



New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

## **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to encourage a healthier lifestyle:

- by prohibiting advertising and other promotional activities aimed at assisting the sale of alcoholic beverages and consequently reducing the incentive for people to consume alcohol, and
- by providing for the declaration of "local option areas" within which the sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.

The Bill also establishes the Alcohol Advertising Prohibition Committee which will be required to prepare a timetable for the removal of advertisements promoting alcoholic beverages and the termination of sponsorships related to the promotion of any such beverages.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will bind the Crown.

**Clause 3** states the purposes of the proposed Act as the following:

- (a) the discouragement of alcohol consumption by:
  - persuading young people not to drink and not to abuse alcoholic beverages
  - limiting exposure of young people and children to persuasion to drink alcoholic beverages
  - encouraging drinkers of other beverages not to start drinking alcoholic beverages
  - assisting those who wish to limit or give up alcohol consumption,
- (b) the reduction of alcohol-related:
  - domestic violence
  - deaths
  - road accidents
  - crimes and other violence,
- (c) the prevention of alcohol-related illness (such as cirrhosis of the liver),
- (d) the reduction of the harmful impact of alcohol in the home and in workplaces and industry generally.

**Clause 4** defines certain terms used in the proposed Act.

### **Part 2 Offences relating to the promotion of alcoholic beverages**

**Clause 5** prohibits the commercial advertising of alcoholic beverages:

- where the advertisement can be seen or heard from a public place, or
- on radio or television, if there is a material benefit to the owner of the radio or television station, or
- on unsolicited things distributed to the public, or
- by means of articles (such as newspapers or books) sold, hired or supplied for some benefit,

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but does not prohibit any such advertising that is done within 5 years after the introduction of this Bill into Parliament (or within such shorter period as may be fixed by the making of a regulation) if it is done in accordance with a contract or arrangement made before the introduction of this Bill or any such advertising that is:

- in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book, or
- in or on a package or carton containing an alcoholic beverage, or
- in a shop or similar retail outlet where alcoholic beverages are offered or exposed for sale, or
- on documents used in the ordinary course of business, or
- otherwise exempted under the proposed Act.

The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,000) and for subsequent offences is 100 penalty units (currently \$10,000).

The maximum penalty for a first offence, if committed by a corporation, is 200 penalty units (currently \$20,000) and for subsequent offences is 400 penalty units (currently \$40,000).

An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a body corporate) may be imposed in the case of a continuing offence.

**Clause 6** prohibits promotional "competitions" and other prescribed schemes designed to promote the sale, or generally to promote the drinking of, alcoholic beverages.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 7** prohibits the offering, giving or distributing of free samples of alcoholic beverages to promote the sale of such products, except to manufacturers, distributors or retailers of alcoholic beverages or their employees or at wineries, vineyards or breweries.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 8** prohibits the promotion of, or agreements to promote, alcoholic beverages or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on those terms, subject to certain exceptions and exemptions.



The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 9** allows the Minister to grant exemptions from the requirements of proposed section 5 or 8 in limited circumstances. No exemption will be effective after the fifth anniversary of the date of introduction of this Bill into Parliament.

### **Part 3 Reintroduction of local option**

**Clause 10** allows a request for the declaration of a local option area to be made to the Minister, but only if it is supported by a petition signed by at least 10% of the enfranchised residents of the proposed area or, if the proposed area is part of a ward, of the whole of the ward.

**Clause 11** empowers the Minister to declare a local option area, but only with the agreement of the local Council that there exists a particular alcohol-related problem in the proposed area.

**Clause 12** empowers the Minister to rescind a declaration of a local option area, but only with the consent of the local Council and after it has been in force for at least 6 months.

**Clause 13** requires notice of the declaration of a local option area to be published in the Gazette before it is effective.

**Clause 14** provides that a local option area will be effective for the period of not less than 3 nor more than 5 years specified in the declaration of the area, unless sooner rescinded.

**Clause 15** creates an offence if, in a declared local option area and while the relevant declaration is in force, anyone buys, sells or (for a material benefit) delivers, an alcoholic beverage or consumes any such drink in a public place. Any drink the subject of such an offence, and any bottle or other container in which it is contained, is forfeited to the Crown. A licensee under the *Liquor Act 1982* will lose the licence if prohibited sales are made from the licensed premises.

The regulations may create specific exemptions from such an offence.

### **Part 4 Alcohol Advertising Prohibition Committee**

**Clause 16** establishes the Alcohol Advertising Prohibition Committee which will consist of 5 members appointed by the Minister.



**Clause 17** requires the Committee to provide the Minister with a timetable for the progressive withdrawal of advertising and promotional activities relating to alcoholic beverages.

**Clause 18** requires the Minister to promote regulations providing for the progressive withdrawal of such advertising and promotional activities.

**Clause 19** provides for the Director-General of the Department of Health to provide the Committee with the resources necessary for it to exercise its functions.

## **Part 5      Enforcement**

**Clause 20** allows a Local Court to order the removal of an advertisement for an alcoholic beverage that was displayed in contravention of the proposed Act, or that was originally lawfully displayed but is required to be removed under the scheme for removal of such advertisements provided by the proposed Act.

**Clause 21** empowers the entry of premises (unless used for a dwelling) to remove advertisements under such an order.

**Clause 22** creates an offence if an *authorised officer* who is required by such an order to remove an advertisement is intimidated or obstructed in giving effect to the order.

**Clause 23** requires the consent of the Director-General of the Department of Health to proceedings for an offence against the proposed Act.

**Clause 24** fixes maximum penalties for certain of the offences against the proposed Act.

**Clause 25** provides that those offences may be dealt with summarily before a Local Court or on indictment.

**Clause 26** allows prosecution of the persons involved in the management of a body corporate for offences committed by the body corporate.

## **Part 6      General**

**Clause 27** bars civil proceedings against a person for doing, or omitting to do, anything which is done or omitted to be done in compliance with the proposed Act.

**Clause 28** empowers the Governor to make regulations for the purposes of the proposed Act.

**Clause 29** requires health warnings to be displayed on packaging for alcoholic beverages in accordance with the regulations.

**Clause 30** provides that, before 4 years expire after assent to the proposed Act, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

### **Schedule 1      Provisions relating to the Alcohol Advertising Prohibition Committee**

**Clause 1** requires nominations for membership of the Committee to be sought by the Minister.

**Clause 2** allows a member a term of office, of not more than 4 years, fixed by the Minister.

**Clause 3** fixes a quorum of 3 members for a meeting of the Committee.

**Clause 4** requires the Chairperson of the Committee to preside over its meetings.

**Clause 5** states how decisions of the Committee are made.

**Clause 6** requires the Minister to call the first meeting of the Committee.

**Clause 7** allows the Committee to fix the procedure for its meetings.

First print



New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

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New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

No , 1995

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## **A Bill for**

An Act to prohibit the advertising of alcoholic beverages and related trade marks, brand names and logos, and for other purposes.

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**The Legislature of New South Wales enacts:**

## **Part 1      Preliminary**

### **1    Name of Act**

This Act is the *Alcoholic Beverages Advertising Prohibition Act 1995*.

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### **2    Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **3    Purposes of the Act**

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The purposes of this Act are:

(a) to discourage alcohol consumption by:

- persuading young people not to drink and not to abuse alcoholic beverages
- limiting exposure of young people and children to persuasion to drink alcoholic beverages
- encouraging drinkers of other beverages not to start drinking alcoholic beverages
- assisting those who wish to limit or give up alcohol consumption, and

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(b) to reduce alcohol-related:

- domestic violence
- deaths
- road accidents
- crimes and violence, and

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(c) to prevent alcohol-related illness (such as cirrhosis of the liver), and

(d) to reduce the harmful impact of alcohol in the workplace and in industry generally.



