited as being objectionable, inappropriate or misleading. Item (46) also amends an existing provision that requires the approval of the Board before the name of licensed premises can be changed, to require the Board to refuse approval for a change that would result in such a prohibited name. A new provision is inserted which will prevent the display of a name on licensed premises or in advertising for licensed premises if the name is similarly prohibited by the regulations or the Board.

Item (47) inserts a new provision that will prevent licensed premises from being described or referred to (such as on signs or in advertising) as a casino or by use of any other description that is prohibited by the regulations. The new provision does not apply to signs and promotional material that is inside the licensed premises concerned.

Amendments: issue of licence**(48) Section 55 (Issue of licence etc.):**

- (a) From section 55 (1), omit “the licence shall not be issued by the registrar”, insert instead “the licence may be issued by the registrar or by the Principal Registrar but is not to be issued”.
- (b) From section 55 (2), omit “while the registrar is prohibited by subsection (1) from issuing the licence”, insert instead “while the issue of the licence is prohibited by subsection (1)”.

Explanatory note

Item (48) enables liquor licences that are granted in Sydney to be issued by the Sydney registry directly to licensees outside Sydney. At present licences are transmitted by the Sydney registry for formal issue by the district registry.

Amendment: freight charges for beer to brewers’ regional depots**(49) Section 78A:**

After section 78, insert:

Freight costs to brewers’ regional depots not to be included in price of beer

78A. (1) Despite section 78, a reference in this Part to the amount paid or payable by or on behalf of a person for any

SCHEDULE 1—AMENDMENTS—*continued*

liquor does not, in the case of liquor that is beer, include brewery regional depot freight charges for that beer.

(2) Brewery regional depot freight charges for beer are any amounts paid or payable as freight or other delivery charges to the holder of an off-licence for a brewer in respect of the delivery of that beer from the licensed premises of the brewer to a regional depot of the brewer, being a depot that is approved by the Board for the purposes of this section by order in writing and being beer that is made by the holder of that off-licence or by a body corporate that is related (within the meaning of the Corporations Law) to that holder.

(3) If the Board is of the opinion that any amount paid or payable as freight or other delivery charges exceeds the value of the freight or other delivery, the Board may determine the value of the freight or delivery (having regard to the circumstances in which the beer was delivered).

(4) An amount so determined by the Board is to be regarded for the purposes of this section as the amount actually paid or payable as the freight or other delivery charges concerned.

(5) A person who is a party to any arrangement for the payment of an amount for freight or other delivery charges which exceeds the true cost of the freight or other delivery, with the intention of causing or assisting in the avoidance or evasion of the payment of licence fee, is guilty of an offence.

Maximum penalty: 100 penalty units.

Explanatory note

Item (49) inserts a new section which provides that the cost of freight on beer from the brewery to the country regional depots of the brewer is not to be included in the amount paid for liquor for the purpose of calculating licence fee. Currently freight charges are included in the cost of liquor as an anti-avoidance measure. This operates to disadvantage country licensees who have the cost of freight from the city included in the cost of beer on which they must pay licence fees.

The new section will contain 3 anti-avoidance measures:

- The concession will apply only in respect of freight to depots approved by the Liquor Administration Board.
- The Board will have power to reassess the amount of freight paid if it appears to be excessive.

SCHEDULE 1—AMENDMENTS—*continued*

- It will be an offence to inflate freight costs with the intention of evading licence fee.

Amendment: payment of licence fees on excess sales by vignerons, wholesalers and brewers

(50) Section 80 (Periodic licence fee):

- In section 80 (2) (b), after "\$500", insert "(plus any amount required to be paid by subsection (5A))"
- After section 80 (5), insert:

(5A) There is payable as licence fee under subsection (2)

(b) (in addition to the amount of \$500 provided by that paragraph) an amount that is 13% of the sale price of any quantity of wine sold by the licensee during the assessment period for the licence fee in excess of the quantity permitted by section 22 (1) (d) to be sold pursuant to the licence.

(5B) Any quantity of liquor purporting to have been sold or supplied pursuant to an off-licence to sell liquor to persons authorised to sell liquor or an off-licence for a brewer but which exceeded the quantity of liquor permitted to be sold or supplied pursuant to the licence, is for the purposes of the calculation, assessment, payment and recovery of licence fee, taken to have been sold or supplied pursuant to the licence concerned.

(5C) Subsections (5A) and (5B) do not limit the operation of any other provision of this Act in relation to a contravention of section 22 (1) (d), in particular the provisions of Division 8 (Disciplinary provisions) of Part 3.

Explanatory note

Item (50) makes amendments which ensure that sales of liquor under a vigneron's licence, a wholesaler's licence or a brewer's licence in excess of the existing limits applicable to the quantity of liquor that can be sold under those licences is to attract licence fee at the rate applicable to ordinary sales.

The Act currently limits single sales by vignerons to a quantity of 45 litres and sales by wholesalers and brewers to their employees are limited to 5% of total sales. The amendment will mean that sales by vignerons in excess of this limit will attract licence fee at the rate of 13%. Sales by wholesalers and brewers in excess of the limit on sales to employees will for licence fee purposes be treated as authorised sales and will attract licence fee at the same rate as other authorised sales (13% or 7%, as appropriate).

SCHEDULE 1—AMENDMENTS—*continued***Amendment: statement of liquor purchases by auctioneers**(51) Section 84 (**Statement of liquor purchases**):

After section 84 (2), insert:

(2A) A person who holds an off-licence to auction liquor is exempt from the requirements of subsection (2) in relation to purchases (but not sales) of liquor.

Explanatory note

Section 84 currently requires licensees to submit a statutory declaration specifying information prescribed by the regulations in relation to sales and purchases of liquor. Information on *purchases* of liquor is not relevant to liquor auctioneers whose licence fee is calculated on the basis of liquor *sales* to unlicensed persons. Item (51) exempts liquor auctioneers from the requirement to lodge a statement under the section in relation to purchases of liquor.

Amendment: verification of complaints by statutory declaration(52) Section 104 (**Quiet and good order of neighbourhood**):

After section 104 (1), insert:

(1A) The Board must require a complaint under this section to be made or verified by statutory declaration.

Explanatory note

Item (52) makes it mandatory for the Board to require that a complaint that licensed premises are unduly disturbing the quiet and good order of the neighbourhood be made or verified by statutory declaration.

Amendment: sale or supply of liquor to minors(53) Section 114 (**Sale or supply of liquor to a minor**):

At the end of section 114, insert:

(9) It is a defence to a prosecution for an offence under subsection (3) if it is proved that the liquor was supplied to the person by that person's parent or guardian.

(10) A reference in this section to the supply of liquor to a person includes a reference to the serving of liquor to a person.

*Liquor (Amendment) Act 1994 No. 42***SCHEDULE 1—AMENDMENTS—continued****Explanatory note**

Item (53) inserts 2 new provisions:

The proposed new subsection (9) gives a licensee a defence to a prosecution for allowing a person under the age of 18 to be supplied with liquor on the licensed premises. The new defence will apply if the under-age person's parent or guardian was the person who supplied the liquor. However, the parent or guardian concerned will still be guilty of an offence in those circumstances. The amendment removes the responsibility of licensees to prevent parents giving their children liquor while on licensed premises.

The proposed new subsection (10) extends the meaning of "supply" in section 114 of the Act (dealing with selling or supplying liquor to minors) so that the offences in that section will also cover the *servicing* of liquor to minors (such as occurs in "BYO" restaurants when liquor brought onto the premises by patrons is served by restaurant staff). The same defences will apply to offences concerning the serving of liquor to minors as apply to supplying liquor to minors.

Amendment: drinking by minors in BYO restaurants

(54) Section 115 (**Consumption etc. of liquor by minor**):

- (a) In section 115 (1) (a), after "premises", insert "or on the premises of an unlicensed restaurant".
- (b) After section 115 (1), insert:
 - (1A) It is a defence to a prosecution for an offence under subsection (1) of consuming liquor on the premises of an unlicensed restaurant if it is proved that the defendant consumed the liquor in the company of and with the authority of his or her parent or guardian.
- (c) In section 115 (2), omit "accused", insert instead "defendant".

Explanatory note

Item (54) (a) and (b) make it an offence for a person under 18 to consume liquor on the premises of an unlicensed restaurant with a defence of parental consent. Item 52 (c) makes an amendment by way of statute law revision for consistency of terminology.

Amendments: hotel trading hours

(55) Section 24 (**Hotelier's licence—trading hours**):

- (a) In section 24 (2) (c), after "day", insert "(other than Good Friday)".

SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 24 (2) (c), omit “and”.
 - (c) After section 24 (2) (c), insert:
 - (c1) on Good Friday, where the liquor is sold or supplied for consumption on the licensed premises—from noon to 10 p.m.; and
- (56) Section 25 (**Hotelier’s licence—variation of trading hours**):
- (a) From section 25 (2), omit “other than Sunday or a restricted trading day”, insert instead “other than a restricted trading day”.
 - (b) After section 25 (2), insert:
 - (2A) An application may not be granted under subsection (2) for an extension of trading hours from midnight on a Sunday unless:
 - (a) the licensed premises concerned are within the area constituting the City of Sydney as at the commencement of this subsection or front onto any of the streets or parts of streets specified in Schedule 2 (Kings Cross) or are situated within the area bounded by those streets or parts of streets; and
 - (b) the court is satisfied that the extension of trading hours is necessary or desirable to meet the needs of tourists and tourism.
 - (2B) In the case of licensed premises referred to in subsection (2A), a single application may be made under this section to cover each of the variations of trading hours provided for under subsection (3) and from midnight on a Sunday under subsection (2).
- (57) Schedule 2:

After Schedule 1, insert:

SCHEDULE 2—KINGS CROSS

(Sec. 25 (2A))

Ward Avenue, from its intersection with Kings Cross Road, north to its intersection with Elizabeth Bay Road and Baroda Street;

SCHEDULE 1—AMENDMENTS—*continued*

Baroda Street, from its intersection with Elizabeth Bay Road and Ward Avenue, north and west to its intersection with Greenknowe Avenue;

Greenknowe Avenue, from its intersection with Baroda Street, west to its intersection with Macleay Street;

Macleay Street, from its intersection with Greenknowe Avenue, north to its intersection with Manning Street;

Manning Street, from its intersection with Macleay Street, west to its intersection with Tusculum Street;

Tusculum Street, from its intersection with Manning Street, south to its intersection with Hughes Street;

Hughes Street, from its intersection with Tusculum Street, west to its intersection with Victoria Street;

Victoria Street, from its intersection with Hughes Street, south to its intersection with Brougham Lane;

Brougham Lane, from its intersection with Victoria Street, west to its intersection with Brougham Street;

Brougham Street, from its intersection with Brougham Lane, south to its intersection with William Street;

William Street, from its intersection with Brougham Street, east to its intersection with Kings Cross Road;

Kings Cross Road, from its intersection with William Street, east to its intersection with Ward Avenue.

Explanatory note

Item (55) amends the provision that deals with hotel trading on Good Friday. Currently hotels are restricted to selling liquor with a meal in a dining room between noon and 10 p.m. on Good Friday. The amendment will allow hotels to sell liquor for consumption anywhere on the licensed premises (but will still not permit take-away sales) during those hours on Good Friday.

Item (56) allows an application to be made and granted for an extension of trading hours for a hotel in the City of Sydney or Kings Cross between midnight Sunday and 5 a.m. Monday (except when Sunday falls on Christmas Day) if the extension is to meet the needs of tourists and tourism. Currently no hotel can trade during these hours.

Item (57) inserts a Schedule containing a description of the streets that form the boundaries of the area that constitutes Kings Cross for the purposes of the amendment in item (56).

SCHEDULE 1—AMENDMENTS—*continued***Amendment: Australian wine licences**

(58) Section 21A:

After section 21, insert:

Australian wine licences

21A. (1) This section applies to a licence to which Schedule 4 (Special provisions relating to Australian wine licences) to the Liquor (Repeals and Savings) Act 1982 applies (referred to in this section as an Australian wine licence).

(2) A condition on an Australian wine licence that liquor other than wine must not be sold or supplied on the licensed premises may not be varied or revoked under section 20.

(3) The court may on the application of the licensee vary that condition of the licence so as to permit the sale of beer on the licensed premises for consumption on those premises, but the court is not to grant such an application unless the court is satisfied that:

- (a) the licence was being exercised on or about 1 January 1994; or
- (b) there is some compelling reason why the licence was not being exercised at that time.

(4) The grant of an application under subsection (3) does not have effect until payment by the applicant to the Board of the amount (up to \$50,000) determined by the Board as payable for the variation of the condition (determined having regard to the circumstances of the licence and the application). The grant of the application is cancelled after 3 months if the amount so determined is not paid within that time.

(5) An application to remove an Australian wine licence may not be granted unless:

- (a) the removal is to a place that is within the neighbourhood of the premises from which it is proposed to remove the licence; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) the floor area of the premises which are proposed to be the licensed premises on removal is not greater than that of the licensed premises from which the licence is proposed to be removed; and
 - (c) the court is satisfied that the licence was being exercised on or about 1 January 1994 or that there is some compelling reason why the licence was not being exercised at that time, or that removal is reasonably necessary to enable the licence to be exercised.
- (6) Section 36 (5) does not apply to an application for the removal of an Australian wine licence.

Explanatory note

Item (58) restates (with the amendments explained below) provisions currently in the Liquor (Repeals and Savings) Regulation 1984 that prevent the removal or variation of a condition on an Australian wine licence that only wine for consumption on the licensed premises may be sold under the licence, and that prevent the removal of such a licence.

The amendments to those provisions will:

- (a) enable the "wine only" condition to be varied to permit the sale of beer for consumption on the premises, but only if the Licensing Court is satisfied the licence is not dormant and with a fee of up to \$50,000 being payable for such a variation; and
- (b) enable the court to grant an application for removal of the licence if satisfied that removal will be to a location in the same neighbourhood and not to larger premises, and that the licence is not dormant or removal is reasonably necessary to allow the licence to be exercised.

Amendments: penalty notices

(59) Section 117F (**Infringement notices for minors**):

Omit the section.

(60) Section 117G (**Minors not to be detained**):

After "penalty under this Act", insert "or an amount ordered to be paid under section 100L (Orders to enforce penalty notices) of the Justices Act 1902 in respect of a penalty notice issued under this Act".

SCHEDULE 1—AMENDMENTS—*continued*

(61) Section 145A:

After section 145, insert:

Penalty notices

145A. (1) A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post. A penalty notice sent by post to a person is taken to have been properly addressed if addressed to the person at the address shown in the records of the Board as the residential or business address of the person last known to the Board.

(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence, except proceedings under Division 8 (Disciplinary provisions) of Part 3.

(5) 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 proceeding arising out of the same occurrence.

(6) However, when a penalty is paid under this section in respect of a penalty notice served on a person, the person is for the purposes of Division 8 (Disciplinary provisions) of Part 3 taken to have been convicted of the offence to which the penalty notice related.

(7) Payment under this section does not interfere with the operation of Division 8A (Special provisions for body corporate licensees) of Part 3 or section 144 (Licensee liable for act of employee) in respect of a contravention or alleged contravention of this Act by the person who pays the penalty.

SCHEDULE 1—AMENDMENTS—*continued*

- (8) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

(9) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(10) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Explanatory note

Items (59)–(61) provide for the issue of penalty notices by police officers for alleged contraventions of the Act or the regulations. The issue of a penalty notice gives the alleged offender the option of paying a penalty that is less than the maximum penalty provided for the offence if dealt with by a court if he or she does not wish to have the matter dealt with by a court. If the penalty is paid, no further action is taken in respect of the offence. However, payment of the penalty is regarded as a conviction for the offence for the purposes of the disciplinary provisions of the Act.

The proposed new provision replaces an existing provision that deals only with offences committed by minors on licensed premises. Under that provision, the maximum penalty which a penalty notice could require was \$50.

Under the proposed new provision, the offences for which penalty notices can be issued and the penalty payable under them will be provided for in the regulations.

Clause 4 of this Bill makes a consequential amendment to the Justices Act 1902 to extend the reminder (“courtesy letter”) and penalty notice enforcement provisions of that Act to the penalty notices provided for under the proposed amendments.

An existing provision of the Liquor Act 1982 that prevents the imprisonment of minors for failure to pay a penalty under that Act will apply to amounts payable under Justices Act enforcement orders.

SCHEDULE 1—AMENDMENTS—*continued***Amendment: evidence by affidavit**

(62) Section 154C:

After section 154B, insert:

Evidence

154C. (1) Subject to subsection (2) and except to the extent (if any) that the court otherwise directs, evidence in any proceedings before the court under this Act (other than proceedings for an offence) is to be given by affidavit.

(2) Except to the extent (if any) that the parties otherwise agree or the court otherwise directs, an affidavit may not, in the absence of the deponent, be admitted in evidence under subsection (1).

(3) Where proceedings for or in respect of an offence against this Act are taken before the court, a witness present in the court at the hearing of the proceedings is, unless the court otherwise directs in a particular case or class of cases, to give evidence by means of a written statement a copy of which has been given both to the court and the parties and which, at the hearing, is verified orally on oath by the witness.

(4) A witness who, pursuant to this section, gives evidence by affidavit or written statement may be cross-examined and re-examined as if he or she had given oral evidence on oath of the matter of the statement.

Explanatory note

Item (62) inserts a provision in the Act that is currently in the regulations concerning the giving of evidence in the court by affidavit or written statement.

Amendment: clarification of licence fee calculation

(63) Section 80 (Periodic licence fee):

From section 80 (3) and (4), omit “the licensee” wherever occurring, insert instead “any licensee under the licence”.

Explanatory note

Item (63) makes it clear that the calculation of licence fee payable for a liquor licence is based on liquor purchases made by or on behalf of *any* licensee under the licence during the assessment period for the fee even if the licensee liable to pay the fee was not the licensee when the purchase was made.

SCHEDULE 1—AMENDMENTS—*continued***Amendment: investigation of applicants to be completed within 6 months****(64) Section 42C (Investigations by Director):**

- (a) In section 42C (1), after “the application”, insert “and is to complete those investigations and inquiries within 6 months after the application was lodged”.
- (b) After section 42C (3), insert:
 - (4) An application is to proceed to be dealt with even if any investigation, inquiry or report under this section in relation to the applicant has not been completed within 6 months after the application was lodged.

Explanatory note

Item (64) provides that the investigation of a licence applicant that the Director of Liquor and Gaming is required to undertake must be completed within 6 months after the application was lodged and that the application is to proceed if the inquiry has not been completed within that time.

Amendment: duty on AAD double-up function**(65) Section 86K (Duty payable on approved amusement devices):**

In the definition of “turnover” in section 86K (5), after “period”, insert “(other than credits risked in the course of a double-up function)”.

Explanatory note

Section 86K of the Act provides for the payment of duty on approved amusement devices with that duty calculated as a proportion of “turnover”, which is defined to mean the value of the total credits risked by players playing those devices. Item (65) makes it clear that credits risked in the course of a double-up function are not to be included in turnover.

Amendments: endorsements on licences**(66) Section 71A:**

After section 71, insert:

Endorsements on licences

71A. A requirement of this Act that a condition or other matter be endorsed on a licence is sufficiently complied with if the condition or other matter is endorsed on a schedule to the licence.

