

**REVIEW OF LIQUOR LICENCE CONDITIONS IN THE NEWCASTLE CENTRAL
BUSINESS DISTRICT AND SURROUNDING AREAS**

ADVICE TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

16 March 2018

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Summary

In 2008, the Liquor Administration Board imposed conditions on liquor licences for a number of venues in the Newcastle CBD. It did so having received complaints about undue disturbance of the quiet and good order of certain neighbourhoods in the vicinity of those premises. Those conditions brought about a reduction in alcohol-related violence in the Newcastle CBD, and without noticeable displacement. In 2010, the Board imposed similar conditions on licensed venues in nearby Hamilton. Those conditions too helped prevent assaults and reduced the frequency with which people presented to hospital emergency departments late at night and in the early hours of the morning. They also created an environment in which more licensed venues appeared without an increase in violence.

It has been nearly a decade since those conditions were imposed. There have been demographic changes in Newcastle, and development and improvement in its CBD in particular. The City, with considerable success, styles itself an 'Event City' and regularly hosts large public gatherings.

There have also been important changes to the regulatory landscape since 2008: the time during which retail outlets may sell takeaway alcohol has been reduced across the State; and three regimes have been introduced to require and encourage the responsible management of licensed venues and to reduce alcohol-related violence. Small bar licences were introduced in 2013 which permit late night alcohol consumption in an environment considered less likely than others to result in alcohol-related harms.

The problem of alcohol-related violence in 2008 called for a solution, and the 2008 Conditions provided it. The central questions are whether a solution of this or a different kind is now called for, and, indeed, whether there is a problem which requires a solution at all. Some styled the 2008 Conditions as the 'Newcastle solution'. That description might have historical relevance, but it is unfairly stigmatising given Newcastle's greatly improved circumstances. Newcastle is no longer in need of a 'solution': what is required is a licensing regime which prevents a return to past problems and allows for the City to develop in a balanced way and in accordance with community expectations, needs and aspirations.

Newcastle is an important and agreeable city. It has an interesting history and a promising future. Among its many attractive qualities are its proximity to the waterfront, its climate, and its wider setting.

The risk of alcohol-related violence has to be considered in the circumstances that prevail today, which differ somewhat from a decade ago. The problem of alcohol-related violence is a perennial one for almost every city. That does not mean,

however, that the response to it must always be the same, or that conditions which have proved successful in minimising it will continue to have that effect without reevaluation and adaptation. Nor does it mean that measures aimed at reducing it in one place will work elsewhere.

It is open to ILGA to vary the 2008 Conditions (and, by extension, similar conditions imposed in Hamilton in 2010) by:

1. removing the requirement there be a shared radio network between licensed venues (rendered obsolete by new technology);
2. reducing the frequency of audits of Plans of Management (as a regulatory condition which, as presently formulated, is more burdensome than it is beneficial);
3. adjusting the restrictions on the drinks that can be sold after 10pm to allow more flexibility for venues to serve ones less likely to be rapidly consumed and lead to intoxication resulting in alcohol-related violence. The lived experience of the drink restrictions exposed unintended consequences. Measures were implemented in Sydney aimed at differentiating drinks more likely to lead to problem intoxication from others. They would be suitable to adopt for Newcastle with such adjustments ILGA considers appropriate for local circumstances.
4. making some other possible adjustments which are described in Part Four: 'Identification of Options and Advice'.

I have formed the opinion that the material available to me does not support the case for either the extension or reduction of trading hours, or for a change to the time at which the lockout comes into operation.

The case for *earlier* closing times and imposing an earlier lockout was made principally on the grounds that it would deliver further reductions in alcohol-related violence. That may be one consequence of such measures, but it is one factor only (albeit an important one). The further curtailment of trading hours would, in my opinion, not be consistent with the expectations of the community, with the balanced development of related industries, what is sought to be achieved in the night time economy, and in the tourism and hospitality activities of the City. It would also encroach upon the freedoms of persons whose activities do not contribute to alcohol-related violence, those who work hours outside the ordinary working day, and, quite possibly, the live music industry. There is not, in my view, a sufficiently cogent case for *extending* trading hours. The research strongly suggests that to do so risks a significant increase in the incidence of alcohol-related violence.

Both the reduction and extension of trading hours (or moving the time at which the lockout commences) would introduce uncertainty. The former would likely adversely affect the economy, late night activities and the development of related industries; the

latter, the amenity of community life and harm associated with the misuse and abuse of liquor.

There does need to be flexibility in the licensing regime to encourage compliance. Venues that demonstrate good practices and that pose a lower risk ought to enjoy less restrictive conditions than those which do not. One avenue open to ILGA is to make one or more of the variations referred to in this Report only for venues which have demonstrated good compliance. If ILGA wishes to institute one or more of the variations on a trial basis, it could consider doing so by granting exemptions to well-performing venues only. This way, it could monitor the effect of the variation in practice and decide whether to make the variation permanent, or extend it to other venues. Exemptions for live music offerings might be considered on this basis. This way, patrons who wish to enjoy late night activities can do so in a way and in a venue that poses a lower risk of harm.

My Terms of Reference direct that I advise ILGA so that it can consider whether and how to exercise its statutory discretion. This report contains the reasoning for the views I formed and the material available to me so that ILGA can consider my advice against the background of those sources. ILGA may form views different from those which I have expressed or weigh matters differently from me. I respect ILGA's independence and the discretion vested in it by the Parliament. I am merely an advisor to it with respect to the exercise (or possible exercise) of powers and discretions it possesses.

The views I have formed are based upon a proposition upon which all submitters seemed to be unanimous: a return to the violence and anti-social behaviour that existed before the Board imposed the conditions in 2008 must be avoided.

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Part One – Introduction and Context

Background

1. This report is the culmination of my review conducted for the Independent Liquor and Gaming Authority (**ILGA**). Its purpose is to advise and inform ILGA's consideration whether to exercise its powers under s 53(2)(b) of the *Liquor Act 2007* (NSW) (**Liquor Act**). That provision empowers ILGA to vary or revoke a condition of a liquor licence that has been imposed (or taken to have been imposed) by it.
2. At issue here are conditions which, for the most part, were imposed by the Liquor Administration Board (**the Board**) in 2008. I explain the nature of them below, how they came to be imposed, and the effect which those who have studied and experienced them say they have had.
3. Before the review was established, the Australian Hotels Association New South Wales (**AHA NSW**) made a submission to ILGA to the effect that it ought take action under s 53(2)(b). My Terms of Reference record that ILGA considers it timely to consider whether it ought exercise such powers and that it wishes, by this review, to have adequate information to inform any decision it might make. Almost a decade has passed since the last considered review of licensing arrangements in the Newcastle CBD.
4. My Terms of Reference and the stated background to them provide:

Background

1. On 14 March 2008, the Liquor Administration Board imposed certain conditions upon the licences attached to specified premises, following the convening of conferences held under the *Liquor Act 1982* (NSW) following the making of disturbance complaints. The Board indicated in its decision that it would keep under review, the operation of the relevant premises to determine whether more substantial restrictions on trading are required, or whether the restrictions imposed might be relaxed. An appeal from the Board's decision by the operators of some of the premises resulted in consent orders extending the time at which a lockdown was to commence and allowing a later closing time. A later review conducted on 20 August 2008 by the Liquor Administration Board resulted in further adjustments to the conditions.
2. Those conditions imposed on liquor licences within the Newcastle Central Business District (CBD) have remained materially the same since that time.

3. The Australian Hotels Association of New South Wales has proposed that the Independent Liquor and Gaming Authority (ILGA) exercise its powers under s 53(2)(b) of the *Liquor Act*, of its own initiative to vary, revoke or impose conditions on a liquor licence. ILGA considers it timely to consider whether it ought exercise such powers and wishes to have before it adequate information to inform the making of that decision.
4. In order to inform that decision, ILGA has engaged Jonathan Horton QC to advise on measures which it may be open to ILGA to take and, for that purpose, to act in accordance with the Terms of Reference below.