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#### 4 Definitions

In this Act:

***alcohol advertisement*** means writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to or otherwise promotes or is intended to promote: 5

- (a) the purchase or use of an alcoholic beverage, or
- (b) the trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage.

***alcoholic beverage*** means spirit, wine or beer (or any other beverage) which contains the drug alcohol and which is designed for human consumption. 10

***authorised officer*** means:

- (a) a health surveyor appointed by the council of a local government area, or 15
- (b) a person authorised as an officer for the purposes of this Act by an order made by the Director-General of the Department of Health.

***book*** includes any printed material in any language.

***brand name*** includes any part of a brand name. 20

***newspaper*** includes a copy of any magazine, journal or periodical or any other publication copies of which contain:

- (a) news, information or reports of events, or
- (b) remarks, observations or comments about any news, information or events or about any other matter of interest to the public or to any section of the public, 25

which are printed in any language and published at regular or irregular intervals.

***package***, in relation to an alcoholic beverage, means a package:

- (a) in which the alcoholic beverage is packed by a manufacturer, and 30
- (b) which is in contact with the alcoholic beverage.

***premises*** includes any place.

***public place*** includes a place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation.

***racing*** includes horse-racing and pacing, dog racing and motor car and motorcycle racing. 5

***relevant day*** means the fifth anniversary of the day on which the Bill for this Act was introduced into the Legislative Council.

***sell*** includes:

- (a) barter or exchange, or 10
- (b) offer or expose for sale, barter or exchange, or
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit, or
- (d) supply or offer to supply gratuitously but with a view to 15  
gaining or maintaining custom or otherwise with a view to  
commercial gain.

***sponsorship*** includes:

- (a) scholarship, prize, gift or other benefit, or
- (b) financial arrangement (other than a genuine contract of 20  
employment or a genuine contract for services) for the  
direction, promotion or publicity of one or more of the  
matters referred to in section 8 (1) (a) and (b) through the  
medium of sporting, arts, youth, educational or other like  
activities. 25

***sport*** includes recreational and other activities but does not include racing.

***telecommunication medium*** includes radio and television.

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## **Part 2      Offences relating to the promotion of                  alcoholic beverages**

### **5    Certain advertising prohibited**

- (1) A person who in New South Wales for any direct or indirect benefit displays an alcohol advertisement, so that it can be seen or heard from a public place, commits an offence. 5
- (2) An individual who broadcasts or transmits an alcohol advertisement by the use of any telecommunication medium commits an offence if, as a consequence, there is a financial or other material benefit (either direct or indirect): 10
- (a) to the owner of the medium or any company that controls the medium used, or
- (b) to any employee of the owner or any such company, or
- (c) to any other individual associated with the owner, any such company or any such employee. 15
- (3) A person who, after 3 months from the commencement of this Act, in New South Wales:
- (a) distributes to the public any unsolicited article, or
- (b) sells, hires or supplies for any direct or indirect benefit any article to any person (other than a person, or the employee of a person, who is a manufacturer, distributor or retailer of an alcoholic beverage), 20
- that constitutes or contains an alcohol advertisement commits an offence.
- (4) This section does not apply in relation to anything done before the relevant day, or before such earlier day as may be prescribed by the regulations (either generally or in a particular case or class of cases), under a contract or arrangement entered into before the day on which the Bill for this Act was introduced into the Legislative Council. 25 30



- (5) This section does not apply in relation to:
- (a) an alcohol advertisement in or on a newspaper or book printed or published outside New South Wales, the sole or main purpose of which newspaper or book is not the promotion or publicising of the purchase or use of an alcoholic beverage or a trademark or brand name of an alcoholic beverage, or 5
  - (b) an alcohol advertisement in or on a package or carton containing an alcoholic beverage, or
  - (c) an alcohol advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale, that is directly adjacent to a place where all or any of those alcoholic beverages are offered or exposed for sale and that complies with the regulations, or 10
  - (d) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of the business of a manufacturer or distributor of an alcoholic beverage, or 15
  - (e) anything to which this section does not apply by virtue of an exemption granted under section 9. 20
- (6) When 18 months has expired after the commencement of this Act, subsection (5) (e) does not apply to an alcohol advertisement that is visible from a public place, regardless of when the advertisement was first displayed.
- (7) In any proceedings for an offence under subsection (1) it is presumed that, if there is present in the relevant alcohol advertisement: 25
- (a) the name of a person who manufactures or distributes any alcoholic beverage, or
  - (b) a trademark of which a person who manufactures or distributes any alcoholic beverage is the registered proprietor or the registered user, within the meaning of the *Trade Marks Act 1955* of the Commonwealth, or 30
  - (c) a brand name used by a person who manufactures or distributes any alcoholic beverage, 35
- the person displayed that alcohol advertisement for a direct or indirect benefit, until the contrary is proved.

- (8) In any proceedings for an offence under this section, if the thing that is alleged to constitute an alcohol advertisement contains the trademark or brand name of an alcoholic beverage, it is presumed to be designed to promote or publicise the alcoholic beverage to which it relates until the contrary is proved. 5
- (9) Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into. 10

## 6 Competitions

- (1) A person who, after 3 months from the commencement of this Act, in connection with the sale of an alcoholic beverage or for the purpose of promoting the sale of an alcoholic beverage:
- (a) supplies (whether it is sent from inside or outside New South Wales) to the purchaser, or any other person (not being a purchaser or other person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) in New South Wales: 15
- (i) a prize, gift or other benefit, or 20
- (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional), or 25
- (b) conducts (whether from inside or outside New South Wales) a scheme:
- (i) prescribed to be a scheme to promote the sale of an alcoholic beverage or to promote drinking alcoholic beverages generally, and 30
- (ii) the whole or any part of which is implemented in New South Wales,
- commits an offence.



- (2) It is a defence in proceedings for an offence under subsection (1) to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of an alcoholic beverage and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy beverages other than alcoholic beverages, was afforded generally to persons who purchased beverages, whether or not they were alcoholic beverages. 5

## **7 Free samples**

- (1) A person who, for the purpose of inducing or promoting the sale of an alcoholic beverage, offers, gives or distributes to another person (not being a person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) a free sample of an alcoholic beverage commits an offence. 10
- (2) This section does not apply to alcoholic beverages which are free samples offered, given or distributed at the actual geographical location where the beverages were made, being the winery or the vineyard (in the case of wine) and the brewery (in the case of beer). 15

## **8 Prohibition of sponsorships** 20

- (1) A person who promotes or publicises, or agrees to promote or publicise, in New South Wales:
- (a) an alcoholic beverage or a trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage, or 25
  - (b) the name or interests of a manufacturer or distributor of an alcoholic beverage (whether or not that manufacturer or distributor also manufactures or distributes a beverage other than the alcoholic beverage) in association directly or indirectly with the alcoholic beverage, 30
- under a contract, or an arrangement (whether or not legally binding) under which a sponsorship is provided or to be provided by another person, commits an offence.
- (2) A person who provides or agrees to provide a sponsorship under a contract or arrangement of a kind referred to in subsection (1) commits an offence. 35



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- (3) For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of an alcoholic beverage are taken to be in association directly or indirectly with the alcoholic beverage if that name or those interests are commonly associated by members of the public in New South Wales with the alcoholic beverage. 5
- (4) This section does not apply in relation to:
- (a) anything done before the relevant day or before such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, under a contract entered into before the day on which the Bill for this Act was introduced into the Legislative Council, or 10
  - (b) anything to which this section does not apply by virtue of an exemption granted under section 9.
- (5) Nothing in subsection (1) or (2) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of an alcoholic beverage to an employee, or a member of the family of an employee, of the manufacturer or distributor. 15
- (6) Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into. 20

