

Submission to the Review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007*

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Table of contents

Opening	3
Executive Summary	3
Response	4
Structure of the liquor regulatory framework	4
Regulating market entry and business operations	5
Monitoring and regulatory intervention	9
Community stakeholder input	10
Conclusion	11
References	12

Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW. LGNSW represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW welcomes the opportunity to make a submission to the five year statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007*.

Councils are involved with aspects of the regulation, enforcement and surveillance of the distribution of alcohol and alcohol-related harm minimisation approaches in the community. Councils are consent authorities under the Environmental Planning and Assessment Act 1979 for development, and thus have responsibility for regulating the environmental and social impacts of licensed premises through the development application process. As such, Local Government has a strong interest in ensuring the legislation controlling the sale, supply and consumption of alcohol in the community is appropriate and provides for a safe and healthy community.

Please note that in order to meet the consultation deadline, this submission is provided in draft form, in anticipation of LGNSW Board endorsement in late August 2013. LGNSW will advise the Office of Liquor, Gaming and Racing (OLGR) of any amendments to the submission at that time.

Executive Summary

The over-arching premise on which the majority of local, state and national alcohol harm reduction actions plans are based recognise that alcohol is a significant and in many cases legitimate aspect of Australian culture. LGNSW advocates for the alignment of the NSW Government policies and plans in relation to the provision and management of alcohol to create consistency and ensure balance between the areas of health, enforcement, social impact and competition policy.

Councils, due to their proximity with their communities, their role in land use planning and development, and their responsibilities under the *Local Government Act 1993* Chapter 13 Part 2 - Strategic Planning (known as the Integrated Planning and Reporting (IPR) Framework), are well placed to support a competitive retail environment that includes licensed venues and that is also in the best interests of their local communities.

Specific recommendations arising from this submission are that:

1. NSW Government should increase the capacity of Local Government, as the consent authority monitoring the number of liquor outlets in different communities and the associated impacts, to address the issue of the supply of alcohol as a strategy to reduce alcohol related harm via measures such as those in recommendations 5, 6 and 7.

2. An automated system of notification to councils should be adopted for all liquor licence applications.
3. Shorter-term licences (eg 5 year) be adopted rather than perpetual licences, or as a minimum, a regular review of licences should be introduced.
4. Small bars should be defined by the number of patrons (60) and/or floor space.
5. The Act should provide for the setting of liquor licence 'caps' or 'saturation zones' in an area; key stakeholders should be consulted in this process including councils, Police, health authorities and the community.
6. Local Government be given access to EVAT (if adopted beyond trial phase) to assist with assessment of liquor-related development applications.
7. Local Government be given a greater role in the setting of liquor licence conditions, particularly operating hours and venue capacity; more specifically, LGNSW recommends that the setting of hours of licensed premises should revert to councils, and that this be adequately resourced through licence fees.
8. Licence conditions that should be made mandatory include:
 - a. all liquor licences include a standard condition requiring membership of the local Liquor Accord, including making financial contributions to harm minimisation initiatives and public safety measures.
 - b. Licensees with late night closures in 'saturation zones' are to work with the local Liquor Accord and relevant agencies and service providers to provide safe late night transport options for patrons.
9. NSW Health to expand the scope of elements considered in their response to applications for liquor licenses to include the impact and possible harm of alcohol use in terms of population health issues such as chronic disease and the social determinants of health
10. The Act provide for greater transparency in licensing determinations and appeal provisions for applicants and third parties, notwithstanding the limitations imposed by s45(6).
11. The onus of proof should rest with the applicant to demonstrate the reasons why the granting of a licence will be positive or at least not of further detriment to the community.

Response

LGNSW's submission has been framed according to the issues and headings provided in the Office of Liquor, Gaming and Racing's (OLGR) explanatory paper. Note that this submission focuses on the *Liquor Act* (the Act).

Structure of the liquor regulatory framework

LGNSW supports the objects of the Act, particularly the objective of regulating the sale, supply and consumption of alcohol in a way that seeks to recognise *the expectations, needs and aspirations of the community*. Alcohol holds a prominent position in our diverse communities, with a number of different sectors invested in its supply, promotion, service, regulation, harm minimisation and enforcement measures. It is incumbent on all sectors involved to recognise both the positive and negative implications of alcohol consumption and contribute towards its appropriate management.

