

# Summary of changes

Liquor Amendment (24-hour Economy) Bill 2020 - May 2020

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# 1. Overview

The NSW Government is inviting community feedback on the draft Liquor Amendment (24-hour Economy) Bill 2020, which includes proposed changes to NSW liquor laws to help create a vibrant, safe and strong 24-hour economy and support the recovery of our nightlife after COVID-19 restrictions are eased.

The changes form part of a second round of liquor law reforms to implement the Government's 2019 response to the NSW Parliament Joint Select Committee's report on Sydney's night time economy.

For more information about the first round of reforms that commenced on 14 January 2020, visit: <https://www.liquorandgaming.nsw.gov.au/news-and-media/nsw-government-announces-major-liquor-law-reforms>.

The key changes in the draft Bill aim to:

- ▲ create a new incentives and demerit point system that consolidates three existing sanctions schemes into one integrated approach to incentivise well run venues, and minimise violence and reduce serious breaches of liquor laws at the premises
- ▲ support live music and entertainment by removing outdated entertainment conditions on liquor licences and waiving application fees to change or remove other existing live music conditions
- ▲ continue to align liquor licensing and planning processes by:
  - improving the approvals process for small bar licences
  - refining Liquor & Gaming NSW's regulatory role in noise complaint compliance and enforcement to reduce overlapping responsibilities
- ▲ allow small bars to offer more family-orientated and diverse services for customers, to support small business and encourage broader use of this lower-risk licence
- ▲ introduce a refined, evidence-based approach to help manage the density of licensed premises in areas with high concentration, and associated risks of alcohol-related violence and anti-social behaviour
- ▲ make other changes to remove red tape, reduce overlap and improve how the industry is regulated.

The draft Bill also includes enhancements to same day alcohol delivery regulation. Feedback received during a 2019 public consultation on this growing market has been considered and incorporated into the draft Bill. This includes minimising the risk of supply to minors through comprehensive age verification requirements and training requirements for delivery drivers.

Read more about these key reforms below.

## 2. A new incentives and sanctions system – Schedule 1

The draft Bill will create a single, integrated incentives and sanctions system, based on demerit points, which aims to:

- ▲ incentivise good behaviour
- ▲ minimise violence in venues
- ▲ reduce serious breaches of liquor laws.

### Overview of Proposed Changes

Currently, there are three sanctions schemes under the *Liquor Act 2007* including:

1. the Three Strikes Scheme
2. the Declared Premises Scheme, commonly known as the Violent Venues Scheme
3. the Minors Sanctions Scheme.

All three schemes were introduced at different times since 2008 in response to different issues.

Most venues today are well run, safe and play an important part in their local and broader communities' culture. Despite the changes seen over time, some venues are unable or continually fail to comply with key liquor laws or provide safe environments for customers.

The Joint Select Committee recommended that the NSW Government should incentivise and reward licensees for ongoing good behaviour, and appropriately sanction venues that continually don't comply with the liquor laws.

Schedule 1 of the draft Bill includes proposed amendments to the liquor laws to introduce an integrated incentives and sanctions system for NSW that achieves this outcome.

The new system:

- ▲ replaces the three existing sanctions schemes with a simpler system based on demerit points, which are obtained when there are serious breaches of the liquor laws and/or serious violence or safety issues. Demerit points last for 3 years, unless the Authority approves the removal of the demerit points sooner.
- ▲ introduces incentives for good behaviour by rewarding well-managed venues, for example, an annual liquor licence fee discount will be applied if demerit points are not obtained over certain periods of time from when the new system takes effect. The discount will be applied to the base fee and trading hours risk loading components of the annual liquor licence fee. Licensees and managers who take proactive steps to address risks that led to a demerit will also be able to apply for the demerit to be removed earlier.

A register of demerits points will be maintained to show where demerit points have been incurred for serious breaches or violence / safety issue. Information from the register will be published online to provide transparency to industry, regulators and the community.

View a diagram of how the integrated system will operate at [Attachment A](#). Additional information is set out below.

### **Potential benefits and costs**

- ▲ A sanctions system that's easier to understand – community, industry and government stakeholders and regulators will be able to easily identify where sanctions have been imposed as part of the integrated approach.
- ▲ More incentives to manage venues well – the annual liquor licence fee discount will reward venues where demerit points are not obtained, and earlier demerits removal will ensure venues are encouraged to proactively respond where demerits are incurred.
- ▲ Higher fees to discourage future breaches - venues where serious breaches or violence/safety issues that led to a demerit point being obtained will pay more compliance history risk loading.
- ▲ Enhanced regulatory oversight – Liquor & Gaming NSW will be able to administer one integrated system rather than three separate sanctions schemes and better prioritise compliance and enforcement activities towards higher risk activities and locations.
- ▲ Potential loss of revenue to Government – offering discounts on licence fees will likely reduce revenues that help contribute towards the costs of regulating the industry.