## 9 Exemptions

- (1) The Minister may, by notice published in the Gazette before the relevant day: 25
- (a) exempt a person or class of persons either wholly or in part from the operation of section 5 or 8 subject to such conditions (if any) as are set out in that notice or prescribed for the purposes of this paragraph, or 30
  - (b) amend or repeal an exemption granted under this section.
- (2) An exemption may be granted under this section only:
- (a) after consultation between the Minister and the appropriate Minister, and having regard to the nature and background of the event, function or series concerned and to the purposes of this Act, to facilitate the promotion and conduct of: 35

- (i) a sporting, racing or arts event or function, or
    - (ii) a series of sporting, racing or arts events or functions,  
of national or international significance, or
  - (b) in any case of significant hardship to persons other than manufacturers or wholesalers of alcohol. 5
- (3) The *appropriate Minister* is:
- (a) in relation to an exemption to facilitate the promotion and conduct of a sporting or racing event or function or a series of such events or functions, the Minister for Gaming and Racing, or 10
  - (b) in relation to an exemption to facilitate the promotion and conduct of an arts event or function or a series of such events or functions, the Minister for the Arts.
- (4) The Minister must, when deciding whether or not to grant an exemption under this section for the purpose referred to in subsection (2) (a), have regard to: 15
- (a) any substantial connection between the relevant event or function or series of events or functions and other significant events or functions outside the State, and 20
  - (b) any reasonable efforts that have been made to obtain sufficient financial or other support for the relevant event or function or series of events or functions from sources other than the advertising of alcoholic beverages to render the exemption unnecessary. 25
- (5) An exemption granted under this section has no effect after the relevant day.

## Part 3 Reintroduction of local option

### 10 Request to declare local option area

- (1) Anyone can request the Minister to declare a specified area to be a local option area. Streets and other landmarks can be used to describe the boundaries of such an area. 5
- (2) The request is not effective unless it is accompanied by a petition supporting the declaration of the area that the Minister is satisfied:
  - (a) clearly described the boundaries of the specified area, the grounds on which the request was made and the effect of declaring that area to be a local option area, and 10
  - (b) was signed (within a period of not more than 6 successive months) by not less than 10% of such of the people who reside in that area as are each entitled to vote in an election of a member of the Legislative Assembly for the electorate that includes his or her place of residence, and 15
  - (c) contains, so that they may be easily read, the surname and the given name or given names (or the surname and the initials of the given name or given names) of, the residential address of, and the date on which the petition was signed by, each signatory, and 20
  - (d) specifies whether the declaration sought is a declaration of general application or a declaration limited to specified hours or other periods of time.
- (3) An area for the purposes of a declaration under this Part may consist of (but is not limited to) a local government area or a ward of such an area. 25
- (4) If such an area consists of part of a ward only, subsection (2) (b) requires the signature of not less than 10% of all the people who reside in the whole of the ward and who are qualified to vote as referred to in that paragraph. 30



## **11 Declaration of local option area**

- (1) The Minister must declare a local option area in accordance with such a request if the Minister agrees with the Council of each local government area the whole or any part of which comprises or is included in the proposed local option area that any of the following situations apply: 5
- (a) there are widespread problems with youth which are related to alcohol being consumed in the proposed local option area,
  - (b) there is widespread alcohol-related crime in that area, 10
  - (c) there is widespread alcohol abuse in that area,
  - (d) there are widespread alcohol-related illnesses, accidents or deaths in that area.
- (2) For the period of 4 months before a local option area is declared under this Part, notice of intention to declare the area (containing details of the proposed declaration) must be given at not less than monthly intervals in at least one local newspaper and at least one other newspaper circulated throughout the area. 15

## **12 Rescission of declaration**

- (1) The Minister may rescind the declaration of a local option area, or any such declaration in so far as it relates to part of a local option area, but only in accordance with an agreement for rescission made between the Minister and the Council of the local government area that constitutes that area or the part of that area. 20 25
- (2) Such an agreement may not be made:
- (a) until 6 months have expired after the declaration of the local option area concerned, or
  - (b) until 6 months after the last occasion (if any) on which the Minister or the Council concerned unsuccessfully requested the other of them to agree to the rescission. 30
- (3) If the declaration of a local option area is rescinded in so far as it relates to part of the area, the local option area is taken to consist only of that part.

**13 When declaration or rescission has effect**

The declaration of a local option area, and any rescission of such a declaration, have effect only when notice of the declaration or rescission is published in the Gazette.

**14 Duration of declaration**

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- (1) A declaration of a local option area must specify the nominal period (being not less than 3 years nor more than 5 years) for which the declaration will be in force unless it is sooner rescinded.
- (2) A declaration of a local option area has effect only until the nominal period specified in the declaration expires or until it is rescinded, whichever occurs first.

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**15 Prohibitions applicable to local option areas**

- (1) A person commits an offence if the person:
  - (a) buys, sells or (for any direct or indirect material benefit to the person delivering) delivers any quantity of an alcoholic beverage, or
  - (b) consumes any alcoholic beverage in a public place,

within any local option area declared under this Part while the declaration is in force.

Maximum penalty: 1 penalty unit.
- (2) If the declaration is expressed to be limited to specified hours or other periods of time, the declaration is taken not to be in force at any other time for the purposes of subsection (1).
- (3) If a person is convicted of an offence under this section of buying, selling or delivering a quantity of an alcoholic beverage, the beverage and any bottle, keg, barrel, cask or other container in which it is contained:
  - (a) are forfeited to the Crown, and
  - (b) may be seized by an authorised officer or any police officer, and
  - (c) are to be disposed of as the Minister directs.

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- (4)    After notice of the declaration of a local option area has been published in the Gazette and before the declaration commences to have effect, the average monthly quantity of any kind of alcoholic beverage sold from premises within that area that are (or are required to be) licensed for the purpose under the *Liquor Act 1982* is not to exceed the average monthly quantity of that kind of liquor sold per month for the 12 months before the notice was published. 5
- (5)    The regulations may provide for the making, keeping and inspection of records of sales of alcoholic beverages for the purpose of ensuring that subsection (4) is complied with. 10
- (6)    If any quantity of an alcoholic beverage is sold in contravention of this section at any premises licensed under the *Liquor Act 1982*, any licence for the premises granted under that Act is taken to be cancelled. 15



## **Part 4      Alcohol Advertising Prohibition Committee**

### **16    Alcohol Advertising Prohibition Committee**

- (1)    The Alcohol Advertising Prohibition Committee is established.
- (2)    The Committee is to consist of 5 members appointed by the Minister, of whom: 5
  - (a)    1 is to be appointed as Chairperson, and
  - (b)    3 are to be appointed on the nomination of the Director-General of the Department of Health, and
  - (c)    1 is to be a person nominated by the Chief Executive Officer of the Outdoor Advertising Association of Australia. 10
- (3)    Schedule 1 has effect with respect to the members and meetings of the Committee.

### **17    Functions of the Committee 15**

- (1)    The Alcohol Advertising Prohibition Committee is to prepare and submit to the Minister a code which provides for the regular and progressive stages in accordance with which advertisements to which section 5 applies should be removed or obscured and sponsorships to which section 8 applies should be terminated. 20
- (2)    The code is to provide for the removing or obscuring of advertisements and the termination of sponsorships by the relevant day.
- (3)    The Committee's initial advice concerning the provisions of the code is to be given within 3 months after the commencement of this section. 25
- (4)    The Committee has such other advisory functions as the Minister may determine.

## **18 Responsibility of the Minister**

- (1) The Minister is required to recommend to the Governor the making of regulations which will ensure:
  - (a) the removal or obscuring of advertisements to which section 5 applies, and 5
  - (b) the termination of sponsorships to which section 8 applies, by regular and progressive stages.
- (2) The Minister, in making any recommendation under this section, must consider any code submitted and any advice given by the Alcohol Advertising Prohibition Committee. 10
- (3) This section does not apply to an advertisement or sponsorship which is the subject of an exemption under section 9.