Terms of Reference

5. The review will:
 - a. investigate (without the exercise of any coercive powers) the issues bearing upon liquor-licensing and related measures that have been implemented in the Newcastle CBD and surrounding areas to reduce the risk of alcohol-related violence and anti-social behaviour, including the current appropriateness of the licence conditions of venues in the Newcastle CBD and surrounding areas, having regard to the objects of the *Liquor Act*;
 - b. compile, summarise and distil the material referred to in 5.a above;
 - c. identify and advise upon the statutory and other measures open to ILGA, including the imposition or alteration of liquor licence conditions.
6. The review will take into account:
 - a. the report of the Honourable I D F Callinan AC, Review of the Amendments to the *Liquor Act*, of 13 September 2016;
 - b. amendments made to the *Liquor Act* consequent upon that review;
 - c. the decision of the former Liquor Administration Board of 14 March 2008 and the changes to the orders of that Board later made by consent;
 - d. research undertaken by the New South Wales Bureau of Crime Statistics and Research;
 - e. scholarly work considering the effect of the conditions imposed by the Liquor Administration Board, and later varied by consent;
 - f. the views of interested persons including indigenous groups, local residents, businesses, the Police, the Local Health District, and the owners and operators of licensed venues, expressed through an appropriate consultation process;
 - g. other material that informs an understanding of community safety and amenity and business operations in and around the Newcastle CBD, including an assessment of the adequacy of liquor licence conditions in the Newcastle CBD.

5. Newcastle is an important city. It is the second-largest non-capital urban centre and the second oldest city in the country. It is home to more than 152,000 people and has some 4.1 million visitors per year. It is the centre of the Lower Hunter region which is home to some 600,000 people. A great deal of business and professional activity takes place in the city and the region around it.

The Process

6. I was retained by ILGA on Wednesday 15 November 2017. An invitation issued on 21 November 2017 for interested persons to lodge written submissions. The deadline for their lodgment was initially 13 December 2017, but was later extended to 24 January 2018, and ultimately to 7 February 2018. I received a small number of submissions just after 7 February which I was able to consider when finalising this Report.
7. Immediately after the announcement of the Review, I contacted some persons likely to have a particular interest in it. I met with a number of them. A complete list of the persons with whom I met in person or spoke to by telephone appears in **Appendix 1**.
8. I visited Newcastle on Wednesday 29 November 2017. I re-acquainted myself with the location of licensed venues in the Newcastle CBD and Hamilton and with the layout and composition of parts of the City. There I met: the (then) Interim Chief Executive Officer of the Newcastle City Council (Mr Jeremy Bath); Superintendent Gralton and Licensing Sergeant Cupples of the Newcastle City Local Area Command; Mr Tony Brown; and, the Chairs of the Newcastle and Hamilton Liquor Accords, as well as Mr de With, a representative of the AHA NSW in Newcastle and President of its Hunter Branch.
9. I received and considered 93 submissions. A complete list of them appears in **Appendix 2**. I also had the benefit of reading a body of scholarly work about the effect which the 2008 Conditions are said to have had, about the public's perceptions of them, and more generally about restrictions on the accessibility and service of alcohol, and the effect of those measures. I received an online petition signed by some 1,283 people. Many recorded their reasons for signing

it. I read all of these reasons. The petition sought ‘parity of lock out times [with Sydney]’ and ‘the freedom to purchase drinks of my choice until 12am, so long as its contents are listed’. The petition is too long to be replicated here but is set out in **Appendix 3**. The significance of drinks being ‘listed’ will be explained later.

10. One of the important questions which ILGA ought consider in my view is whether and to what extent there have been changes in Newcastle’s CBD and areas surrounding it that might bear upon the appropriateness and adequacy of existing conditions. Such an inquiry helps identify if circumstances are now different in a material way from those which prevailed when the Board imposed the conditions almost a decade ago. The ‘Background’ to my Terms of Reference record that ILGA considered it timely to consider whether to exercise its powers to revoke or vary conditions. I asked Liquor and Gaming NSW to provide data and information better to inform this exercise. I consider and summarise the response I received in various places in this Report.
11. I possessed no coercive powers in conducting my Review.
12. It is important that this Report be read, as my Terms of Reference unambiguously direct, as advice to ILGA and as a compilation, summary and distillation of the material I considered. My work does not constitute a decision by ILGA and nor does it purport to direct any particular decision or, indeed, that a decision be made at all. The final Part of this report (Part Four) ‘Identification of Options and Advice’ identifies statutory and other measures which appear to be ones which are open to ILGA to take. I respect ILGA’s independence and the functions and discretions vested in it by statute.
13. I was assisted in my Review by Ms Sofia Moffett, a solicitor. Ms Moffett travelled with me to Newcastle, attended the meetings I had with interested persons, and conducted a great deal of research. I am very grateful for her assistance, which was unstintingly given. Mr Samuel Bendit, a law graduate and postgraduate student in law at the University of Sydney, assisted with research into the scholarly work on the effect of licensing arrangements of the kind found in the 2008 Conditions.

Some relevant history

14. Between 2000 and 2008, as many as 20,000 people gathered in and about licensed premises in Newcastle on Friday and Saturday nights. Many of those premises had permission to sell alcohol until 5am. In July 2007, Police lodged a complaint with the Board against four licensed premises in Newcastle alleging ‘undue disturbance of the quiet and good order of the neighbourhood’.
15. On 19 July 2007, the Board conducted what were described under s 104 of the *Liquor Act* 1982 (NSW) as ‘conferences’ in relation to each of the four premises the subject of those complaints. That occasion afforded a means to hear submissions about the complaints. The conferences were adjourned to a later date in November of that year, on receipt of undertakings by the licensees of the relevant premises.
16. In early November 2007, Mr Tony Brown, a member of the community with a particular interest in the regulation of licensed venues and the sale and supply of alcohol in Newcastle, lodged complaints against the same four premises.
17. On 21 November 2007, the Board convened a joint conference about the four licensed premises. The Director of Liquor and Gaming NSW and the Police requested that a further 11 licensed premises be joined to participate in that conference. The Board adjourned the conference for a second time and extended some of the undertakings previously given by licensees.
18. On 14 March 2008, the Chair of the Board (Mr D B Armati) delivered a decision on the complaints. Mr Armati found:

[t]he substantial issue of concern to the complainants is the migration of patrons between premises. The common denominator for that migration is late trading hours. Whilst that migration takes place criminal and anti-social behaviour occurs ... In addition crime and anti-social behaviour occurs on and about licensed premises.
19. The Board imposed restrictions on 14 of the 15 venues, including a 1am lockdown and a requirement that the venues cease trading at 3am. This latter condition was not limited to the cessation of the sale or supply of alcohol, but required that venues actually close at that time. The Board imposed no restrictions on one venue because the development consent and strata conditions attached to it

prohibited it trading past midnight in any event. The Board did not impose the lockout and closing time conditions on two venues which closed at 12am and 1am respectively. These two venues were, however, subject to all remaining conditions.

20. The Board imposed 10 conditions on the remaining venues:

- 1) That patrons not already within the licensed premises are prohibited from entering it from 1.00am [the lockout condition].
- 2) That the licensed premises previously trading to 3am close at 2.30am, and that those licensed premises previously trading to 5.00am close at 3am [the closing time condition].
- 3) That the licensee produce to the Board a Plan of Management within a period of six weeks. The contents of that Plan of Management will be settled in conjunction with the two complainants.
- 4) The licensee shall ensure that at least every 3 months a compliance audit of the premises is carried out by a person who is not employed or in an ongoing financial arrangement with the hotel so as to ensure continuous compliance with the Plan of Management [the Plan of Management audit condition].
- 5) That from 11.00pm until closure the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises.
- 6) The following restrictions and conditions will apply upon the sale of alcohol after 10.00pm:
 - a. no shots;
 - b. no mixed drinks with more than 30mls of alcohol;
 - c. no RTD drinks with an alcohol by volume greater than 5%;

- d. not more than 4 drinks may be served to any patron at the one time;
- e. that free water stations be placed on every bar.

[the drink restrictions condition].

- 7) That the sale and supply of alcohol shall cease 30 minutes prior to closing time.
 - 8) That the licensee shall ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. For this purpose stockpiling shall mean that any one patron has more than 2 unconsumed drinks at any one time (a patron may consume up to 4 drinks at the one time) [the no-stockpiling condition].
 - 9) That within 14 days the licensee shall cause every member of staff to be notified in writing of these conditions and to be advised of the need to apply responsible service of alcohol practices.
 - 10) That within a period of 3 months the licensee shall have, whether under the provisions of a uniform Plan of Management or otherwise, entered into an agreement with each of the other licensees the subject of the imposition of these conditions an arrangement for the sharing of a radio network to be used by management and security for the purposes of communicating with each of the other premises [the radio network condition].
21. The Board said it would keep under review, the operation of the relevant premises to determine whether more substantial restrictions on trading were required, or whether the restrictions might be relaxed.
22. Mr Armati's decision was the subject of an appeal by nine of the licensed venues. Consent orders were subsequently made in compromise of the appeal. Those orders extended the time at which a lockout came into operation from 1am to 1.30am, and the closing time from 2.30am to 3am for two of the premises, and from 3am to 3.30am for the other seven venues. The remaining conditions were unaltered.