SCHEDULE 1—AMENDMENTS—*continued*

(67) Section 140 (Averments):

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

- (c1) that a specified endorsement is an endorsement on a specified licence;

Explanatory note

Item (66) allows endorsements on licences to be made by way of endorsements on schedules to licences. Item (67) provides that an allegation that a specified endorsement has been made to a specified licence is sufficient evidence of the endorsement.

Amendment: refund on surrender of licence

(68) Section 83A:

Omit the section, insert instead:

Refund of licence fee on surrender of licence

83A. (1) If the surrender in writing of a licence is accepted by the Board, application may be made to the Board for a refund of part of any licence fee already paid for the licensing period during which the surrender was accepted.

(2) The Board may, if the Board thinks fit, refund part of the licence fee, excluding any amount of duty referred to in section 80 (2) (a) (iii).

(3) The amount of any such refund is at the discretion of the Board but is not to exceed such amount as is proportionate to the unexpired portion of the licensing period in respect of which the licence fee was paid.

(4) The Board is entitled to deduct from the refund a surrender fee fixed by the Board for the licence concerned.

(5) Any refund payable under this section is to be paid to the person who, in the opinion of the Board, is entitled to the refund.

Explanatory note

Item (68) substitutes a provision that provides for a refund of licence fee when a licence is surrendered. The current provision allows a refund of a part of the fee payable for the licensing period *following* the licensing period during which the licence is surrendered, with the amount of the refund being in proportion to the unexpired portion of the licensing period. As proposed to be substituted, the refund will be of part of the fee payable for the licensing period *during* which

*Liquor (Amendment) Act 1994 No. 42*SCHEDULE 1—AMENDMENTS—*continued*

the surrender occurs. It will be clearly provided that any refund will be at the discretion of the Board and the amount of the refund will be at the discretion of the Board with the amount currently provided for being the upper limit.

Amendments: penalties(69) Section 84 (**Statement of liquor purchases**):

From section 84 (2), omit “or imprisonment for 1 year or both”.

(70) Section 85 (**Sales to authorised sellers**):

From section 85 (1), omit “or imprisonment for 1 year, or both”.

Explanatory note

Items (69) and (70) remove imprisonment as a penalty for offences under section 84 or 85 of the Act.

Amendments: statute law revision(71) Section 4 (**Definitions**):

(a) After paragraph (c) of the definition of “person authorised to sell liquor” in section 4 (1), insert:

(c1) any person who sells or supplies liquor (otherwise than as referred to in section 6 (c)–(f)) whether in New South Wales or elsewhere but is not required by the Act to hold a licence in respect of the sale or supply of liquor in New South Wales; or

(b) At the end of paragraphs (a) and (b) of the definition of “person authorised to sell liquor” in section 4 (1), insert “or”.

(72) Section 196 (**Modification of approved amusement devices**):

From section 196 (2) (a), omit “network”, insert instead “artwork”.

Explanatory note

Items (71) and (72) make amendments by way of statute law revision.

Item (71) transfers part of the definition of “person authorised to sell liquor” from the regulations to the definition of that term in the Act.

Item (72) makes a minor amendment to correct an error of terminology.

SCHEDULE 1—AMENDMENTS—*continued***Amendment: savings and transitional provisions****(73) Schedule 1 (Savings and transitional provisions):****(a) Omit clause 1 (1), insert instead:**

(1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Liquor (Amendment) Act 1993;

Liquor (Amendment) Act 1994.

(b) After clause 13, insert:**Part 3—Liquor (Amendment) Act 1994****Penalty notices**

14. Section 117F (Infringement notices for minors) continues to apply despite its repeal in respect of a penalty notice issued under that section before its repeal.

Licence fee calculation

15. The amendments made to section 80 by Schedule 1 (44) and (50) to the Liquor (Amendment) Act 1994 apply for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extend to apply in respect of liquor sold or supplied before the commencement of those amendments.

Freight charges to brewers' regional depots

16. Section 78A applies for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extends to apply in respect of sales of liquor occurring before the commencement of that section.

Existing caterer's licences

17. (1) A caterer's licence in force immediately before the substitution of section 54B by the Liquor (Amendment) Act 1994 continues in force as if it had been granted under this Act as amended by that Act.

(2) Such a licence is taken to specify, as the commercial kitchen to which the licence applies, the premises that were

SCHEDULE 1—AMENDMENTS—*continued*

the licensed premises under the licence immediately before that substitution of section 54B.

(3) This Act as amended by the Liquor (Amendment) Act 1994 extends to an application for a caterer's licence made, but not determined, before that substitution of section 54B.

Liquor (Repeals and Savings) Act 1982

18. (1) If, immediately before the commencement of this Act, the trading hours pursuant to any licence to which Schedule 4 to the Liquor (Repeals and Savings) Act 1982 applies extended beyond the limits prescribed by this Act and clause 3 of that Schedule, the licensee may, in addition to trading during the hours so prescribed, trade in accordance with the licence concerned during those extended hours.

(2) Provisions of this Act that enable a variation of trading hours effected under that Act to be further varied:

- (a) apply to the extended hours authorised by this clause so as to enable a reduction of those hours, as if those hours had been authorised by a variation effected under this Act; and
- (b) so apply, for the purposes of any such reduction, notwithstanding any limits prescribed by this Act generally in relation to variations (or further variations) of trading hours.

Off-licence for brewer held by body corporate

19. Division 8A of Part 3 does not apply to an off-licence for a brewer held by a body corporate and in force immediately before the commencement of that Division, until 6 months after that commencement.

3 year amnesty for existing advertising

20. The amendments made by the Liquor (Amendment) Act 1994 which amend section 91 and insert section 91A (Restrictions on use of "casino" etc. to advertise licensed premises) do not apply to any visible promotional or advertising matter first displayed before the commencement of the amendments, until the promotional or advertising matter is replaced or its form or contents are changed or until the day that is 3 years after the commencement of the amendments (whichever is the earlier).

SCHEDULE 1—AMENDMENTS—*continued***Validation**

21. Anything done before the commencement of the amendments made by Schedule 1 (63) to the Liquor (Amendment) Act 1994 which would have been validly done had those amendments been in force when it was done is validated.

Regulations

22. The amendments to the Liquor Regulation 1983 made by section 6 of the Liquor (Amendment) Act 1994 do not affect the future amendment or repeal of that Regulation.

Explanatory note

Item (73) inserts savings and transitional provisions and a validation consequent on the proposed amendments to be made by this Bill.

*[Minister's second reading speech made in—
Legislative Assembly on 3 May 1994
Legislative Council on 13 May 1994]*

FIRST PRINT

LIQUOR (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Registered Clubs (Amendment) Bill 1994 is cognate with this Bill.

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

- (a) to provide for the issue of liquor licences for motels to authorise the sale of liquor for consumption by guests in their rooms;
- (b) to alter the caterer's licence provisions of the Act so that a caterer will be able to hold a caterer's licence even though the caterer does not provide catering services at the caterer's own premises;
- (c) to provide for the grant of liquor licences to corporations and for the appointment of managers of licensed premises when the licensee is a body corporate;
- (d) to enable a restaurant to obtain a liquor licence when it has sanitary facilities in immediate proximity to the restaurant (at present sanitary facilities must be within the premises of the restaurant);
- (e) to update and clarify the range of activities and events that will qualify for the grant of a function licence;
- (f) to require certain retail liquor sales by wholesalers and brewers who also hold a retailer's licence to be made through their retail licence and to make the method of calculating licence fees for wholesalers and brewers the same whether or not they hold a retail licence;
- (g) to amend existing provisions and add new provisions for preventing the use of names and descriptions for licensed premises that are objectionable, inappropriate or misleading or prohibited by the regulations;
- (h) to exempt from the price of beer (for licence fee calculation purposes) the cost of freight from breweries to country depots;
- (i) to enable liquor licences that are granted in Sydney to be issued by the Sydney registry directly to licensees outside Sydney;
- (j) to require vigneron, wholesalers and brewers to pay licence fees in respect of sales in excess of the existing limits applicable to their licences;

Liquor (Amendment) 1994

- (k) to exempt the holders of off-licences to auction liquor from the requirement to lodge with the Board a statement of liquor purchases;
- (l) to make it clear that the Board has power to require a complaint that licensed premises are unduly disturbing the quiet and good order of the neighbourhood be made or verified by statutory declaration;
- (m) to give a licensee a defence to the offence of allowing liquor to be served to a minor when the liquor is served by the parent or guardian of the minor;
- (n) to extend offences concerning the consumption of liquor by a minor so that they will operate on unlicensed ("BYO") restaurants, with a defence of parental consent;
- (o) to extend offences concerning the sale or supply of liquor to minors to include the serving of liquor to minors;
- (p) to permit liquor to be served for consumption anywhere on hotel premises on Good Friday (rather than being restricted to sales with a meal in a dining room as at present) and to permit hotel trading hours to be extended from midnight Sunday to 5 a.m. Monday for hotels in Sydney City and Kings Cross areas if the extension is necessary to meet the needs of tourists and tourism;
- (q) to permit, subject to certain conditions, the variation of Australian wine licences so that beer can be sold for consumption on the premises and to permit the removal of such a licence to a new location in the same neighbourhood in certain circumstances;
- (r) to extend an existing provision which deals with the issue of penalty notices for offences committed by minors on licensed premises so that the regulations will be able to apply it to other offences under the Act or the regulations, and provide for the penalty payable and the persons who may issue a penalty notice;
- (s) to insert a provision in the Act that is currently found in the regulations concerning the giving of evidence before the Licensing Court by affidavit;
- (t) to make it clear that the assessment of liquor purchases by a licensee (for licence fee purposes) is to include all purchases by any licensee under the licence during the assessment period;
- (u) to require the Director of Liquor and Gaming to complete his or her investigation of an applicant for a licence within 6 months after the application is lodged and to provide for the application to proceed even if the investigation has not been completed within that time;
- (v) to provide that credits risked in the course of a double-up function on an approved amusement device are not to be counted for the purpose of calculating machine turnover (and the duty payable on that turnover);
- (w) to provide that conditions and other matters required to be endorsed on a licence may be endorsed on a schedule to the licence, and provide for evidence of endorsements;
- (x) to provide for the refund of licence fee paid for the licensing period during which a licence is surrendered (rather than licence fee paid for the next succeeding licensing period, as at present) and to provide that such a refund is at the discretion of the Board;
- (y) to remove imprisonment as a penalty for certain offences concerned with the furnishing of information;

Liquor (Amendment) 1994

- (z) to make amendments by way of statute law revision and to enact consequential savings and transitional provisions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Liquor Act 1982.

Clause 4 makes an amendment to the Justices Act 1902 that extends the courtesy letter and enforcement order provisions of that Act to penalty notices issued under the Liquor Act 1982. The amendment is consequential on the amendments referred to in (r) above.

Clause 5 amends the Liquor (Repeals and Savings) Act 1982 by repealing a provision that prevents the removal of an Australian wine licence. That provision will now be inserted in the Principal Act (with certain exceptions) by the amendment referred to in (q) above.

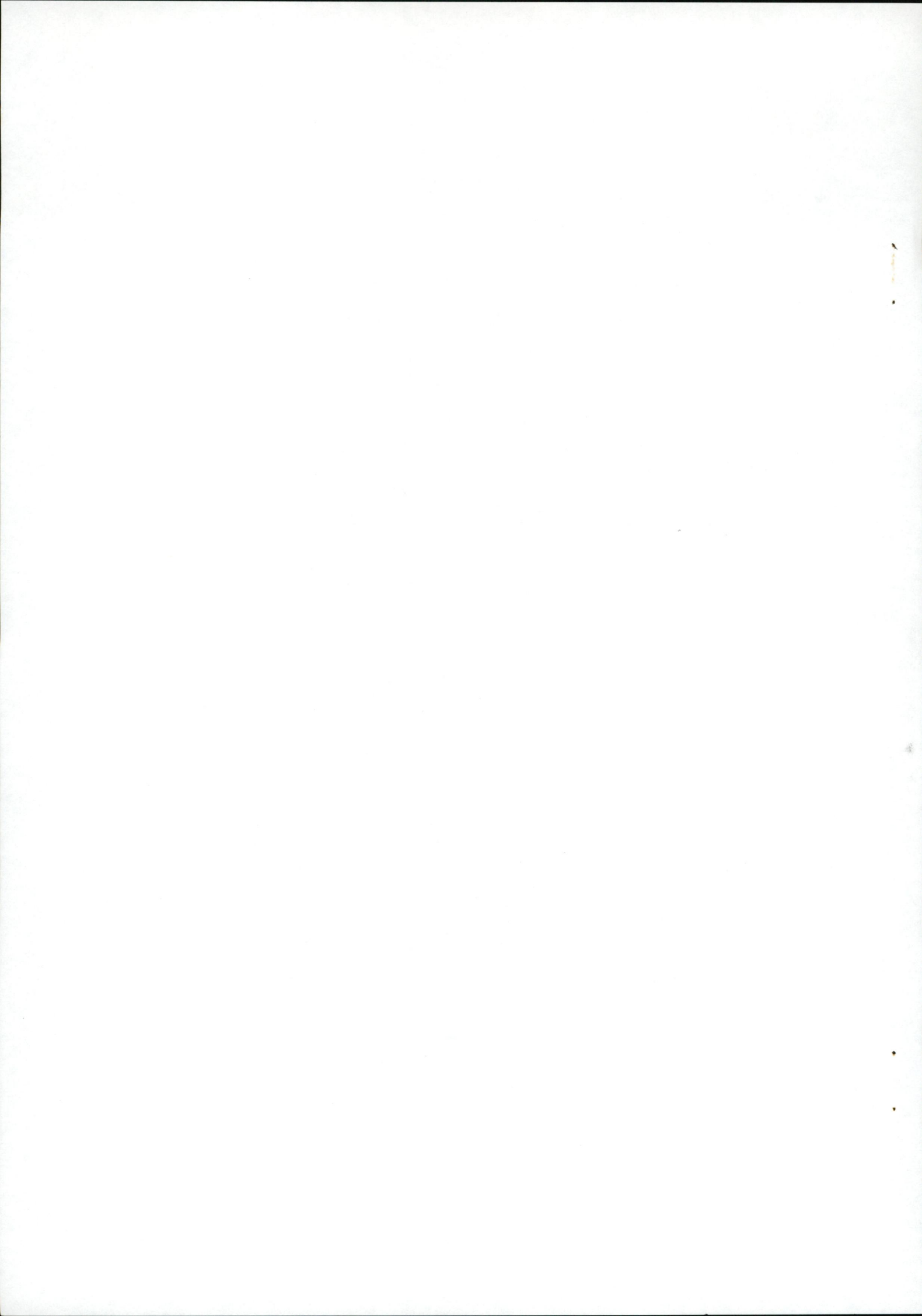
Clause 6 amends the Liquor Regulation 1983 to:

- (a) prescribe a fee of \$1,000 for a composite application provided for by the Bill for hotels in Sydney City and Kings Cross areas which will cover both of the allowable trading hours extensions on Sunday and the proposed new extension of trading hours for those hotels from midnight on Sunday to 5 a.m. Monday; and
- (b) prescribe a fee of \$500 for an application for removal of an Australian wine licence; and
- (c) omit the provision that is to be inserted in the Act by the amendment referred to in (s) above; and
- (d) delete a provision consequentially on the transfer of part of the definition of "person authorised to sell liquor" from the regulations to the Act.

Clause 7 repeals the Liquor (Australian Wine Licences) Regulation 1984, with the substance of that regulation being continued in the context of the amendment referred to in (q) above and in proposed clause 18 of existing Schedule 1 (Savings and transitional provisions).

Clause 8 provides that explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedule 1 makes the amendments to the Liquor Act 1982 described above. Each amendment is described in detail in the explanatory note relating to the amendment concerned.



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LIQUOR (AMENDMENT) BILL 1994

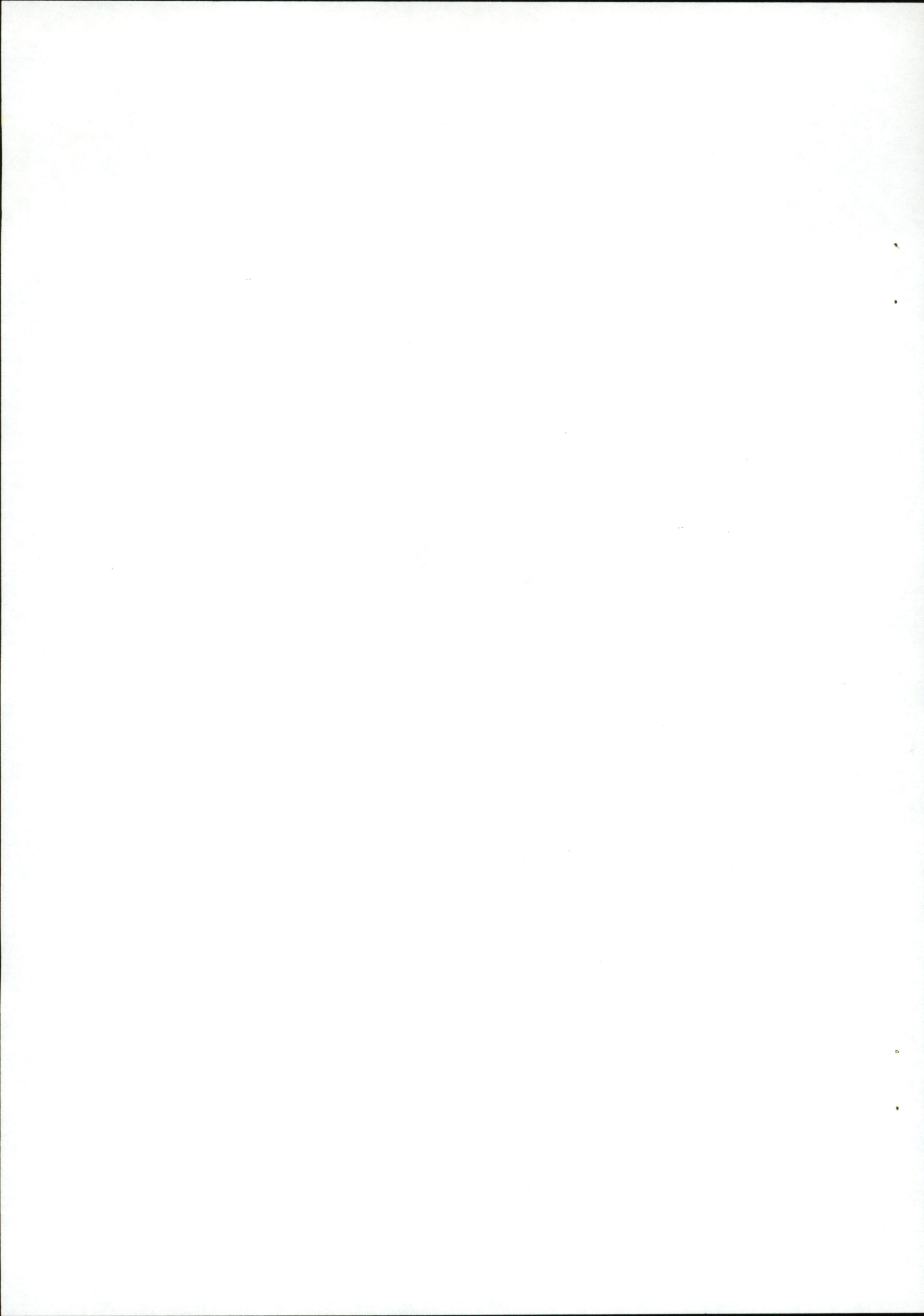
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Liquor Act 1982 No. 147
4. Amendment of Justices Act 1902 No. 27
5. Amendment of Liquor (Repeals and Savings) Act 1982 No. 148
6. Amendment of Liquor Regulation 1983
7. Repeal of Liquor (Australian Wine Licences) Regulation 1984
8. Explanatory notes

SCHEDULE 1—AMENDMENTS



LIQUOR (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Liquor Act 1982 to make further provision with respect to licence fees, the grant of licences, penalties, the duties of licensees, and minors; and for other purposes.