## **19 Provision of assistance to the Committee**

For the purpose of the exercise of its functions, the Director-General of the Department of Health is to provide the Alcohol Advertising Prohibition Committee with such assistance as it may reasonably require. 15

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## Part 5      Enforcement

### 20    Removal of certain advertisements

- (1) This section applies to an alcohol advertisement:
- (a) if the advertisement was placed or displayed in contravention of this Act or the regulations, or 5
  - (b) after the relevant day or such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, whether or not the advertisement was placed or displayed in contravention of this Act or the regulations. 10
- (2) If an alcohol advertisement is situated in a public place or on any premises from which it can be seen from a public place, a Local Court constituted by a Magistrate sitting alone may order:
- (a) that the advertisement be removed or obscured by an authorised officer, and 15
  - (b) if any person has been convicted of an offence against this Act or the regulations relating to the placing or displaying of the advertisement, that the person pay the reasonable costs incurred by the authorised officer in removing or obscuring the advertisement. 20
- (3) Subsection (2) does not apply to an advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale and that complies with the regulations.
- (4) An authorised officer does not commit a civil wrong and is not liable for damages for anything done or omitted to be done while removing or obscuring an alcohol advertisement with reasonable care under the authority of such an order. 25
- (5) Any alcohol advertisement in the form of an article that is removed in accordance with such an order is taken to be the property of such person as is specified in the order. 30
- (6) If any costs are payable under such an order, they may be recovered in a court of competent jurisdiction as a debt due to the Crown or a Council, as the case requires.



- (7) This section does not apply to an alcohol advertisement while it may be lawfully displayed in accordance with an exemption provided by this Act or the regulations.

## **21 Power of entry**

- (1) An authorised officer may enter any premises to remove or obscure an alcohol advertisement under the authority of an order made by a Local Court. 5
- (2) This section does not allow the entry of any premises or part of premises used as dwelling.

## **22 Intimidation or obstruction of authorised officer** 10

A person must not in any way intimidate or obstruct an authorised officer who is removing or obscuring an alcohol advertisement under the authority of an order made by a Local Court or who is attempting to do so.

Maximum penalty: 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence. 15

## **23 Consent required for prosecutions**

Proceedings for an offence against this Act are not to be commenced without the consent in writing of the Director-General of the Department of Health or a person authorised by him or her in writing for the purpose of this section. 20

## **24 Penalties**

- (1) A person who commits an offence under a provision of this Act specified in the Table to this subsection is liable: 25
- (a) in the case of an individual, to a penalty of not more than:
- (i) 50 penalty units for a first offence, or
- (ii) 100 penalty units for a second or subsequent offence, or

(b) in the case of a body corporate, to a penalty of not more than:

- (i) 200 penalty units for a first offence, or
- (ii) 400 penalty units for a second or subsequent offence.

5

### Table

Sections 5 (1), (2) and (3), 6 (1), 7 (1), 8 (1) and (2) and 29 (1).

(2) If a continuing state of affairs is created by an offence referred to in subsection (1), the offender is liable to a penalty of not more than:

10

(a) 50 penalty units in the case of an individual, or

(b) 200 penalty units in the case of a body corporate,

in respect of each day on which that offence continues, in addition to the penalty specified in that subsection.

## 25 Proceedings for offences

15

(1) Proceedings for an offence against this Act or the regulations may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

(2) An offence against this Act may be dealt with as an indictable offence, but only if the prosecutor proposes that the offence be so dealt with.

20

(3) If proceedings for an offence against this Act or the regulations are disposed of in a summary manner before a Local Court, the maximum penalty that may be imposed is 50 penalty units, or the maximum penalty for the offence (whichever is the lesser), despite any other provision of this Act.

25

(4) If proceedings for such an offence are taken on indictment, the maximum penalty that may be imposed is the maximum penalty for the offence.

(5) Proceedings for such an offence may be commenced at any time within 12 months after the date on which the offence is alleged to have been committed.

30

## **26   Offences by bodies corporate**

- (1)    When a body corporate commits an offence under this Act or the regulations, every officer of the body corporate commits the same offence unless he or she proves that:
- (a)    the offence was committed without his or her consent or connivance, and     5
  - (b)    he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.     10

- (2)    In subsection (1):

*officer*, in relation to a body corporate, means:

- (a)    a director, secretary or executive officer of the body corporate, or
- (b)    a receiver, or receiver and manager, of property of the body corporate, or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge, or     15
- (c)    an official manager or a deputy official manager of the body corporate, or     20
- (d)    a liquidator of the body corporate, or
- (e)    a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons,

and includes any other person, by whatever name called and whether or not a director of the body corporate, who is concerned, or takes part, in the management of the body corporate.     25



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## Part 6      General

### 27    Certain civil proceedings barred

An action at law or in equity does not lie against a person for:

- (a) the omission to do any thing the doing of which, or
  - (b) the doing of any thing the omission to do which,      5
- would constitute an offence under this Act.

### 28    Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular:      10
  - (a) prescribing the labelling of packages containing alcoholic beverages, including the position of labels on packages and the size, colour, style and nature of labels or labelling, and
  - (b) prescribing the size, colour, style, position and nature of alcohol advertisements displayed inside shops and other retail outlets where alcoholic beverages are offered or exposed for sale, and any statements or warnings to be included in those alcohol advertisements, and      15
  - (c) prescribing the duty of persons packing, or causing other persons to pack, specified alcoholic beverages prepared for drinking to label those alcoholic beverages in a specified manner, and      20
  - (d) prohibiting the sale of packages containing specified alcoholic beverages prepared for drinking unless those packages are labelled in a specified manner, and      25
  - (e) exempting persons from any of the requirements made by section 15, but only in specified circumstances and where the quantity of alcoholic beverage concerned does not exceed that specified in relation to those circumstances, and      30
  - (f) creating offences and providing in respect of any such offence a penalty not exceeding 10 penalty units.

- (2) In this section, *specified* means specified in regulations made under this section.

## 29 Warnings

- (1) The producer of an alcoholic beverage commits an offence if a warning prescribed by the regulations is not displayed, in accordance with the regulations, on the packaging in which the alcoholic beverage is sold or supplied by the producer. 5

- (2) The warning must give information about the harmful effects of alcohol consumption.

The following are examples of a warning that may be prescribed: 10

alcohol consumption can be harmful to your health and can cause:

- cirrhosis of the liver
- permanent brain damage

alcohol consumption often leads to deaths on the road. 15

## 30 Review of Act

- (1) Within a period of 12 months commencing on the third anniversary of the day on which the Bill for this Act was assented to, the Minister must cause an investigation and review to be conducted and a report prepared, concerning the operation of this Act. 20

- (2) The Minister must cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament as soon as is practicable after the completion of that report.

---

## **Schedule 1 Provisions relating to the Alcohol Advertising Prohibition Committee**

(Section 16 (3))

### **1 Nominations**

- (1) A nomination of a member of the Committee must: 5
  - (a) be submitted in writing to the Minister at the request of the Minister, and
  - (b) be in respect of a person who is prepared to be a member.
- (2) If a person does not submit a nomination within 30 days after the making of the relevant request, the Minister may appoint a person to be the member concerned to represent the interests of the person or body in default until the relevant nomination is submitted. 10

### **2 Term of office**

- A member has such term of office, not exceeding 4 years, as may be specified by the Minister in the instrument appointing the member. 15

### **3 Quorum**

- Three members constitute a quorum for a meeting of the Committee. 20

### **4 Presiding member**

- (1) The Chairperson is to preside at each meeting of the Committee at which the Chairperson is present.
- (2) In the absence of the Chairperson from a meeting of the Committee, the members present are to select from among their number a member to preside at the meeting. 25

### **5 Decisions of the Committee**

- (1) A decision supported by the votes of the majority of the members present and voting at a meeting of the Committee is the decision of the Committee. 30



Alcoholic Beverages Advertising Prohibition Bill 1995

Schedule 1 Provisions relating to the Alcohol Advertising Prohibition Committee

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- (2) Each member present at a meeting of the Committee is entitled to one vote on a matter arising for determination at the meeting.