### **Additional Information**

#### ***Demerits are obtained by licensees, managers or clubs when there are serious breaches of the liquor laws or violence and safety issues***

For most venues, demerit points will be obtained by licensees or approved managers.

At registered clubs, points will be incurred against a club's licence.

This approach to imposing sanctions is consistent with the way strikes have been imposed under the Three Strikes Scheme since 2017, and recognises different arrangements are in place for privately owned venues as compared to registered clubs, where the club secretaries and managers are often one and the same.

#### ***Demerits obtained when there are serious breaches of the liquor laws***

Serious breaches of the liquor laws previously captured by the Three Strikes and Minors Sanctions schemes will now be referred to as 'demerit offences'.

If a demerit offence is committed, the number of demerit points obtained by the licensee, manager or club is dependent on the seriousness of the demerit offence.

For example:

- ▲ A prescribed offence under the Three Strikes Scheme (e.g. selling or supplying liquor to an intoxicated person) will be referred to as a 'Category 1 demerit offence' and will result in 1 demerit point being obtained.
- ▲ An offence under the Minors Sanctions Scheme (e.g. selling or supplying liquor to a minor) will be referred to as a 'Category 2 demerit offence' and will result in 2 demerit points being obtained.

Demerit points are automatically imposed when:

- ▲ the penalty notice amount is paid,
- ▲ a court convicts the person for the offence, or
- ▲ a penalty notice enforcement order under the Fines Act 1996 is made against the person.

All penalty notices relating to demerit offences will include additional information to notify the licensee, manager or club that the offence is a demerit offence. This ensures licensees and managers are aware that they or the club will incur demerit points unless the matter is contested in court.

The licensee, manager and/or club secretary will also receive a notice advising them that demerit point(s) have been obtained, and how many demerits points in total they and/or the club currently have.

***Demerit points obtained as a result of a violence, safety or risky drinking complaint***

A new approach is being proposed to target venues that have serious issues with violence, safety or risky drinking through a complaint process. This approach will replace the Violent Venues Scheme, while also ensuring other types of serious issues with safety and risky drinking are captured by the new incentives and sanctions system.

The proposal to replace the Violent Venues Scheme reflects that Liquor & Gaming and NSW Police continue to invest significant time and cost into its administration, despite improved industry behaviour and lasting cultural change. Over the past ten years to December 2019, non-domestic alcohol related assaults have fallen by an average of 7.7% per year. With significant reductions in the number of venues appearing on the violent venues list, it is time to consider whether there is a better way to regulate the smaller number of venues with serious violence issues.

The proposed new complaint process allows the Secretary of the Department of Customer Service or the Commissioner of the NSW Police to make complaints to the Authority about venues which have been identified as being a 'priority venue' due to:

- ▲ Multiple acts (two or more) involving serious violence on or near the licensed premises
- ▲ Multiple incidents (two or more) posing serious risk to the health and safety of persons on or near the licensed premises
- ▲ Acts involving violence against persons or damage to property frequently committed on or near the licensed premises by persons who have been on the licensed premises

- ▲ The licensee or manager engaging in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption), or
- ▲ Intoxicated persons frequently being on the licensed premises or have frequently been seen to leave those premises

The current complaint procedures for disciplinary matters under Part 9 of the *Liquor Act 2007* will apply, which provide procedural fairness to licensees or managers during the complaint determination process.

If the Authority is satisfied that the complaint stands, the Authority may impose 1 or 2 demerit points on the licensee, manager or club.

The Authority will be able to consider a range of factors when deciding whether to give demerit points, such as what measures have been put in place at the venue to make the venue safer or prevent violence or intoxication.

Licensees and managers will be given an opportunity to make a submission about why the demerit points should not be given, which must be considered by the Authority before it decides whether to impose demerit points.

If the Authority decides to impose demerit points, the licensee, manager or club secretary will receive a notice advising them that demerit point(s) have been imposed and the total number of demerits points they and/or the club have.

#### ***Additional sanctions escalate as demerit points increase***

If a licensee, manager or a club obtains more than one demerit point, Liquor & Gaming NSW will intensify its engagement with the venue by increasing monitoring and supervision efforts.

