



Mr Jon Martin  
JDK Legal  
[j.martin@jdklegal.com.au](mailto:j.martin@jdklegal.com.au)

16 June 2020

Dear Jon

<b>Application No.</b>	1-7105686307
<b>Applicant</b>	Nicholas James Minogue
<b>Application for</b>	Removal of a packaged liquor licence
<b>Licence number</b>	LIQP700353201
<b>Current licence name</b>	Liquorland Express
<b>Current premises</b>	388 George Street Sydney NSW 2000
<b>Current trading hours</b>	Monday to Saturday 5:00 AM – 11:00 PM Sunday 10:00 AM – 10:00 PM
<b>Proposed licence name</b>	Vintage Cellars
<b>Proposed premises</b>	Tenancy Y3, 46-48 York Street Sydney NSW 2000
<b>Proposed trading hours</b>	Monday to Saturday 8:00 AM – 9:59 PM Sunday 10:00 AM – 9:59 PM
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 47F, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for the removal of a packaged liquor licence – Vintage Cellars, Sydney**

The Independent Liquor & Gaming Authority considered the application above at its meeting on 12 February 2020 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **approve** the application subject to the following conditions:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 AM and 8:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)  
Retail Sales  
Good Friday Not permitted  
December 24<sup>th</sup> Normal trading Monday to Saturday  
8:00 AM to 10:00 PM Sunday  
Christmas Day Not permitted  
December 31<sup>st</sup> Normal trading
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of removing this licence to the premises at Tenancy Y3, 46-48 York Street, Sydney, NSW 2000.
4. The premises is to be operated at all times in accordance with the Coles Liquor NSW Management Strategies and House Policy for the Responsible Service of Alcohol documents, as submitted to the Independent Liquor and Gaming Authority (“the Authority”) in support of the licence application and as may be varied from time to time after consultation with the Authority. A copy of these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor & Gaming NSW inspector, or any other person authorised by the Authority.

5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the premises is required to close,
  - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - (i) all entry and exit points to the premises, and
    - (ii) all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
  - (a) keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

7. Incident Register

- 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any actions taken in response to any such incident:
  - (a) any incident involving violence or anti-social behaviour occurring on the premises,
  - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
  - (c) any incident that results in a person being turned out of the premises under section 77 of the Act,
  - (d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or inspector:
  - (a) make any such incident register immediately available for inspection by a police officer or inspector, and
  - (b) allow a police officer or inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

8. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.

9. The maximum number of patrons permitted in the premises at any given time is 33.

A statement of reasons for this decision is attached at the end of this letter.

## Removal of the licence

Notwithstanding the approval of the application, the subject licence (LIQP700353201) remains at 388 George Street, Sydney subject to the same conditions and trading hours in force immediately before the approval of this application, until Liquor & Gaming NSW is notified that the licence has been removed.

If you have any questions, please contact the case manager, Andrew Whitehead, at [andrew.whitehead@liquorandgaming.nsw.gov.au](mailto:andrew.whitehead@liquorandgaming.nsw.gov.au).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P Crawford', enclosed in a thin black rectangular border.

Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

## Statement of reasons

### Decision

1. On 20 December 2019, Nicholas James Minogue (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”).
2. The Application sought to remove packaged liquor licence LIQP700353201 (“Licence”) from 388 George Street, Sydney (“Current Premises”) to Tenancy Y3, 46-48 York Street, Sydney (“Proposed Premises”), to be known as Vintage Cellars.
3. The Authority considered the Application at its board meeting on 12 February 2020 and approved the Application under section 59 of the *Liquor Act 2007* (“Act”). In reaching this decision, the Authority has had regard to the material before it and the legislative requirements under the Act and the Liquor Regulation 2018 (“Regulation”).
4. On 25 February 2020 the Authority issued a preliminary advice letter notifying the Applicant of the approval and the relevant conditions.
5. The Licence, once removed to the Proposed Premises, will authorise the sale and supply of liquor in sealed containers at the Proposed Premises, for consumption away from the premises.