**6 Calling of first meeting**

The Minister is to call the first meeting of the Committee in such manner as the Minister thinks fit.

5

**7 Procedure**

The Committee is to decide its own procedure for the conduct of its meetings, except as provided by this Schedule.



New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

## **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to encourage a healthier lifestyle:

- by prohibiting advertising and other promotional activities aimed at assisting the sale of alcoholic beverages and consequently reducing the incentive for people to consume alcohol, and
- by providing for the declaration of "local option areas" within which the sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.

The Bill also establishes the Alcohol Advertising Prohibition Committee which will be required to prepare a timetable for the removal of advertisements promoting alcoholic beverages and the termination of sponsorships related to the promotion of any such beverages.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will bind the Crown.

**Clause 3** states the purposes of the proposed Act as the following:

- (a) the discouragement of alcohol consumption by:
  - persuading young people not to drink and not to abuse alcoholic beverages
  - limiting exposure of young people and children to persuasion to drink alcoholic beverages
  - encouraging drinkers of other beverages not to start drinking alcoholic beverages
  - assisting those who wish to limit or give up alcohol consumption,
- (b) the reduction of alcohol-related:
  - domestic violence
  - deaths
  - road accidents
  - crimes and other violence,
- (c) the prevention of alcohol-related illness (such as cirrhosis of the liver),
- (d) the reduction of the harmful impact of alcohol in the home and in workplaces and industry generally.

**Clause 4** defines certain terms used in the proposed Act.

### **Part 2 Offences relating to the promotion of alcoholic beverages**

**Clause 5** prohibits the commercial advertising of alcoholic beverages:

- where the advertisement can be seen or heard from a public place, or
- on radio or television, if there is a material benefit to the owner of the radio or television station, or
- on unsolicited things distributed to the public, or
- by means of articles (such as newspapers or books) sold, hired or supplied for some benefit,



Alcoholic Beverages Advertising Prohibition Bill 1995

Explanatory note

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but does not prohibit any such advertising that is done within 5 years after the introduction of this Bill into Parliament (or within such shorter period as may be fixed by the making of a regulation) if it is done in accordance with a contract or arrangement made before the introduction of this Bill or any such advertising that is:

- in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book, or
- in or on a package or carton containing an alcoholic beverage, or
- in a shop or similar retail outlet where alcoholic beverages are offered or exposed for sale, or
- on documents used in the ordinary course of business, or
- otherwise exempted under the proposed Act.

The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,000) and for subsequent offences is 100 penalty units (currently \$10,000).

The maximum penalty for a first offence, if committed by a corporation, is 200 penalty units (currently \$20,000) and for subsequent offences is 400 penalty units (currently \$40,000).

An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a body corporate) may be imposed in the case of a continuing offence.

**Clause 6** prohibits promotional "competitions" and other prescribed schemes designed to promote the sale, or generally to promote the drinking of, alcoholic beverages.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 7** prohibits the offering, giving or distributing of free samples of alcoholic beverages to promote the sale of such products, except to manufacturers, distributors or retailers of alcoholic beverages or their employees or at wineries, vineyards or breweries.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 8** prohibits the promotion of, or agreements to promote, alcoholic beverages or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on those terms, subject to certain exceptions and exemptions.

The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 5.

**Clause 9** allows the Minister to grant exemptions from the requirements of proposed section 5 or 8 in limited circumstances. No exemption will be effective after the fifth anniversary of the date of introduction of this Bill into Parliament.

### **Part 3 Reintroduction of local option**

**Clause 10** allows a request for the declaration of a local option area to be made to the Minister, but only if it is supported by a petition signed by at least 10% of the enfranchised residents of the proposed area or, if the proposed area is part of a ward, of the whole of the ward.

**Clause 11** empowers the Minister to declare a local option area, but only with the agreement of the local Council that there exists a particular alcohol-related problem in the proposed area.

**Clause 12** empowers the Minister to rescind a declaration of a local option area, but only with the consent of the local Council and after it has been in force for at least 6 months.

**Clause 13** requires notice of the declaration of a local option area to be published in the Gazette before it is effective.

**Clause 14** provides that a local option area will be effective for the period of not less than 3 nor more than 5 years specified in the declaration of the area, unless sooner rescinded.

**Clause 15** creates an offence if, in a declared local option area and while the relevant declaration is in force, anyone buys, sells or (for a material benefit) delivers, an alcoholic beverage or consumes any such drink in a public place. Any drink the subject of such an offence, and any bottle or other container in which it is contained, is forfeited to the Crown. A licensee under the *Liquor Act 1982* will lose the licence if prohibited sales are made from the licensed premises.

The regulations may create specific exemptions from such an offence.

### **Part 4 Alcohol Advertising Prohibition Committee**

**Clause 16** establishes the Alcohol Advertising Prohibition Committee which will consist of 5 members appointed by the Minister.



**Clause 17** requires the Committee to provide the Minister with a timetable for the progressive withdrawal of advertising and promotional activities relating to alcoholic beverages.

**Clause 18** requires the Minister to promote regulations providing for the progressive withdrawal of such advertising and promotional activities.

**Clause 19** provides for the Director-General of the Department of Health to provide the Committee with the resources necessary for it to exercise its functions.

## **Part 5    Enforcement**

**Clause 20** allows a Local Court to order the removal of an advertisement for an alcoholic beverage that was displayed in contravention of the proposed Act, or that was originally lawfully displayed but is required to be removed under the scheme for removal of such advertisements provided by the proposed Act.

**Clause 21** empowers the entry of premises (unless used for a dwelling) to remove advertisements under such an order.

**Clause 22** creates an offence if an *authorised officer* who is required by such an order to remove an advertisement is intimidated or obstructed in giving effect to the order.

**Clause 23** requires the consent of the Director-General of the Department of Health to proceedings for an offence against the proposed Act.

**Clause 24** fixes maximum penalties for certain of the offences against the proposed Act.

**Clause 25** provides that those offences may be dealt with summarily before a Local Court or on indictment.

**Clause 26** allows prosecution of the persons involved in the management of a body corporate for offences committed by the body corporate.

## **Part 6    General**

**Clause 27** bars civil proceedings against a person for doing, or omitting to do, anything which is done or omitted to be done in compliance with the proposed Act.

**Clause 28** empowers the Governor to make regulations for the purposes of the proposed Act.



**Clause 29** requires health warnings to be displayed on packaging for alcoholic beverages in accordance with the regulations.

**Clause 30** provides that, before 4 years expire after assent to the proposed Act, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

### **Schedule 1      Provisions relating to the Alcohol Advertising Prohibition Committee**

**Clause 1** requires nominations for membership of the Committee to be sought by the Minister.

**Clause 2** allows a member a term of office, of not more than 4 years, fixed by the Minister.

**Clause 3** fixes a quorum of 3 members for a meeting of the Committee.

**Clause 4** requires the Chairperson of the Committee to preside over its meetings.

**Clause 5** states how decisions of the Committee are made.

**Clause 6** requires the Minister to call the first meeting of the Committee.

**Clause 7** allows the Committee to fix the procedure for its meetings.



New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

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New South Wales

# **Alcoholic Beverages Advertising Prohibition Bill 1995**

No , 1995

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## **A Bill for**

An Act to prohibit the advertising of alcoholic beverages and related trade marks, brand names and logos, and for other purposes.

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**The Legislature of New South Wales enacts:**

## **Part 1      Preliminary**

### **1    Name of Act**

This Act is the *Alcoholic Beverages Advertising Prohibition Act 1995*.