The Authority will also review the liquor licence and may impose additional sanctions, which escalate as demerit points increase. This is similar to existing approaches under the Three Strikes and Minor Sanctions Schemes.

Venues will receive a notice of the proposed additional sanctions and be given the opportunity to make submissions in response. When deciding whether to impose additional sanctions, the Authority may consider a range of factors, including whether the venue has made changes to address the issues, and if these changes are working.

#### ***Additional sanctions for licensees and managers***

If a licensee or manager obtains more than one demerit point, the Authority may impose the following additional sanctions:

- ▲ If the licensee or manager has 2-3 demerit points: the licensee or manager can be reprimanded
- ▲ If the licensee or manager has 4-5 demerit points: the licensee or manager can be reprimanded and/or disqualified for a specified period
- ▲ If the licensee or manager has 6 or more demerit points: the licensee or manager can be reprimanded and/or disqualified for a specified period or permanently.



### ***Additional sanctions for licences that are not club licences***

If multiple demerit offences and/or prescribed complaints are made out for acts or incidents that occur at the same venue, the Authority may also take remedial action in relation to the licence.

If a venue has more than one demerit point connected with it, the Authority may impose additional conditions on the liquor licence as part of its liquor licence review to address the risk of:

- ▲ another demerit offence being committed, or
- ▲ another complaint about violence or safety being made.

The Authority may also impose the following additional sanctions:

- ▲ If the venue has 4-5 demerit points connected with it: the venue's liquor licence can be suspended for up to 7 days
- ▲ If the venue has 6 or more demerit points connected with it: the venue's liquor licence can be suspended for up to 14 days.

For any prescribed complaints that are made out, the Authority will also retain existing disciplinary powers under Section 141 of the *Liquor Act* to suspend the licence for such period not exceeding 12 months, or up to 24 months if circumstances of aggravation exist in relation to the complaint.

### ***Additional sanctions for clubs***

If a club has more than one demerit point connected with it, the Authority may impose the following additional sanctions when reviewing the licence:

- ▲ If the club has 2-3 demerit points: the secretary or manager can be reprimanded
- ▲ If the club has 4-5 demerit points: the secretary or manager can be reprimanded or disqualified for a specified period
- ▲ If the club has 6 or more demerit points: the secretary or manager or another member of the club's governing body can be reprimanded, the secretary or manager can be disqualified for a specified period of time or permanently or another member of the club's governing body can be disqualified for a specified period.

The Authority may also impose additional conditions on the liquor licence following the liquor licence review to address the risk of another demerit offence being committed or another complaint about violence or safety being made.

### ***Simplified compliance history risk loading***

Under the draft Bill, compliance history risk loading has been simplified. Venues will pay a one-off loading of \$4,000 for each demerit point connected to their licence as part of their

next annual liquor licence fee. Although demerit points remain in place for three years, venues will only pay the compliance history risk loading once for each demerit point.

### ***Annual liquor licence fee discounts for well-managed venues***

To encourage venues without demerit points to continue to run their venue well, an annual liquor licence fee discount will be introduced. The following discount will apply to the base fee and trading hours risk loading only:

- ▲ 5% discount if a venue has had no demerit points connected with it in 3 years.
- ▲ 10% discount if a venue has had no demerit points connected with it in 5 years.

### ***Removing demerit points from a licence and demerit point waivers***

Demerit points will automatically expire 3 years after the demerit point was obtained.

However, demerit points can be removed earlier if a successful application is made to the Authority to have demerit points removed.

An application to remove demerit points can only be made if:

- ▲ The demerit relates to a Category 1 offence that has not resulted in serious harm to any person, where related risks are being managed or reduced and no related remedial action has been taken, and the licensee or manager has not committed any other demerit offence in the last 10 years; or
- ▲ 12 months after the demerit point has been obtained, if the licensee or manager can demonstrate proactive steps have been taken to address the risk which led to the demerits being obtained e.g. additional Responsible Service of Alcohol training provided to address intoxicated customers being served alcohol.

Demerit points can be reinstated if false or misleading information is provided to the Authority during the application process.

### ***Transitional arrangements***

Demerit points will be incurred for acts committed, or incidents occurring, from the date of commencement of the new system. Annual liquor licence fee discounts for venues with a good record under the new system will also begin to apply after three years from the introduction of the new system, to allow time for demerit point history to be factored into the assessments.

Strikes imposed under the Three Strikes Scheme will be revoked when the new system commences to ensure there is a clean start. However, other existing suspensions, cancellations, disqualifications and remedial action under pre-existing schemes will continue to apply.