### Material considered by the Authority

6. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
7. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
8. In accordance with the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
9. A list of the material considered by the Authority is set out in Schedule 1.

### Legislative framework

10. The Authority has considered the Application in the context of the following legislative provisions under the Act:
  - a. Section 3: Statutory objects of the Act and relevant considerations.
  - b. Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
  - c. Sections 29-31: Specific provisions in respect of a packaged liquor licence.
  - d. Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - e. Section 45: Criteria for granting a liquor licence.
  - f. Section 47F(3): Restrictions on approving licence removals in prescribed precincts.
  - g. Section 48: Requirements in respect of a CIS.
  - h. Section 59: Requirements for an application to remove a liquor licence to another premises and the determination of such an application.
11. An extract of these sections is set out in Schedule 2.

## **Key findings**

12. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

### Validity, procedural and trading hour requirements

13. The Authority notes that the Applicant had lodged a previous application to remove the Licence to the Proposed Premises ("Previous Application"), which the Authority found to be invalid as the application was not made in the name of the licensee on record as required by section 59 of the Act.
14. On the basis of the consultation that had already been undertaken, the Authority approved a shortened post-application submission period from 30 days to 14 working days, for the Application that is the subject of this decision.
15. The Authority is satisfied on the material before it that:
- a) the current Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act;
  - b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods;
  - c) if the Application were to be granted, liquor would be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act;
  - d) sections 30 and 31 of the Act do not apply to the Application, as the Proposed Premises is not intended to be used for any of the purposes specified in those sections; and
  - e) the patron capacity of the Proposed Premises will be equal to the patron capacity of the Current Premises, and accordingly the Application satisfies the legislative test set out at section 47(F)(3) of the Act.

### Fit and proper person, responsible service of alcohol, and development consent

16. Pursuant to sections 45 and 59 of the Act, the Authority accepts on the material provided by the Applicant that, if the Application were to be approved, practices will be in place from the commencement of licensed trading at the Proposed Premises, and will remain in place, to ensure the responsible serving of alcohol.
17. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- a) the Applicant is fit and proper to carry on the business to which the Licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
  - b) the requisite development consent is in force, having had regard to the Notice of Determination of Development Application No. D2018/1609 issued by the City of Sydney Council on 13 May 2019 in respect of the Proposed Premises.

### Community impact statement

18. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.
19. For the purpose of this decision and consistent with its position in Guideline 6, the Authority is satisfied that:
- a. the relevant "local community" is the community within the suburb of Sydney, and
  - b. the relevant "broader community" refers to the community within the Local Government Area ("LGA") of Sydney.

### Positive social impacts

20. The Authority notes that the lease on the Current Premises has expired and the Applicant seeks to remove the licence a short distance of approximately 200 metres to a new 39-storey mixed-use commercial and residential development in the Sydney CBD, which the Applicant contends will “transform and revitalise the local community.”
21. The Authority has had regard to the submission from the Landlord of the Proposed Premises, who supports the proposal, submitting that the Vintage Cellars store would complement the existing tenancy mix and offer shoppers increased choice and convenience.
22. The Authority considers that the packaged liquor outlet will offer a measure of convenience to residents of the development who will be able to shop for liquor products without requiring special trips further afield.
23. The Authority notes that the Licence will be rebranded from the Liquorland brand to the Vintage Cellars brand at the Proposed Premises. The Authority notes from the Application material that Vintage Cellars specialises in fine wines and premium liquor and that Vintage Cellars’ “customised range attracts the premium liquor market which is not available at Liquorland ... stores”.
24. The Authority notes that Vintage Cellars offers in-store wine experts and operates Australia’s largest wine club, which offers members in-store tasting events, masterclasses, meet the makers events, and access to an extensive back vintage collection.
25. The Authority is satisfied on the material before it that the proposal set out in the Application would likely benefit the local and broader communities through the provision of increased liquor access, choice and convenience.
26. The Authority notes that the Applicant has referred to a range of other purported benefits to which less weight has been given, including increased competition, economic benefits and employment opportunities; and “potential” contributions to local community groups and sports.
27. The Authority considers the proposed benefits above to be limited by the absence of any substantive evidence of community support for the Application.