5

### **2    Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **3    Purposes of the Act**

10

The purposes of this Act are:

(a) to discourage alcohol consumption by:

- persuading young people not to drink and not to abuse alcoholic beverages
- limiting exposure of young people and children to persuasion to drink alcoholic beverages
- encouraging drinkers of other beverages not to start drinking alcoholic beverages
- assisting those who wish to limit or give up alcohol consumption, and

15

20

(b) to reduce alcohol-related:

- domestic violence
- deaths
- road accidents
- crimes and violence, and

25

(c) to prevent alcohol-related illness (such as cirrhosis of the liver), and

(d) to reduce the harmful impact of alcohol in the workplace and in industry generally.

---

#### 4 Definitions

In this Act:

***alcohol advertisement*** means writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to or otherwise promotes or is intended to promote: 5

- (a) the purchase or use of an alcoholic beverage, or
- (b) the trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage.

***alcoholic beverage*** means spirit, wine or beer (or any other beverage) which contains the drug alcohol and which is designed for human consumption. 10

***authorised officer*** means:

- (a) a health surveyor appointed by the council of a local government area, or 15
- (b) a person authorised as an officer for the purposes of this Act by an order made by the Director-General of the Department of Health.

***book*** includes any printed material in any language.

***brand name*** includes any part of a brand name. 20

***newspaper*** includes a copy of any magazine, journal or periodical or any other publication copies of which contain:

- (a) news, information or reports of events, or
- (b) remarks, observations or comments about any news, information or events or about any other matter of interest to the public or to any section of the public, 25

which are printed in any language and published at regular or irregular intervals.

***package***, in relation to an alcoholic beverage, means a package:

- (a) in which the alcoholic beverage is packed by a manufacturer, and 30
- (b) which is in contact with the alcoholic beverage.



**premises** includes any place.

**public place** includes a place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation.

**racing** includes horse-racing and pacing, dog racing and motor car and motorcycle racing. 5

**relevant day** means the fifth anniversary of the day on which the Bill for this Act was introduced into the Legislative Council.

**sell** includes:

- (a) barter or exchange, or 10
- (b) offer or expose for sale, barter or exchange, or
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit, or
- (d) supply or offer to supply gratuitously but with a view to gaining or maintaining custom or otherwise with a view to commercial gain. 15

**sponsorship** includes:

- (a) scholarship, prize, gift or other benefit, or
- (b) financial arrangement (other than a genuine contract of employment or a genuine contract for services) for the direction, promotion or publicity of one or more of the matters referred to in section 8 (1) (a) and (b) through the medium of sporting, arts, youth, educational or other like activities. 20  
25

**sport** includes recreational and other activities but does not include racing.

**telecommunication medium** includes radio and television.

---

## **Part 2      Offences relating to the promotion of                  alcoholic beverages**

### **5    Certain advertising prohibited**

- (1)    A person who in New South Wales for any direct or indirect benefit displays an alcohol advertisement, so that it can be seen or heard from a public place, commits an offence. 5
- (2)    An individual who broadcasts or transmits an alcohol advertisement by the use of any telecommunication medium commits an offence if, as a consequence, there is a financial or other material benefit (either direct or indirect): 10
- (a)    to the owner of the medium or any company that controls the medium used, or
- (b)    to any employee of the owner or any such company, or
- (c)    to any other individual associated with the owner, any such company or any such employee. 15
- (3)    A person who, after 3 months from the commencement of this Act, in New South Wales:
- (a)    distributes to the public any unsolicited article, or
- (b)    sells, hires or supplies for any direct or indirect benefit any article to any person (other than a person, or the employee of a person, who is a manufacturer, distributor or retailer of an alcoholic beverage), 20
- that constitutes or contains an alcohol advertisement commits an offence.
- (4)    This section does not apply in relation to anything done before the relevant day, or before such earlier day as may be prescribed by the regulations (either generally or in a particular case or class of cases), under a contract or arrangement entered into before the day on which the Bill for this Act was introduced into the Legislative Council. 25 30

- (5) This section does not apply in relation to:
- (a) an alcohol advertisement in or on a newspaper or book printed or published outside New South Wales, the sole or main purpose of which newspaper or book is not the promotion or publicising of the purchase or use of an alcoholic beverage or a trademark or brand name of an alcoholic beverage, or 5
  - (b) an alcohol advertisement in or on a package or carton containing an alcoholic beverage, or
  - (c) an alcohol advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale, that is directly adjacent to a place where all or any of those alcoholic beverages are offered or exposed for sale and that complies with the regulations, or 10
  - (d) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of the business of a manufacturer or distributor of an alcoholic beverage, or 15
  - (e) anything to which this section does not apply by virtue of an exemption granted under section 9. 20
- (6) When 18 months has expired after the commencement of this Act, subsection (5) (e) does not apply to an alcohol advertisement that is visible from a public place, regardless of when the advertisement was first displayed.
- (7) In any proceedings for an offence under subsection (1) it is presumed that, if there is present in the relevant alcohol advertisement: 25
- (a) the name of a person who manufactures or distributes any alcoholic beverage, or
  - (b) a trademark of which a person who manufactures or distributes any alcoholic beverage is the registered proprietor or the registered user, within the meaning of the *Trade Marks Act 1955* of the Commonwealth, or 30
  - (c) a brand name used by a person who manufactures or distributes any alcoholic beverage, 35
- the person displayed that alcohol advertisement for a direct or indirect benefit, until the contrary is proved.



- 
- (8) In any proceedings for an offence under this section, if the thing that is alleged to constitute an alcohol advertisement contains the trademark or brand name of an alcoholic beverage, it is presumed to be designed to promote or publicise the alcoholic beverage to which it relates until the contrary is proved. 5
- (9) Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into. 10

## 6 Competitions

- (1) A person who, after 3 months from the commencement of this Act, in connection with the sale of an alcoholic beverage or for the purpose of promoting the sale of an alcoholic beverage:
- (a) supplies (whether it is sent from inside or outside New South Wales) to the purchaser, or any other person (not being a purchaser or other person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) in New South Wales: 15
- (i) a prize, gift or other benefit, or 20
- (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional), or 25
- (b) conducts (whether from inside or outside New South Wales) a scheme:
- (i) prescribed to be a scheme to promote the sale of an alcoholic beverage or to promote drinking alcoholic beverages generally, and 30
- (ii) the whole or any part of which is implemented in New South Wales,

commits an offence.

- (2) It is a defence in proceedings for an offence under subsection (1) to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of an alcoholic beverage and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy beverages other than alcoholic beverages, was afforded generally to persons who purchased beverages, whether or not they were alcoholic beverages. 5

## **7 Free samples**

- (1) A person who, for the purpose of inducing or promoting the sale of an alcoholic beverage, offers, gives or distributes to another person (not being a person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) a free sample of an alcoholic beverage commits an offence. 10
- (2) This section does not apply to alcoholic beverages which are free samples offered, given or distributed at the actual geographical location where the beverages were made, being the winery or the vineyard (in the case of wine) and the brewery (in the case of beer). 15

## **8 Prohibition of sponsorships** 20

- (1) A person who promotes or publicises, or agrees to promote or publicise, in New South Wales:
- (a) an alcoholic beverage or a trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage, or 25
  - (b) the name or interests of a manufacturer or distributor of an alcoholic beverage (whether or not that manufacturer or distributor also manufactures or distributes a beverage other than the alcoholic beverage) in association directly or indirectly with the alcoholic beverage, 30
- under a contract, or an arrangement (whether or not legally binding) under which a sponsorship is provided or to be provided by another person, commits an offence.
- (2) A person who provides or agrees to provide a sponsorship under a contract or arrangement of a kind referred to in subsection (1) commits an offence. 35