The NSW Auditor-General estimated that the total cost of alcohol-related abuse to NSW Government services to be \$1.029 billion per annum, equivalent to \$415 per household, with the largest costs borne by the NSW Police, Family and Community Services and

then NSW Health. These figures do not include the costs to Local Government, the Australian Government, nor to individuals or the health insurance industry.

The Office of Liquor, Gaming and Racing issued an explanatory paper for the review, which outlined the entities involved in liquor regulation in NSW, providing a summary of each. However LGNSW understands that the role of Local Government was not outlined in any detail in the paper on the basis that Local Government does not have a statutory role under the *Liquor Act*. While the latter is correct, Local Government is fundamental to the implementation of the *Liquor Act* and the management of impacts of alcohol in the community and should be given due recognition.

The role of councils relevant to the administration and implementation of the *Liquor Act* includes:

- Acting as the consent authority for development, including consulting the community; without development consent, a liquor licence cannot be issued.
- Putting in place and monitoring compliance with development consent conditions, including trading hours, noise restrictions.
- Participating on local liquor accords to develop and promote initiatives to minimise alcohol-related harm in the community.
- Dealing with the consequences of alcohol-related violence or damaging behaviour eg, cleaning or repair of public spaces
- Establishment of Alcohol Free Zones and Alcohol Prohibited Areas under the *Local Government Act 1993*.

The NSW Ministry of Health (including Local Health Districts) and the emergency services were also not covered in detail in the explanatory paper, but they are also critical stakeholders in the broader management of alcohol and impacts arising from its consumption. While they do not perform a statutory role under the liquor legislation, these organisations end up dealing with the consequences of alcohol mis-use such as intoxication, chronic alcohol-related health issues and the results of violence.

Definitions

The Act currently defines a 'small bar' as a having a maximum of 60 patrons, irrespective of floor space or locational context. For development consent and enforcement purposes, it would be useful to define a small bar in terms of patrons and/or floor space.

Regulating market entry and business operations

Assessment and planning

Councils are consent authorities under the NSW *Environmental Planning and Assessment Act 1979* (currently under review). They have the responsibility to regulate the environmental and social impacts of licensed premises through the development application process.

Councils in some areas including Sydney's fringe, have reported the difficulty of taking into consideration the social and health factors in order to challenge a successful development approval. The NSW Government's response to these concerns has been to advise that planning regulations should not be used to restrict competition, and that the benefits of restrictions should clearly outline and outweigh the costs of further development, in particular, another liquor outlet in area. The cumulative impact of a high

number of liquor outlets in communities is an issue that needs to be considered and again should also outweigh the costs of the planning objectives.

As the consent authority, Local Government advocates for more opportunities to work with the NSW Government to ensure that an appropriate number of liquor outlets exist in each community. While LGNSW recognises the importance of commercial investment, expansion and competition for the purpose of providing communities with a healthy and vibrant economy, there is increasing research emerging regarding the negative health impacts on individuals and communities due to the level and frequency of alcohol supply, consumption and related harm.

The density of outlets and the negative social and health impacts these can have on different communities is important to consider when making planning and liquor licensing decisions. These decisions must take into account the availability of alcohol in a community and treat the number of liquor outlets as an important risk factor to the incidence of alcohol-related harm.

Licence 'caps' or 'saturation zones'

The Office of Liquor, Gaming and Racing (OLGR) has produced maps for each local government area indicating the density of liquor licences, however Local Government believes more can be done.

The correlation and implications of liquor licence density on the incidence of alcohol-related violence and harm suggests that it is appropriate to limit the number of liquor licences in an area, to protect community amenity and minimise harm. The NSW Government has effectively adopted this approach in the handful of areas where it has already applied freezes (listed in Schedule 5 of the Act).

Limiting licence numbers in certain areas or identifying 'saturation zones' are both ways of recognising the cumulative impact of licensed premises. These limits/zones could be informed by the outputs of the Environment and Venue Assessment Tool (EVAT) or similar, and would provide a level of certainty for both industry and the community. The EVAT would also take into account the proximity of licensed premises to sensitive receivers such as schools, hospitals etc.