23. A decision by Mr Armati dated 20 August 2008 with respect to the remaining five venues found that it was premature to relax the conditions as they were achieving appropriate results. He did, however, amend the conditions for the Great Northern Hotel, extending the time at which the lockdown condition came into operation until 1.30am, and the trading hours condition to 3.30am. In the course of that review, the Clarendon Hotel (which was not subject to the lockdown or closing time conditions because it was prohibited from trading past midnight by a lease condition) invited the deletion of the conditions to retain an responsible service of alcohol (**RSA**) supervisor and that it participate in the shared radio network. The Board agreed and those two conditions were revoked, but for that venue only.
24. The Board was later abolished as reforms were made to the regulation of Liquor in the State. Conditions imposed by the Board are taken to be conditions imposed by ILGA.¹ ILGA has powers to continue to give effect to such conditions. It may vary or revoke conditions in accordance with the current *Liquor Act*. ILGA is, in these senses, the Board's successor. It is the body now vested with the statutory functions the subject of this review. I do not think it correct to say, as one interested person asserted, that the Board ought be re-convened to consider the matters the subject of my Terms of Reference. Only ILGA in my opinion now has power to revoke or vary the conditions imposed by the Board.
25. In this Report, I refer to the conditions imposed in the Board's decision of 14 March 2008, as amended by consent and by its later decision of 20 August 2008, as the '**2008 Conditions**'. They have remained materially the same since they were imposed.
26. In 2010, conditions similar to the 2008 Conditions were applied to the licences for six venues in Hamilton on a trial basis following a disturbance complaint made by Newcastle City Local Area Command and a complaint by a local resident. ILGA reviewed those conditions in 2012 and decided upon their retention. Those conditions comprise the following requirements (**the Hamilton Conditions**):

¹ *Liquor Act* s 160; Sch 1, cl 3(4).

- 1) the licensees the subject of this decision maintain a Plan of Management following reasonable consultation with the Local Area Commander of NSW Police, which is lodged with the Director of Compliance of the then-Office of Liquor, Gaming and Racing. [*The original condition imposed in 2010 included a requirement that licensees prepare six-monthly compliance audits conducted by an appropriately qualified person and submission of it to the coordinator of the Local Liquor Accord. In its 2012 decision, the Board held that it was difficult to accept that it remained in the public interest that this reporting requirement be observed on an ongoing basis when there was no evidence before it that the Police had not followed up or made use of the information.*];
- 2) an RSA monitor be employed from 11.00pm on Friday and Saturday nights whose sole function it is to supervise and monitor responsible sale of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the licensed premises;
- 3) a prohibition on the sale of the following types of drinks after 10pm on Friday and Saturday nights:
 - a. any drink (commonly referred to as a 'shot') that contains no more than 30ml of spirits or liqueur and that is designed to be consumed rapidly;
 - b. any drink containing more than 50% spirits or liqueur;
 - c. any ready to drink beverage with an alcohol by volume content of more than 5%;
 - d. any drink prepared on the premises that contains more than one 30ml nip of spirits or liqueur;
- 4) a prohibition on the sale of more than four drinks, or one bottle of wine per person at any one time;

- 5) a prohibition on stockpiling (a patron having more than 2 unconsumed drinks at any one time);
 - 6) ensuring that free water stations were placed at every bar within the licensed premises;
 - 7) a 1.00am lockout on Friday and Saturday nights;
 - 8) within 14 days of the commencement of the conditions, every member of staff and any security contractor is notified in writing of these conditions, the need to apply responsible service of alcohol practices, details of available transport, the location of the 50 metre vicinity that applies to excluded persons, and the location of any Alcohol Free Zones in Hamilton.
27. The Hamilton Conditions also included requirements for the maintenance of an orderly precinct:
- a. a prohibition on the entry to, or the prompt removal from a licensed premises the subject of the Hamilton conditions of any patron if it was known, or should have been reasonably apparent to staff or security contractors that within the previous 6 hours the person has:
 - i. unlawfully consumed alcohol in a public place;
 - ii. exhibited anti-social or aggressive behaviour in the vicinity of that premises or any of the premises the subject of the Hamilton conditions, or at any other place within the Hamilton CBD; or
 - iii. been argumentative or abusive to staff or patrons at that premises;
 - b. signage requirements on the exterior of the premises advising patrons of the circumstances in which they will be refused entry and the times when a lockout is in effect;

- c. a prohibition on the on the removal or carriage of liquor away from the licensed premises after 10pm on Friday and Saturday evenings; and
 - d. a requirement that signs be prominently displayed in every bar area, advising patrons of the need to reduce noise and impact on the local neighbourhood.
28. Another condition contained pre-closure procedures to be conducted 30 minutes before shutting the venue on Friday and Saturday nights including the cessation of the sale of alcohol (but not water and food) and live music. Any music was to be reduced to background level and not be audible outside the venue. Lighting was to be set to indicate that the venue is closing, and announcements were to be made at 15 minute intervals until the last person had left the premises.
 29. There were other conditions about the times at which rubbish could be collected and directing security officers to encourage patrons not to linger within the perimeter of the premises as they depart, and to ensure that all patrons have left the environs of the premises 30 minutes after closure.
 30. The views I express about the 2008 Conditions apply, to the extent the terms are to the same effect, to the Hamilton Conditions.
 31. ILGA recognised in its decision that not all late trading licensed premises were subject to its decision. It invited Police to comment on the possibility of applying the conditions uniformly across all venues within the Hamilton entertainment precinct. Ultimately, the Board was satisfied that the patrons of the hotels the subject of its decision had previously demonstrated their potential to cause undue disturbance and was satisfied that the Hamilton Conditions were an appropriate and a proportionate harm minimisation measure.
 32. The Hamilton Conditions, unlike the 2008 Conditions, did not reduce trading hours. The venues in Hamilton voluntarily agreed to cease trading at 3am.
 33. On 30 January 2014, the Parliament of New South Wales enacted the *Liquor Amendment Act 2014* which sought to reduce alcohol-related violence in the

Sydney CBD Entertainment and Kings Cross precincts. As part of the reforms, a 1.30am lockout and a 3am cessation of sale conditions were imposed on licensed venues within these precincts, and the sale of takeaway alcohol across the State was required to cease at 10pm.

34. In September 2016, the Hon IDF Callinan AC completed a report following his review of these and other reforms. I assisted Mr Callinan AC in his Review, part of which was statutory in nature and part of which was at the request of the Executive.
35. Mr Callinan AC was asked by ILGA to assess whether the relevant policy objectives of those amendments remained valid and in their terms remained appropriate for securing those policy objectives. He concluded that the relevant policy objectives remained valid, but considered the lockout ought commence slightly later (2am), and the cessation of liquor sales could be extended to 3.30am for venues offering live entertainment continuously until that time. Mr Callinan also concluded that the sale of takeaway alcohol could be extended to 11pm, and home delivery of liquor could be extended to midnight. The Liquor Amendment Regulation 2016 gave effect to Mr Callinan's conclusions. A new cl 53OA (now cl 53S²) permits licensees to apply for exemptions from the 1.30am lockout and 3am cessation of trade conditions. Such an application can only be approved where 'the Secretary is of the opinion that the premises have a market orientation toward live performances, the arts and cultural events and endeavours'.³ Any exemption is subject to the conditions that patrons must not be permitted to enter licensed premises after 2am (cl 53S(2)), and that liquor must not be sold or supplied on licensed premises after 3.30am (cl 53S(3)). A new cl 70AB was also introduced allowing premises licensed to sell takeaway liquor to do so until 11pm.
36. The conferences over which the Board presided in 2008 were, as I have said, instituted under s 104 of the *Liquor Act* 1982 (NSW) (since repealed). The primary object of that Act was the minimisation of harm associated with misuse

² The Liquor Regulation was amended again in 2017 by the Liquor Amendment (Miscellaneous) Regulation 2017 (NSW). Clause 53OA was repealed, but its substance was included in a new cl 53S.