See also Registered Clubs (Amendment) Bill 1994.

*Liquor (Amendment) 1994***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Liquor (Amendment) Act 1994.

Commencement

- 5 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 Schedule 1.

Amendment of Justices Act 1902 No. 27

- 10 4. The Justices Act 1902 is amended by inserting in alphabetical order in paragraph (a) of the definition of "penalty notice" in section 100I (1) the words "Liquor Act 1982, section 145A;".

Amendment of Liquor (Repeals and Savings) Act 1982 No. 148

- 15 5. Clause 9 of Schedule 4 to the Liquor (Repeals and Savings) Act 1982 is repealed.

Amendment of Liquor Regulation 1983

6. The Liquor Regulation 1983 is amended:
- (a) by omitting clause 3C;
 - (b) by inserting after clause 11 (4) (d) the following clause:

20 (d1) application for removal of a licence to which section 21A (Australian wine licences) applies—\$500;
 - (c) by inserting after clause 11 (4) (e2) the following paragraph:

(e3) application for a variation of trading hours as referred to in section 25 (2B)—\$1,000;
 - 25 (d) by omitting clause 33 (Evidence).

Repeal of Liquor (Australian Wine Licences) Regulation 1984

7. The Liquor (Australian Wine Licences) Regulation 1984 is repealed.

Explanatory notes

- 30 8. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendments: licences for motels**(1) Section 4 (Definitions):**

After the definition of "minor" in section 4 (1), insert: 5

"motel" means premises that provide temporary accommodation to travellers, comprising bedrooms each with en-suite bathing and sanitary facilities, but does not include a hotel, guest-house, boarding house, lodging house, nursing home or caravan park, or any other form of residential accommodation declared by the regulations to not be a motel for the purposes of this Act; 10

"motel licence" means an on-licence granted in respect of a motel (not being an on-licence granted in respect of a restaurant where the licensed premises are defined to include a motel); 15

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

(a) After section 18 (4) (c), insert:

(c1) a motel; 20

(b) After section 18 (10), insert:

(10A) Subsections (1) and (2) do not authorise the court to grant an on-licence in relation to premises if the grant of the licence will result in there being an on-licence in force in relation to a motel at the same time as a separate on-licence is in force in relation to a restaurant at the motel. 25

(c) After section 18 (11), insert:

(12) The jurisdiction of the court to grant a motel licence may be exercised by the Principal Registrar if there is no objection to the grant of the licence. 30

(3) Section 23 (On-licence—miscellaneous conditions):

After section 23 (6), insert:

(7) If an on-licence is a motel licence, liquor must not be sold or supplied on the licensed premises in contravention of any of the following restrictions: 35

(a) liquor must not be sold or supplied except in the reception area of the motel (that is, the office or other area of the motel where persons are received for the purpose of the making of arrangements concerning accommodation at the motel); 40

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (b) liquor may only be sold or supplied to a person who is a bona fide traveller and accommodated at the motel in accommodation consisting of or including a bedroom with separate sanitary and bathing facilities, for consumption in that accommodation (whether by that person or by an invited guest of that person);
- 10 (c) the liquor sold or supplied must have been purchased by the licensee under the motel licence from the holder of a hotelier's licence or an off-licence to sell liquor by retail;
- (d) the volume of liquor sold or supplied to any one person on any one day must not exceed 2 litres.
- 15 (4) Section 53A:
After section 53, insert:
Grant of motel licence
53A. An application for a motel licence must not be granted unless the court is satisfied that the premises concerned are to be operated as a bona fide motel.
- 20 (5) Section 56 (**Fee for grant of licence**):
After section 56 (1) (j), insert:
(j1) in the case of a motel licence—such fee, not exceeding \$500, as may be fixed by the Board;
- 25 (6) Section 61 (**Grant of transfer of licence**):
After section 61 (2), insert:
(2A) If there is no objection to an application under section 41 for the transfer of a motel licence, the application may be granted by the Principal Registrar.
- 30 (7) Section 80 (**Periodic licence fee**):
After section 80 (2) (b), insert:
(b1) in the case of a motel licence—\$100;
- 35 (8) Section 84 (**Statement of liquor purchases**):
Before section 84 (2), insert:
(1) This section does not apply to a licensee under a motel licence.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*(9) Section 86 (**Records to be kept**):

After section 86 (5), insert:

(6) This section does not apply to a licensee under a motel licence. 5

(10) Section 86A (**Keeping of records concerning low alcohol beer**):

In section 86A (1), after "A licensee", insert "(other than a licensee under a motel licence)".

Explanatory note

Items (1)–(10) expand the class of on-licences (licences in which liquor purchased must be consumed on the premises) that may be issued under the Act to include a new licence for motels. Currently motels can be licensed premises but only as an endorsement on a restaurant licence. 10

The new licence will not require the motel to have a restaurant, and will have the following features: 15

- It will authorise the sale of liquor in the reception area of a motel for consumption by guests accommodated at the motel in suites having their own bathing and toilet facilities. Sales will be limited to 2 litres per day to any one person.
- The liquor must have been purchased from a hotel or an off-licence to sell liquor by retail. A fixed licence fee is payable (rather than one based on a percentage of the value of liquor) because the percentage fee is payable by the hotel or retail off-licence from which the liquor is purchased. 20
- If there is no objection to the grant of a motel licence, the Principal Registrar of the Licensing Court will be permitted to grant the licence. 25
- Provisions that cover conduct on licensed premises and restrict under-age drinking will apply to motel licences.

Amendments: caterers' licences(11) Section 4 (**Definitions**): 30

- (a) From section 4 (1), omit the definition of "caterer's licence", insert instead:

"**caterer's licence**" means a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises; 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(b) In section 4 (1), after paragraph (a) of the definition of “licensed premises”, insert:

(a1) in the case of a caterer’s licence:

5 (i) premises or part of premises that comprise the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies; and

10 (ii) premises or part of premises in which a function, occasion or event is being held and at which the holder of the licence is selling liquor under the authority of the licence; or

(c) After section 4 (3), insert:

15 (4) Where the situation of the licensed premises is relevant for any purpose relating to a caterer’s licence, the licensed premises are taken to be situated at the commercial kitchen to which the licence applies.

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

Omit section 18 (2) (d), insert instead:

20 (d) a caterer’s licence, being a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for
25 consumption on those premises.

(13) Section 36 (**Restriction on certain applications**):

Omit section 36 (5A), insert instead:

30 (5A) Application may not be made for a caterer’s licence where the commercial kitchen to be specified in the licence is on a vessel or an aircraft.

(5B) Application may not be made for the removal of a caterer’s licence (that is, to change the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies).

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (14) Section 39 (**Production of agreement required**):
 At the end of the section, insert:
 (2) In the application of this section to a caterer's licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence. 5
- (15) Section 54B:
 Omit the section, insert instead:
Grant of caterer's licence 10
 54B. (1) An application for a caterer's licence must not be granted unless the court is satisfied that:
 (a) the applicant carries on or is proposing to carry on the business of providing catering services and that business is or is proposed to be the applicant's principal business; and 15
 (b) the applicant has such skills, qualifications and experience, and has undergone such training, as may be prescribed by the regulations as necessary for the holder of a caterer's licence; and 20
 (c) the applicant is or will be the occupier of a commercial kitchen which satisfies any applicable standards and requirements determined by the Board for commercial kitchens and for access to the kitchen by the licensee.
 (2) A caterer's licence must specify, as the commercial kitchen to which the licence applies, the commercial kitchen occupied by the licensee as referred to in subsection (1). A particular commercial kitchen may not be specified in more than one caterer's licence. 25
 (3) The Board may determine standards and requirements for commercial kitchens, or different classes of commercial kitchens, and for access to commercial kitchens, for the purposes of this section. 30
- (16) Section 80 (**Periodic licence fee**):
 In section 80 (3) (d), after "function", insert "or a caterer's licence". 35

SCHEDULE 1—AMENDMENTS—*continued*(17) Section 86 (**Records to be kept**):

5 In section 86 (3) (b) (ii) and (5) (a), after “licensed premises” wherever occurring, insert “or other place approved under subsection (2)”.

(18) Section 101 (**Control of licensed premises**):

After section 101 (5), insert:

10 (6) In the application of this section to a caterer’s licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence.

(19) Section 104 (**Quiet and good order of neighbourhood**):

After section 104 (7), insert:

15 (8) In the application of this section to a caterer’s licence:
(a) a reference to licensed premises does not include private domestic premises; and
20 (b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.

(20) Section 110 (**Powers of entry**):

After section 110 (3), insert:

25 (4) In the application of this section to a caterer’s licence, a reference to licensed premises does not include private domestic premises.

(21) Section 114 (**Sale or supply of liquor to a minor**):

After section 114 (7), insert:

30 (8) In the application of this section to a caterer’s licence, a reference to licensed premises does not include private domestic premises.

(22) Section 115 (**Consumption etc. of liquor by a minor**):

After section 115 (3), insert:

35 (4) In the application of this section to a caterer’s licence, a reference to licensed premises does not include private domestic premises.

*Liquor (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued*****(23) Section 125 (Conduct on licensed premises):**

After section 125 (4), insert:

(5) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises except in subsection (3). 5

Explanatory note

At present it is a requirement of the Act that a caterer must have a function room in order to be able to hold a caterer's licence. The holder of a caterer's licence is authorised to sell liquor when catering for a function in that function room or on any other premises on which the licensee provides catering services (whether or not occupied or controlled by the licensee). 10

Items (11)–(23) will remove this requirement so that a caterer will be able to hold a caterer's licence even though he or she does not provide catering services on his or her own premises. It will however be necessary for a caterer to have a commercial kitchen of a certain standard, both to ensure that the caterer is a bona fide caterer and to provide nominal "licensed premises" (the commercial kitchen) to assist in the operation of premises-based enforcement provisions of the Act. 15

Consequential amendments are made to various provisions of the Act. In particular, the term "licensed premises" is defined to include any premises on which the holder of a caterer's licence sells liquor under the authority of the licence (i.e. wherever he or she is catering for the time being). Some sections have been amended to exclude private domestic premises where it would not be appropriate to treat those premises as licensed premises. 20
25

Amendments: grant of licences to corporations etc.**(24) Section 4 (Definitions):**

In section 4 (1), insert in alphabetical order:

"manager" or "manager of licensed premises" means a person appointed under Division 8A of Part 3 to manage licensed premises; 30

"position of authority" is defined in section 4B;

(25) Section 4B:

After section 4A, insert:

Corporate licences—interpretation 35

4B. (1) A reference in this Act to a position of authority in a body corporate is a reference to the position of chief executive officer, director or secretary of the body corporate.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

5 (2) A person who occupies a position of authority in a body corporate is to be regarded as interested in an application for a licence made by the body and as interested in the business of the licensed premises to which a licence held by the body corporate relates.

10 (3) A person who is a shareholder in a body corporate is not (merely because of being a shareholder) to be regarded as a person who will be interested in an application for a licence made by the body corporate or in the business, or the profits or conduct of the business, to be carried on pursuant to the licence applied for or of the licensed premises to which a licence held by the body corporate relates.

15 (26) Section 36 (**Restrictions on liquor licence applications**):

Omit section 36 (1) and (1A), insert instead:

(1) This section does not apply to an application for a gaming-related licence.

(1A) An application for a licence may be made by:

- 20 (a) a natural person; or
(b) a body corporate.

(1B) An application for a licence may not be made by:

- (a) a natural person who is under the age of 18 years; or
(b) a person who is disqualified from holding a licence or who holds a suspended licence.

25 (27) Section 36A:

After section 36, insert:

Restrictions on applications for gaming-related licences

30 36A. (1) An application for a gaming-related licence may be made by a natural person or by a body corporate, subject to the restrictions in subsection (2).

(2) The following restrictions apply as to who may apply for a gaming-related licence:

- 35 (a) an application may not be made by a natural person who is under the age of 18 years;
(b) an application may not be made by a person who is disqualified from holding a gaming-related licence or who holds a suspended gaming-related licence;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (c) an application may not be made by a person who is within a class of persons prescribed by the regulations as being ineligible to apply for a gaming-related licence; 5
- (d) an application for an amusement device technician's licence may not be made by a body corporate.
- (28) Section 39 (**Production of agreement required**):
- At the end of the section, insert:
- (3) This section does not apply in the case of an application for the grant of a licence to a body corporate. 10
- (29) Section 45 (**Grounds of objection**):
- (a) After section 45 (1) (a1), insert:
- (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence; 15
- (b) In section 45 (3) (a) and (b), after “applicant” wherever occurring, insert “(or a person who occupies a position of authority in a body corporate that is the applicant)”. 20
- (c) In section 45 (4), after “(a1)”, insert “, (a2)”.
- (d) After section 45 (4) (a1), insert:
- (a2) in the case of an objection specified in subsection (1) (a2)—that the person to whom the objection relates is a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence; 25
- (30) Section 46 (**Taking of objection**):
- After section 46 (1) (b) (ia), insert:
- (ib) in the case of an objection specified in section 45 (1) (a2)—that the person to whom the objection relates is not a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence; 30

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (31) Section 47 (**Grant of application is discretionary in certain cases**):
- 5 (a) In section 47 (2), omit “(a1) or (b)”, insert instead “(a1), (a2) or (b)”.
- (b) After section 47 (2) (a1), insert:
- 10 (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence;
- (32) Section 66A (**Director may investigate licensee and others**):
After “licensee” wherever occurring, insert “or manager”.
- (33) Section 67 (**Summons to show cause against taking of disciplinary action**):
- 15 In section 67 (1), (2) and (3), after “licensee” wherever occurring, insert “or manager”.
- (34) Section 68 (**Grounds for complaint**):
- 20 (a) In section 68 (1), after “licensee” where firstly occurring, insert “or a manager of licensed premises”.
- (b) From section 68 (1) (a), omit “that the licensee has, while holding a licence, been convicted:”, insert instead “that the licensee or manager has, while holding a licence or managing licensed premises, been convicted:”.
- 25 (c) Omit section 68 (1) (b), insert instead:
- (b) that the licensee or manager has been guilty of a breach of a condition of the licence concerned;
- (d) In section 68 (1) (c) and (c1), after “licensee” wherever occurring, insert “or manager”.
- 30 (e) In section 68 (1) (e), after “licence”, insert “or the manager is not a fit and proper person to be the manager of the licensed premises”.
- (f) After section 68 (1) (f), insert:
- 35 (f1) in the case of a licence held by a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is the holder of a licence;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (g) In section 68 (2), after “licensee”, insert “or the manager of licensed premises”.
- (35) Section 69 (**Disciplinary powers of court**):
- (a) In section 69 (1), after “licensee” where firstly occurring, insert “or manager of licensed premises”. 5
- (b) In section 69 (1) (a) and (b), after “licensee” wherever else occurring, insert “or manager”.
- (c) After section 69 (1) (f), insert:
- (f1) withdraw the manager’s approval by the court to manage licensed premises; 10
- (f2) disqualify the manager from being the holder of an approval to manage licensed premises;
- (d) At the end of section 69 (1A) (a) (i), insert:
- or 15
- (ia) a person who occupies a position of authority in the body corporate that holds the licence (if the licence is held by a body corporate); or
- (e) In section 69 (1A) (c) (i), after “licence”, insert “or a person who occupies a position of authority in a body corporate that holds a licence”. 20
- (36) Part 3, Division 8A:
- After Division 8 of Part 3, insert:
- Division 8A—Special provisions for body corporate licensees** 25
- Division does not apply to gaming-related licences**
- 69A. This Division does not apply to a licensee under a gaming-related licence.
- Appointment of managers**
- 69B. A body corporate that is a licensee must appoint a manager for the licensed premises and must not cause or permit the conduct of business under the licence for a period in excess of 14 days unless there is an appointment of a manager of the licensed premises in force under this Division. 30
- Maximum penalty: 50 penalty units. 35

*Liquor (Amendment) 1994***SCHEDULE 1—AMENDMENTS—continued****Restrictions on who may be appointed as manager**

69C. (1) The following restrictions apply to the appointment of a manager of licensed premises:

- 5 (a) A person may not be appointed as the manager of licensed premises unless the person is approved by the court to manage licensed premises and the approval applies to the premises concerned.
- 10 (b) Only a natural person may be appointed to manage licensed premises.
- (c) A person cannot be appointed as manager of licensed premises if at the time of the appointment he or she already holds an appointment as manager of other licensed premises.
- 15 (2) An appointment in contravention of this section is void for the purposes of this Part.

Court approval of manager

69D. (1) The court is not to approve a person to manage licensed premises unless satisfied that the person is a fit and proper person to manage licensed premises.

20 (2) The approval of the court of a person to manage licensed premises may be given so as to apply to particular licensed premises, to all licensed premises of a specified class or to all licensed premises, as the court thinks fit.

25 (3) An application for the court's approval is to be made in the form approved by the Board.

How appointments are made and revoked

69E. (1) A licensee must give the Board notice of the appointment of a person as manager of licensed premises. The notice must give the name, address and date of birth of the person appointed and must be signed by the appointee as evidence of consent to his or her appointment as manager.

Maximum penalty: 20 penalty units.

30 (2) The appointment of a manager is not in force until the licensee has given the Board notice of the appointment as required by this section.

35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(3) The appointment of a manager is revoked by the licensee giving notice under this section of the appointment of a new manager or by the licensee or manager giving the Board notice of the manager's ceasing to act as manager. 5

(4) A notice of appointment of or of ceasing to act as manager may specify a day that is later than the day the notice is given as the day the notice is to take effect, and the notice takes effect accordingly.

(5) A notice under this section must be in writing in the form approved by the Board. 10

(6) In any proceedings in which the question of whether notice was given to the Board under this section is at issue, the party alleged to have given the notice bears the onus of establishing on the balance of probabilities that the notice was given. 15

Responsibilities and liabilities of managers of licensed premises

69F. (1) The person appointed as manager of licensed premises is responsible for the personal supervision and management of the conduct of the business under the licence on licensed premises. 20

(2) If an element of an offence under a provision of this Act is an act or omission by a licensee, a person who is manager of the licensed premises is responsible as though that person were also a licensee of those premises and is liable for the offence accordingly. 25

(3) This section does not affect any liability of a licensee for a contravention by the licensee of a provision of this Act.