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- (3) For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of an alcoholic beverage are taken to be in association directly or indirectly with the alcoholic beverage if that name or those interests are commonly associated by members of the public in New South Wales with the alcoholic beverage. 5
- (4) This section does not apply in relation to:
- (a) anything done before the relevant day or before such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, under a contract entered into before the day on which the Bill for this Act was introduced into the Legislative Council, or 10
  - (b) anything to which this section does not apply by virtue of an exemption granted under section 9.
- (5) Nothing in subsection (1) or (2) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of an alcoholic beverage to an employee, or a member of the family of an employee, of the manufacturer or distributor. 15
- (6) Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into. 20

## 9 Exemptions

- (1) The Minister may, by notice published in the Gazette before the relevant day: 25
- (a) exempt a person or class of persons either wholly or in part from the operation of section 5 or 8 subject to such conditions (if any) as are set out in that notice or prescribed for the purposes of this paragraph, or 30
  - (b) amend or repeal an exemption granted under this section.
- (2) An exemption may be granted under this section only:
- (a) after consultation between the Minister and the appropriate Minister, and having regard to the nature and background of the event, function or series concerned and to the purposes of this Act, to facilitate the promotion and conduct of: 35



- (i) a sporting, racing or arts event or function, or
  - (ii) a series of sporting, racing or arts events or functions,  
of national or international significance, or
  - (b) in any case of significant hardship to persons other than manufacturers or wholesalers of alcohol. 5
- (3) The *appropriate Minister* is:
  - (a) in relation to an exemption to facilitate the promotion and conduct of a sporting or racing event or function or a series of such events or functions, the Minister for Gaming and Racing, or 10
  - (b) in relation to an exemption to facilitate the promotion and conduct of an arts event or function or a series of such events or functions, the Minister for the Arts.
- (4) The Minister must, when deciding whether or not to grant an exemption under this section for the purpose referred to in subsection (2) (a), have regard to: 15
  - (a) any substantial connection between the relevant event or function or series of events or functions and other significant events or functions outside the State, and 20
  - (b) any reasonable efforts that have been made to obtain sufficient financial or other support for the relevant event or function or series of events or functions from sources other than the advertising of alcoholic beverages to render the exemption unnecessary. 25
- (5) An exemption granted under this section has no effect after the relevant day.

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## **Part 3      Reintroduction of local option**

### **10   Request to declare local option area**

- (1) Anyone can request the Minister to declare a specified area to be a local option area. Streets and other landmarks can be used to describe the boundaries of such an area. 5
- (2) The request is not effective unless it is accompanied by a petition supporting the declaration of the area that the Minister is satisfied:
  - (a) clearly described the boundaries of the specified area, the grounds on which the request was made and the effect of declaring that area to be a local option area, and 10
  - (b) was signed (within a period of not more than 6 successive months) by not less than 10% of such of the people who reside in that area as are each entitled to vote in an election of a member of the Legislative Assembly for the electorate that includes his or her place of residence, and 15
  - (c) contains, so that they may be easily read, the surname and the given name or given names (or the surname and the initials of the given name or given names) of, the residential address of, and the date on which the petition was signed by, each signatory, and 20
  - (d) specifies whether the declaration sought is a declaration of general application or a declaration limited to specified hours or other periods of time.
- (3) An area for the purposes of a declaration under this Part may consist of (but is not limited to) a local government area or a ward of such an area. 25
- (4) If such an area consists of part of a ward only, subsection (2) (b) requires the signature of not less than 10% of all the people who reside in the whole of the ward and who are qualified to vote as referred to in that paragraph. 30

## **11 Declaration of local option area**

- (1) The Minister must declare a local option area in accordance with such a request if the Minister agrees with the Council of each local government area the whole or any part of which comprises or is included in the proposed local option area that any of the following situations apply: 5
- (a) there are widespread problems with youth which are related to alcohol being consumed in the proposed local option area,
  - (b) there is widespread alcohol-related crime in that area, 10
  - (c) there is widespread alcohol abuse in that area,
  - (d) there are widespread alcohol-related illnesses, accidents or deaths in that area.
- (2) For the period of 4 months before a local option area is declared under this Part, notice of intention to declare the area (containing details of the proposed declaration) must be given at not less than monthly intervals in at least one local newspaper and at least one other newspaper circulated throughout the area. 15

## **12 Rescission of declaration**

- (1) The Minister may rescind the declaration of a local option area, or any such declaration in so far as it relates to part of a local option area, but only in accordance with an agreement for rescission made between the Minister and the Council of the local government area that constitutes that area or the part of that area. 20 25
- (2) Such an agreement may not be made:
- (a) until 6 months have expired after the declaration of the local option area concerned, or
  - (b) until 6 months after the last occasion (if any) on which the Minister or the Council concerned unsuccessfully requested the other of them to agree to the rescission. 30
- (3) If the declaration of a local option area is rescinded in so far as it relates to part of the area, the local option area is taken to consist only of that part.



**13 When declaration or rescission has effect**

The declaration of a local option area, and any rescission of such a declaration, have effect only when notice of the declaration or rescission is published in the Gazette.

**14 Duration of declaration**

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- (1) A declaration of a local option area must specify the nominal period (being not less than 3 years nor more than 5 years) for which the declaration will be in force unless it is sooner rescinded.
- (2) A declaration of a local option area has effect only until the nominal period specified in the declaration expires or until it is rescinded, whichever occurs first.

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**15 Prohibitions applicable to local option areas**

- (1) A person commits an offence if the person:
  - (a) buys, sells or (for any direct or indirect material benefit to the person delivering) delivers any quantity of an alcoholic beverage, or
  - (b) consumes any alcoholic beverage in a public place, within any local option area declared under this Part while the declaration is in force.

Maximum penalty: 1 penalty unit.
- (2) If the declaration is expressed to be limited to specified hours or other periods of time, the declaration is taken not to be in force at any other time for the purposes of subsection (1).
- (3) If a person is convicted of an offence under this section of buying, selling or delivering a quantity of an alcoholic beverage, the beverage and any bottle, keg, barrel, cask or other container in which it is contained:
  - (a) are forfeited to the Crown, and
  - (b) may be seized by an authorised officer or any police officer, and
  - (c) are to be disposed of as the Minister directs.

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- (4)    After notice of the declaration of a local option area has been published in the Gazette and before the declaration commences to have effect, the average monthly quantity of any kind of alcoholic beverage sold from premises within that area that are (or are required to be) licensed for the purpose under the *Liquor Act 1982* is not to exceed the average monthly quantity of that kind of liquor sold per month for the 12 months before the notice was published. 5
- (5)    The regulations may provide for the making, keeping and inspection of records of sales of alcoholic beverages for the purpose of ensuring that subsection (4) is complied with. 10
- (6)    If any quantity of an alcoholic beverage is sold in contravention of this section at any premises licensed under the *Liquor Act 1982*, any licence for the premises granted under that Act is taken to be cancelled. 15

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## **Part 4      Alcohol Advertising Prohibition Committee**

### **16    Alcohol Advertising Prohibition Committee**

- (1)    The Alcohol Advertising Prohibition Committee is established.
- (2)    The Committee is to consist of 5 members appointed by the Minister, of whom: 5
  - (a)    1 is to be appointed as Chairperson, and
  - (b)    3 are to be appointed on the nomination of the Director-General of the Department of Health, and
  - (c)    1 is to be a person nominated by the Chief Executive Officer of the Outdoor Advertising Association of Australia. 10
- (3)    Schedule 1 has effect with respect to the members and meetings of the Committee.