### Negative social impact

28. The Authority notes that both Sydney suburb and Sydney LGA have a significantly higher density of packaged liquor licences compared to the state average. However, the Authority considers that this reflects the fact that both Sydney suburb and Sydney LGA are popular commercial, hospitality, entertainment and tourist hubs, and that the removal of the Licence a distance of some 200 metres will not increase licence density in the local or broader communities.
29. The Authority has had regard to the relevant BOCSAR data, which indicates that for the year to September 2019:
  - a) the Proposed Premises was located within high density hotspots for incidents of alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property; and
  - b) Sydney and Sydney LGA recorded significantly higher rates of alcohol-related domestic and non-domestic assault, malicious damage to property and alcohol-related disorderly conduct (offensive conduct) compared to the state average.
30. The Authority has had regard to the most recent HealthStats NSW data available at the time of its decision, which indicates that Sydney LGA recorded a higher than average level of alcohol attributable deaths for the period 2016-17, and a significantly higher than average level of alcohol attributable hospitalisations for the period 2016-18.

31. The Authority notes that ABS Socio-Economic Index for Areas (“SEIFA”) data as at 2016 indicates that Sydney and Sydney LGA ranked among the most advantaged suburbs and LGAs in NSW.
32. Accordingly, the Authority considers that there are no immediate concerns regarding socio-economic disadvantage in the local or broader communities which may increase vulnerability to alcohol-related harms.
33. The Authority has had regard to the two submissions from a commercial competitor operating in the Sydney CBD, which objected to the Previous Application on the following grounds:
  - a. the substantial increased scale of the Proposed Premises compared to the Current Premises;
  - b. the Previous Application had not been validly made as it did not identify the correct licensee;
  - c. the applicant failed to provide evidence to satisfy the Authority that the patron capacity at the Proposed Premises will not be greater than the patron capacity at the Current Premises (with the increased footprint of the Proposed Premises compared to the Current premises indicating otherwise), and accordingly the Previous Application does not satisfy the legislative test set out at section 47(F)(3) of the Act; and
  - d. absence of a development consent for the Proposed Premises.
34. The Authority notes that the Previous Application was subsequently remade, and considers the Current Application to have been validly made. Furthermore, the Authority notes that appropriate development consent has been granted for the Proposed Premises, and that the City of Sydney Council does not object to the Application.
35. The Authority notes the Applicant’s contention that the “overall nature and scale of the business (including any notion of capacity and customer patronage) to be operated at [Proposed Premises] will be no greater than the scale of the business which operated at [the Current Premises].”
36. The Authority has had regard to the report from Urbis which provided analysis relating to potential patron occupancy between the Current Premises and the Proposed Premises, and to the letter from Vic Lilli & Partners certifying the patron capacity of the Current Premises to be 33 patrons. Having reviewed the two reports, the Authority is satisfied that there will not be any increased patronage at the Proposed Premises. Furthermore, the Authority has conditioned the grant of the Application to prevent the Licensee from permitting patrons on the Proposed Premises in numbers that exceed the patron capacity of the Current Premises.
37. The Authority notes that submissions were also received from NSW Police, the City of Sydney Council, L&GNSW Compliance, Roads & Maritime Services, the Landlord of the Proposed Premises, none of which raised any objections to the Application.
38. The Authority considers the statistics above to raise some concerns about the prevailing level of alcohol-related harm experienced in the local and broader communities. The Authority nevertheless finds that the risk of any detrimental social impacts associated with approving the Application is sufficiently mitigated by the following:
  - a) the removal of the Licence within the same suburb and LGA will not increase the density of packaged liquor licences within the local or broader communities;
  - b) the reduction in trading hours at the Proposed Premises compared to the Current Premises;
  - c) the Licence has traded at the Current Premises for some 20 years with no adverse compliance history;
  - d) no objections were received from any institutional stakeholders, including NSW Police, NSW Health or L&GNSW Compliance;