Liability of licensee for contravention by manager 30

69G. The licensee of licensed premises is taken to have contravened any provision of this Act or the regulations that the manager of the licensed premises contravened as a result of section 69F unless the licensee establishes that the licensee: 35

(a) did not authorise or knowingly permit the contravention by the manager; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention occurring.

5 **Liability of directors etc. of body corporate licensee**

69H. (1) If a licensee that is a body corporate contravenes (whether by act or omission) any provision of this Act or the regulations, each person who occupies a position of authority in the body is taken to have contravened the same provision if the person knowingly authorised or permitted the
10 contravention.

(2) If a licensee that is a body corporate is taken to have contravened (whether by act or omission) any provision of this Act or the regulations by reason of a contravention by the manager of the licensed premises, each person who occupies a position of authority in the body is taken to have
15 contravened the same provision unless he or she establishes that he or she:

(a) was not knowingly a party to any authorisation by the
20 body corporate of the contravention by the manager;
and

(b) took all reasonable steps (within the scope of his or her
25 authority) to ensure that the body corporate maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention by the manager occurring.

(3) A person may be proceeded against and convicted
30 under a provision pursuant to this section whether or not the body corporate or manager of the licensed premises has been proceeded against or convicted.

(4) This section does not affect any liability imposed on a
35 body corporate or the manager of licensed premises for an offence committed by the body corporate or manager against this Act or the regulations.

(5) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer,

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the body corporate had that intention at that time.

5

(37) Section 101 (**Control of licensed premises**):

At the end of section 101, insert:

(7) Subsections (1) (a) and (b), (2) and (4) (b) do not apply to or in respect of a licence held by a body corporate. Subsection (3) does not apply to or in respect of a licence held by a body corporate unless the licence is a gaming-related licence.

10

(38) Section 125B (**Holding more than one licence etc.**):

At the end of the section, insert:

(2) This section does not apply to a licensee that is a body corporate.

15

(39) Section 144 (**Licensee liable for act of employee etc.**):

(a) After “holder of a licence” wherever occurring, insert “or the manager of licensed premises”.

(b) After “licensee”, insert “or manager”.

20

Explanatory note

Items (24)–(39) permit the grant of a liquor licence to a body corporate. Currently a liquor licence cannot be granted to a body corporate (except a licence for a brewer).

The amendments will also provide for the compulsory appointment by a body corporate licensee of a manager to manage and supervise the conduct of the licensed premises. Managers will be responsible in the same way as licensees for the conduct of business under the licence. The body corporate licensee will also be responsible for any contravention by the manager unless able to establish that the licensee did not authorise or knowingly permit the contravention by the manager and maintained control over and supervision of the manager.

25

Provision is also included which makes persons holding positions of authority in a body corporate that holds a licence responsible for contraventions by the body corporate or a manager appointed by the body corporate.

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35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

5 Various consequential amendments are made to existing provisions of the Act, including provision for objections to the grant of licences and complaints about licensees on the grounds that a person occupying a position of authority in a body corporate applicant or licensee is not a fit and proper person to hold such a position.

Amendments: restaurant sanitary facilities

(40) Section 32 (**On-licence (restaurant)—variation of trading hours**):

10 After section 32 (3A), insert:

(3B) A variation of trading hours is not available under subsection (3) in respect of a restaurant if any sanitary facilities for the restaurant are not located within the restaurant.

15 (41) Section 53 (**Grant of on-licence (restaurant)**):

(a) Omit section 53 (1) (b), insert instead:

20 (b) the court is satisfied that sanitary facilities for both sexes of at least the standard prescribed by the regulations are located within, or in immediate proximity to, the restaurant and there are any additional sanitary facilities that the court thinks should, in the circumstances of the case, be provided.

(b) After section 53 (2), insert:

25 (3) An application for an on-licence relating to a restaurant is not to be granted where any sanitary facilities for the restaurant are proposed by the applicant for the licence to be located in immediate proximity to the restaurant (and not within the restaurant) unless the court is satisfied that:

30 (a) there are special circumstances that prevent those facilities being located within the restaurant; and

(b) the facilities are sufficiently near to the restaurant for convenient use by its patrons; and

35 (c) the facilities will be fully accessible to the patrons during the trading hours of the restaurant and will not be available for use by other persons during those hours; and

(d) the safety of patrons will not be jeopardised by reason of the location of the facilities; and

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (e) the applicant for the on-licence has entered into a written agreement or made other appropriate arrangements with the owner or occupier of the premises in which the facilities are located for the maintenance of the cleanliness of the facilities during the trading hours of the restaurant; and 5
- (f) the grant of the licence is necessary to meet the needs of tourists and tourism or other special needs.
- (42) Section 92 (**Cleanliness of licensed and related premises**): 10
- (a) In section 92 (b), after “on-licence”, insert “(other than an on-licence to which paragraph (c1) relates)”;
- (b) After section 92 (c), insert:
- (c1) in the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant—ensure that the sanitary facilities are maintained in a good and sanitary condition and take all reasonable steps to ensure that those facilities are furnished with proper sanitary appliances sufficient for the business carried on pursuant to the licence; 15 20
- (43) Section 110 (**Powers of entry**):
- After section 110 (6), insert:
- (7) In the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant, the part of any premises that comprises those facilities and any part of premises necessary for access to those facilities is to be treated as part of the licensed premises for the purposes of this section. 25
- (44) Section 156 (**Regulations**):
- After section 156 (1) (h), insert: 30
- (i) the control and cleanliness of, and access to, sanitary facilities for licensed premises (being a restaurant) located within, or in immediate proximity to, the licensed premises;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

5 At present, section 53 (1) (b) of the Liquor Act 1982 provides that an on-licence relating to a restaurant cannot be granted unless there are appropriate sanitary facilities within the premises.

Item (41) makes amendments which provide that a licence may be granted for a restaurant with sanitary facilities located in immediate proximity to the restaurant instead of within the restaurant, but only if:

- 10 (a) special circumstances prevent the facilities being in the restaurant; and
 (b) the facilities are nearby, convenient, safe and accessible to patrons and not available to other persons; and
 (c) there are satisfactory arrangements for the cleaning of the facilities; and
 (d) the licence is needed to meet the needs of tourists, tourism or other special needs.

15 Items (42)–(44) make amendments that:

- (a) require licensees to ensure that such facilities are maintained in a sanitary condition and properly supplied; and
 (b) enable police officers and special inspectors to exercise, in relation to the sanitary facilities, the powers of entry conferred on them in respect of licensed premises; and
 (c) enable regulations to be made with respect to the control and cleanliness of, and access to, sanitary facilities (whether located within, or in immediate proximity to, a restaurant).

Item (40) prevents a variation in trading hours for such a restaurant.

25 **Amendment: function licences**

(45) Section 4 (**Definitions**):

Omit the definition of “function” in section 4 (1), insert instead:

30 “function” means any function that comprises, or comprises a combination of, a dinner, ball, convention, seminar, sporting event, race-meeting, regatta, agricultural show, horticultural show, pastoral show, industrial show, trade or other fair, fete, carnival, or any event or activity that is similar to an event or activity
 35 specified in this definition and is conducted for public amusement or entertainment;

Explanatory note

40 Item (45) substitutes the definition of “function” in the Act so as to update and clarify the range of activities and events that will qualify for the grant of a function licence under the Act. The new definition refers to the same activities

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

and events as the current definition but removes the distinction between functions held in buildings or not in buildings, and makes it clear that a function can comprise a combination of any of the activities or events mentioned in the definition.

5

Amendments: licence fees payable by wholesalers and brewers**(46) Section 18 (Court may grant licences):**

From section 18 (8), omit “to the extent referred to in section 22 (3)”, insert instead “to the extent provided in section 22”.

(47) Section 22 (Off-licence—miscellaneous conditions):

10

(a) From section 22 (2), omit “subject to subsection (3)”, insert instead “subject to this section”.

(b) After section 22 (2), insert:

(2A) Liquor must not be sold or supplied pursuant to an off-licence to persons referred to in paragraph (c1) or (d) of the definition of “person authorised to sell liquor” in section 4 (1) or to employees of the licensee if:

15

(a) the off-licence is a licence to sell liquor to persons authorised to sell liquor or is a licence for a brewer; and

20

(b) an off-licence to sell liquor by retail is held in respect of the same premises.

(48) Section 80 (Periodic licence fee):

(a) Omit section 80 (2) (c), insert instead:

(c) in the case of an off-licence to sell liquor to persons authorised to sell liquor or an off-licence for a brewer—\$1,000 plus 13 per cent of the applicable amount prescribed by subsection (3) plus 7 per cent of the applicable amount prescribed by subsection (3A); or

25

30

(b) From section 80 (3) (b), omit “, where in either case an off-licence to sell liquor by retail is not held in respect of the same premises”.

Explanatory note

Items (46) and (47) clarify restrictions on the sale of liquor under a wholesaler’s licence or brewer’s licence where a retail licence is held in respect of the same premises. The amendment will ensure that a wholesaler’s licence

35

*Liquor (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued***

5 will not authorise the sale of liquor to employees or to certain other persons that the wholesaler is currently authorised to sell to (such as the State Rail Authority), and a brewer's licence will not authorise the sale of liquor to employees, when a retail licence is held concurrently. Those sales will have to be made under the retail licence.

10 Item (48) will remove the current distinction in the Act (for the purposes of the calculation of licence fees) between wholesalers and brewers who also hold retail licences and those who do not. The licence fee for wholesalers and brewers who also hold a retail licence is currently a flat \$1,000, whereas the licence fee for other wholesalers and brewers is \$1,000 or a percentage of liquor sales, whichever is greater. The amendment will make the licence fee for all wholesalers and brewers \$1,000 plus a percentage of liquor sales.

Amendments: names of licensed premises

15 (49) Section 54C:

After section 54B, insert:

Application to be refused if name objectionable

20 54C. An application for a licence is to be refused if the court is of the opinion that the proposed name for the licensed premises is objectionable, inappropriate or misleading or is a name that is a prohibited name for the licensed premises under section 91 (Name of licensed premises).

(50) Section 91 (Name of licensed premises):

25 (a) Omit section 91 (1) (a), insert instead:

(a) a name for the licensed premises (not being a name that is a prohibited name for the licensed premises under this section); and

(b) Omit section 91 (2) (a), insert instead:

30 (a) the Board has approved in writing of the proposed new name; and

(c) After section 91 (2), insert:

35 (2A) The Board must not approve an alteration of the name of licensed premises if the name as proposed to be altered is a prohibited name for the licensed premises under this section.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(2B) A licensee must not cause or permit the use on any sign displayed on the exterior of the licensed premises or in any advertising with respect to the licensed premises of a name that is a prohibited name for the licensed premises under this section. 5

Maximum penalty: 5 penalty units.

(2C) A name is a prohibited name for licensed premises under this section if:

(a) it is a name or a name of a kind, or contains words or words of a kind, prescribed by the regulations as prohibited, either in relation to all licensed premises or in relation to the particular class of licensed premises of which the licensed premises forms part; or 10

(b) it is a name that the Board has notified the licensee in writing is prohibited as being objectionable, inappropriate or misleading. 15

(2D) A regulation for the purposes of subsection (2C) may be made so as to apply to licensed premises generally or so as to apply only to a specified class or specified classes of licensed premises. 20

(2E) A name may not be prohibited in respect of licensed premises by notification under this section if the regulations provide that the name is permitted for use in relation to the licensed premises concerned or in relation to the particular class of licensed premises concerned. 25

(51) Section 91A:

After section 91, insert:

Restrictions on use of “casino” etc. to advertise licensed premises 30

91A. (1) A licensee must not cause or permit the licensed premises or any part of the licensed premises to be described, promoted or referred to (whether on any sign or in any advertising with respect to the licensed premises or otherwise) as a casino or by use of any other description that is prescribed as a prohibited description for licensed premises. 35

Maximum penalty: 5 penalty units.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

5 (2) Subsection (1) does not apply to the contents of any sign or advertising or promotional material if the sign is not visible, and the material is not visible or audible, from any public place outside the licensed premises concerned.

(3) The regulations may provide for the circumstances in which use of the word “casino” or any other specified word in a name or description of licensed premises or a part of the premises is not a contravention of this section.

10 **Explanatory note**

15 Item (49) provides that the Licensing Court is to refuse an application for a liquor licence if of the opinion that the proposed name of the premises is objectionable, inappropriate or misleading or is prohibited by the regulations or a direction of the Board provided for under item (50). This formalises an existing implied power of the court.

20 Item (50) alters an existing provision of the Act that prevents the use of a name for licensed premises if the Board had directed that the proposed new name not be used. As amended, the provision will prevent the use of a name that is prohibited by the regulations or is a name that the Board has prohibited as being objectionable, inappropriate or misleading. Item (50) also amends an existing provision that requires the approval of the Board before the name of licensed premises can be changed, to require the Board to refuse approval for a change that would result in such a prohibited name. A new provision is inserted which will prevent the display of a name on licensed premises or in advertising
25 for licensed premises if the name is similarly prohibited by the regulations or the Board.

30 Item (51) inserts a new provision that will prevent licensed premises from being described or referred to (such as on signs or in advertising) as a casino or by use of any other description that is prohibited by the regulations. The new provision does not apply to signs and promotional material that is inside the licensed premises concerned.

Amendments: issue of licence

(52) Section 55 (Issue of licence etc.):

35 (a) From section 55 (1), omit “the licence shall not be issued by the registrar”, insert instead “the licence may be issued by the registrar or by the Principal Registrar but is not to be issued”.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 55 (2), omit “while the registrar is prohibited by subsection (1) from issuing the licence”, insert instead “while the issue of the licence is prohibited by subsection (1)”.

5

Explanatory note

Item (52) enables liquor licences that are granted in Sydney to be issued by the Sydney registry directly to licensees outside Sydney. At present licences are transmitted by the Sydney registry for formal issue by the district registry.

Amendment: freight charges for beer to brewers' regional depots

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(53) Section 78A:

After section 78, insert:

Freight costs to brewers' regional depots not to be included in price of beer

78A. (1) Despite section 78, a reference in this Part to the amount paid or payable by or on behalf of a person for any liquor does not, in the case of liquor that is beer, include brewery regional depot freight charges for that beer.

15

(2) Brewery regional depot freight charges for beer are any amounts paid or payable as freight or other delivery charges to the holder of an off-licence for a brewer in respect of the delivery of that beer from the licensed premises of the brewer to a regional depot of the brewer, being a depot that is approved by the Board for the purposes of this section by order in writing and being beer that is made by the holder of that off-licence or by a body corporate that is related (within the meaning of the Corporations Law) to that holder.

20

(3) If the Board is of the opinion that any amount paid or payable as freight or other delivery charges exceeds the value of the freight or other delivery, the Board may determine the value of the freight or delivery (having regard to the circumstances in which the beer was delivered).

25

30

(4) An amount so determined by the Board is to be regarded for the purposes of this section as the amount actually paid or payable as the freight or other delivery charges concerned.

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*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (5) A person who is a party to any arrangement for the payment of an amount for freight or other delivery charges which exceeds the true cost of the freight or other delivery, with the intention of causing or assisting in the avoidance or evasion of the payment of licence fee, is guilty of an offence.

Maximum penalty: 100 penalty units.

Explanatory note

- 10 Item (53) inserts a new section which provides that the cost of freight on beer from the brewery to the country regional depots of the brewer is not to be included in the amount paid for liquor for the purpose of calculating licence fee. Currently freight charges are included in the cost of liquor as an anti-avoidance measure. This operates to disadvantage country licensees who have the cost of freight from the city included in the cost of beer on which they must pay licence fees.

15 The new section will contain 3 anti-avoidance measures:

- The concession will apply only in respect of freight to depots approved by the Liquor Administration Board.
- 20 • The Board will have power to reassess the amount of freight paid if it appears to be excessive.
- It will be an offence to inflate freight costs with the intention of evading licence fee.

Amendment: payment of licence fees on excess sales by vignerons, wholesalers and brewers

- 25 (54) Section 80 (**Periodic licence fee**):
- (a) In section 80 (2) (b), after "\$500", insert "(plus any amount required to be paid by subsection (5A))"
- (b) After section 80 (5), insert:
- 30 (5A) There is payable as licence fee under subsection (2) (b) (in addition to the amount of \$500 provided by that paragraph) an amount that is 13% of the sale price of any quantity of wine sold by the licensee during the assessment period for the licence fee in excess of the quantity permitted by section 22 (1) (d) to be sold pursuant to the licence.
- 35 (5B) Any quantity of liquor purporting to have been sold or supplied pursuant to an off-licence to sell liquor to persons

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

authorised to sell liquor or an off-licence for a brewer but which exceeded the quantity of liquor permitted to be sold or supplied pursuant to the licence, is for the purposes of the calculation, assessment, payment and recovery of licence fee, taken to have been sold or supplied pursuant to the licence concerned. 5

(5C) Subsections (5A) and (5B) do not limit the operation of any other provision of this Act in relation to a contravention of section 22 (1) (d), in particular the provisions of Division 8 (Disciplinary provisions) of Part 3. 10

Explanatory note

Item (54) makes amendments which ensure that sales of liquor under a vigneron's licence, a wholesaler's licence or a brewer's licence in excess of the existing limits applicable to the quantity of liquor that can be sold under those licences is to attract licence fee at the rate applicable to ordinary sales. 15

The Act currently limits single sales by vignerons to a quantity of 45 litres and sales by wholesalers and brewers to their employees are limited to 5% of total sales. The amendment will mean that sales by vignerons in excess of this limit will attract licence fee at the rate of 13%. Sales by wholesalers and brewers in excess of the limit on sales to employees will for licence fee purposes be treated as authorised sales and will attract licence fee at the same rate as other authorised sales (13% or 7%, as appropriate). 20

Amendment: statement of liquor purchases by auctioneers

(55) Section 84 (**Statement of liquor purchases**): 25

After section 84 (2), insert:

(2A) A person who holds an off-licence to auction liquor is exempt from the requirements of subsection (2) in relation to purchases (but not sales) of liquor.

Explanatory note 30

Section 84 currently requires licensees to submit a statutory declaration specifying information prescribed by the regulations in relation to sales and purchases of liquor. Information on *purchases* of liquor is not relevant to liquor auctioneers whose licence fee is calculated on the basis of liquor *sales* to unlicensed persons. Item (55) exempts liquor auctioneers from the requirement to lodge a statement under the section in relation to purchases of liquor. 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Amendment: verification of complaints by statutory declaration****(56) Section 104 (Quiet and good order of neighbourhood):**

After section 104 (1), insert:

- 5 (1A) The Board may require a complaint under this section to be made or verified by statutory declaration.

Explanatory note

- 10 Item (56) formalises the power of the Board to require that a complaint that licensed premises are unduly disturbing the quiet and good order of the neighbourhood be made or verified by statutory declaration. This accords with the Board's current practice in respect of such complaints.