³ Liquor Regulation 2008, cl 53S(5).

and abuse of liquor. The current Liquor Act does not claim to have any ‘primary’ object. All persons having functions under that Act were required to have due regard to the need for liquor harm minimisation and the public interest.⁴

37. That Act (the 1982 Act) was repealed and replaced by the current *Liquor Act*, the objects of which are as follows [the underlining is mine]:

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.

Licensing arrangements

38. Persons are prohibited from selling liquor unless licensed to do so.⁵ ‘Sell’ is defined in s 4 of the *Liquor Act* as to:

- (a) barter or exchange,
- (b) offer, agree or attempt to sell,

⁴ *Liquor Act* 1982, s 2A.

⁵ *Liquor Act* s 7.

- (c) expose, send, forward or deliver for sale,
 - (d) cause or permit to be sold or offered for sale.
39. The sale or supply of liquor contrary to licence conditions to which that person is subject is prohibited by s 9 of the *Liquor Act*. The types of licences available, and the conditions associated with them, are the subject of Part 3. Applications for liquor licences are made to ILGA under s 40 of the *Liquor Act*. ILGA has power to carry out investigations in relation to applications,⁶ to require further information from an applicant,⁷ and to grant, or reject, an application.⁸
40. Section 52 of the *Liquor Act* allows ILGA to impose special conditions on a licence, prohibiting or restricting activities that could encourage misuse or abuse of liquor, require premises to cease serving liquor or to restrict access to the licensed premises.
41. Section 53 of the *Liquor Act* provides:

53 Authority may impose, vary or revoke licence conditions

- (1) Without limiting any other provision of this Act, the Authority may at any time:
 - (a) on application by the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative, impose conditions on a licence.
- (1A) The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions:
 - (a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and
 - (b) restricting the trading hours of, and public access to, the licensed premises.
- (2) The Authority may at any time:
 - (a) on application by the licensee, the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative, vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.

⁶ *Liquor Act* s 42.

⁷ *Liquor Act* s 43.

⁸ *Liquor Act* s 45.

42. Two provisions of s 51 are also material:

- (13) The Authority must not impose a condition on an authorisation, or revoke or vary an authorisation, other than a variation made on application by a licensee, unless the Authority has:
 - (a) given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision, and
 - (b) taken any such submissions into consideration before making the decision.
- (14) This section does not authorise the revocation or variation of a condition to which an authorisation is subject if the condition is imposed by this Act or is prescribed by the regulations.

43. If ILGA were to revoke or vary conditions in a way that adversely affected licensees, it would be obliged to afford them procedural fairness. That provision (s 51(13)) is directed only to the protection of the interests of licensees.

44. The wider regulatory regime within which these provisions operate was, as I said above, considered by the Hon I D F Callinan AC in his report of 13 September 2016. Since then, and in some cases as a result of Mr Callinan's review, changes were made to the statutory regime.

Part Two – The Issues

45. The principal issues which arise from my Terms of Reference are as follows:

- a. the extent to which the 2008 Conditions proved successful in reducing alcohol-related violence; that is, the extent to which can they be said to have been successful in reducing alcohol-related harms;
- b. whether changes:
 - (i) in demographics, population, or the nature and density of licensed venues in the Newcastle CBD and surrounding areas (or in a physical sense in the city and its environs); and/or
 - (ii) in the applicable statutory and regulatory arrangements,are such that the 2008 Conditions ought be reconsidered or adjusted so as better to achieve the objects of the *Liquor Act*;
- c. whether the management and compliance of licensed venues have been improved such that varied or different conditions might be appropriate;
- d. whether considerations of a night-time economy, or night-time activities generally, are inappropriately impaired by the 2008 Conditions, or aspects of them.

46. I consider these below.

Effect of the 2008 Conditions

47. The imposition of the 2008 Conditions is widely credited with having reduced the rate of non-domestic assault in the Newcastle CBD and surrounding areas. A reputable body of scholarly work exists that has made a systematic and scientific study of this and related questions.

48. Work by Jones and others in 2009⁹ not long after the imposition of the 2008 Conditions published by the Bureau of Crime Statistics and Research (**BOCSAR**) sought to determine whether restrictions on hotel trading hours for a number of licensed premises in the Newcastle CBD had reduced the incidence of assault in the vicinity of them. The period analysed was 1 April 2004 (four years before introduction of the 2008 Conditions) to 31 March 2009. Three sources of police data (recorded crime, last place of consumption and police call outs) were analysed for the Newcastle CBD. These results were compared to data for the Hamilton area.
49. The recorded crime data suggested a significant change in the trend in night-time assaults in Newcastle in the 12 months following the imposition of the 2008 Conditions (a reduction of some 133 assaults). There was no significant change in the rate of assaults in Hamilton, suggesting no geographic displacement of assaults to that area.¹⁰ (This study was undertaken before the Hamilton Conditions had been imposed.)
50. In the Newcastle CBD, there was a marked decrease in the proportion of non-domestic assaults between the hours of 3am and 6am and a corresponding increase in the proportion occurring between 9pm and midnight. In the four years before the imposition of the 2008 Conditions, 17% of all non-domestic assaults were recorded as having taken place between 3am and 6am. In the year after, this fell to 6%.¹¹ No significant change was identified in the time of day at which assaults occurred in Hamilton following the start of the intervention.¹²
51. The authors' analysis (by reference to the last place that persons said they had consumed alcohol) revealed a reduction in assaults linked to hotels subject to the 2008 Conditions by some 83 assaults in the year following their introduction. There was no significant increase in assaults linked to premises

⁹ Jones et al 'The Impact of Restricted Alcohol availability on alcohol related violence Newcastle, NSW' (November 2009) No 137 *Crime and Justice Bulletin*.

¹⁰ Above n 9, 9.

¹¹ Above n 9, 10.

¹² Above n 9,10.

not subject to those conditions, suggesting, once again, there had not been a geographic displacement of assaults.¹³

52. A study by Professor Kypros Kypri and others¹⁴ sought to ascertain whether the restriction on the opening times component of the 2008 Conditions had reduced the incidence of night-time assaults. The study authors observed a 37% reduction in assaults, which they describe as large relative to Hamilton (used as the control locality). This equates to 33 assaults having been avoided per quarter. For the time with which this was concerned, licensed venues in Hamilton were not subject to what I earlier described at paragraph 26 above as the Hamilton Conditions. No evidence was found that the 2008 Conditions had brought about a displacement of assaults to Hamilton.
53. Possible limitations of the study were said to include that there could have been differences in police activity and staff reporting between the two areas, and that the owners of licensed venues may have advised their staff to avoid reporting incidents to police in the wake of adverse publicity. The authors also acknowledged the enactment in July 2008 of amendments to the *Liquor Act* which imposed restrictions on the service practices of licensed venues with the worst assault records. Aspects of this regime were voluntarily adopted by some licensed venues in Hamilton from late 2008 and the authors thought that these voluntary measures may have had ‘a small protective effect’.¹⁵ Other possible limitations (also acknowledged by the study’s authors) are that: Newcastle and Hamilton may not be truly comparable; an effect was only seen after a two-quarter lag; and an effect could be seen at earlier, as well as later, times.
54. This study was aimed at ‘pub closing times’. There was said to be a lack of evidence one way or the other on the effects of the other strategies implemented as part of the 2008 Conditions. I do not read the study as having claimed to have isolated for analysis the effect of earlier closing times upon the incidence of assaults from the effect of the 2008 Conditions as a whole.

¹³ Above n 9, 10.

¹⁴ Kypros Kypri et al, ‘Effects of restricting pub closing times on night-time assaults in an Australian city’ (2011) 106 *Addiction* 303.

¹⁵ Above n 14, 309. This seems to be a reference to the violent venues scheme which took effect from 1 December 2008 and appears in s 11(1A) and Schedule 4 of the *Liquor Act*.