### 3. A new refined, evidence-based approach to manage the density of licensed premises – Schedule 2

This part of the draft Bill will introduce a more sophisticated, evidence-based approach to help manage the density of licensed premises and the associated risks of alcohol-related violence and anti-social behaviour, in parts of the State where there are high concentrations. The proposed approach is referred to as the “Cumulative Impact Assessment Framework”.

#### Overview of Proposed Changes

The Cumulative Impact Assessment Framework seeks to manage potential negative cumulative impacts on the community from licensed premises by allowing the Authority to limit certain liquor-related applications in higher risk areas where there are large concentrations. This include areas where data and evidence shows there are already significant related problems, such as higher levels of alcohol-related violence and anti-social behaviour, and there are likely to be adverse community impacts from additional premises or more late night trading.

The introduction of the framework recognises relevant research linking the density of certain types of licensed premises to alcohol-related harms and adverse community impacts, as referred to in the [Authority’s Guideline 6: Consideration of Social Impact under Section 48\(5\) of the Liquor Act 2007](#).

Under the new framework, the Authority would be empowered to publicly issue a ‘*Cumulative Impact Assessment*’ that is reviewed on an ongoing basis. The assessment must include a map showing any problem areas (‘*Cumulative Impact Areas*’), where the Authority considers the granting of new high risk licences or late night trading is likely to be inconsistent with its duty under section 48(5) of the *Liquor Act 2007* to ensure that the grant will not be detrimental to the well-being of the local or broader community. This sets a strong presumption against the grant of a new licence or late trading in that area.

Each Cumulative Impact Assessment must be data driven and contain the relevant evidence that has been relied upon, such as geo-spatial data on venue density, alcohol-related violence, crime and offensive behaviour. After preparing an initial draft, the Authority would be required to consult with key stakeholders for their input including:

- ▲ The Local Council
- ▲ NSW Police
- ▲ The Ministry of Health

Once any input and data has been obtained, the first assessment would be published and reviewed after 12 months. The Authority would then be required to review the assessment every 2 years (at least) with key stakeholders to ensure it is updated with the most relevant evidence and data.

This proposed legislative approach is similar to the system used in the United Kingdom to manage risks associated with the density of licensed premises, where there are many examples of cumulative impact assessments issued across local council areas.

Lower-risk licensed premises such as small bars and standard restaurants would not be affected by the proposed changes and could continue to apply for new licences and later trading.

Additional background information is set out below.

### **Potential Benefits and Costs of the Changes**

- ▲ **Provides certainty to industry, community and government** – any published Cumulative Impact Assessment would make clear the problem areas where higher risk licences and related extended trading applications are unlikely to be approved by the Authority, providing necessary certainty to industry and community. It would ensure the relevant Council is aware of the Authority's position early on, before it grants a related development consent or approval and businesses take on associated costs of development.
- ▲ **Reduces unnecessary licence application costs** – applicants would be able to make better choices about business plans and what licence they apply for and where, reducing the costs of making applications in areas they are unlikely to be approved due to density issues.
- ▲ **Enables continuous improvement as systems mature** – as geo-spatial tools and data collecting methods are improved and developed, outputs would be integrated into the relevant published Cumulative Impact Assessments. The consultative approach proposed for each assessment would also enable the most relevant information and data from key stakeholders to be incorporated.

### **Additional Information**

The Joint Select Committee on Sydney's night time economy recommended the development of a tool that can assess the impact of high risk venues in a particular neighbourhood through the licensing system.

***Businesses that may be affected by a Cumulative Impact Assessment***

Assessments may limit new applications for licences and/or extended trading in designated

Cumulative Impact Areas for:

- ▲ Hotels (other than tourist accommodation establishments)
- ▲ Registered clubs
- ▲ Public entertainment venues operating under on-premises licences - for example, nightclubs (excludes cinemas, theatres or dedicated live music and performance venues)
- ▲ Venues operating under on-premises licences that are endorsed with a primary service authorisation that allows liquor to be sold without another product or service; and/or
- ▲ Packaged liquor businesses

## 4. Improved regulatory framework for same day alcohol delivery – Schedule 3

This part of the Bill aims to:

- ▲ reduce the risk of alcohol being supplied to minors (under 18s) and intoxicated people
- ▲ ensure those involved in the same day alcohol delivery in NSW are covered by our liquor laws
- ▲ ensure those who deliver same day alcohol are appropriately trained.

### Overview of the Proposed Changes

Changes in technology and consumer demand for fast and convenient online delivery services has resulted in the growth of the online alcohol sales market and same day alcohol delivery options around Australia.