- e) the imposition of special licence conditions; and
- f) the Applicant's adherence to the Plan of Management and House Policy documents lodged with the Application.

Overall social impact

- 39. Having considered the positive and negative social impacts that are likely to flow from the removal of the Licence, the Authority is satisfied that the overall social impact of approving the Application would not be detrimental to the well-being of the local and broader communities.
- 40. The Authority is also satisfied that the other legislative criteria for the granting of the Application have been met.
- 41. Accordingly, the Authority has decided to grant the removal of the Licence from the Current Premises to the Proposed Premises.



Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the Liquor & Gaming NSW website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

## Schedule 1 – Material considered by the Authority

### Application material

1. Completed application dated 2 December 2019.
2. Completed authority to give particulars, appear & act.
3. Completed public consultation site notice, police notice and local consent authority notice dated 2 October 2019.
4. Completed Category B Community Impact Statement dated 2 December 2019, attaching:
  - a. List of stakeholders and special interest groups;
  - b. City of Sydney Council “Outdoor Alcohol Restrictions” map;
  - c. 100 metre radius map;
  - d. The Applicant’s detailed response to Part 7 of the Community Impact Statement;
  - e. Images depicting the theme and décor of the Proposed Premises;
  - f. Plan of the Proposed Premises.
  - g. Submission from Roads & Maritime Services dated 28 August 2018;
  - h. Submission from the Landlord of the Proposed Premises dated 20 December 2018;
  - i. Submission from the City of Sydney Council dated 17 August 2018;
  - j. Email from the City of Sydney Council dated 27 September 2018 attaching the development consent for the Proposed Premises;
  - k. Coles Liquor Plan of Management and House Policy documents for the Proposed Premises; and
  - l. Completed notice of intention to apply for liquor licence dated 9 August 2018.
5. Completed certification of advertising dated 24 January 2020.
6. Floor plan for the Premises indicating the proposed licensed area.
7. ASIC business records in relation to the business owner and premises owner.

### Development consent

8. Notice of determination issued by Sydney City Council on 13 May 2019, approving the development application D/2018/1609 for the Proposed Premises.

### L&GNSW records

9. L&GNSW liquor licensing records as at 14 January 2020 setting out the number and density (in terms of licences per 100,000 persons of the population) of all types of liquor licences in Sydney, Sydney LGA and NSW. The density of packaged liquor licences is 35.03 in NSW, 83.98 in Sydney LGA, and 179.69 in Sydney.
10. L&GNSW liquor licensing records as at 16 September 2019 listing all packaged liquor, hotel and club licences in Sydney.
11. Key liquor licence details recorded as at 23 January 2020 for packaged liquor licence number LIQP700353201.

### Stakeholder submissions in relation to the Application

12. Submission from City of Sydney Council dated 3 January 2020.
13. Submission from NSW Police dated 21 January 2020.

### SEIFA

14. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-economic Advantage and Disadvantage for NSW on a scale of 1 to 10, with the 10<sup>th</sup> decile being the most advantaged and 1<sup>st</sup> decile the most disadvantaged, Sydney ranked in the 9<sup>th</sup> decile and Sydney LGA ranked in the 10<sup>th</sup> decile.

## Health data

15. HealthStats NSW data showing that:
  - a. for the period 2016-17 Sydney LGA recorded a spatially adjusted rate of 18.5 alcohol attributable deaths per 100,000 of population, compared to the corresponding NSW figure of 17.4; and
  - b. for the period 2016-18 Sydney LGA recorded a spatially adjusted rate of 764.2 alcohol attributable hospitalisations per 100,000 of population, compared to the corresponding NSW figure of 555.6.