55. A major project led by Associate Professor Peter Miller released in December 2012,¹⁶ involved a comparison between the perceived effectiveness of alcohol-related harm prevention measures instituted in Newcastle (through licensing regulation) with those instituted (voluntarily) in Geelong. That study considered:
- a. secondary data (10 years retrospective, two years prospective):
 - (i) emergency department attendance records;
 - (ii) Victoria and NSW police records (assaults, property damage and drink-driving);
 - (iii) Ambulance Victoria attendance records;
 - (iv) patron interviews (10pm-3.30am over 18 months);
 - (v) venue observations (quarterly, structured observations of 35 licensed late night venues);
 - b. community surveys; and
 - c. key informant interviews (licensees, security workers, bar workers, community workers, police and health professionals).
56. No reduction in injury presentations to emergency departments was evident in Geelong during ‘high alcohol hours’ (midnight to 5.59am) on Saturday and Sunday mornings following the implementation of a number of voluntary measures in that city, including ID scanners, a shared radio network between venues and police and the ‘Just Think’ campaign.¹⁷ Some reduction was, however, observed after the implementation of the Victoria Police Operation ‘Nightlife 2’¹⁸ and increased fines for antisocial behaviour associated with intoxication.¹⁹

¹⁶ Miller et al, ‘Dealing with alcohol-related harm and the night-time economy (DANTE)’ (April 2012) National Drug Law Enforcement Research Fund.

¹⁷ A campaign wherein local celebrities endorsing safe drinking patterns and reduced violence.

¹⁸ Improved radio contact between police and licensees.

¹⁹ Above n 16, 32.

57. Injury attendances at two emergency departments in Newcastle remained relatively stable between 2001 and 2009, but declined during the high alcohol hours (midnight and 5.59am) following the introduction of the 2008 Conditions.²⁰
58. Police arrest data showed that the interventions implemented in Geelong had no significant impact on assault rates generally and between 12am and midnight.²¹ In contrast, crime data from Newcastle showed a significant decline in non-domestic assaults since the introduction of the 2008 Conditions, especially during the hours of 10pm and 6am. Non-domestic assaults decreased on average by nine incidents per month.²² One of this study's principal conclusions would seem to be that measures imposed by regulatory authorities are more effective in reducing alcohol-related violence than voluntary systems of licensing reform. The risk with the latter is that licensees are less likely to subject themselves to restrictions which might impair profits, with an accompanying tendency therefore for voluntarily measures to be less effective in reducing alcohol consumption.
59. A study by Associate Professor Peter Miller and others in 2014 examined whether lockouts had been effective in controlling this violence, by reference to stakeholder views.²³ It relied upon interviews conducted in Newcastle and Geelong (a city thought to share some similarities with Newcastle). The majority of interviewees believed lockouts to be ineffective.²⁴ The authors express the view that lockouts favour large venues that close late rather than smaller, earlier-closing venues. By 'channeling' patrons to larger venues, they say, smaller venues may be forced to close permanently.²⁵
60. The rationale of lockouts is that much alcohol-related violence occurs as a result of the movement of people between venues during early morning hours, queuing and crowding around licensed venues. The authors record the

²⁰ Above n 16, 40.

²¹ Above n 16, 48.

²² Above n 16, 82.

²³ Miller et al, 'Key stakeholder views of venue lockouts in Newcastle and Geelong' (2014) 16(1) *Crime Prevention and Community Safety* 38.

²⁴ Above n 23, 38.

²⁵ Above n 23, 48.

experience of lockouts in other places. In Scotland, a lockout was instituted to reduce knife-crime by implementing a midnight lockout combined with a restriction of trading hours. A reduction of 19% in such incidents was ultimately attributed to an increased police presence. After this initial reduction, the rate rose to higher than before the lockout had been instituted.²⁶

61. A lockout was also implemented in Ballarat, Victoria. It remains one of the longest-standing. Police data showed a decrease in assaults by 47.5% in licensed premises and 33% in public places. Decreases in assaults and property damage began six months before implementation of the lockout, following an increased police presence, and greater cooperation between police and venues.²⁷ The authors found it difficult to distinguish between the impact of the lockout and the cumulative effect of all interventions.²⁸
62. In their analysis of assault rates in Newcastle, the authors concluded that the evidence on lockouts remained largely inconclusive, and the reasons for the reduction in assaults experienced in Newcastle was marred by limited evaluation and the prevalence of several other competing factors, and numerous variables, such as police practice.²⁹
63. The authors express the view that some key stakeholders consulted in the course of the survey suggested that lockouts are ‘a small part of the picture’,³⁰ and that they may have unintended consequences. Most key stakeholders agreed that lockouts are less likely to reduce patron intoxication and aggression than earlier closing times. Some stakeholders reported increased patron aggression because of being locked out.³¹
64. The view of a NSW Police officer is recorded in the study that lockouts minimise the migration of intoxicated patrons between venues, and hence reduce the ability and opportunity for crime to occur.³² Lockouts enable

²⁶ Above n 23, 40.

²⁷ Above n 23, 40.

²⁸ Above n 23, 41.

²⁹ Above n 23, 42.

³⁰ Above n 23, 47.

³¹ Above n 23, 49.

³² Above n 23, 45-46.

premises to manage their patrons, and allow police more effectively to allocate resources.³³

65. A study by Peter Miller and others also in 2014³⁴ describes concurrent changes in a number of night time injury-related hospital emergency department presentations in Geelong and Newcastle. Geelong is said to have involved a collaborative voluntary approach to reducing harms, and Newcastle, a 'regulatory approach'.³⁵ The authors note that at the time they were writing, there was a lack of evidence regarding the effectiveness of voluntary or regulatory approaches to reducing alcohol-related harm. The aim of the paper, therefore, was to examine concurrent changes in the number of alcohol-related presentations to hospital emergency departments in the two cities. The data did not permit the authors to attribute causes, but it did allow the identification of the emergency department trends associated with the two different approaches.³⁶
66. The study focused on the period between midnight and 5.59am. The (voluntary) initiatives in Geelong included a closed-circuit television network, a Night Watch Radio Program and the use of ID scanners, all of which had been anecdotally reported as being successful.
67. Both Geelong and Newcastle were said to have seen reversals of previously increasing trends. In Geelong, 2,828 injuries occurred between midnight and 5.59am. Of those, 67.2% of the victims were male and 32.8% were female.³⁷ In Newcastle, 4,538 injuries occurred during the same time period with a gender divide identical to that for Geelong.³⁸ Geelong saw a progressive increase in injury presentations at that city's hospital emergency department between 2005-2010, and a decrease in 2010-2011 following the implementation of the safe taxi rank and the night watch radio program.³⁹ The introduction of other

³³ Above n 23, 46.

³⁴ Miller et al, 'Changes in Injury related hospital emergency department presentations associated with the imposition of regulatory versus voluntary licensing conditions on licensed venues in two cities' (2014) 33 *Drug and Alcohol Review* 314.

³⁵ Above n 34, 315.

³⁶ Above n 34, 315.

³⁷ Above n 34, 319.

³⁸ Above n 34, 319.

³⁹ Above n 34, 319.

measures, including ID scanners, Just Think and Operation Nightlife 2, each coincided with an increase in presentations. The introduction of a strategy to use fines, rather than arrests, to deal with antisocial behaviour was followed by a decrease in presentations. This strategy included increasing on-the-spot fines for a range of offences including being drunk and disorderly, failing to leave a licensed venue when requested, and failing to move on.⁴⁰ The authors note that these rates have not been adjusted for seasonal and temporal trends.⁴¹

68. In Newcastle, the number of presentations peaked in 2008 and declined until 2011 following the introduction of the 2008 Conditions.⁴² I have already mentioned that a 37% reduction in police-recorded night-time assaults was experienced following imposition of the 2008 Conditions.⁴³
69. The authors express the view that none of the interventions introduced in Geelong were associated with a significant reduction in emergency department presentations. The introduction of voluntary interventions had no significant success in curbing alcohol-related injuries in that city. The authors suggest that the results reflect the difficulty of assessing interventions that are voluntarily instituted and established *ad hoc*.⁴⁴
70. The authors say that voluntary measures such as those implemented in Geelong do not normally affect a proprietor's profits and are therefore focused on reducing crime rather than the consumption of alcohol. They suggest this approach was unsuccessful in Geelong.⁴⁵ By contrast, in Newcastle, emergency department presentations for alcohol-related injury remained relatively stable between 2005 and 2009, and then declined markedly in the years following the imposition of the 2008 Conditions.⁴⁶
71. The results of this study must be read against the knowledge that injuries sustained as a result of alcohol-related violence do not always require medical

⁴⁰ Above n 16, 4.
⁴¹ Above n 34, 319.
⁴² Above n 34, 320.
⁴³ Above n 14.
⁴⁴ Above n 34, 321.
⁴⁵ Above n 34, 321.
⁴⁶ Above n 34, 321.

attention, and victims may seek help in places other than emergency departments.⁴⁷