There are potential risks which are more likely to arise from the same day alcohol delivery business model, such as minors or intoxicated people accessing alcohol. This has been recognised by Liquor & Gaming NSW, as same day alcohol delivery is one of its regulatory priorities.

It is important that regulation of the sale and supply of liquor keeps up to date with this emerging trend. The draft Bill updates the liquor laws by defining and regulating same day alcohol delivery. This is the first regulatory framework of its type in Australia.

Additional information is set out below.

### Potential benefits and costs

- ▲ **Better regulation of this emerging market** – the regulatory framework has been specifically tailored to address the potential risks from same day alcohol delivery.
- ▲ **Increased protections for minors** - age verification requirements will help to prevent minors from accessing alcohol. However, these controls may require some businesses to implement system changes.
- ▲ **Improved harm minimisation measures** – the draft Bill contains harm minimisation measures, such as a new offence for delivering alcohol to an intoxicated person or to a person who has entered into an agreement to exclude themselves from same day alcohol delivery. These measures will contribute to reducing the cost of alcohol-related harm to the community and to government.
- ▲ **Alcohol more likely to be supplied responsibly** – anyone who delivers same day alcohol will be required to undertake relevant training on how to supply alcohol responsibly. Same day delivery providers may incur costs to develop this training, or to have employees undertake the training.

- ▲ **Consistency in restrictions for same day delivery providers** – the framework will apply to any person who makes same day alcohol deliveries in NSW, providing a level playing field.

### **Additional information**

#### ***Interstate licensees must hold a NSW liquor licence if delivering alcohol stored in the State to NSW residents on the same day that the order is placed***

Technology now enables interstate licensed businesses to sell alcohol to NSW residents and arrange for delivery on the same day the order is placed. This can lead to NSW liquor licensing restrictions, like restrictions on delivery hours, being inadvertently bypassed.

The draft Bill prevents same day alcohol delivery providers from supplying alcohol to NSW residents that is stored for sale in NSW, unless they:

- ▲ hold a NSW liquor licence themselves; or
- ▲ are delivering alcohol sold under a NSW liquor licence.

This ensures same day alcohol providers who are delivering alcohol across NSW are licensed in the State and that these providers are required to comply with NSW liquor laws.

#### ***Same day deliveries must be made after certain times***

The draft Bill introduces standard cut off times for making same day deliveries:

- ▲ 11pm on a Sunday
- ▲ Midnight on any other day of the week.

These are the same as existing home delivery trading hours for most NSW licensees.

#### ***A two-step proof of age requirement to prevent minors accessing same day delivery alcohol***

Under the liquor laws, it is an offence to sell or supply alcohol to a minor. The regulator and licensed venues have effective ways to monitor this in a venue.

However, there are currently few ways to ensure a same day alcohol order is not delivered to a minor. For example, customers must currently enter their date of birth to state that they are over 18 years of age when the sale is made. This measure does not prevent minors from entering a false date of birth to make a same day delivery order.

The draft Bill introduces a two-step proof of age process designed to prevent minors from receiving a same day alcohol delivery:

1. same day alcohol delivery providers must ask customers for ID and verify that ID.  
This needs to happen at the time of sale or when a customer first registers for a same day alcohol delivery service.
2. the person making the same day alcohol delivery must confirm that the person receiving the order is the customer who bought the alcohol (as part of step 1) by

seeing an ID. It does not need to be the same ID which was provided by the customer as part of step 1. This additional step should help to prevent minors receiving alcohol which they ordered using someone else's ID and provide extra consumer protection against fraud.

***Same day alcohol deliveries cannot be left unattended***

Currently, alcohol deliveries can be left unattended at a delivery address if the customer has requested it. This has been a long-standing practice designed for businesses offering home delivery services, like wine clubs or cellar doors. Liquor & Gaming NSW has rarely detected or received complaints about minors using these services to access alcohol.

This is not the case for same day alcohol delivery services, where the risk of minors accessing alcohol is higher. Some businesses have already recognised this and do not allow any alcohol they deliver on the same day to be left unattended.

The draft Bill makes it mandatory that same day alcohol be delivered to a person and not left unattended.

The same day delivery framework does not apply to liquor sold and delivered to persons or businesses that are already authorised to sell liquor. This means businesses like licensed restaurants can continue to access same day alcohol delivery services outside of standard hours when stock is low.

***Same day alcohol cannot be delivered to an intoxicated person***

As alcohol cannot be served to an intoxicated person on licensed premises, the draft Bill makes it an offence to make a same day alcohol delivery to an intoxicated person.