Amendment: sale or supply of liquor to minors**(57) Section 114 (Sale or supply of liquor to a minor):**

At the end of section 114, insert:

- 15 (9) It is a defence to a prosecution for an offence under subsection (3) if it is proved that the liquor was supplied to the person by that person's parent or guardian.
- 20 (10) A reference in this section to the supply of liquor to a person includes a reference to the serving of liquor to a person.

Explanatory note

Item (57) inserts 2 new provisions:

- 25 The proposed new subsection (9) gives a licensee a defence to a prosecution for allowing a person under the age of 18 to be supplied with liquor on the licensed premises. The new defence will apply if the under-age person's parent or guardian was the person who supplied the liquor. However, the parent or guardian concerned will still be guilty of an offence in those circumstances. The amendment removes the responsibility of licensees to prevent parents giving their children liquor while on licensed premises.
- 30 The proposed new subsection (10) extends the meaning of "supply" in section 114 of the Act (dealing with selling or supplying liquor to minors) so that the offences in that section will also cover the *servicing* of liquor to minors (such as occurs in "BYO" restaurants when liquor brought onto the premises by patrons is served by restaurant staff). The same defences will
- 35 apply to offences concerning the serving of liquor to minors as apply to supplying liquor to minors.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Amendment: drinking by minors in BYO restaurants****(58) Section 115 (Consumption etc. of liquor by minor):**

(a) In section 115 (1) (a), after “premises”, insert “or on the premises of an unlicensed restaurant”. 5

(b) After section 115 (1), insert:

(1A) It is a defence to a prosecution for an offence under subsection (1) of consuming liquor on the premises of an unlicensed restaurant if it is proved that the defendant consumed the liquor in the company of and with the authority of his or her parent or guardian. 10

(c) In section 115 (2), omit “accused”, insert instead “defendant”.

Explanatory note

Item (58) (a) and (b) make it an offence for a person under 18 to consume liquor on the premises of an unlicensed restaurant with a defence of parental consent. Item 56 (c) makes an amendment by way of statute law revision for consistency of terminology. 15

Amendments: hotel trading hours**(59) Section 24 (Hotelier’s licence—trading hours):** 20

(a) In section 24 (2) (c), after “day”, insert “(other than Good Friday)”.

(b) From section 24 (2) (c), omit “and”.

(c) After section 24 (2) (c), insert:

(c1) on Good Friday, where the liquor is sold or supplied for consumption on the licensed premises—from noon to 10 p.m.; and 25

(60) Section 25 (Hotelier’s licence—variation of trading hours):

(a) From section 25 (2), omit “other than Sunday or a restricted trading day”, insert instead “other than a restricted trading day”. 30

(b) After section 25 (2), insert:

(2A) An application may not be granted under subsection (2) for an extension of trading hours from midnight on a Sunday unless: 35

*Liquor (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued***

5 (a) the licensed premises concerned are within the area constituting the City of Sydney as at the commencement of this subsection or front onto any of the streets or parts of streets specified in Schedule 2 (Kings Cross) or are situated within the area bounded by those streets or parts of streets; and

10 (b) the court is satisfied that the extension of trading hours is necessary or desirable to meet the needs of tourists and tourism.

15 (2B) In the case of licensed premises referred to in subsection (2A), a single application may be made under this section to cover each of the variations of trading hours provided for under subsection (3) and from midnight on a Sunday under subsection (2).

(61) Schedule 2:

After Schedule 1, insert:

SCHEDULE 2—KINGS CROSS

(Sec. 25 (2A))

20 Ward Avenue, from its intersection with Kings Cross Road, north to its intersection with Elizabeth Bay Road and Baroda Street;

25 Baroda Street, from its intersection with Elizabeth Bay Road and Ward Avenue, north and west to its intersection with Greenknowe Avenue;

Greenknowe Avenue, from its intersection with Baroda Street, west to its intersection with Macleay Street;

Macleay Street, from its intersection with Greenknowe Avenue, north to its intersection with Manning Street;

30 Manning Street, from its intersection with Macleay Street, west to its intersection with Tusculum Street;

Tusculum Street, from its intersection with Manning Street, south to its intersection with Hughes Street;

35 Hughes Street, from its intersection with Tusculum Street, west to its intersection with Victoria Street;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

Victoria Street, from its intersection with Hughes Street, south to its intersection with Brougham Lane;	
Brougham Lane, from its intersection with Victoria Street, west to its intersection with Brougham Street;	5
Brougham Street, from its intersection with Brougham Lane, south to its intersection with William Street;	
William Street, from its intersection with Brougham Street, east to its intersection with Kings Cross Road;	
Kings Cross Road, from its intersection with William Street, east to its intersection with Ward Avenue.	10

Explanatory note

Item (59) amends the provision that deals with hotel trading on Good Friday. Currently hotels are restricted to selling liquor with a meal in a dining room between noon and 10 p.m. on Good Friday. The amendment will allow hotels to sell liquor for consumption anywhere on the licensed premises (but will still not permit take-away sales) during those hours on Good Friday. 15

Item (60) allows an application to be made and granted for an extension of trading hours for a hotel in the City of Sydney or Kings Cross between midnight Sunday and 5 a.m. Monday (except when Sunday falls on Christmas Day) if the extension is to meet the needs of tourists and tourism. Currently no hotel can trade during these hours. 20

Item (61) inserts a Schedule containing a description of the streets that form the boundaries of the area that constitutes Kings Cross for the purposes of the amendment in item (60). 25

Amendment: Australian wine licences

(62) Section 21A:

After section 21, insert:

Australian wine licences

21A. (1) This section applies to a licence to which Schedule 4 (Special provisions relating to Australian wine licences) to the Liquor (Repeals and Savings) Act 1982 applies (referred to in this section as an Australian wine licence). 30

(2) A condition on an Australian wine licence that liquor other than wine must not be sold or supplied on the licensed premises may not be varied or revoked under section 20. 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

5 (3) The court may on the application of the licensee vary that condition of the licence so as to permit the sale of beer on the licensed premises for consumption on those premises, but the court is not to grant such an application unless the court is satisfied that:

(a) the licence was being exercised on or about 1 January 1994; or

10 (b) there is some compelling reason why the licence was not being exercised at that time.

15 (4) The grant of an application under subsection (3) does not have effect until payment by the applicant to the Board of the amount (up to \$50,000) determined by the Board as payable for the variation of the condition (determined having regard to the circumstances of the licence and the application). The grant of the application is cancelled after 3 months if the amount so determined is not paid within that time.

20 (5) An application to remove an Australian wine licence may not be granted unless:

(a) the removal is to a place that is within the neighbourhood of the premises from which it is proposed to remove the licence; and

25 (b) the floor area of the premises which are proposed to be the licensed premises on removal is not greater than that of the licensed premises from which the licence is proposed to be removed; and

30 (c) the court is satisfied that the licence was being exercised on or about 1 January 1994 or that there is some compelling reason why the licence was not being exercised at that time, or that removal is reasonably necessary to enable the licence to be exercised.

(6) Section 36 (5) does not apply to an application for the removal of an Australian wine licence.

35 **Explanatory note**

40 Item (62) restates (with the amendments explained below) provisions currently in the Liquor (Repeals and Savings) Regulation 1984 that prevent the removal or variation of a condition on an Australian wine licence that only wine for consumption on the licensed premises may be sold under the licence, and that prevent the removal of such a licence.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

The amendments to those provisions will:

- (a) enable the “wine only” condition to be varied to permit the sale of beer for consumption on the premises, but only if the Licensing Court is satisfied the licence is not dormant and with a fee of up to \$50,000 being payable for such a variation; and 5
- (b) enable the court to grant an application for removal of the licence if satisfied that removal will be to a location in the same neighbourhood and not to larger premises, and that the licence is not dormant or removal is reasonably necessary to allow the licence to be exercised. 10

Amendments: penalty notices

- (63) Section 117F (**Infringement notices for minors**):

Omit the section.

- (64) Section 117G (**Minors not to be detained**):

After “penalty under this Act”, insert “or an amount ordered to be paid under section 100L (Orders to enforce penalty notices) of the Justices Act 1902 in respect of a penalty notice issued under this Act”. 15

- (65) Section 145A:

After section 145, insert: 20

Penalty notices

145A. (1) A person who is an authorised officer in relation to an offence against this Act or the regulations may serve a penalty notice on a person if it appears to the officer that the person has committed that offence and the offence is one that is stated by the regulations to be an offence to which this section applies. 25

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section. 30

(3) A penalty notice may be served personally or by post. A penalty notice sent by post to a person is taken to have been properly addressed if addressed to the person at the address shown in the records of the Board as the residential or business address of the person last known to the Board. 35

Liquor (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

5 (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence, except proceedings under Division 8 (Disciplinary provisions) of Part 3.

10 (5) 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 proceeding arising out of the same occurrence.

15 (6) However, when a penalty is paid under this section in respect of a penalty notice served on a person, the person is for the purposes of Division 8 (Disciplinary provisions) of Part 3 taken to have been convicted of the offence to which the penalty notice related.

20 (7) Payment under this section does not interfere with the operation of Division 8A (Special provisions for body corporate licensees) of Part 3 or section 144 (Licensee liable for act of employee) in respect of a contravention or alleged contravention of this Act by the person who pays the penalty.

(8) The regulations may:
25 (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
(c) prescribe different amounts of penalties for different offences or classes of offences.

30 (9) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(10) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

35 (11) In this section:

“**authorised officer**”, in relation to an offence against this Act or the regulations, means a person prescribed by the regulations as an authorised officer for the

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

purposes of this section in relation to that offence or in relation to the class of offences of which that offence forms part.

Explanatory note

5

Items (63)–(65) provide for the issue of penalty notices by authorised officers for alleged contraventions of the Act or the regulations. The issue of a penalty notice gives the alleged offender the option of paying a penalty that is less than the maximum penalty provided for the offence if dealt with by a court if he or she does not wish to have the matter dealt with by a court. If the penalty is paid, no further action is taken in respect of the offence. However, payment of the penalty is regarded as a conviction for the offence for the purposes of the disciplinary provisions of the Act.

10

The proposed new provision replaces an existing provision that deals only with offences committed by minors on licensed premises. Under that provision, the maximum penalty which a penalty notice could require was \$50 and only police officers could issue them.

15

Under the proposed new provision, the offences for which penalty notices can be issued and the penalty payable under them will be provided for in the regulations. The regulations will also provide who can issue penalty notices for the offences concerned.

20

Clause 4 of this Bill makes a consequential amendment to the Justices Act 1902 to extend the reminder (“courtesy letter”) and penalty notice enforcement provisions of that Act to the penalty notices provided for under the proposed amendments.

25

An existing provision of the Liquor Act 1982 that prevents the imprisonment of minors for failure to pay a penalty under that Act will apply to amounts payable under Justices Act enforcement orders.

Amendment: evidence by affidavit

(66) Section 154C:

30

After section 154B, insert:

Evidence

154C. (1) Subject to subsection (2) and except to the extent (if any) that the court otherwise directs, evidence in any proceedings before the court under this Act (other than proceedings for an offence) is to be given by affidavit.

35

(2) Except to the extent (if any) that the parties otherwise agree or the court otherwise directs, an affidavit may not, in

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

the absence of the deponent, be admitted in evidence under subsection (1).

5 (3) Where proceedings for or in respect of an offence against this Act are taken before the court, a witness present in the court at the hearing of the proceedings is, unless the court otherwise directs in a particular case or class of cases, to give evidence by means of a written statement a copy of which has been given both to the court and the parties and
10 which, at the hearing, is verified orally on oath by the witness.

(4) A witness who, pursuant to this section, gives evidence by affidavit or written statement may be cross-examined and re-examined as if he or she had given oral evidence on oath
15 of the matter of the statement.

Explanatory note

Item (66) inserts a provision in the Act that is currently in the regulations concerning the giving of evidence in the court by affidavit or written statement.

Amendment: clarification of licence fee calculation

20 (67) Section 80 (**Periodic licence fee**):

From section 80 (3) and (4), omit “the licensee” wherever occurring, insert instead “any licensee under the licence”.

Explanatory note

25 Item (67) makes it clear that the calculation of licence fee payable for a liquor licence is based on liquor purchases made by or on behalf of *any* licensee under the licence during the assessment period for the fee even if the licensee liable to pay the fee was not the licensee when the purchase was made.

Amendment: investigation of applicants to be completed within 6 months

30 (68) Section 42C (**Investigations by Director**):

(a) In section 42C (1), after “the application”, insert “and is to complete those investigations and inquiries within 6 months after the application was lodged”.

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 42C (3), insert:

(4) An application is to proceed to be dealt with even if any investigation, inquiry or report under this section in relation to the applicant has not been completed within 6 months after the application was lodged. 5

Explanatory note

Item (68) provides that the investigation of a licence applicant that the Director of Liquor and Gaming is required to undertake must be completed within 6 months after the application was lodged and that the application is to proceed if the inquiry has not been completed within that time. 10

Amendment: duty on AAD double-up function

(69) Section 86K (**Duty payable on approved amusement devices**):

In the definition of "turnover" in section 86K (5), after "period", insert "(other than credits risked in the course of a double-up function)". 15

Explanatory note

Section 86K of the Act provides for the payment of duty on approved amusement devices with that duty calculated as a proportion of "turnover", which is defined to mean the value of the total credits risked by players playing those devices. Item (69) makes it clear that credits risked in the course of a double-up function are not to be included in turnover. 20

Amendments: endorsements on licences

(70) Section 71A:

After section 71, insert: 25

Endorsements on licences

71A. A requirement of this Act that a condition or other matter be endorsed on a licence is sufficiently complied with if the condition or other matter is endorsed on a schedule to the licence. 30

(71) Section 140 (**Averments**):

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

(c1) that a specified endorsement is an endorsement on a specified licence;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

5 Item (70) allows endorsements on licences to be made by way of endorsements on schedules to licences. Item (71) provides that an allegation that a specified endorsement has been made to a specified licence is sufficient evidence of the endorsement.

Amendment: refund on surrender of licence

(72) Section 83A:

Omit the section, insert instead:

10 **Refund of licence fee on surrender of licence**

83A. (1) If the surrender in writing of a licence is accepted by the Board, application may be made to the Board for a refund of part of any licence fee already paid for the licensing period during which the surrender was accepted.

15 (2) The Board may, if the Board thinks fit, refund part of the licence fee, excluding any amount of duty referred to in section 80 (2) (a) (iii).

20 (3) The amount of any such refund is at the discretion of the Board but is not to exceed such amount as is proportionate to the unexpired portion of the licensing period in respect of which the licence fee was paid.

(4) The Board is entitled to deduct from the refund a surrender fee fixed by the Board for the licence concerned.

25 (5) Any refund payable under this section is to be paid to the person who, in the opinion of the Board, is entitled to the refund.

Explanatory note

30 Item (72) substitutes a provision that provides for a refund of licence fee when a licence is surrendered. The current provision allows a refund of a part of the fee payable for the licensing period *following* the licensing period during which the licence is surrendered, with the amount of the refund being in proportion to the unexpired portion of the licensing period. As proposed to be substituted, the refund will be of part of the fee payable for the licensing period *during* which the surrender occurs. It will be clearly provided that any refund will be at the discretion of the Board and the amount of the refund will be at the discretion of the Board with the amount currently provided for being the upper limit.

35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Amendments: penalties**(73) Section 84 (**Statement of liquor purchases**):

From section 84 (2), omit “or imprisonment for 1 year or both”.

5

(74) Section 85 (**Sales to authorised sellers**):

From section 85 (1), omit “or imprisonment for 1 year, or both”.

Explanatory note

Items (73) and (74) remove imprisonment as a penalty for offences under section 84 or 85 of the Act.

10

Amendments: statute law revision(75) Section 4 (**Definitions**):

(a) After paragraph (c) of the definition of “person authorised to sell liquor” in section 4 (1), insert:

15

(c1) any person who sells or supplies liquor (otherwise than as referred to in section 6 (c)–(f)) whether in New South Wales or elsewhere but is not required by the Act to hold a licence in respect of the sale or supply of liquor in New South Wales; or

20

(b) At the end of paragraphs (a) and (b) of the definition of “person authorised to sell liquor” in section 4 (1), insert “or”.

(76) Section 196 (**Modification of approved amusement devices**):

From section 196 (2) (a), omit “network”, insert instead “artwork”.

25

Explanatory note

Items (75) and (76) make amendments by way of statute law revision.

Item (75) transfers part of the definition of “person authorised to sell liquor” from the regulations to the definition of that term in the Act.

30

Item (76) makes a minor amendment to correct an error of terminology.

SCHEDULE 1—AMENDMENTS—*continued***Amendment: savings and transitional provisions**(77) Schedule 1 (**Savings and transitional provisions**):

(a) Omit clause 1 (1), insert instead:

5 (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Liquor (Amendment) Act 1993;

Liquor (Amendment) Act 1994.

10 (b) After clause 13, insert:

Part 3—Liquor (Amendment) Act 1994**Penalty notices**

15 14. Section 117F (Infringement notices for minors) continues to apply despite its repeal in respect of a penalty notice issued under that section before its repeal.

Licence fee calculation

20 15. The amendments made to section 80 by Schedule 1 (48) and (54) to the Liquor (Amendment) Act 1994 apply for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extend to apply in respect of liquor sold or supplied before the commencement of those amendments.

Freight charges to brewers' regional depots

25 16. Section 78A applies for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extends to apply in respect of sales of liquor occurring before the commencement of that section.

Existing caterer's licences

30 17. (1) A caterer's licence in force immediately before the substitution of section 54B by the Liquor (Amendment) Act 1994 continues in force as if it had been granted under this Act as amended by that Act.

35 (2) Such a licence is taken to specify, as the commercial kitchen to which the licence applies, the premises that were the licensed premises under the licence immediately before that substitution of section 54B.

SCHEDULE 1—AMENDMENTS—*continued*

(3) This Act as amended by the Liquor (Amendment) Act 1994 extends to an application for a caterer's licence made, but not determined, before that substitution of section 54B.

Liquor (Repeals and Savings) Act 1982

5

18. (1) If, immediately before the commencement of this Act, the trading hours pursuant to any licence to which Schedule 4 to the Liquor (Repeals and Savings) Act 1982 applies extended beyond the limits prescribed by this Act and clause 3 of that Schedule, the licensee may, in addition to trading during the hours so prescribed, trade in accordance with the licence concerned during those extended hours.

10

(2) Provisions of this Act that enable a variation of trading hours effected under that Act to be further varied:

(a) apply to the extended hours authorised by this clause so as to enable a reduction of those hours, as if those hours had been authorised by a variation effected under this Act; and

15

(b) so apply, for the purposes of any such reduction, notwithstanding any limits prescribed by this Act generally in relation to variations (or further variations) of trading hours.

20

Off-licence for brewer held by body corporate

19. Division 8A of Part 3 does not apply to an off-licence for a brewer held by a body corporate and in force immediately before the commencement of that Division, until 6 months after that commencement.

25

3 year amnesty for existing advertising

20. The amendments made by the Liquor (Amendment) Act 1994 which amend section 91 and insert section 91A (Restrictions on use of "casino" etc. to advertise licensed premises) do not apply to any visible promotional or advertising matter first displayed before the commencement of the amendments, until the promotional or advertising matter is replaced or its form or contents are changed or until the day that is 3 years after the commencement of the amendments (whichever is the earlier).