72. Another study by Associate Professor Miller and others in 2015⁴⁸ was directed to the investigation of the prevalence of a culture of pre-drinking within the night time economy and its impact upon degrees of intoxication and, in turn, alcohol-related violence. The investigation included conducting surveys and interviews in and around Newcastle and Geelong and analysing the results. Geelong and Newcastle are said to share similar demographics, but at the same time to have very different licensing regimes. Venues in Geelong (at the time of the study at least) were permitted to trade until 7am, whereas licensed premises in Newcastle were required to close at 3:30am with a lockout from 1:30am. The licensing regime in Geelong was accompanied by factors which were not present to the same degree in Newcastle, including an industry-funded education campaign, ID scanners, and CCTV.
73. 3,949 interviews were undertaken. There was a high response rate (90%), of about equal numbers of men and women whose mean age was 24. 66.8% reported pre-drinking. Measured self-rated intoxication resulted in pre-drinkers being considerably more intoxicated than those who abstained. Patrons who consumed 6-10 standard pre-drinks were 1.5 times more likely to have been involved in a violent incident in the last 12 months. Patrons who consumed 11-15 standard pre-drinks were 1.8 times more likely to have been involved in a violent incident in the same period.⁴⁹
74. The authors express the view that pre-drinking has become ‘increasingly intense and ritualised’.⁵⁰ In the United Kingdom, more than half of patrons (57.6%) entering nightlife areas had consumed alcohol beforehand and they were 2.5 times more likely to be involved in a violent incident.⁵¹ One tentative view expressed by the authors is that earlier closing times may encourage people to

⁴⁷ Above n 34, 321.

⁴⁸ Miller et al, ‘Correlates and Motives of pre-drinking with intoxication and harm around licensed venues in two cities’ (2015) 35 *Drug and Alcohol Review* 177.

⁴⁹ Above n 48, 182.

⁵⁰ Above n 48, 178.

⁵¹ Above n 48, 178.

start their night earlier, rather than stay home for longer and drink more before going out.⁵²

75. The authors recognise that the interviewees were nearly all intoxicated and approached in public areas. No details were collected from respondents of their demographics, education level, social class, employment status or income.
76. Hoffman and others,⁵³ in their paper ‘Liquor legislation, last drinks, and lockouts: the Newcastle (Australia) solution’, sought to determine whether the implementation of prohibitive liquor legislation leads directly to a reduction in the number of incidents of assaults occasioning facial injury. The years examined were 2003 to 2015, which spanned a period before and after those measures were implemented. The study found an increase in the incidence of such injuries before the measures were instituted and a decrease of 21% per year afterwards. The study credits ‘last drinks’ and ‘lockout’ legislation with having contributed to this result.⁵⁴
77. The study population was taken from those who attended the regional level one trauma hospital and were assessed for facial injury. The incidents the subject of the study were all ones which were alcohol-related and occurred within specific study hours. A total of 152 patients attended the emergency department. 75% were males aged between 18-35 years.⁵⁵ The number of presentations increased between 2003 and 2008 at a rate of 14% per annum. In contrast, there was a decrease in presentations of 21% per year between 2009 and 2015, being a 31% relative reduction in alcohol-related facial injury.⁵⁶
78. The authors point out that presentations to the emergency department the subject of the study were not all ones necessarily drawn from incidents which occurred in that locality. Moreover, some individuals may not have visited the emergency department, even after suffering an attack.⁵⁷

⁵² Above n 48, 185.

⁵³ Hoffman et al ‘Liquor Legislation, Last Drinks, and Lockouts: The Newcastle (Australia) solution’ (2017) 46 *Int. J. Oral Maxillofac Surg* 740.

⁵⁴ Above n 53, 740.

⁵⁵ Above n 53, 741.

⁵⁶ Above n 53, 742.

⁵⁷ Above n 53, 744.

Observations

79. The body of work which I have surveyed above is not the only scholarly attention directed to the effect of restrictions of the kind comprising the 2008 Conditions. Lockouts, for example, have been in place at various times on the Gold Coast, in Melbourne, in Glasgow, in Surfers Paradise and in Brisbane. More recently, they were instituted in parts of Sydney. There are many studies about the demonstrable reduction in assaults and in emergency department presentations which follow restrictions on the accessibility to, and availability of, alcohol. I have covered those matters in less detail here than I would have otherwise done so, because Mr Callinan AC in his September 2016 report had regard to them and explained and summarised their effect. Of importance is that late night trading is consistently associated with increased alcohol-related harms and violence, primarily driven by increased levels of intoxication.⁵⁸ The literature on the effect of lockouts and their desirability is less unanimous in its conclusions.
80. The effect of the studies which have made a focus of the 2008 Conditions and the circumstances of Newcastle following their imposition are in my opinion the most relevant for the purposes of this Review. That does not mean of course that the experience elsewhere of similar restrictions ought be ignored. I have had regard to many other studies (set out in the bibliography) about other places and other kinds of restrictions, in addition to Mr Callinan's consideration of the wider body of scholarly work (with which I respectfully agree).
81. The scholarly work and studies *do* show a reduction in alcohol-related violence coincident with the imposition of the 2008 Conditions, and without any real evidence of displacement of such violent to areas not covered by those conditions. None of them was able (understandably) to isolate one or more restrictions as having that effect, and none studied with specificity, the effect of the drink restrictions condition.⁵⁹ None studied the effect of the radio network

⁵⁸ See the reference to this and other research and findings in Mr Callinan's report at, particularly, paras 6.1 and 6.2.

⁵⁹ Condition 6) at paragraph 20 above.

condition⁶⁰ or the Plan of Management audit condition in isolation from other conditions.⁶¹ The same can be said of the drink restrictions condition.

82. There is no scholarly work which to my knowledge proves conclusively that the reductions in violent incidents in Newcastle were solely attributable in whole or in part to the imposition of those conditions. That is unsurprising. It can be very difficult to single out one possible cause of many and demonstrate definitively that it, as distinct from other possible causes or contributing factors, brought about the particular result. In the present case, however, having Hamilton as the control area does tend to support the claim that the 2008 Conditions are responsible for the decrease in violent incidents. So too is the temporal coincidence between the imposition of those conditions and the falls in the rates of violence that were experienced.
83. It is my opinion that, despite the limitations of the studies (mostly very fairly acknowledged in the studies themselves) the 2008 Conditions seem probable to have brought about a substantial lessening of alcohol-related violence. That likely effect is one which in my view weighs in favour of the approach that any change to the 2008 Conditions ought have a cogent and persuasive basis and not fundamentally disturb, without some protective mechanism, in particular, the closing time and lockout conditions. Any extension of the hours at which alcohol may be sold or supplied would require a cogent basis because, of all the restrictions, they are the ones the studies show can be most closely and reliably linked to the reduction of alcohol-related violence.
84. There is no doubt that the 2008 Conditions had a noticeable effect upon the economics of premises the subject of them. The June 2017 submission of the AHA NSW claims the economic impact of the 2008 Conditions in the period immediately following their imposition to have been:
- a. one in four hospitality workers were laid off;
 - b. hotel closures, receivership and changes in ownership;

⁶⁰ Condition 10) at paragraph 20 above.

⁶¹ Condition 4) at paragraph 20 above.

- c. sales revenue – down 30.8% (in NSW as a whole, it rose 2.7%);
- d. asset value decreased by \$22.5 million;
- e. the workforce decreased by 21.7%;
- f. live music decreased by \$1 million per year.

85. I have not been able independently to verify these figures. I am of the opinion, however, given what follows below and the effect of the studies discussed above, that the effect on the licensed premises and the wider industry was substantial.
86. These effects are to some extent confirmed by looking to the fate of the venues the subject of the 2008 Conditions and their owners and operators. **Table 1** below shows the changes in operational status, management, and character since the imposition of the 2008 Conditions so far as I have been able to ascertain them.