Responsible supply of alcohol training will be introduced that will assist people undertaking deliveries in making this assessment.

***All people making same day deliveries must complete responsible supply of alcohol training***

To sell, serve or supply alcohol in a venue in NSW, everyone must complete Responsible Service of Alcohol (RSA) training. However, this framework currently does not apply to persons making same day alcohol deliveries.

The draft Bill will set out a new responsible supply training framework tailored to address the different risks which can arise when delivering same day alcohol.

Under the framework, same day delivery providers must not allow anyone to make a delivery unless the person has completed responsible supply training which ensures the liquor will be supplied responsibly.

Responsible supply training will need to cover:

- ▲ obligations for responsibly delivering alcohol under NSW liquor laws, including the new requirements being introduced for same day alcohol deliveries, such as the cut off times for deliveries



- ▲ how to undertake a responsible supply of alcohol assessment when making a home delivery – including how to recognise intoxication and factor in the presence of minors
- ▲ how to look after personal safety.

Unlike the RSA training, a specific course is not prescribed. This will provide industry with the flexibility to create its own, factoring in its own management and delivery practices, or to update its existing training material where the provider already offers targeted training for delivery staff.

The draft Bill makes all same day alcohol delivery providers liable for acts of their employees and delivery agents. There is a defence available if the provider can establish the employee or agent was provided with responsible supply training and the provider keeps records of how they have complied with the training requirement.

To ensure providers have time to implement appropriate training programs and have any person making deliveries complete them, a 12-month transitional arrangement will be applied.

***For all same day alcohol deliveries, licensees to keep a record of non-delivery***

Under the draft Bill, same day alcohol delivery providers must keep a record when a delivery is not completed because:

- ▲ delivery would have been to a minor or intoxicated person
- ▲ the recipient could not provide ID which confirms they ordered the alcohol.

Like incident registers that record incidents on some NSW licensed premises, the record would need to be available for NSW Police or Liquor & Gaming NSW inspection. This record will help regulators to monitor the industry and support investigations undertaken as part of the enhanced regulation of the sector – noting that monitoring compliance in this area of alcohol supply is challenging.

Licensees must maintain these records for 1 year at least, to assist with the conduct of investigations in a timely manner.

***Ensure delivery people are not penalised for refusing to complete a delivery***

The draft Bill introduces a new offence for a same day delivery provider that causes or permits an employee or delivery agent to be financially penalised for not making a same day delivery because it would break relevant liquor laws.

This new offence aims to address situations where delivery agents are financially penalised if they refuse to supply liquor to a minor, intoxicated person or a recipient unable to provide ID which confirms they ordered the alcohol. For example, if a provider refuses to pay a delivery agent after the delivery agent had refused to deliver alcohol to an intoxicated person.

Some business models only pay or refund delivery agents when goods are returned to a pick-up location (e.g. a packaged liquor store or bottle shop). Others will pay when the goods

are dropped off to a safe drop location. Defence provisions in the draft Bill aim to take into account circumstances where a delivery agent has not returned liquor as per an agreed method.

***Ensure customers can exclude themselves from receiving same day alcohol***

Under the draft Bill, same day alcohol delivery providers must provide a way for customers to self-exclude to stop them from receiving alcohol from that provider. Giving customers a way to reduce their access to alcohol, especially where there are dependence or other issues, will help reduce alcohol-related harm.

Customers must be provided with the opportunity to self-exclude for a specified period of time or permanently. If someone makes a request, the provider must enter into an agreement and each party must comply with the terms of the agreement.

It will be an offence for a same day alcohol delivery provider not to comply with a self-exclusion agreement. This is consistent with self-exclusions that apply to licensed premises under section 76 of the *Liquor Act 2007*.

***Same day delivery alcohol will not be delivered into alcohol-free zones and alcohol prohibited areas***

The draft Bill will stop same day alcohol deliveries being made in alcohol-free zones, alcohol prohibited areas or restricted alcohol areas. This is because most alcohol delivered same day is for immediate consumption, and alcohol is not allowed to be consumed in these designated areas.

***The new framework will be reviewed after 2 years***

The new same day delivery regulatory framework will be reviewed after 2 years.

## 5. Small bar reforms to continue aligning liquor licensing and planning processes and support 24-hour economy diversity – Schedule 4

The aim of this part of the Bill is to further recognise small bars as a lower-risk licensing option and to assist them in contributing to diverse night life and offerings for the community, while applying an appropriate level of regulatory oversight.