Although the costs to the health system generally cannot be attributed to a particular licence or type of licence, it is critical that health authorities (in addition to councils) be consulted on regional trends or the setting of licence number 'caps' or 'saturation zones' in an area.

Licensing information

Information about individual licences can be looked up online on the Government Licensing Service (<https://www.licence.nsw.gov.au/LicenceCheck/>). This is a useful tool for searching individual licences and their conditions, however councils would benefit from being able to search by LGA or other geographic region e.g. to drill down into the density maps to examine the spread and types of licences in a specific area.

Despite the above system, there appears to be little information available as to how many (and which) of the almost 18,000 liquor licences in NSW are active. Section 93 of the *Liquor Act* requires licensees that have ceased trading for more than six continuous weeks to notify the Authority. It is understood this rarely occurs and nor is this provision routinely enforced.

LGNSW proposes the introduction of shorter term licences (eg. 5 year), or at a minimum, the Authority should be required to undertake a regular review of licences. LGNSW believes this proposal would:

- enable licence conditions to be updated in light of new research on harm minimisation measures,
- assist with updating data on licence activity and inform reviews of licence caps in an area.

Ideally, the Authority should tailor the level of regulatory attention to the risks posed by a type of licence, and the latter could be defined based on the track record of the licensee/premises and the density of licences in an area.

Onus of proof

The existing licensing process requires councils or other members of the community to demonstrate the harm or negative impact of a liquor licence application, rather than the applicant needing to demonstrate the reasons why the granting of a licence will be positive or at least not of further detriment to the community. Local Government would argue that this situation should be reversed. The onus of proof should be on licence applicants and not on the community or government (State or Local).

Local Liquor Accords

Liquor Accords are currently formed on a voluntary basis, with Local Government as a key stakeholder along with local police, local licensees and community members. This approach places a strong emphasis on partnerships within a community, to effectively address the issue of alcohol-related violence by adopting appropriate harm minimisation measures.

Section 52(3) of the Act already provides for the Authority to impose conditions on a licence requiring a licensee to participate in and comply with a local liquor accord. However, in order for harm minimisation measures to be applied consistently across licensed premises and to provide for equity amongst licensees, LGNSW suggests that membership of the local Liquor Accord be made a standard condition on all liquor licences.

Requiring licensees to be members of Liquor Accords would provide a stronger avenue for local/regional engagement but will not, in itself, ensure active participation of licensees. However the additional requirement that licensees must contribute financially to liquor accords would:

- Provide a higher level of commitment and strengthen member resolve around promoting and complying with harm minimisation measures and initiatives;
- provide an incentive for non-active licensees to surrender licences;

Furthermore, if membership fees were to be suspended during licence inactivity, this would present an incentive for licensees to advise the Authority of substantial periods of inactivity.

Environment and Venue Assessment Tool (EVAT)

This tool is currently being trialled by the Authority in the assessment of new liquor licence applications in the City of Sydney and Newcastle, using weighted risk assessments based on location and venue risks. The tool presents a welcome step

forward in factoring cumulative social and economic considerations into licensing decisions, and Local Government is keen to see feedback from the trial. Ideally, this feedback would inform the Act review but the trial will not be completed until after the Act review report is tabled in December 2013. OLGR has indicated that there will be opportunity to incorporate findings from the EVAT trial into the Act review. LGNSW would strongly support this and also urge the Minister to consult further with Local Government on the results of the EVAT at that time.

Should the EVAT (or similar) be formally adopted as part of the licensing process, LGNSW strongly recommends that Local Government also be given access to the tool so it can inform assessment of development applications. This would also enable increased transparency and consistency in the decision-making process on related matters.

Consultation on liquor licences and nexus with development consent processes

A question posed as part of the Act review has been whether there are merits in combining the consultation processes for planning consent and liquor licensing. Given the planning reforms currently in train, this question must be considered in relation to both the existing framework as well as that proposed in the Government's White paper.