Table 1: Status of venues subject to the 2008 Conditions

Venue Name	Current Status	Current name	Management Status	Notes
The Cambridge	Operating	Unchanged	Changed	The building was bought by Mr John Palmieri and two associates in the 1990s. In June 2017, the building was offered for sale. It operates as a live entertainment venue for specific events.
Civic Hotel	Closed	Closed	Closed	Destroyed by fire in 2009.
Clarendon Hotel	Operating	Unchanged	Unknown	Was exempt from the lockout and trading hours conditions because it was the subject of a condition of the lease that the venue not trade past midnight. It

Venue Name	Current Status	Current name	Management Status	Notes
				was then exempted from the RSA supervisor and shared radio network conditions following the second Board decision in August 2008.
Crown and Anchor Hotel	Operating	Unchanged	Changed	Was purchased by chefs and now operates as a dining destination, with a bistro downstairs and a restaurant upstairs that has a licence until 3am. No longer houses a nightclub.
Customs House	Operating	Unchanged	Unchanged	Mainly operates as a restaurant and function centre, but is popular with university students on a Wednesday night.
Ducks Nuts	Closed	The Family Hotel	Changed	This venue traded as The Family Hotel prior to operating as the Duck's Nuts. The name has subsequently been changed the name back to The Family Hotel.
Fanny's of Newcastle (Nightclub)	Closed. A new venue now operates on the same site	Argyle House	Changed	Operates only on a Wednesday evening.
Hotel CBD	Operating	Unchanged	Unknown	
King Street Hotel	Operating	Unchanged	Unchanged	Only trades on Friday and Saturday evenings.
Lucky Country Hotel	Closed	The Lucky Hotel	Changed	After a major demolition and refurbishment, a new venue now operates on the

Venue Name	Current Status	Current name	Management Status	Notes
				same site. In 2008, the then-operators became insolvent. The premises was bought by a new owner and sat vacant until a major renovation and demolition was completed in 2014. The venue now offers accommodation, as well as food and drink.
M J Finnegans	Operating	Finnegan's Hotel	Changed	Trades until 2am on a Friday and Saturday night.
Queens Wharf Brewery	Operating	Unchanged	Changed	Changed hands in August 2008 and again in March 2014. The building is owned by Council. It does not trade past midnight.
Grand Hotel	Operating	Unchanged	Unchanged	Was not subject to the lockout and closing time provisions because it did not trade past 1am at the time the conditions were imposed.
Great Northern Hotel	Operating	Unchanged	Changed	Currently closed for refurbishment, and has been for some time.
The Dockyard	Operating	Unchanged	Changed	No formal findings were made against this venue. It did not trade beyond 12am and was prevented from doing so by its development consent and strata title conditions.

87. This is not to suggest that the impacts experienced by these venues were all caused by the 2008 Conditions. It does, however, tend to support the effect of the scholarly work discussed above. If fewer people were patronising licensed venues in the Newcastle CBD after their imposition, then it follows that less alcohol-related violence would be experienced.
88. In summary then, the 2008 Conditions were, most likely, the operative (or an important) cause of the marked reduction in alcohol-related violence experienced after they were introduced. The closing time condition is likely to have played a lead role in bringing about that result. The contribution made to that by the lockout condition and the drink restrictions condition is less ascertainable. The scholarly work and research in my view, establishes those matters, but also, more generally, that there is community benefit in restricting the availability and access to, alcohol in terms of reducing alcohol-related violence.

Changes in demographics, the population, the nature and density of licensed venues and the regulatory environment

89. Many submitters, on both sides of the debate, said that Newcastle, and the Newcastle CBD in particular, is in some ways a different place from what it was when the 2008 Conditions were introduced. The online petition I received made the same point. I agree with these views.
90. Newcastle is the world's largest coal export port and is its oldest and second largest tonnage throughput port. The Port of Newcastle achieved shipments at a record level of 15.9 million tonnes in December 2016. Its steel works and shipbuilding industry have, however, declined, the former closing in 1999 after 84 years of operation.
91. The Newcastle CBD has been undergoing renewal and change, especially over the last decade. The Newcastle City Council endorsed the Hunter Street Revitalisation Masterplan and the corresponding Strategic Framework in 2010. This policy sought the regeneration of Hunter Street, and its reestablishment as the retail hub of Newcastle, and to develop Hunter Street as the primary multimodal transport corridor for the city centre. Much of this work is

underway or completed. One purpose of it was to encourage small bar and café business and new residential development.

92. In 2012, the State Government introduced the Newcastle Urban Renewal Strategy. A key objective of it is to create enhanced physical and visual connections between the city centre and the waterfront. Several components of this strategy included the establishment of a university campus in the city centre, attracting more residents to it to support and build a vibrant and viable city centre, and repositioning the west end (around Wickham) as the city's future CBD.
93. At the same time, a decision was made to remove the heavy rail corridor between Wickham station and the Newcastle CBD, and to construct a transport interchange adjacent to (and to replace) Wickham Station.
94. The removal of the heavy rail corridor was completed in 2016. A new 'multi-modal' transport interchange opened at Wickham in October 2017. It connects trains with buses and taxis and will, in the future, include light rail. This station operates as the final stop for the Central Coast and Newcastle, and the Hunter train lines. Wickham interchange has ticket barriers, but Hamilton (the preceding stop) does not. Moreover, as one submitter pointed out, Hamilton was in fact the last stop for some months, which meant, for that time at least, that even more people than usual patronised the licensed venues there.
95. The development of the University of Newcastle's City campus is well advanced. A \$95 million education precinct, NeW space, commenced operation in July 2017, housing the Business and Law Faculties. The building adopted an innovative design, and attracted New South Wales Government and Commonwealth funding. It is located in the Civic Precinct.
96. In 2014, the construction of a high-frequency light rail service was announced to operate between the Newcastle Interchange at Wickham and Pacific Park in Newcastle East. It will be 2.7 kilometres in length, utilising the rail corridor for about one third of its route, moving south to Hunter Street then moving East onto Scott Street to the beach. Stops are to be located at the Newcastle Interchange, Honeysuckle, Civil, Crown Street, Market Street and Pacific Park.

Major construction works commenced in September 2017. There will be 10 construction zones, and the proposed schedule for them is publicly available.⁶²

97. 'Revitalising Newcastle' is a NSW Government program which commenced after 2008. It has the objective of drawing people, jobs and tourism to Newcastle. The program, which is overseen by the Hunter Development Corporation, has seen many of the projects mentioned above come to fruition.
98. Honeysuckle is an area which, for most of the last century, was characterised by railway workshops and warehouses. Some time ago, it became clear that there had been a decline in the number of people living and working in the city itself. The Honeysuckle Development Corporation was charged with the transformation of 50 hectares of surplus government land in that area. Its plan was to create quality residential, commercial and recreational waterfront areas, and to rejuvenate the city by stimulating a diverse, modern economy which is home to residential, employment, cultural and recreational activities. The project has a long water frontage, from Carrington and Linwood through the Marina, Wickham and Cottage Creek precincts to the Boardwalk, Crowne Plaza and Breakwater Apartments. Much of the site has been developed. I saw converted warehouses and a number of medium-rise, very modern medium to high density modern residential buildings. There are also many restaurants. Most of the development activity appears to have occurred in the last decade or so. The Hunter Development Corporation played an important role in these changes, including by its Newcastle City Centre Renewal Report in 2009.
99. The Hunter New England Local Health District acknowledged in its written submission that there has been redevelopment and enhancement in the CBD as a residential area and educational precinct.
100. Another noticeable change since 2008 has occurred in late night transportation. Uber has entered the market as a real competitor to taxis. It adds to the options for point-to-point late night transport which is a preference for many who attend late night venues.

⁶² See www.revitalisingnewcastle.nsw.gov.au/construction/construction-information/.

101. I saw many of the changes I have mentioned above on my visit to Newcastle on 29 November 2017, and on another visit there in mid-2016. One of the important effects of these changes is that the number of those living in the Newcastle CBD has increased in recent years and looks likely to continue to do so. Newcastle City Council pointed to an increase of 1,500 people in the city centre population between the 2006 census and the one undertaken in 2016.
102. Newcastle overall has seen a growth in its population of about 10% in the decade to 2016 as shown in **Table 2** below.⁶³

Table 2: Population Growth in Newcastle LGA 2006-2016

Suburb	Population		
	2006	2011	2016
Newcastle	1,737	2,384	2,753
Newcastle West	349	594	618
Cooks Hill	2,931	3,621	3,621
Hamilton	3,711	4,071	4,229
Hamilton South	3,924	4,027	3,876
Islington	1,530	1,806	1,883
Newcastle LGA	141,753	148,535	155,411

Location and density of venues, and venue types

103. The types of licensed venues in Newcastle have become more diverse since 2008 and there are more of them. Those who are in favour of the 2008 Conditions say that they are responsible for creating and fostering an environment in which new and different types of licensed venues could develop. The increased safety and order which the 2008 Conditions, they say, gave rise to patrons having the confidence to visit licensed venues, parents having confidence that their older teenage children would be safe in doing so, and, more generally, caused or contributed to circumstances which, as the proliferation of licensed venues demonstrates, were conducive to business. They also say that that any change to the 2008 Conditions would result in a possible reversion to the assault rates and frequency of emergency department presentations seen before the imposition of them, and that it would be detrimental for the hospitality industry also as a result. It is important to

⁶³ Australian Bureau of Statistics, 3218.0 Regional Population Growth, Australia (released 28 July 2017); sources provided by Liquor & Gaming NSW.

observe that this increase in the number of licensed venues was able to occur without any material increase in the rate of alcohol-related violence.