### Overview of the Proposed Changes

The 2016 small bar review found venues using a small bar licence have lower rates of alcohol-related violence compared to other licence types. Small bars are increasingly popular and have led to more diverse offerings in the precincts and across NSW.

The draft Bill will make this lower-risk licence type more attractive to business owners by:

- allowing small bars to offer more family-orientated and diverse services
- simplifying planning and liquor licensing for small bars.

### Additional information

#### ***Enabling more diverse services in small bars by allowing minors on small bar premises***

Many small bar venues are suitable for smaller family-orientated functions, particularly before late-night trading.

The draft Bill:

- ▲ allows minors into small bars until midnight if they are in the company of a responsible adult.
- ▲ allows small bars to apply for a new authorisation which allows minors to be in the small bar without being in the company of a responsible adult during particular hours. For example, if a small bar is also offering retail services appropriate for minors – e.g. as a record or book store - it may be able to obtain an authorisation to allow minors on the premises during the day.

This relaxation supports the financial viability of small bars and encourages venues to develop new offerings to customers – without adding substantial risks to the small bar licence. However, if issues arise at a venue, the Authority will also be able to remove this privilege on a case-by-case basis.

### ***Fast-tracked licence applications***

The small bar liquor licence will be added to the existing fast-tracked application process used for restaurants and cafes. Small bars have a similar lower-risk profile to restaurants and cafes.

Certain small bars will be able to serve alcohol as soon as they have lodged an eligible small bar liquor licence application. To be eligible, the small bar must meet relevant criteria - one of which includes having planning approval, which was granted after a public consultation process where the community was advised that the applicant would sell alcohol.

Fast-tracking liquor trading for small bars will reduce costs and start-up times, encouraging industry to use this lower-cost licence.

### ***Community Impact Statements no longer required***

Currently when applying for a small bar licence, a community impact statement (CIS) isn't required if:

- ▲ a small bar needs to go through a development consent process (which usually includes a public consultation as part of that process), and
- ▲ Liquor and Gaming NSW and the local Police are notified within 2 days of submitting the development application.

Community Impact Statements are usually required for higher risk liquor licences and authorisations.

The draft Bill removes the need for a CIS to be submitted with any small bar liquor licence application. This will reduce the number of processes which a small bar has to complete before obtaining their liquor licence, and better reflects the lower risk profile of small bars.

### ***Regularising 2am trading***

The draft Bill will regularise small bar liquor trading hours by making legislative changes, rather than relying on an exemption under clause 118 of the Liquor Regulation 2018. This will allow existing premises to retain their current trading hours allowed by clause 118.

This change aims to make it easier for licensees to understand their trading hours and will not extend the current trading hours of existing small bars.

Generally, small bars will be automatically allowed to trade to 2am, whether they are located inside or outside of a cumulative impact area. However, this will not automatically mean all small bar licensees can trade until 2am as a venue's development consent may restrict trading times.

## 6. Supporting live music in venues – Schedule 4

This part of the Bill aims to encourage live music in venues by adjusting entertainment conditions on liquor licences.

### Overview of the Proposed Changes

The Joint Select Committee recommended licence conditions that unnecessarily restrict live music be removed.

Schedule 4 of the draft Bill will:

- ▲ remove outdated entertainment conditions on licences
- ▲ waive fees on applications to vary or remove existing entertainment conditions which restrict or prohibit live music
- ▲ prevent entertainment conditions being imposed on licences in the future.

### Benefits to existing liquor licences

The following outdated conditions that unnecessarily limit music and performances will be removed immediately, without any action needed from venues:

- ▲ conditions that restrict the genre of music that can be played or performed
- ▲ conditions that restrict what type of instruments can be played
- ▲ conditions that restrict the number of musicians or live entertainment acts that can perform.

Examples of the types of conditions that will be removed under these categories include:

- ▲ no rock bands are to perform in the premises
- ▲ the only entertainment permitted is a guitarist and keyboard player or the playing of compact disks of a 'soft' rock and roll nature.

If a venue has a condition on their licence which prohibits, limits or restricts amplified or live music, the licensee can lodge an application to vary or revoke that condition and the usual \$110 fee will be waived. These conditions cannot be automatically removed from the licence because of potential impacts on the surrounding community. The public will still have the opportunity to comment on any applications to remove or vary such conditions.

### Benefits to future licensees

Entertainment conditions will no longer be imposed on a liquor licence other than conditions which relate to adult entertainment of a sexual nature.

## 7. Aligning compliance and enforcement responsibilities in relation to noise – Schedule 4

This part of the Bill aims to remove Government agency noise regulation overlap.

