

Republic of Nauru - 18<sup>th</sup> Parliament

**Liquor (Amendment) Bill 2009**

**EXPLANATORY MEMORANDUM**

**BACKGROUND AND INTRODUCTION:**

In the revenue budget for the fiscal year 2009-2010, the Cabinet has approved an increase in the liquor license fees. Such increase can only be lawfully given effect by amending the *Liquor Act 1967-1997*.

Notwithstanding the law that governs liquor licence fees (the *Liquor Act 1967-1997*, in particular, section 59 and Schedule 4 of that Act), the increase in liquor licence fees that was approved in the 2004-2005 budget (doubling the fees), was purportedly given effect by publishing a notice in the Gazette (G.N.No.379/2004) without making the necessary amendment to the Act.

This Bill would amend the *Liquor Act* in order to achieve three main things:

- 1) to preclude any action being brought to challenge the lawfulness of or seek a refund of the licence fees that have been charged and paid since 2004;
- 2) to vest Cabinet with the authority in future to prescribe fees for liquor licences by Regulation; and
- 3) to amend the Fourth Schedule to prescribe the immediate increase in fees that is proposed by Cabinet, in order to avoid the necessity of having to immediately make Regulations in addition to amending the Act. The Act will then provide that the fees payable are those set out in the (new) Fourth Schedule, or as prescribed by Regulation.

**NOTES ON CLAUSES:**

**Clause 1** provides the short title of the Bill and provides that the Act will come into force on the date of certification.

**Clause 2** defines the *Liquor Act 1967-1997* as the 'principal Act' and provides for the new short title of the principal Act as amended: the *Liquor Act 1967-2009*.

**Clause 3** would amend section 14 of the Liquor Act. The effect of this amendment is to create a system whereby all liquor licences expire and are renewed at the same time, so that instead of a liquor licence being valid for 12 months from the date on which it was granted or renewed (as is the case under existing s14(2)), a liquor licence would be valid until the last day of the financial year in which it was granted or renewed. All liquor licences would expire on 30 June each year and have to be renewed on 1 July each year.

This proposed amendment is intended to make the administration of the Act simpler and more efficient.

**Clause 4** would repeal sections 59 and 60 of the Liquor Act and replace them with new sections 59 and 60. Existing section 59 provides:

‘An Applicant under this Ordinance shall, at any time of giving notice of his application, lodge with the Registrar the fee provided for in the Fourth Schedule.’

Proposed new section 59 contains four subsections, the first of which has essentially the same effect as existing section 59, and the other three of which make new provisions in respect of fees. The effect of repealing and replacing section 59 in the manner proposed by the Bill would be to provide Cabinet with the power to alter by regulation the fees payable for liquor licence fees, so that it is not necessary to amend the Act every time there is an increase in fees; to make provision for the payment of a pro rata portion of the annual liquor licence fee if a licensee obtains a licence more than three months after the commencement of the financial year, and to provide for the refund of fees paid for licence applications that are not approved.

Existing section 60 provides that the Administrator in Council [to be read as Cabinet] may make regulations under the Ordinance [Act] and in particular, prescribing penalties not exceeding one hundred dollars for offences against the regulations. The proposed repeal and replacement of section 60 would have the effect of increasing the maximum penalty that Cabinet can prescribe by regulation for offences against regulations, from one hundred dollars to \$1,000 dollars, and expressly providing that Cabinet can make regulations prescribing fees payable for a licence under the Act.

**Clause 5** would insert a new section 61 in the Act, to provide that no legal or administrative challenge may be brought and no legal or administrative remedy shall be granted in respect of any licence fee that was charged or paid prior to the date on which this section comes into effect. This clause is intended to deal with the purported increase of fees in 2004 that was effected without amending the Act as required.

The Bill proposes to preclude any action being brought to challenge the lawfulness of or seek a refund of the licence fees that have been charged and paid since 2004, rather than seeking to accord retrospective legal validity to the 2004 increase, because of the general undesirability of retrospective legislation and the likelihood that if the 18<sup>th</sup> Parliament purported to pass a law that has retrospective effect from a date that was during the term of the 16<sup>th</sup> Parliament, such law may be open to challenge on the grounds that it is *ultra vires*.

**Clause 6** would repeal the Fourth Schedule to the Act relating to fees, and replace it with a new Schedule 4 that prescribes new fees. The replacement of the Fourth Schedule would give immediate legal effect to the new increases in fees, rather than relying on new subsection 59(2) and new section 60 to achieve this increase by way of regulations. However in respect of any further change in fees in future, it is likely that this would be done by way of regulations, rather than by further amendment of Schedule 4.