30

35

Liquor (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued***Validation**

5 21. Anything done before the commencement of the amendments made by Schedule 1 (67) to the Liquor (Amendment) Act 1994 which would have been validly done had those amendments been in force when it was done is validated.

Regulations

10 22. The amendments to the Liquor Regulation 1983 made by section 6 of the Liquor (Amendment) Act 1994 do not affect the future amendment or repeal of that Regulation.

Explanatory note

Item (77) inserts savings and transitional provisions and a validation consequent on the proposed amendments to be made by this Bill.

SECOND PRINT

LIQUOR (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Liquor Act 1982 No. 147
4. Amendment of Justices Act 1902 No. 27
5. Amendment of Liquor (Repeals and Savings) Act 1982 No. 148
6. Amendment of Liquor Regulation 1983
7. Repeal of Liquor (Australian Wine Licences) Regulation 1984
8. Explanatory notes

SCHEDULE 1—AMENDMENTS

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

Legislative Assembly

NEW SOUTH WALES



Act No. , 1994

An Act to amend the Liquor Act 1982 to make further provision with respect to licence fees, the grant of licences, penalties, the duties of licensees, and minors; and for other purposes.

See also Registered Clubs (Amendment) Bill 1994.

*Liquor (Amendment) 1994***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Liquor (Amendment) Act 1994.

Commencement

- 5 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 Schedule 1.

Amendment of Justices Act 1902 No. 27

- 10 4. The Justices Act 1902 is amended by inserting in alphabetical order in paragraph (a) of the definition of "penalty notice" in section 100I (1) the words "Liquor Act 1982, section 145A;".

Amendment of Liquor (Repeals and Savings) Act 1982 No. 148

- 15 5. Clause 9 of Schedule 4 to the Liquor (Repeals and Savings) Act 1982 is repealed.

Amendment of Liquor Regulation 1983

6. The Liquor Regulation 1983 is amended:
- (a) by omitting clause 3C;
 - (b) by inserting after clause 11 (4) (d) the following clause:

20 (d1) application for removal of a licence to which section 21A (Australian wine licences) applies—\$500;
 - (c) by inserting after clause 11 (4) (e2) the following paragraph:

(e3) application for a variation of trading hours as referred to in section 25 (2B)—\$1,000;
 - 25 (d) by omitting clause 33 (Evidence).

Repeal of Liquor (Australian Wine Licences) Regulation 1984

7. The Liquor (Australian Wine Licences) Regulation 1984 is repealed.

Explanatory notes

- 30 8. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendments: licences for motels(1) Section 4 (**Definitions**):

After the definition of "minor" in section 4 (1), insert: 5

"motel" means premises that provide temporary accommodation to travellers, comprising bedrooms each with en-suite bathing and sanitary facilities, but does not include a hotel, guest-house, boarding house, lodging house, nursing home or caravan park, or any other form of residential accommodation declared by the regulations to not be a motel for the purposes of this Act; 10

"motel licence" means an on-licence granted in respect of a motel (not being an on-licence granted in respect of a restaurant where the licensed premises are defined to include a motel); 15

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

(a) After section 18 (4) (c), insert: 20

(c1) a motel;

(b) After section 18 (10), insert:

(10A) Subsections (1) and (2) do not authorise the court to grant an on-licence in relation to premises if the grant of the licence will result in there being an on-licence in force in relation to a motel at the same time as a separate on-licence is in force in relation to a restaurant at the motel. 25

(c) After section 18 (11), insert:

(12) The jurisdiction of the court to grant a motel licence may be exercised by the Principal Registrar if there is no objection to the grant of the licence. 30

(13) The following provisions of this Act and the regulations apply to and in respect of a motel licence in the same way as they apply to and in respect of a hotelier's licence: 35

(a) provisions of the regulations as to the making, advertising and lodging of an application for a licence and as to the documents required to accompany such an application;

(b) section 102 (Register of guests);

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(c) provisions of the regulations as to attendance or completion by an applicant for a licence at a course of instruction.

5 (3) Section 23 (**On-licence—miscellaneous conditions**):

After section 23 (6), insert:

(7) If an on-licence is a motel licence, liquor must not be sold or supplied on the licensed premises in contravention of any of the following restrictions:

10 (a) liquor may only be sold or supplied by means of bar facilities (such as facilities known as a mini-bar) located in the accommodation in which the liquor is to be consumed;

15 (b) liquor may only be sold or supplied to a person who is a bona fide traveller and accommodated at the motel in accommodation consisting of or including a bedroom with separate sanitary and bathing facilities, for consumption in that accommodation (whether by that person or by an invited guest of that person);

20 (c) the volume of liquor sold or supplied to any one person on any one day must not exceed 2 litres.

(4) Section 53A:

After section 53, insert:

Grant of motel licence

25 53A. An application for a motel licence must not be granted unless the court is satisfied that the premises concerned are to be operated as a bona fide motel.

(5) Section 56 (**Fee for grant of licence**):

After section 56 (1) (j), insert:

30 (j1) in the case of a motel licence—such fee, not exceeding \$500, as may be fixed by the Board;

(6) Section 61 (**Grant of transfer of licence**):

After section 61 (2), insert:

35 (2A) If there is no objection to an application under section 41 for the transfer of a motel licence, the application may be granted by the Principal Registrar.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Items (1)–(6) expand the class of on-licences (licences in which liquor purchased must be consumed on the premises) that may be issued under the Act to include a new licence for motels. Currently motels can be licensed premises but only as an endorsement on a restaurant licence. 5

The new licence will not require the motel to have a restaurant, and will have the following features:

- It will authorise the sale of liquor for consumption by guests accommodated at the motel in suites having their own bathing and toilet facilities. Sales will be by means of mini-bar facilities in guests' suites and will be limited to 2 litres per person per day. 10
- If there is no objection to the grant of a motel licence, the Principal Registrar of the Licensing Court will be permitted to grant the licence. 15
- Provisions that cover conduct on licensed premises and restrict under-age drinking will apply to motel licences.

Amendments: caterers' licences

(7) Section 4 (Definitions):

- (a) From section 4 (1), omit the definition of "caterer's licence", insert instead: 20

"caterer's licence" means a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises; 25

- (b) In section 4 (1), after paragraph (a) of the definition of "licensed premises", insert:

(a1) in the case of a caterer's licence:

- (i) premises or part of premises that comprise the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies; and 30
- (ii) premises or part of premises in which a function, occasion or event is being held and at which the holder of the licence is selling liquor under the authority of the licence; or 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(c) After section 4 (3), insert:

(4) Where the situation of the licensed premises is relevant for any purpose relating to a caterer's licence, the licensed premises are taken to be situated at the commercial kitchen to which the licence applies.

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

Omit section 18 (2) (d), insert instead:

(d) a caterer's licence, being a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises.

(9) Section 36 (**Restriction on certain applications**):

Omit section 36 (5A), insert instead:

(5A) Application may not be made for a caterer's licence where the commercial kitchen to be specified in the licence is on a vessel or an aircraft.

(5B) Application may not be made for the removal of a caterer's licence (that is, to change the commercial kitchen specified in the licence as the commercial kitchen to which the licence applies).

(10) Section 39 (**Production of agreement required**):

At the end of the section, insert:

(2) In the application of this section to a caterer's licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence.

(11) Section 54B:

Omit the section, insert instead:

Grant of caterer's licence

54B. (1) An application for a caterer's licence must not be granted unless the court is satisfied that:

(a) the applicant carries on or is proposing to carry on the business of providing catering services and that business is or is proposed to be the applicant's principal business; and

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) the applicant has such skills, qualifications and experience, and has undergone such training, as may be prescribed by the regulations as necessary for the holder of a caterer's licence; and 5
- (c) the applicant is or will be the occupier of a commercial kitchen which satisfies any applicable standards and requirements determined by the Board for commercial kitchens and for access to the kitchen by the licensee. 10
- (2) A caterer's licence must specify, as the commercial kitchen to which the licence applies, the commercial kitchen occupied by the licensee as referred to in subsection (1). A particular commercial kitchen may not be specified in more than one caterer's licence. 10
- (3) The Board may determine standards and requirements for commercial kitchens, or different classes of commercial kitchens, and for access to commercial kitchens, for the purposes of this section. 15
- (12) Section 80 (**Periodic licence fee**): 20
 In section 80 (3) (d), after "function", insert "or a caterer's licence".
- (13) Section 86 (**Records to be kept**): 25
 In section 86 (3) (b) (ii) and (5) (a), after "licensed premises" wherever occurring, insert "or other place approved under subsection (2)".
- (14) Section 101 (**Control of licensed premises**):
 After section 101 (5), insert:
 (6) In the application of this section to a caterer's licence, a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises under the licence. 30
- (15) Section 104 (**Quiet and good order of neighbourhood**):
 After section 104 (7), insert:
 (8) In the application of this section to a caterer's licence:
 (a) a reference to licensed premises does not include private domestic premises; and 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.
- (16) Section 110 (**Powers of entry**):
After section 110 (3), insert:
10 (4) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.
- (17) Section 114 (**Sale or supply of liquor to a minor**):
After section 114 (7), insert:
15 (8) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.
- (18) Section 115 (**Consumption etc. of liquor by a minor**):
After section 115 (3), insert:
20 (4) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises.
- (19) Section 125 (**Conduct on licensed premises**):
After section 125 (4), insert:
25 (5) In the application of this section to a caterer's licence, a reference to licensed premises does not include private domestic premises except in subsection (3).

Explanatory note

30 At present it is a requirement of the Act that a caterer must have a function room in order to be able to hold a caterer's licence. The holder of a caterer's licence is authorised to sell liquor when catering for a function in that function room or on any other premises on which the licensee provides catering services (whether or not occupied or controlled by the licensee).

35 Items (7)–(19) will remove this requirement so that a caterer will be able to hold a caterer's licence even though he or she does not provide catering services on his or her own premises. It will however be necessary for a caterer to have a commercial kitchen of a certain standard, both to ensure that the caterer is a bona fide caterer and to provide nominal "licensed premises" (the commercial kitchen) to assist in the operation of premises-based enforcement provisions of the Act.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

Consequential amendments are made to various provisions of the Act. In particular, the term “licensed premises” is defined to include any premises on which the holder of a caterer’s licence sells liquor under the authority of the licence (i.e. wherever he or she is catering for the time being). Some sections have been amended to exclude private domestic premises where it would not be appropriate to treat those premises as licensed premises.

5

Amendments: grant of licences to corporations etc.(20) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

10

“**manager**” or “**manager of licensed premises**” means a person appointed under Division 8A of Part 3 to manage licensed premises;

“**position of authority**” is defined in section 4B;

(21) Section 4B:

15

After section 4A, insert:

Corporate licences—interpretation

4B. (1) A reference in this Act to a position of authority in a body corporate is a reference to the position of chief executive officer, director or secretary of the body corporate.

20

(2) A person who occupies a position of authority in a body corporate is to be regarded as interested in an application for a licence made by the body and as interested in the business of the licensed premises to which a licence held by the body corporate relates.

25

(3) A person who is a shareholder in a body corporate is not (merely because of being a shareholder) to be regarded as a person who will be interested in an application for a licence made by the body corporate or in the business, or the profits or conduct of the business, to be carried on pursuant to the licence applied for or of the licensed premises to which a licence held by the body corporate relates.

30

(22) Section 36 (**Restrictions on liquor licence applications**):

Omit section 36 (1) and (1A), insert instead:

(1) This section does not apply to an application for a gaming-related licence.

35

SCHEDULE 1—AMENDMENTS—*continued*

(1A) An application for a licence may be made by:

- (a) a natural person; or
- (b) a body corporate.

5

(1B) An application for a licence may not be made by:

- (a) a natural person who is under the age of 18 years; or
- (b) a person who is disqualified from holding a licence or who holds a suspended licence.

(23) Section 36A:

10

After section 36, insert:

Restrictions on applications for gaming-related licences

36A. (1) An application for a gaming-related licence may be made by a natural person or by a body corporate, subject to the restrictions in subsection (2).

15

(2) The following restrictions apply as to who may apply for a gaming-related licence:

- (a) an application may not be made by a natural person who is under the age of 18 years;
- (b) an application may not be made by a person who is disqualified from holding a gaming-related licence or who holds a suspended gaming-related licence;
- (c) an application may not be made by a person who is within a class of persons prescribed by the regulations as being ineligible to apply for a gaming-related licence;
- (d) an application for an amusement device technician's licence may not be made by a body corporate.

20

25

(24) Section 39 (**Production of agreement required**):

At the end of the section, insert:

30

(3) This section does not apply in the case of an application for the grant of a licence to a body corporate.

(25) Section 45 (**Grounds of objection**):

- (a) After section 45 (1) (a1), insert:

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence; 5
- (b) In section 45 (3) (a) and (b), after “applicant” wherever occurring, insert “(or a person who occupies a position of authority in a body corporate that is the applicant)”. 10
- (c) In section 45 (4), after “(a1)”, insert “, (a2)”. 10
- (d) After section 45 (4) (a1), insert:
- (a2) in the case of an objection specified in subsection (1) (a2)—that the person to whom the objection relates is a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence; 15
- (26) Section 46 (**Taking of objection**):
- After section 46 (1) (b) (ia), insert:
- (ib) in the case of an objection specified in section 45 (1) (a2)—that the person to whom the objection relates is not a fit and proper person to occupy a position of authority in a body corporate that is to be the holder of a licence; 20
- (27) Section 47 (**Grant of application is discretionary in certain cases**):
- (a) In section 47 (2), omit “(a1) or (b)”, insert instead “(a1), (a2) or (b)”. 25
- (b) After section 47 (2) (a1), insert:
- (a2) in the case of an application for the grant of a licence to a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is to be the holder of a licence; 30
- (28) Section 66A (**Director may investigate licensee and others**):
- After “licensee” wherever occurring, insert “or manager”.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*(29) Section 67 (**Summons to show cause against taking of disciplinary action**):

5 In section 67 (1), (2) and (3), after “licensee” wherever occurring, insert “or manager”.

(30) Section 68 (**Grounds for complaint**):

(a) In section 68 (1), after “licensee” where firstly occurring, insert “or a manager of licensed premises”.

10 (b) From section 68 (1) (a), omit “that the licensee has, while holding a licence, been convicted:”, insert instead “that the licensee or manager has, while holding a licence or managing licensed premises, been convicted:”.

(c) Omit section 68 (1) (b), insert instead:

15 (b) that the licensee or manager has been guilty of a breach of a condition of the licence concerned;

(d) In section 68 (1) (c) and (c1), after “licensee” wherever occurring, insert “or manager”.

20 (e) In section 68 (1) (e), after “licence”, insert “or the manager is not a fit and proper person to be the manager of the licensed premises”.

(f) After section 68 (1) (f), insert:

25 (f1) in the case of a licence held by a body corporate—that a person who occupies a position of authority in the body is not a fit and proper person to occupy such a position in a body that is the holder of a licence;

(g) In section 68 (2), after “licensee”, insert “or the manager of licensed premises”.

(31) Section 69 (**Disciplinary powers of court**):

30 (a) In section 69 (1), after “licensee” where firstly occurring, insert “or manager of licensed premises”.

(b) In section 69 (1) (a) and (b), after “licensee” wherever else occurring, insert “or manager”.

(c) After section 69 (1) (f), insert:

35 (f1) withdraw the manager’s approval by the court to manage licensed premises;

(f2) disqualify the manager from being the holder of an approval to manage licensed premises;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (d) At the end of section 69 (1A) (a) (i), insert:
- or
- (ia) a person who occupies a position of authority in the body corporate that holds the licence (if the licence is held by a body corporate); or 5
- (e) In section 69 (1A) (c) (i), after “licence”, insert “or a person who occupies a position of authority in a body corporate that holds a licence”.
- (32) Part 3, Division 8A: 10
- After Division 8 of Part 3, insert:
- Division 8A—Special provisions for body corporate licensees**
- Division does not apply to gaming-related licences**
- 69A. This Division does not apply to a licensee under a gaming-related licence. 15
- Appointment of managers**
- 69B. A body corporate that is a licensee must appoint a manager for the licensed premises and must not cause or permit the conduct of business under the licence for a period in excess of 14 days unless there is an appointment of a manager of the licensed premises in force under this Division. 20
- Maximum penalty: 50 penalty units.
- Restrictions on who may be appointed as manager** 25
- 69C. (1) The following restrictions apply to the appointment of a manager of licensed premises:
- (a) A person may not be appointed as the manager of licensed premises unless the person is approved by the court to manage licensed premises and the approval applies to the premises concerned. 30
- (b) Only a natural person may be appointed to manage licensed premises.

SCHEDULE 1—AMENDMENTS—*continued*

5 (c) A person cannot be appointed as manager of licensed premises if at the time of the appointment he or she already holds an appointment as manager of other licensed premises.

(2) An appointment in contravention of this section is void for the purposes of this Part.

Court approval of manager

10 69D. (1) The court is not to approve a person to manage licensed premises unless satisfied that the person is a fit and proper person to manage licensed premises.

15 (2) The approval of the court of a person to manage licensed premises may be given so as to apply to particular licensed premises, to all licensed premises of a specified class or to all licensed premises, as the court thinks fit.

(3) An application for the court's approval is to be made in the form approved by the Board.

How appointments are made and revoked

20 69E. (1) A licensee must give the Board notice of the appointment of a person as manager of licensed premises. The notice must give the name, address and date of birth of the person appointed and must be signed by the appointee as evidence of consent to his or her appointment as manager.

Maximum penalty: 20 penalty units.

25 (2) The appointment of a manager is not in force until the licensee has given the Board notice of the appointment as required by this section.

30 (3) The appointment of a manager is revoked by the licensee giving notice under this section of the appointment of a new manager or by the licensee or manager giving the Board notice of the manager's ceasing to act as manager.

35 (4) A notice of appointment of or of ceasing to act as manager may specify a day that is later than the day the notice is given as the day the notice is to take effect, and the notice takes effect accordingly.

(5) A notice under this section must be in writing in the form approved by the Board.

SCHEDULE 1—AMENDMENTS—*continued*

(6) In any proceedings in which the question of whether notice was given to the Board under this section is at issue, the party alleged to have given the notice bears the onus of establishing on the balance of probabilities that the notice was given. 5

Responsibilities and liabilities of managers of licensed premises

69F. (1) The person appointed as manager of licensed premises is responsible for the personal supervision and management of the conduct of the business under the licence on licensed premises. 10

(2) If an element of an offence under a provision of this Act is an act or omission by a licensee, a person who is manager of the licensed premises is responsible as though that person were also a licensee of those premises and is liable for the offence accordingly. 15

(3) This section does not affect any liability of a licensee for a contravention by the licensee of a provision of this Act.