### **17    Functions of the Committee 15**

- (1)    The Alcohol Advertising Prohibition Committee is to prepare and submit to the Minister a code which provides for the regular and progressive stages in accordance with which advertisements to which section 5 applies should be removed or obscured and sponsorships to which section 8 applies should be terminated. 20
- (2)    The code is to provide for the removing or obscuring of advertisements and the termination of sponsorships by the relevant day.
- (3)    The Committee's initial advice concerning the provisions of the code is to be given within 3 months after the commencement of this section. 25
- (4)    The Committee has such other advisory functions as the Minister may determine.



**18 Responsibility of the Minister**

- (1) The Minister is required to recommend to the Governor the making of regulations which will ensure:
  - (a) the removal or obscuring of advertisements to which section 5 applies, and 5
  - (b) the termination of sponsorships to which section 8 applies, by regular and progressive stages.
- (2) The Minister, in making any recommendation under this section, must consider any code submitted and any advice given by the Alcohol Advertising Prohibition Committee. 10
- (3) This section does not apply to an advertisement or sponsorship which is the subject of an exemption under section 9.

**19 Provision of assistance to the Committee**

For the purpose of the exercise of its functions, the Director-General of the Department of Health is to provide the Alcohol Advertising Prohibition Committee with such assistance as it may reasonably require. 15

## **Part 5      Enforcement**

### **20   Removal of certain advertisements**

- (1) This section applies to an alcohol advertisement:
  - (a) if the advertisement was placed or displayed in contravention of this Act or the regulations, or 5
  - (b) after the relevant day or such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, whether or not the advertisement was placed or displayed in contravention of this Act or the regulations. 10
- (2) If an alcohol advertisement is situated in a public place or on any premises from which it can be seen from a public place, a Local Court constituted by a Magistrate sitting alone may order:
  - (a) that the advertisement be removed or obscured by an authorised officer, and 15
  - (b) if any person has been convicted of an offence against this Act or the regulations relating to the placing or displaying of the advertisement, that the person pay the reasonable costs incurred by the authorised officer in removing or obscuring the advertisement. 20
- (3) Subsection (2) does not apply to an advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale and that complies with the regulations.
- (4) An authorised officer does not commit a civil wrong and is not liable for damages for anything done or omitted to be done while removing or obscuring an alcohol advertisement with reasonable care under the authority of such an order. 25
- (5) Any alcohol advertisement in the form of an article that is removed in accordance with such an order is taken to be the property of such person as is specified in the order. 30
- (6) If any costs are payable under such an order, they may be recovered in a court of competent jurisdiction as a debt due to the Crown or a Council, as the case requires.

- (7) This section does not apply to an alcohol advertisement while it may be lawfully displayed in accordance with an exemption provided by this Act or the regulations.

**21 Power of entry**

- (1) An authorised officer may enter any premises to remove or obscure an alcohol advertisement under the authority of an order made by a Local Court. 5
- (2) This section does not allow the entry of any premises or part of premises used as dwelling.

**22 Intimidation or obstruction of authorised officer** 10

A person must not in any way intimidate or obstruct an authorised officer who is removing or obscuring an alcohol advertisement under the authority of an order made by a Local Court or who is attempting to do so.

Maximum penalty: 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence. 15

**23 Consent required for prosecutions**

Proceedings for an offence against this Act are not to be commenced without the consent in writing of the Director-General of the Department of Health or a person authorised by him or her in writing for the purpose of this section. 20

**24 Penalties**

- (1) A person who commits an offence under a provision of this Act specified in the Table to this subsection is liable: 25
- (a) in the case of an individual, to a penalty of not more than:
- (i) 50 penalty units for a first offence, or
- (ii) 100 penalty units for a second or subsequent offence, or



(b) in the case of a body corporate, to a penalty of not more than:

- (i) 200 penalty units for a first offence, or
- (ii) 400 penalty units for a second or subsequent offence.

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### Table

Sections 5 (1), (2) and (3), 6 (1), 7 (1), 8 (1) and (2) and 29 (1).

(2) If a continuing state of affairs is created by an offence referred to in subsection (1), the offender is liable to a penalty of not more than:

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- (a) 50 penalty units in the case of an individual, or
  - (b) 200 penalty units in the case of a body corporate,
- in respect of each day on which that offence continues, in addition to the penalty specified in that subsection.

## 25 Proceedings for offences

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- (1) Proceedings for an offence against this Act or the regulations may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.
- (2) An offence against this Act may be dealt with as an indictable offence, but only if the prosecutor proposes that the offence be so dealt with.
- (3) If proceedings for an offence against this Act or the regulations are disposed of in a summary manner before a Local Court, the maximum penalty that may be imposed is 50 penalty units, or the maximum penalty for the offence (whichever is the lesser), despite any other provision of this Act.
- (4) If proceedings for such an offence are taken on indictment, the maximum penalty that may be imposed is the maximum penalty for the offence.
- (5) Proceedings for such an offence may be commenced at any time within 12 months after the date on which the offence is alleged to have been committed.

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## **26 Offences by bodies corporate**

- (1) When a body corporate commits an offence under this Act or the regulations, every officer of the body corporate commits the same offence unless he or she proves that:
- (a) the offence was committed without his or her consent or connivance, and 5
  - (b) he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances. 10
- (2) In subsection (1):

*officer*, in relation to a body corporate, means:

- (a) a director, secretary or executive officer of the body corporate, or
- (b) a receiver, or receiver and manager, of property of the body corporate, or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge, or 15
- (c) an official manager or a deputy official manager of the body corporate, or 20
- (d) a liquidator of the body corporate, or
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons,

and includes any other person, by whatever name called and whether or not a director of the body corporate, who is concerned, or takes part, in the management of the body corporate. 25





- (2) In this section, *specified* means specified in regulations made under this section.

## 29 Warnings

- (1) The producer of an alcoholic beverage commits an offence if a warning prescribed by the regulations is not displayed, in accordance with the regulations, on the packaging in which the alcoholic beverage is sold or supplied by the producer. 5

- (2) The warning must give information about the harmful effects of alcohol consumption.

The following are examples of a warning that may be prescribed: 10

alcohol consumption can be harmful to your health and can cause:

- cirrhosis of the liver
- permanent brain damage

alcohol consumption often leads to deaths on the road. 15

## 30 Review of Act

- (1) Within a period of 12 months commencing on the third anniversary of the day on which the Bill for this Act was assented to, the Minister must cause an investigation and review to be conducted and a report prepared, concerning the operation of this Act. 20

- (2) The Minister must cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament as soon as is practicable after the completion of that report.

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## **Schedule 1 Provisions relating to the Alcohol Advertising Prohibition Committee**

(Section 16 (3))

### **1 Nominations**

- (1) A nomination of a member of the Committee must: 5
  - (a) be submitted in writing to the Minister at the request of the Minister, and
  - (b) be in respect of a person who is prepared to be a member.
- (2) If a person does not submit a nomination within 30 days after the making of the relevant request, the Minister may appoint a person to be the member concerned to represent the interests of the person or body in default until the relevant nomination is submitted. 10

### **2 Term of office**

A member has such term of office, not exceeding 4 years, as may be specified by the Minister in the instrument appointing the member. 15

### **3 Quorum**

Three members constitute a quorum for a meeting of the Committee. 20

### **4 Presiding member**

- (1) The Chairperson is to preside at each meeting of the Committee at which the Chairperson is present.
- (2) In the absence of the Chairperson from a meeting of the Committee, the members present are to select from among their number a member to preside at the meeting. 25

### **5 Decisions of the Committee**

- (1) A decision supported by the votes of the majority of the members present and voting at a meeting of the Committee is the decision of the Committee. 30

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- (2) Each member present at a meeting of the Committee is entitled to one vote on a matter arising for determination at the meeting.

**6 Calling of first meeting**

The Minister is to call the first meeting of the Committee in such manner as the Minister thinks fit.

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**7 Procedure**

The Committee is to decide its own procedure for the conduct of its meetings, except as provided by this Schedule.