Current planning framework

The existing consultation process has come under scrutiny because of perceived doubling up of consultation at DA stage and then again for liquor licensing purposes. For example, the local Police may be asked to comment on the DA for a restaurant precinct, and then again on the individual liquor licence applications. Where the development application matches the consent conditions, there are merits in combining the processes. However if adjustments to the development application were made to address concerns raised during consultation on the development application, key stakeholders may not be aware of what aspects have changed and a further round of consultation in relation to the liquor licence may be necessary.

Under the existing planning framework there are also limited situations where it is clear that the proposed application will require, or be seeking, a liquor licence. On these occasions, it would be appropriate to combine the two consultation processes. However there is likely to be a larger number of situations where the liquor licence application is lodged independently to the development application or variation to consent. Therefore in the majority of these cases there would be no benefit to merging consultation processes. LGNSW recommends that careful consideration is needed before adding yet another consultation pathway (to the existing Category A and B community impact statement requirements) to account for situations where development consent and liquor licences were sought concurrently.

Proposed planning framework

Under the proposed planning reforms, small bars are to be included as 'code assessable development'. This classification means that there would be no requirement to notify or consult with neighbours or other stakeholders on the proposal. This would make it even more important that the size of such venues is limited. Local Government is not supportive of changes to both the planning system and *Liquor Act* that would see such development totally exempt from consultation requirements.

Monitoring and regulatory intervention

The operating hours of licensed premises are a pivotal mechanism for both estimating the potential impacts of a proposal, and then for managing those impacts. Opening hours influence things such as noise disturbance, incidence of alcohol-related violence, likelihood of property damage, and have implications for late night transport options.

In 2008 the (then) Liquor Administration Board imposed a number of restrictions on 14 licensed premises in Newcastle, including lock out times. An evaluation of the effect of the changes was conducted in the following 12 months and found that there was a 37 per cent reduction in alcohol-related harms, and three years later there was a 35 per cent reduction in night-time non-domestic assaults requiring police attention and a 50 per cent reduction in night-time offences (FARE, August 2012). These figures demonstrate the influence that operating hours can have on minimising harm from alcohol use and misuse in the community.

It is often difficult to enforce operating hours after midnight, particularly in fringe metropolitan or regional areas (as opposed to inner city locations), and it places a significant 'after hours' time burden on the limited resources of the local Police or council enforcement officers. In these locations, allowing premises to operate past midnight is not necessarily suitable if there is no transport available after that time for patrons.

Local Government seeks a greater role in the setting of liquor licence conditions, particularly operating hours and venue capacity. Other licence conditions that should be made mandatory include:

- licensee to be a member of the local liquor accord and contribute financially;
- Licensees with late night closures in 'saturation zones' are to work with the local Liquor Accord and relevant agencies and service providers to provide safe late night transport options for patrons.

Precedents for including the above conditions on licences exist in the Kings Cross precinct where licensees contribute towards the costs of cleaning, transport and harm minimisation measures.

Licensing decisions & appeals

A number of metropolitan and regional councils have been identified in the media expressing their concerns regarding supermarket chain plans to sell alcohol in its NSW stores. Community stakeholders including councils are concerned that many of these outlets are targeting low socio-economic areas and could exacerbate alcohol-related harm, and increase demand on hospital, emergency and community health services.

LGNSW would support the reinstatement of independent reviewers to provide expert advice to OLG on the likely impact on communities in relation to the sale, supply and consumption of alcohol.

Section 42 of the Act provides for the Authority to initiate investigations and inquiries in relation to an application if it considers it necessary for a proper consideration of the application. However once a decision to grant or not grant a licence is made, there does not appear to be provision in the Act for third party appeal of a licensing decision.

It is understandable that in some cases disclosing the reasons for a decision can be detrimental, which is ostensibly why the Act specifically exempts the Authority from being

required to give reasons for not granting a licence if the giving of those reasons would disclose criminal intelligence (section 45(6)). LGNSW would submit, however, that in the remainder of cases the outcome of the decision process, as well as the factors considered in deliberation on more contentious applications should be communicated to the broader community. This in itself would demonstrate how the Authority has had due regard to the objects of the Act.

Community stakeholder input

The *Liquor Act* requires certain licence applications to be accompanied by a community impact statement (CIS), which is prepared by the applicant based on consultation they undertake. The OLGR web site provides guidance on who should be consulted – local residents, council, Police, other agencies – depending on the type of licence sought.