Liability of licensee for contravention by manager 20

69G. The licensee of licensed premises is taken to have contravened any provision of this Act or the regulations that the manager of the licensed premises contravened as a result of section 69F unless the licensee establishes that the licensee: 25

(a) did not authorise or knowingly permit the contravention by the manager; and

(b) maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention occurring. 30

Liability of directors etc. of body corporate licensee

69H. (1) If a licensee that is a body corporate contravenes (whether by act or omission) any provision of this Act or the regulations, each person who occupies a position of authority in the body is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 35

SCHEDULE 1—AMENDMENTS—*continued*

5 (2) If a licensee that is a body corporate is taken to have contravened (whether by act or omission) any provision of this Act or the regulations by reason of a contravention by the manager of the licensed premises, each person who occupies a position of authority in the body is taken to have contravened the same provision unless he or she establishes that he or she:

10 (a) was not knowingly a party to any authorisation by the body corporate of the contravention by the manager; and

15 (b) took all reasonable steps (within the scope of his or her authority) to ensure that the body corporate maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention by the manager occurring.

20 (3) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the body corporate or manager of the licensed premises has been proceeded against or convicted.

25 (4) This section does not affect any liability imposed on a body corporate or the manager of licensed premises for an offence committed by the body corporate or manager against this Act or the regulations.

30 (5) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the body corporate had that intention at that time.

(33) Section 101 (**Control of licensed premises**):

At the end of section 101, insert:

35 (7) Subsections (1) (a) and (b), (2) and (4) (b) do not apply to or in respect of a licence held by a body corporate. Subsection (3) does not apply to or in respect of a licence held by a body corporate unless the licence is a gaming-related licence.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*(34) Section 125B (**Holding more than one licence etc.**):

At the end of the section, insert:

(2) This section does not apply to a licensee that is a body corporate.

5

(35) Section 144 (**Licensee liable for act of employee etc.**):

(a) After “holder of a licence” wherever occurring, insert “or the manager of licensed premises”.

(b) After “licensee”, insert “or manager”.

10

Explanatory note

Items (20)–(35) permit the grant of a liquor licence to a body corporate. Currently a liquor licence cannot be granted to a body corporate (except a licence for a brewer).

The amendments will also provide for the compulsory appointment by a body corporate licensee of a manager to manage and supervise the conduct of the licensed premises. Managers will be responsible in the same way as licensees for the conduct of business under the licence. The body corporate licensee will also be responsible for any contravention by the manager unless able to establish that the licensee did not authorise or knowingly permit the contravention by the manager and maintained control over and supervision of the manager.

15

Provision is also included which makes persons holding positions of authority in a body corporate that holds a licence responsible for contraventions by the body corporate or a manager appointed by the body corporate.

Various consequential amendments are made to existing provisions of the Act, including provision for objections to the grant of licences and complaints about licensees on the grounds that a person occupying a position of authority in a body corporate applicant or licensee is not a fit and proper person to hold such a position.

25

Amendments: restaurant sanitary facilities

30

(36) Section 32 (**On-licence (restaurant)—variation of trading hours**):

After section 32 (3A), insert:

(3B) A variation of trading hours is not available under subsection (3) in respect of a restaurant if any sanitary facilities for the restaurant are not located within the restaurant.

35

SCHEDULE 1—AMENDMENTS—*continued*(37) Section 53 (**Grant of on-licence (restaurant)**):

(a) Omit section 53 (1) (b), insert instead:

5 (b) the court is satisfied that sanitary facilities for both sexes of at least the standard prescribed by the regulations are located within, or in immediate proximity to, the restaurant and there are any additional sanitary facilities that the court thinks should, in the circumstances of the case, be provided.

10 (b) After section 53 (2), insert:

(3) An application for an on-licence relating to a restaurant is not to be granted where any sanitary facilities for the restaurant are proposed by the applicant for the licence to be located in immediate proximity to the restaurant (and not within the restaurant) unless the court is satisfied that:

- 15 (a) there are special circumstances that prevent those facilities being located within the restaurant; and
- (b) the facilities are sufficiently near to the restaurant for convenient use by its patrons; and
- 20 (c) the facilities will be fully accessible to the patrons during the trading hours of the restaurant and will not be available for use by other persons during those hours; and
- (d) the safety of patrons will not be jeopardised by reason of the location of the facilities; and
- 25 (e) the applicant for the on-licence has entered into a written agreement or made other appropriate arrangements with the owner or occupier of the premises in which the facilities are located for the maintenance of the cleanliness of the facilities during
- 30 the trading hours of the restaurant; and
- (f) the grant of the licence is necessary to meet the needs of tourists and tourism or other special needs.

(38) Section 92 (**Cleanliness of licensed and related premises**):

35 (a) In section 92 (b), after “on-licence”, insert “(other than an on-licence to which paragraph (c1) relates)”;

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 92 (c), insert:
- (c1) in the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant—ensure that the sanitary facilities are maintained in a good and sanitary condition and take all reasonable steps to ensure that those facilities are furnished with proper sanitary appliances sufficient for the business carried on pursuant to the licence; 5
- (39) Section 110 (**Powers of entry**): 10
 After section 110 (6), insert:
 (7) In the case of an on-licence relating to a restaurant with sanitary facilities located in immediate proximity to the restaurant, the part of any premises that comprises those facilities and any part of premises necessary for access to those facilities is to be treated as part of the licensed premises for the purposes of this section. 15
- (40) Section 156 (**Regulations**):
 After section 156 (1) (h), insert:
 (i) the control and cleanliness of, and access to, sanitary facilities for licensed premises (being a restaurant) located within, or in immediate proximity to, the licensed premises; 20
- Explanatory note**
- At present, section 53 (1) (b) of the Liquor Act 1982 provides that an on-licence relating to a restaurant cannot be granted unless there are appropriate sanitary facilities within the premises. 25
- Item (37) makes amendments which provide that a licence may be granted for a restaurant with sanitary facilities located in immediate proximity to the restaurant instead of within the restaurant, but only if: 30
- (a) special circumstances prevent the facilities being in the restaurant; and
 (b) the facilities are nearby, convenient, safe and accessible to patrons and not available to other persons; and
 (c) there are satisfactory arrangements for the cleaning of the facilities; and
 (d) the licence is needed to meet the needs of tourists, tourism or other special needs. 35
- Items (38)–(40) make amendments that:
- (a) require licensees to ensure that such facilities are maintained in a sanitary condition and properly supplied; and

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) enable police officers and special inspectors to exercise, in relation to the sanitary facilities, the powers of entry conferred on them in respect of licensed premises; and
- 5 (c) enable regulations to be made with respect to the control and cleanliness of, and access to, sanitary facilities (whether located within, or in immediate proximity to, a restaurant).

Item (36) prevents a variation in trading hours for such a restaurant.

Amendment: function licences

- 10 (41) Section 4 (**Definitions**):

Omit the definition of “function” in section 4 (1), insert instead:

- 15 “**function**” means any function that comprises, or comprises a combination of, a dinner, ball, convention, seminar, sporting event, race-meeting, regatta, agricultural show, horticultural show, pastoral show, industrial show, trade or other fair, fete, carnival, or any event or activity that is similar to an event or activity specified in this definition and is conducted for public amusement or entertainment;
- 20

Explanatory note

- 25 Item (41) substitutes the definition of “function” in the Act so as to update and clarify the range of activities and events that will qualify for the grant of a function licence under the Act. The new definition refers to the same activities and events as the current definition but removes the distinction between functions held in buildings or not in buildings, and makes it clear that a function can comprise a combination of any of the activities or events mentioned in the definition.

Amendments: licence fees payable by wholesalers and brewers

- 30 (42) Section 18 (**Court may grant licences**):

From section 18 (8), omit “to the extent referred to in section 22 (3)”, insert instead “to the extent provided in section 22”.

- (43) Section 22 (**Off-licence—miscellaneous conditions**):

- 35 (a) From section 22 (2), omit “subject to subsection (3)”, insert instead “subject to this section”.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 22 (2), insert:
- (2A) Liquor must not be sold or supplied pursuant to an off-licence to persons referred to in paragraph (c1) or (d) of the definition of “person authorised to sell liquor” in section 4 (1) or to employees of the licensee if: 5
- (a) the off-licence is a licence to sell liquor to persons authorised to sell liquor or is a licence for a brewer; and
- (b) an off-licence to sell liquor by retail is held in respect of the same premises. 10
- (44) Section 80 (**Periodic licence fee**):
- (a) Omit section 80 (2) (c), insert instead:
- (c) in the case of an off-licence to sell liquor to persons authorised to sell liquor or an off-licence for a brewer—\$1,000 plus 13 per cent of the applicable amount prescribed by subsection (3) plus 7 per cent of the applicable amount prescribed by subsection (3A); or 15
- (b) From section 80 (3) (b), omit “, where in either case an off-licence to sell liquor by retail is not held in respect of the same premises”. 20
- Explanatory note**
- Items (42) and (43) clarify restrictions on the sale of liquor under a wholesaler’s licence or brewer’s licence where a retail licence is held in respect of the same premises. The amendment will ensure that a wholesaler’s licence will not authorise the sale of liquor to employees or to certain other persons that the wholesaler is currently authorised to sell to (such as the State Rail Authority), and a brewer’s licence will not authorise the sale of liquor to employees, when a retail licence is held concurrently. Those sales will have to be made under the retail licence. 25
- Item (44) will remove the current distinction in the Act (for the purposes of the calculation of licence fees) between wholesalers and brewers who also hold retail licences and those who do not. The licence fee for wholesalers and brewers who also hold a retail licence is currently a flat \$1,000, whereas the licence fee for other wholesalers and brewers is \$1,000 or a percentage of liquor sales, whichever is greater. The amendment will make the licence fee for all wholesalers and brewers \$1,000 plus a percentage of liquor sales. 30 35

SCHEDULE 1—AMENDMENTS—*continued***Amendments: names of licensed premises**

(45) Section 54C:

After section 54B, insert:

5 **Application to be refused if name objectionable**

54C. An application for a licence is to be refused if the court is of the opinion that the proposed name for the licensed premises is objectionable, inappropriate or misleading or is a name that is a prohibited name for the licensed premises under section 91 (Name of licensed premises).

(46) Section 91 (Name of licensed premises):

(a) Omit section 91 (1) (a), insert instead:

15 (a) a name for the licensed premises (not being a name that is a prohibited name for the licensed premises under this section); and

(b) Omit section 91 (2) (a), insert instead:

20 (a) the Board has approved in writing of the proposed new name; and

(c) After section 91 (2), insert:

(2A) The Board must not approve an alteration of the name of licensed premises if the name as proposed to be altered is a prohibited name for the licensed premises under this section.

25 (2B) A licensee must not cause or permit the use on any sign displayed on the exterior of the licensed premises or in any advertising with respect to the licensed premises of a name that is a prohibited name for the licensed premises under this section.

30 Maximum penalty: 5 penalty units.

(2C) A name is a prohibited name for licensed premises under this section if:

35 (a) it is a name or a name of a kind, or contains words or words of a kind, prescribed by the regulations as prohibited, either in relation to all licensed premises or in relation to the particular class of licensed premises of which the licensed premises forms part; or

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) it is a name that the Board has notified the licensee in writing is prohibited as being objectionable, inappropriate or misleading.
- (2D) A regulation for the purposes of subsection (2C) may be made so as to apply to licensed premises generally or so as to apply only to a specified class or specified classes of licensed premises. 5
- (2E) A name may not be prohibited in respect of licensed premises by notification under this section if the regulations provide that the name is permitted for use in relation to the licensed premises concerned or in relation to the particular class of licensed premises concerned. 10
- (47) Section 91A: 15
- After section 91, insert:
- Restrictions on use of “casino” etc. to advertise licensed premises**
- 91A. (1) A licensee must not cause or permit the licensed premises or any part of the licensed premises to be described, promoted or referred to (whether on any sign or in any advertising with respect to the licensed premises or otherwise) as a casino or by use of any other description that is prescribed as a prohibited description for licensed premises. 20
- Maximum penalty: 5 penalty units. 25
- (2) Subsection (1) does not apply to the contents of any sign or advertising or promotional material if the sign is not visible, and the material is not visible or audible, from any public place outside the licensed premises concerned.
- (3) The regulations may provide for the circumstances in which use of the word “casino” or any other specified word in a name or description of licensed premises or a part of the premises is not a contravention of this section. 30
- Explanatory note**
- Item (45) provides that the Licensing Court is to refuse an application for a liquor licence if of the opinion that the proposed name of the premises is objectionable, inappropriate or misleading or is prohibited by the regulations or a direction of the Board provided for under item (46). This formalises an existing implied power of the court. 35

*Liquor (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued***

5 Item (46) alters an existing provision of the Act that prevents the use of a name for licensed premises if the Board had directed that the proposed new name not be used. As amended, the provision will prevent the use of a name that is prohibited by the regulations or is a name that the Board has prohibited as being objectionable, inappropriate or misleading. Item (46) also amends an existing provision that requires the approval of the Board before the name of licensed premises can be changed, to require the Board to refuse approval for a change that would result in such a prohibited name. A new provision is inserted
10 which will prevent the display of a name on licensed premises or in advertising for licensed premises if the name is similarly prohibited by the regulations or the Board.

15 Item (47) inserts a new provision that will prevent licensed premises from being described or referred to (such as on signs or in advertising) as a casino or by use of any other description that is prohibited by the regulations. The new provision does not apply to signs and promotional material that is inside the licensed premises concerned.

Amendments: issue of licence**(48) Section 55 (Issue of licence etc.):**

- 20 (a) From section 55 (1), omit "the licence shall not be issued by the registrar", insert instead "the licence may be issued by the registrar or by the Principal Registrar but is not to be issued".
- 25 (b) From section 55 (2), omit "while the registrar is prohibited by subsection (1) from issuing the licence", insert instead "while the issue of the licence is prohibited by subsection (1)".

Explanatory note

30 Item (48) enables liquor licences that are granted in Sydney to be issued by the Sydney registry directly to licensees outside Sydney. At present licences are transmitted by the Sydney registry for formal issue by the district registry.

Amendment: freight charges for beer to brewers' regional depots**(49) Section 78A:**

After section 78, insert:

35 **Freight costs to brewers' regional depots not to be included in price of beer**

78A. (1) Despite section 78, a reference in this Part to the amount paid or payable by or on behalf of a person for any

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

liquor does not, in the case of liquor that is beer, include brewery regional depot freight charges for that beer.

(2) Brewery regional depot freight charges for beer are any amounts paid or payable as freight or other delivery charges to the holder of an off-licence for a brewer in respect of the delivery of that beer from the licensed premises of the brewer to a regional depot of the brewer, being a depot that is approved by the Board for the purposes of this section by order in writing and being beer that is made by the holder of that off-licence or by a body corporate that is related (within the meaning of the Corporations Law) to that holder. 5 10

(3) If the Board is of the opinion that any amount paid or payable as freight or other delivery charges exceeds the value of the freight or other delivery, the Board may determine the value of the freight or delivery (having regard to the circumstances in which the beer was delivered). 15

(4) An amount so determined by the Board is to be regarded for the purposes of this section as the amount actually paid or payable as the freight or other delivery charges concerned. 20

(5) A person who is a party to any arrangement for the payment of an amount for freight or other delivery charges which exceeds the true cost of the freight or other delivery, with the intention of causing or assisting in the avoidance or evasion of the payment of licence fee, is guilty of an offence. 25

Maximum penalty: 100 penalty units.

Explanatory note

Item (49) inserts a new section which provides that the cost of freight on beer from the brewery to the country regional depots of the brewer is not to be included in the amount paid for liquor for the purpose of calculating licence fee. Currently freight charges are included in the cost of liquor as an anti-avoidance measure. This operates to disadvantage country licensees who have the cost of freight from the city included in the cost of beer on which they must pay licence fees. 30 35

The new section will contain 3 anti-avoidance measures:

- The concession will apply only in respect of freight to depots approved by the Liquor Administration Board.
- The Board will have power to reassess the amount of freight paid if it appears to be excessive. 40

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- It will be an offence to inflate freight costs with the intention of evading licence fee.

5 **Amendment: payment of licence fees on excess sales by vignerons, wholesalers and brewers**

(50) Section 80 (Periodic licence fee):

(a) In section 80 (2) (b), after "\$500", insert "(plus any amount required to be paid by subsection (5A))"

(b) After section 80 (5), insert:

10 (5A) There is payable as licence fee under subsection (2)
 (b) (in addition to the amount of \$500 provided by that
 paragraph) an amount that is 13% of the sale price of any
 quantity of wine sold by the licensee during the assessment
 period for the licence fee in excess of the quantity permitted
 15 by section 22 (1) (d) to be sold pursuant to the licence.

(5B) Any quantity of liquor purporting to have been sold
 or supplied pursuant to an off-licence to sell liquor to persons
 authorised to sell liquor or an off-licence for a brewer but
 which exceeded the quantity of liquor permitted to be sold or
 20 supplied pursuant to the licence, is for the purposes of the
 calculation, assessment, payment and recovery of licence fee,
 taken to have been sold or supplied pursuant to the licence
 concerned.

(5C) Subsections (5A) and (5B) do not limit the operation
 of any other provision of this Act in relation to a
 25 contravention of section 22 (1) (d), in particular the
 provisions of Division 8 (Disciplinary provisions) of Part 3.

Explanatory note

30 Item (50) makes amendments which ensure that sales of liquor under a
 vigneron's licence, a wholesaler's licence or a brewer's licence in excess of the
 existing limits applicable to the quantity of liquor that can be sold under those
 licences is to attract licence fee at the rate applicable to ordinary sales.

35 The Act currently limits single sales by vignerons to a quantity of 45 litres and
 sales by wholesalers and brewers to their employees are limited to 5% of total
 sales. The amendment will mean that sales by vignerons in excess of this limit
 will attract licence fee at the rate of 13%. Sales by wholesalers and brewers in
 excess of the limit on sales to employees will for licence fee purposes be
 treated as authorised sales and will attract licence fee at the same rate as other
 authorised sales (13% or 7%, as appropriate).

 SCHEDULE 1—AMENDMENTS—*continued*
Amendment: statement of liquor purchases by auctioneers**(51) Section 84 (Statement of liquor purchases):**

After section 84 (2), insert:

(2A) A person who holds an off-licence to auction liquor is exempt from the requirements of subsection (2) in relation to purchases (but not sales) of liquor. 5

Explanatory note

Section 84 currently requires licensees to submit a statutory declaration specifying information prescribed by the regulations in relation to sales and purchases of liquor. Information on *purchases* of liquor is not relevant to liquor auctioneers whose licence fee is calculated on the basis of liquor *sales* to unlicensed persons. Item (51) exempts liquor auctioneers from the requirement to lodge a statement under the section in relation to purchases of liquor. 10

Amendment: verification of complaints by statutory declaration 15**(52) Section 104 (Quiet and good order of neighbourhood):**

After section 104 (1), insert:

(1A) The Board must require a complaint under this section to be made or verified by statutory declaration.

Explanatory note

Item (52) makes it mandatory for the Board to require that a complaint that licensed premises are unduly disturbing the quiet and good order of the neighbourhood be made or verified by statutory declaration. 20

Amendment: sale or supply of liquor to minors**(53) Section 114 (Sale or supply of liquor to a minor): 25**

At the end of section 114, insert:

(9) It is a defence to a prosecution for an offence under subsection (3) if it is proved that the liquor was supplied to the person by that person's parent or guardian.