### **Overview of the Proposed Changes**

The Committee recommended a coordinated approach between inspectors from Liquor & Gaming NSW, City of Sydney, NSW Police and other agencies concerning monitoring and inspection of venues to avoid duplication, overlap and unnecessary expense to Government and business.

Currently up to 7 government agencies and bodies are responsible for managing noise - causing confusion and creating unnecessary complexity for venues.

The draft Bill will reduce this regulatory overlap by limiting Liquor & Gaming NSW's role in relation to noise disturbance complaints. Liquor & Gaming NSW will not deal with disturbance complaints about noise coming from within a venue, including noise caused by live music.

Liquor & Gaming NSW will still consider disturbance complaints which relate to the behaviour of customers as they leave a venue, including any noise generated.

This means more certainty for venues trying to do business.

## 8. Other minor and procedural changes that remove unnecessary red tape – Schedule 4

- ▲ Take-away liquor trading hours will be regularised by making legislative changes, rather than relying on the exemption provided under clause 117 of the Liquor Regulation 2018. This aims to:
  - allow existing premises to retain their current trading hours under clause 117
  - make it easier for licensees to understand their trading hours.
- ▲ The intoxication defence will be clarified to provide industry with certainty around when the defence applies.
- ▲ Signage requirements are being updated to enable licensees to print their own signs.
- ▲ The Australia Post Digital iD will become an acceptable form of evidence of age at venues.

### INCENTIVES FOR NO DEMERIT POINTS

**3-5 years no demerits =**  
5% discount on annual liquor licence fee

**5 years+ no demerits =**  
10% discount on annual liquor licence fee

**No compliance loading on**  
annual liquor licence fee

### SANCTIONS FOR DEMERIT POINTS

#### DEMERIT POINTS ARE GIVEN FOR:

##### 1. Serious breaches of liquor laws

- **Category 1 offences = 1 demerit** (not related to minors)  
e.g. sell/supply liquor to an intoxicated person.
- **Category 2 offences = 2 demerits** (related to minors)  
e.g. sell/supply liquor to a minor.

##### 2. Prescribed complaints (made under Section 139 of the liquor act)

- The Authority\* might impose **1-2 demerits** for liquor law breaches known as 'prescribed complaints'. These include encouraging risky drinking, frequent intoxication and/or violence at a venue and putting the health or safety of the public at risk.

#### DEMERIT POINTS:

- Apply for up to 3 years.
- Apply to a licensee or a manager. Except for clubs, where the demerits are applied to the licence.
- Result in compliance risk loading of \$4,000 being added to a venue's annual liquor licence fee. This loading is paid once for each demerit point.
- Are published on a public register.

#### ESCALATING SANCTIONS FOR MULTIPLE DEMERITS

**2+ demerits** = heightened monitoring, engagement and supervision by L&GNSW, and an Authority\* case review which might result in:

- **2+ demerits** - reprimand of licensee, manager, or club secretary; more conditions imposed on venue.
- **4+ demerits** - temporarily disqualify licensee, manager, or club secretary.
- **6+ demerits** - permanently disqualify the licensee, manager, or club secretary, or temporarily disqualify a member of the club's governing body.

#### TEMPORARY LICENCE SUSPENSION

The Authority might take more action when licensees or managers have multiple demerits in a 3 year period at the same premises:

- **4+ demerits** - licence suspended for up to 7 days.
- **6+ demerits** - licence suspended for up to 14 days.

**For any prescribed complaints** - the Authority has existing powers to suspend a licence for up to 12 months, or more in serious circumstances.

### REMOVAL OF DEMERIT POINTS

#### 3 years

Demerits are removed after 3 years.

#### Early demerit point removal

There are 2 ways to have demerits removed early.

#### 1. By applying to the Authority\* for good behaviour / low harm of the offence if:

- The demerit is for a Category 1 offence.
- The licensee or manager has a clear 10 year record.
- No remedial action was taken regarding the demerit.
- The offence didn't lead to serious harm.
- Practices are in place to prevent it happening again.
- No other serious breaches of the Liquor Act occurred.

#### 2. By applying to the Authority\* after 12 months and demonstrating that the risk that led to the demerit has been addressed. For example by:

- Installing voluntary ID scanners, digital incident registers.
- Running extra training for staff, managers and security, e.g. patron management technique training.
- Employing RSA Marshals.
- Becoming an active liquor accord member.

The Authority = Independent Liquor & Gaming Authority | L&GNSW = Liquor & Gaming NSW | NCAT = NSW Civil and Administrative Tribunal

\*The Authority's decisions may be reviewed by NCAT