## Crime data

16. NSW Recorded Crime Statistics 2018 outlining offences flagged as alcohol-related by NSW Police in Sydney LGA compared to NSW.
17. BOCSAR NSW Recorded Crime Statistics for the year to September 2019 outlining offences flagged as alcohol-related by NSW Police by day of week and time of day in Sydney and Sydney LGA compared to NSW.
18. BOCSAR crime hotspot maps for the year to September 2019, indicating the location of the Current Premises and Proposed Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
19. NSW crime statistics published by BOCSAR indicating that:
  - a. for the year to September 2018, the rates of:
    - i. alcohol-related domestic assault in Sydney LGA and Sydney were 184.2 and 379.6 respectively, compared to the NSW average of 113.8;
    - ii. alcohol-related non-domestic assault in Sydney LGA and Sydney were 651.3 and 2,462.3 respectively, compared to the NSW average of 125.1;
    - iii. malicious damage to property in Sydney LGA and Sydney were 1,71.6 and 1,841.6 respectively, compared to the NSW average of 756.0; and
    - iv. alcohol-related offensive conduct in Sydney LGA and Sydney were 279.1 and 810.5 respectively, compared to the NSW average of 38.5.
  - b. for the year to September 2019, the rates of:
    - i. alcohol-related domestic assault in Sydney LGA and Sydney were 201.4 and 410.4 respectively, compared to the NSW average of 117.7;
    - ii. alcohol-related non-domestic assault in Sydney LGA and Sydney were 603.2 and 2,400.7 respectively, compared to the NSW average of 118.8;
    - iii. malicious damage to property in Sydney LGA and Sydney were 1,120.1 and 2,190.4 respectively, compared to the NSW average of 727.9; and
    - iv. alcohol-related offensive conduct in Sydney LGA and Sydney were 290.2 and 1,645.5 respectively, compared to the NSW average of 35.0.

## Other relevant information

20. Letter from Urbis dated 16 July 2019 in relation to patron capacity at the Current Premises compared to the Proposed Premises.
21. Letter from Vic Lilli & Partners dated 20 December 2019 in relation to the patron capacity at the Current Premises.
22. Correspondence between L&GNSW staff and the Applicant between 20 December 2019 and 30 January 2020 in relation to the assessment of the Application.
23. Google map images extracted from the Google website on 22 January 2020, showing the location and photos of the Proposed Premises in map view, earth view and street view.

## Application material relating to the previous invalid application

24. NSW BOCSAR Bulletin No. 181 dated December 2014 titled "The effect of liquor licence concentrations in local areas on rates of assault in New South Wales".
25. Submissions from the City of Sydney Council dated 11 January 2019 and 16 May 2019.

26. Submission from a commercial competitor dated 21 January 2019.
27. Submission from NSW Police dated 15 March 2019.
28. Submission from L&GNSW Compliance dated 19 March 2019.
29. Submission from a commercial competitor dated 22 March 2019, attaching:
  - a. Submission letter dated 21 January 2019;
  - b. Email to the applicant's legal representative dated 13 March 2019;
  - c. Development Application history table;
  - d. Drawing No. "A02 Revision D";
  - e. Red line plan by Liquorland (Australia) Pt Limited accompanying the removal application; and
  - f. Plan for Vintage Cellars site, accompanying Development Application No. 2018/1609.
30. Correspondence between L&GNSW staff and the Applicant between 18 March 2019 and 9 July in relation to the previous invalid application.
31. Correspondence between ILGA Secretariat staff and the Applicant between 25 July 2019 and 16 September 2019 in relation to the previous invalid application.
32. Applicant's response to submissions received during the application process, undated, attaching:
  - a. Images depicting the building that will house the Proposed Premises; and
  - b. Images depicting the theme and décor of the Proposed Premises.
33. Applicant's supplementary response to submissions received during the application process, undated.