For example in a north coast council, development applications (DA's) received by council for liquor outlets and licenced premises are automatically referred to the Community Development Council Officer as well as the LAC Licensing Sergeant to work through and assess. These officers can make an appropriate recommendation and also canvass views from people in the community. Effective community engagement is important when addressing the issue of alcohol levels of supply and resulting social impact, and therefore requires appropriate resourcing. Without community support it can be difficult for councils to challenge a liquor licence or DA which would increase liquor supply in an area.

A key concern for councils in relation to the consultation process for liquor licences is the time allowed for comment, which is often too short to enable meaningful consultation with the community. The current process allows 30 days for comment, however council may receive the notice 4 or 5 days into the allotted time, and even then only the cover page 'notification' without any further detail about the application. This leaves little time to chase additional detail from the applicant, as well as conduct internal or external consultation and seek sign off by council.

An electronic notification system is in place for certain licence applications, which councils report as working reasonably well, however there is still room for improvement. Some councils have suggested an automated system of notification be adopted for all liquor licence applications.

The second main concern is the lack of transparency and robustness with the existing approach of applicants undertaking consultation and reporting on outcomes, which presents a potential bias towards the applicant. It is understandable that the Authority and OLGR would not have the capacity to verify the consultation outcomes presented by applicants in the majority of cases. The CIS nor the reasons for licensing decisions are not made public, and therefore there are few avenues for stakeholders to understand what has transpired between the application they were consulted on and the final outcome. This makes it quite difficult for Local Government to make use of the appeal provisions contained in the Act, notwithstanding having the resources and capacity to pursue an appeal.

Small bar applications and CIS

Applications for small bar licences are currently exempt from the requirement to submit a CIS where development consent is required and where the local Police and the Director-General of Trade & Investment are notified by the applicant within 2 days of lodging the

development application. LGNSW understands the rationale behind this is the desire to reduce red tape for an activity that is considered to be relatively low risk, and community consultation on the proposal would occur through the development application process. However the research findings linking negative health impacts on individuals and communities with the level and frequency of alcohol supply, consumption and related harms raises the importance of understanding the cumulative impacts of small bars.

While the EVAT would provide a mechanism to assess the cumulative impacts of small bar applications, there also needs to be a mechanism for seeking the community's views on whether the 'amenity of community life' (as per the objects of the Act) will be detracted from. LGNSW suggests that this issue could be addressed by incorporating community input into the setting of caps on the number of liquor licences in an area (as outlined earlier).

Conclusion

The introduction of the *Liquor Act* in 2008, implemented in tandem with education and harm minimisation initiatives, has seen a general improvement in the appropriate management of sale, supply and consumption of alcohol. The 10 year analysis of progress in alcohol management by the Foundation for Alcohol Research and Education shows that alcohol-related non-domestic assaults per 100,000 people in NSW rose from 199 in 2002-3 to 275 in 2007-08, but has since declined back to the same level as 2002-3. (FARE, March 2013) The rate of alcohol-related assaults on Police followed a similar trend of increasing from 2002-3 to 2007-8, then declined back to the 2002-3 levels in 2011-12.

While these recent downward trends in alcohol-related violence are positive, further refinements to the *Liquor Act* and Regulation are required to also improve transparency in decision-making, and to provide for greater recognition of the social and health impacts of alcohol use in our community. LGNSW's recommendations in this regard have been outlined in the Executive Summary, and cover not only amendments to the legislation itself but also to the administration and implementation of the legislation.

LGNSW would be pleased to further discuss the suggestions and recommendations contained in this submission.

References

Dealing with alcohol-related harm and the night-time economy (DANTE) Final report
Funded by National Drug Law Enforcement Research Fund, April 2012

Independent Liquor and Gaming Authority: *Annual Report – 2011/12*

Foundation for Alcohol Research and Education, August 2012: *10 point plan to reduce alcohol-related harms in NSW*

Foundation for Alcohol Research and Education, March 2013: *10 years on: An analysis of the progress made in preventing alcohol-related harms since the 2003 NSW Summit on Alcohol Abuse*

Audit Office of New South Wales, August 2013: *Cost of alcohol abuse to the NSW Government*, NSW Auditor-General's Report Performance Audit