(10) A reference in this section to the supply of liquor to a person includes a reference to the serving of liquor to a person. 30

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Item (53) inserts 2 new provisions:

5 The proposed new subsection (9) gives a licensee a defence to a prosecution for allowing a person under the age of 18 to be supplied with liquor on the licensed premises. The new defence will apply if the under-age person's parent or guardian was the person who supplied the liquor. However, the parent or guardian concerned will still be guilty of an offence in those circumstances. The amendment removes the responsibility of licensees to prevent parents giving their children liquor while on licensed premises.

10 The proposed new subsection (10) extends the meaning of "supply" in section 114 of the Act (dealing with selling or supplying liquor to minors) so that the offences in that section will also cover the *servicing* of liquor to minors (such as occurs in "BYO" restaurants when liquor brought onto the premises by patrons is served by restaurant staff). The same defences will apply to offences concerning the serving of liquor to minors as apply to supplying liquor to minors.

Amendment: drinking by minors in BYO restaurants

(54) Section 115 (Consumption etc. of liquor by minor):

20 (a) In section 115 (1) (a), after "premises", insert "or on the premises of an unlicensed restaurant".

(b) After section 115 (1), insert:

25 (1A) It is a defence to a prosecution for an offence under subsection (1) of consuming liquor on the premises of an unlicensed restaurant if it is proved that the defendant consumed the liquor in the company of and with the authority of his or her parent or guardian.

(c) In section 115 (2), omit "accused", insert instead "defendant".

30 **Explanatory note**

Item (54) (a) and (b) make it an offence for a person under 18 to consume liquor on the premises of an unlicensed restaurant with a defence of parental consent. Item 52 (c) makes an amendment by way of statute law revision for consistency of terminology.

35 **Amendments: hotel trading hours**

(55) Section 24 (Hotelier's licence—trading hours):

(a) In section 24 (2) (c), after "day", insert "(other than Good Friday)".

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 24 (2) (c), omit “and”.
- (c) After section 24 (2) (c), insert:
- (c1) on Good Friday, where the liquor is sold or supplied for consumption on the licensed premises—from noon to 10 p.m.; and 5
- (56) Section 25 (**Hotelier’s licence—variation of trading hours**):
- (a) From section 25 (2), omit “other than Sunday or a restricted trading day”, insert instead “other than a restricted trading day”. 10
- (b) After section 25 (2), insert:
- (2A) An application may not be granted under subsection (2) for an extension of trading hours from midnight on a Sunday unless:
- (a) the licensed premises concerned are within the area constituting the City of Sydney as at the commencement of this subsection or front onto any of the streets or parts of streets specified in Schedule 2 (Kings Cross) or are situated within the area bounded by those streets or parts of streets; and 15
- (b) the court is satisfied that the extension of trading hours is necessary or desirable to meet the needs of tourists and tourism. 20
- (2B) In the case of licensed premises referred to in subsection (2A), a single application may be made under this section to cover each of the variations of trading hours provided for under subsection (3) and from midnight on a Sunday under subsection (2). 25
- (57) Schedule 2:
- After Schedule 1, insert: 30

SCHEDULE 2—KINGS CROSS

(Sec. 25 (2A))

Ward Avenue, from its intersection with Kings Cross Road, north to its intersection with Elizabeth Bay Road and Baroda Street; 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- Baroda Street, from its intersection with Elizabeth Bay Road and Ward Avenue, north and west to its intersection with Greenknowe Avenue;
- 5 Greenknowe Avenue, from its intersection with Baroda Street, west to its intersection with Macleay Street;
- Macleay Street, from its intersection with Greenknowe Avenue, north to its intersection with Manning Street;
- 10 Manning Street, from its intersection with Macleay Street, west to its intersection with Tusculum Street;
- Tusculum Street, from its intersection with Manning Street, south to its intersection with Hughes Street;
- Hughes Street, from its intersection with Tusculum Street, west to its intersection with Victoria Street;
- 15 Victoria Street, from its intersection with Hughes Street, south to its intersection with Brougham Lane;
- Brougham Lane, from its intersection with Victoria Street, west to its intersection with Brougham Street;
- Brougham Street, from its intersection with Brougham Lane, south to its intersection with William Street;
- 20 William Street, from its intersection with Brougham Street, east to its intersection with Kings Cross Road;
- Kings Cross Road, from its intersection with William Street, east to its intersection with Ward Avenue.

25 **Explanatory note**

30 Item (55) amends the provision that deals with hotel trading on Good Friday. Currently hotels are restricted to selling liquor with a meal in a dining room between noon and 10 p.m. on Good Friday. The amendment will allow hotels to sell liquor for consumption anywhere on the licensed premises (but will still not permit take-away sales) during those hours on Good Friday.

35 Item (56) allows an application to be made and granted for an extension of trading hours for a hotel in the City of Sydney or Kings Cross between midnight Sunday and 5 a.m. Monday (except when Sunday falls on Christmas Day) if the extension is to meet the needs of tourists and tourism. Currently no hotel can trade during these hours.

Item (57) inserts a Schedule containing a description of the streets that form the boundaries of the area that constitutes Kings Cross for the purposes of the amendment in item (56).

SCHEDULE 1—AMENDMENTS—*continued***Amendment: Australian wine licences**

(58) Section 21A:

After section 21, insert:

Australian wine licences

5

21A. (1) This section applies to a licence to which Schedule 4 (Special provisions relating to Australian wine licences) to the Liquor (Repeals and Savings) Act 1982 applies (referred to in this section as an Australian wine licence).

10

(2) A condition on an Australian wine licence that liquor other than wine must not be sold or supplied on the licensed premises may not be varied or revoked under section 20.

(3) The court may on the application of the licensee vary that condition of the licence so as to permit the sale of beer on the licensed premises for consumption on those premises, but the court is not to grant such an application unless the court is satisfied that:

15

- (a) the licence was being exercised on or about 1 January 1994; or
- (b) there is some compelling reason why the licence was not being exercised at that time.

20

(4) The grant of an application under subsection (3) does not have effect until payment by the applicant to the Board of the amount (up to \$50,000) determined by the Board as payable for the variation of the condition (determined having regard to the circumstances of the licence and the application). The grant of the application is cancelled after 3 months if the amount so determined is not paid within that time.

25

30

(5) An application to remove an Australian wine licence may not be granted unless:

- (a) the removal is to a place that is within the neighbourhood of the premises from which it is proposed to remove the licence; and

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*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (b) the floor area of the premises which are proposed to be the licensed premises on removal is not greater than that of the licensed premises from which the licence is proposed to be removed; and
- 10 (c) the court is satisfied that the licence was being exercised on or about 1 January 1994 or that there is some compelling reason why the licence was not being exercised at that time, or that removal is reasonably necessary to enable the licence to be exercised.
- (6) Section 36 (5) does not apply to an application for the removal of an Australian wine licence.

Explanatory note

15 Item (58) restates (with the amendments explained below) provisions currently in the Liquor (Repeals and Savings) Regulation 1984 that prevent the removal or variation of a condition on an Australian wine licence that only wine for consumption on the licensed premises may be sold under the licence, and that prevent the removal of such a licence.

The amendments to those provisions will:

- 20 (a) enable the “wine only” condition to be varied to permit the sale of beer for consumption on the premises, but only if the Licensing Court is satisfied the licence is not dormant and with a fee of up to \$50,000 being payable for such a variation; and
- 25 (b) enable the court to grant an application for removal of the licence if satisfied that removal will be to a location in the same neighbourhood and not to larger premises, and that the licence is not dormant or removal is reasonably necessary to allow the licence to be exercised.

Amendments: penalty notices

30 (59) Section 117F (**Infringement notices for minors**):
Omit the section.

(60) Section 117G (**Minors not to be detained**):
After “penalty under this Act”, insert “or an amount ordered to be paid under section 100L (Orders to enforce penalty notices) of the Justices Act 1902 in respect of a penalty notice issued under this Act”.

35

 SCHEDULE 1—AMENDMENTS—*continued*

(61) Section 145A:

After section 145, insert:

Penalty notices

145A. (1) A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies. 5

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section. 10

(3) A penalty notice may be served personally or by post. A penalty notice sent by post to a person is taken to have been properly addressed if addressed to the person at the address shown in the records of the Board as the residential or business address of the person last known to the Board. 15

(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence, except proceedings under Division 8 (Disciplinary provisions) of Part 3. 20

(5) 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 proceeding arising out of the same occurrence. 25

(6) However, when a penalty is paid under this section in respect of a penalty notice served on a person, the person is for the purposes of Division 8 (Disciplinary provisions) of Part 3 taken to have been convicted of the offence to which the penalty notice related. 30

(7) Payment under this section does not interfere with the operation of Division 8A (Special provisions for body corporate licensees) of Part 3 or section 144 (Licensee liable for act of employee) in respect of a contravention or alleged contravention of this Act by the person who pays the penalty. 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(8) The regulations may:

- 5 (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

10 (9) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

15 (10) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Explanatory note

20 Items (59)–(61) provide for the issue of penalty notices by police officers for alleged contraventions of the Act or the regulations. The issue of a penalty notice gives the alleged offender the option of paying a penalty that is less than the maximum penalty provided for the offence if dealt with by a court if he or she does not wish to have the matter dealt with by a court. If the penalty is paid, no further action is taken in respect of the offence. However, payment of the penalty is regarded as a conviction for the offence for the purposes of the disciplinary provisions of the Act.

25 The proposed new provision replaces an existing provision that deals only with offences committed by minors on licensed premises. Under that provision, the maximum penalty which a penalty notice could require was \$50.

30 Under the proposed new provision, the offences for which penalty notices can be issued and the penalty payable under them will be provided for in the regulations.

Clause 4 of this Bill makes a consequential amendment to the Justices Act 1902 to extend the reminder (“courtesy letter”) and penalty notice enforcement provisions of that Act to the penalty notices provided for under the proposed amendments.

35 An existing provision of the Liquor Act 1982 that prevents the imprisonment of minors for failure to pay a penalty under that Act will apply to amounts payable under Justices Act enforcement orders.

 SCHEDULE 1—AMENDMENTS—*continued*
Amendment: evidence by affidavit

(62) Section 154C:

After section 154B, insert:

Evidence

154C. (1) Subject to subsection (2) and except to the extent (if any) that the court otherwise directs, evidence in any proceedings before the court under this Act (other than proceedings for an offence) is to be given by affidavit.

(2) Except to the extent (if any) that the parties otherwise agree or the court otherwise directs, an affidavit may not, in the absence of the deponent, be admitted in evidence under subsection (1).

(3) Where proceedings for or in respect of an offence against this Act are taken before the court, a witness present in the court at the hearing of the proceedings is, unless the court otherwise directs in a particular case or class of cases, to give evidence by means of a written statement a copy of which has been given both to the court and the parties and which, at the hearing, is verified orally on oath by the witness.

(4) A witness who, pursuant to this section, gives evidence by affidavit or written statement may be cross-examined and re-examined as if he or she had given oral evidence on oath of the matter of the statement.

Explanatory note

Item (62) inserts a provision in the Act that is currently in the regulations concerning the giving of evidence in the court by affidavit or written statement.

Amendment: clarification of licence fee calculation(63) Section 80 (**Periodic licence fee**):

From section 80 (3) and (4), omit “the licensee” wherever occurring, insert instead “any licensee under the licence”.

Explanatory note

Item (63) makes it clear that the calculation of licence fee payable for a liquor licence is based on liquor purchases made by or on behalf of *any* licensee under the licence during the assessment period for the fee even if the licensee liable to pay the fee was not the licensee when the purchase was made.

SCHEDULE 1—AMENDMENTS—*continued***Amendment: investigation of applicants to be completed within 6 months****(64) Section 42C (Investigations by Director):**

- 5 (a) In section 42C (1), after “the application”, insert “and is to complete those investigations and inquiries within 6 months after the application was lodged”.
- (b) After section 42C (3), insert:
- 10 (4) An application is to proceed to be dealt with even if any investigation, inquiry or report under this section in relation to the applicant has not been completed within 6 months after the application was lodged.

Explanatory note

- 15 Item (64) provides that the investigation of a licence applicant that the Director of Liquor and Gaming is required to undertake must be completed within 6 months after the application was lodged and that the application is to proceed if the inquiry has not been completed within that time.

Amendment: duty on AAD double-up function

- 20 (65) Section 86K (Duty payable on approved amusement devices):
In the definition of “turnover” in section 86K (5), after “period”, insert “(other than credits risked in the course of a double-up function)”.

Explanatory note

- 25 Section 86K of the Act provides for the payment of duty on approved amusement devices with that duty calculated as a proportion of “turnover”, which is defined to mean the value of the total credits risked by players playing those devices. Item (65) makes it clear that credits risked in the course of a double-up function are not to be included in turnover.

Amendments: endorsements on licences

- 30 (66) Section 71A:

After section 71, insert:

Endorsements on licences

- 35 71A. A requirement of this Act that a condition or other matter be endorsed on a licence is sufficiently complied with if the condition or other matter is endorsed on a schedule to the licence.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*(67) Section 140 (**Averments**):

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

- (c1) that a specified endorsement is an endorsement on a specified licence;

5

Explanatory note

Item (66) allows endorsements on licences to be made by way of endorsements on schedules to licences. Item (67) provides that an allegation that a specified endorsement has been made to a specified licence is sufficient evidence of the endorsement.

10

Amendment: refund on surrender of licence

(68) Section 83A:

Omit the section, insert instead:

Refund of licence fee on surrender of licence

83A. (1) If the surrender in writing of a licence is accepted by the Board, application may be made to the Board for a refund of part of any licence fee already paid for the licensing period during which the surrender was accepted.

15

(2) The Board may, if the Board thinks fit, refund part of the licence fee, excluding any amount of duty referred to in section 80 (2) (a) (iii).

20

(3) The amount of any such refund is at the discretion of the Board but is not to exceed such amount as is proportionate to the unexpired portion of the licensing period in respect of which the licence fee was paid.

25

(4) The Board is entitled to deduct from the refund a surrender fee fixed by the Board for the licence concerned.

(5) Any refund payable under this section is to be paid to the person who, in the opinion of the Board, is entitled to the refund.

30

Explanatory note

Item (68) substitutes a provision that provides for a refund of licence fee when a licence is surrendered. The current provision allows a refund of a part of the fee payable for the licensing period *following* the licensing period during which the licence is surrendered, with the amount of the refund being in proportion to the unexpired portion of the licensing period. As proposed to be substituted, the refund will be of part of the fee payable for the licensing period *during* which

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*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

the surrender occurs. It will be clearly provided that any refund will be at the discretion of the Board and the amount of the refund will be at the discretion of the Board with the amount currently provided for being the upper limit.

5 Amendments: penalties**(69) Section 84 (Statement of liquor purchases):**

From section 84 (2), omit “or imprisonment for 1 year or both”.

(70) Section 85 (Sales to authorised sellers):

10 From section 85 (1), omit “or imprisonment for 1 year, or both”.

Explanatory note

Items (69) and (70) remove imprisonment as a penalty for offences under section 84 or 85 of the Act.

15 Amendments: statute law revision**(71) Section 4 (Definitions):**

(a) After paragraph (c) of the definition of “person authorised to sell liquor” in section 4 (1), insert:

20 (c1) any person who sells or supplies liquor (otherwise than as referred to in section 6 (c)–(f)) whether in New South Wales or elsewhere but is not required by the Act to hold a licence in respect of the sale or supply of liquor in New South Wales; or

25 (b) At the end of paragraphs (a) and (b) of the definition of “person authorised to sell liquor” in section 4 (1), insert “or”.

(72) Section 196 (Modification of approved amusement devices):

From section 196 (2) (a), omit “network”, insert instead “artwork”.

30 Explanatory note

Items (71) and (72) make amendments by way of statute law revision.

Item (71) transfers part of the definition of “person authorised to sell liquor” from the regulations to the definition of that term in the Act.

Item (72) makes a minor amendment to correct an error of terminology.

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Amendment: savings and transitional provisions****(73) Schedule 1 (Savings and transitional provisions):****(a) Omit clause 1 (1), insert instead:**

(1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of any of the following Acts: 5

Liquor (Amendment) Act 1993;

Liquor (Amendment) Act 1994.

(b) After clause 13, insert: 10**Part 3—Liquor (Amendment) Act 1994****Penalty notices**

14. Section 117F (Infringement notices for minors) continues to apply despite its repeal in respect of a penalty notice issued under that section before its repeal. 15

Licence fee calculation

15. The amendments made to section 80 by Schedule 1 (44) and (50) to the Liquor (Amendment) Act 1994 apply for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extend to apply in respect of liquor sold or supplied before the commencement of those amendments. 20

Freight charges to brewers' regional depots

16. Section 78A applies for the purposes of the licensing period commencing on 16 January 1995 and subsequent licensing periods and for that purpose extends to apply in respect of sales of liquor occurring before the commencement of that section. 25

Existing caterer's licences

17. (1) A caterer's licence in force immediately before the substitution of section 54B by the Liquor (Amendment) Act 1994 continues in force as if it had been granted under this Act as amended by that Act. 30

(2) Such a licence is taken to specify, as the commercial kitchen to which the licence applies, the premises that were 35

*Liquor (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

the licensed premises under the licence immediately before that substitution of section 54B.

5 (3) This Act as amended by the Liquor (Amendment) Act 1994 extends to an application for a caterer's licence made, but not determined, before that substitution of section 54B.

Liquor (Repeals and Savings) Act 1982

10 18. (1) If, immediately before the commencement of this Act, the trading hours pursuant to any licence to which Schedule 4 to the Liquor (Repeals and Savings) Act 1982 applies extended beyond the limits prescribed by this Act and clause 3 of that Schedule, the licensee may, in addition to trading during the hours so prescribed, trade in accordance with the licence concerned during those extended hours.

15 (2) Provisions of this Act that enable a variation of trading hours effected under that Act to be further varied:

20 (a) apply to the extended hours authorised by this clause so as to enable a reduction of those hours, as if those hours had been authorised by a variation effected under this Act; and

(b) so apply, for the purposes of any such reduction, notwithstanding any limits prescribed by this Act generally in relation to variations (or further variations) of trading hours.

25 Off-licence for brewer held by body corporate

19. Division 8A of Part 3 does not apply to an off-licence for a brewer held by a body corporate and in force immediately before the commencement of that Division, until 6 months after that commencement.

30 3 year amnesty for existing advertising

35 20. The amendments made by the Liquor (Amendment) Act 1994 which amend section 91 and insert section 91A (Restrictions on use of "casino" etc. to advertise licensed premises) do not apply to any visible promotional or advertising matter first displayed before the commencement of the amendments, until the promotional or advertising matter is replaced or its form or contents are changed or until the day that is 3 years after the commencement of the amendments (whichever is the earlier).

Liquor (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued***Validation**

21. Anything done before the commencement of the amendments made by Schedule 1 (63) to the Liquor (Amendment) Act 1994 which would have been validly done had those amendments been in force when it was done is validated. 5

Regulations

22. The amendments to the Liquor Regulation 1983 made by section 6 of the Liquor (Amendment) Act 1994 do not affect the future amendment or repeal of that Regulation. 10

Explanatory note

Item (73) inserts savings and transitional provisions and a validation consequent on the proposed amendments to be made by this Bill.