## Schedule 2 – Relevant extracts from the *Liquor Act 2007*

### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

### 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the standard trading period means:
  - (a) for any day of the week other than a Sunday:
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday:
    - (i) the period from 10 am to 10 pm, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the standard trading period for a small bar is the period from noon to midnight on any day of the week.

**Note.** Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1) (a), the standard trading period for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
- (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
- (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

## 29 Authorisation conferred by packaged liquor licence

### (1) Retail sales

A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:

- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
- (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.

### (2) No retail trading on restricted trading days

Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.

### (3) Selling liquor by wholesale or to employees

A packaged liquor licence also authorises the licensee:

- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
- (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.

(3A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.

### (4) Tastings

A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

## 30 Liquor sales area required if bottle shop is part of another business activity

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (**the liquor sales area**) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

## 31 Restrictions on granting packaged liquor licences

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section:

**general store** means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

**service station** means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

**take-away food shop** means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

#### 40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
  - (a) an individual, or
  - (b) a corporation, or
  - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
  - (a) an individual who is under the age of 18 years, or
  - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
  - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

**Note.** Controlled members are prohibited from applying for licences—see section 27 of the Crimes (Criminal Organisations Control) Act 2012.

- (4) An application for a licence must:
  - (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

**Note.** See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

#### 45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
  - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
  - (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

**Note.** Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
  - (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of,a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and

- (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

#### **47F Restrictions on approving licence removals**

- (1) **Removal of licence from premises situated outside of prescribed precinct** During the freeze period, the removal of any of the following types of licences must not be approved if the licence would be removed to subject premises from premises that are not situated in the prescribed precinct in which the subject premises are situated—
  - (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence that relates to a public entertainment venue,
  - (d) packaged liquor licence.
  - (e) (Repealed)
- (2) During the freeze period, the Authority must not approve the removal of an on-premises licence (other than an on-premises licence that relates to a public entertainment venue) or a producer/wholesaler licence to subject premises from premises that are not situated in the prescribed precinct in which the subject premises are situated if the Authority is satisfied that the patron capacity of the subject premises will be more than the patron capacity of the premises from which the licence would be removed.
- (3) **Removal of licence between premises in same prescribed precinct** During the freeze period, the Authority must not approve the removal of a licence, being a licence to which this subsection applies, to subject premises from other premises situated in the same prescribed precinct in which the subject premises are situated if the Authority is satisfied that the patron capacity of the subject premises will be more than the patron capacity of the premises from which the licence would be removed.
- (4) Subsection (3) applies to the following types of licences—
  - (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence,
  - (d) packaged liquor licence,
  - (e) producer/wholesaler licence.

#### **48 Community impact**

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
  - (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:
 

**relevant application** means any of the following:

  - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.

- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

## 59 Removal of licence to other premises

- (1) A licensee may apply to the Authority for approval to remove the licence to premises other than those specified in the licence.
- (2) An application for approval to remove a licence to other premises must:
  - (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
- (3) An application for approval to remove a licence to other premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.
- (4) The Authority may refuse an application for approval to remove a hotel licence if the Authority is satisfied that the removal of the licence would adversely affect the interest of the owner or a lessee or mortgagee of the premises

from which it is proposed to remove the hotel licence, or a sublessee from a lessee or sublessee of those premises.

- (5) The Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that:
  - (a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
  - (b) those practices will remain in place.
- (6) The regulations may provide additional mandatory or discretionary grounds for refusing to approve the removal of a licence.
- (7) The approval to remove a licence to other premises takes effect:
  - (a) on payment to the Secretary of the fee prescribed by the regulations, and
  - (b) when the Authority endorses the licence to the effect that those other premises are the premises to which the licence relates.