Density and number of venues

104. Outlet density can be assessed differently. Here I consider two of them: ‘outlet-saturation’ and ‘outlet-clustering’.
105. The first of these, outlet saturation, is calculated by dividing the number of outlets in an area by its residential population and multiplying the result by 1,000. Some analysts have shown that the greater the number of outlets per head of population, the greater the consumption of liquor by residents.⁶⁴ A higher number indicates a greater level of saturation relative to the size of the residential population.
106. Outlet-clustering is calculated by averaging the number of outlets in a one kilometre radius of each venue in a given area. Unlike the outlet-saturation measure, it does not use residential population to calculate licence density. This measure may better identify outlet concentrations in some circumstances (eg in an ‘entertainment-strip’). The 1 kilometre radius represents a distance that is easily walked by most patrons.
107. **Table 3** below contains a detailed description of outlet saturation levels for different outlet types in the Newcastle suburb and surrounding area, while **Table 4** gives a detailed description of clustering of outlet-saturation for different suburbs in this area.

⁶⁴ See, for example, ‘Access to alcohol, and the effects of availability on consumption and alcohol-related problems’, in Edwards et al, *Alcohol Policy and the Public Good*, Oxford Medical Publications (1994) pp 133-135 and 144.

Table 3: Newcastle suburb & surrounding area: Saturation by outlet-type (2011 & 2017)⁶⁵

Outlet-type	2011		2017		% change (2011-2017)	
	Outlets	Saturation	Outlets	Saturation	Outlets	Saturation
Club	9	0.5	7	0.4	-22%	-24%
Hotel	34	2.1	34	2	0%	-3%
Packaged liquor	10	0.6	16	0.9	60%	56%
Small bar	0	N/a	6	0.4	N/a	N/a
Producer wholesaler	5	0.3	4	0.2	-20%	-22%
On premises (PSA)	24	1.5	41	2.4	71%	66%
On-premises (no PSA)	87	5.3	88	5.2	1%	-2%
Total	169	10.2	195	11.5	15%	12%
Extended Trading Authorisation	55	3.3	43	2.5	-22%	-24%

Table 4: Newcastle suburb & surrounding area: Outlet-clustering by suburb (2012 & 2017)⁶⁶

Suburb	2012	2017	% change (2012-2017)
	Clustering		
Newcastle	76.3	89.7	18%
Newcastle West	65.1	63.9	-2%
Cooks Hill	79.0	92.8	17%
Hamilton	43.3	42.1	-3%
Hamilton South	6	8	33%
Islington	44.4	43	-3%
Newcastle suburb & surrounding area	52.4	56.6	8%

108. These figures show mixed results. The outlet saturation approach suggests lower density over time. A slight increase in density is suggested by the outlet clustering method. I have not found these figures to be of much assistance because it is difficult to reconcile those differences.

109. Venues in Newcastle are not concentrated in highly dense nighttime entertainment precincts as, for example, Kings Cross in Sydney, or Fortitude

⁶⁵ 2017 outlet-saturation is calculated using 2016 ABS Census population data.

⁶⁶ The source of the 2012 outlet-clustering data is the Office of Liquor & Gaming's (OLGR) Environmental & Venue Assessment Tool (EVAT), published that year.

Valley in Brisbane. Venues are spread between Watt and Scott Streets in Newcastle East, Hunter Street in the CBD, Darby Street in Cooks Hill, around the Honeysuckle precinct, and further west of the CBD, in Hamilton.

110. In Newcastle itself (the area shown in the map in **Appendix 4**), the number of evening or late night licensed venues increased slightly for hotels (from 15 to 18) and for small bars from zero to four from 2008 to 2017. The number of nightclubs remained the same. The same period saw an increase in on-premises licenses from 10 to 28 (for those with a Primary Service Authorisation (PSA) (about which I say more below)) and from 44 to 47 (for those without a PSA). Packaged liquor outlets more than doubled in number from three to seven.⁶⁷
111. In Hamilton (see also **Appendix 4** for a depiction of that area), there was a decrease in licensed venues operating in the evening or late at night, with the number of hotels falling slightly from seven to six between 2009 to 2017 and clubs from three to one. There were no small bars in Hamilton. The number of restaurants and cafés fell slightly from 16 to 15 (no PSA) increased for those with a PSA (three to eight). Retail outlets for the sale of take-away liquor doubled, but only from one to two.
112. In Newcastle and surrounding areas (shown also in **Appendix 4**), the number of nightclubs decreased from nine to seven, but an increase occurred in hotels and small bars (32 to 34 and zero to six respectively). The number of restaurants and cafés rose for premises with and without a PSA. Venues without a PSA increased in number between 2008 and 2015 (77 to 112) but then decreased in number to 87 in 2017. Those venues holding a PSA saw a steady, substantial increase between 2008-2017 from 14 to 41. Retailers of packaged liquor rose in number from eight to 16.
113. Of significance is that, despite the greater number of licensed venues now subsisting than the number in 2008, the rates of alcohol-related violence have not increased.

⁶⁷ Data supplied by Liquor & Gaming NSW.

Changes in the regulatory and licensing environment

114. There have been many changes in the licensing and regulatory landscape since March 2008.

Small bar licences

115. The diversification of venue types has included the introduction of small bars as a night-time destination. The statutory provisions governing small bars are set out in Part 3, Division 3A of the *Liquor Act*. A small bar may only sell liquor for consumption on the licensed premises.⁶⁸ Small bars must only sell liquor during the standard trading period (the period from noon to midnight on any day of the week) or as permitted by an extended trading authorisation.⁶⁹ For small bars that are not in a prescribed precinct, an extended trading authorisation (under s 49A) is, on the grant of a licence to such a venue, taken to be in force. It allows the venue to sell or supply liquor on the licensed premises between midnight and 2am every day of the week.⁷⁰
116. Small bars outside prescribed precincts can apply for longer trading hours under s 49A. Small bars *within* prescribed precincts can also apply for an extended trading authorisation to trade after midnight. Small bars generally can sell and supply liquor if the number of patrons on the precinct does not exceed 100 people.⁷¹ Small bars must be open to the general public,⁷² and make available food of a nature and quantity consistent with the responsible sale of alcohol whenever liquor is sold or supplied.⁷³
117. Small bar licences were introduced by the *Liquor Amendment (Small Bars) Act* 2013 (NSW). In the second reading speech for that Bill, the then Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts, Mr George Souris stated:

The introduction of a new small bar liquor licence will broaden and diversify the entertainment venues on offer to the people of New South Wales and help to

⁶⁸ *Liquor Act* s 20A.

⁶⁹ *Liquor Act* s 20B(1).

⁷⁰ *Liquor Act* s 20B(2).

⁷¹ *Liquor Act* s 20C(1), see also cl 17A of the Liquor Regulation 2008.

⁷² *Liquor Act* s 20C(2).

⁷³ *Liquor Act* s 20C(4).

reduce the alcohol-fuelled violence and antisocial behaviour that is associated with larger venues.

118. Liquor & Gaming NSW undertook a statutory review in 2016 under cl 40 of Schedule 1 of the *Liquor Act*.⁷⁴ That review had the task of assessing whether the policy objectives of the amendments remained valid, and if the terms of the amendments remained appropriate for securing those objectives. That review made a number of key findings, including the following:
- a. while the policy objectives remained valid, the terms of the legislation required amendment in order to secure those objectives;
 - b. administrative delays and complexities associated with small bar planning and licensing approvals impeded the greater uptake of small bar liquor licences;
 - c. stakeholders agreed that the introduction of small bar licences did not give rise to venues exploiting their small bar status by incrementally changing into a venue of a different kind. This is more likely, they thought, to occur in larger venues holding an on-premises licence with a PSA;
 - d. venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence.
119. That review made a number of recommendations, including that the maximum patron limit for small bar licences be increased to 100 (from the then-maximum number of 60), and that opportunities to expedite Liquor & Gaming NSW consideration and approval of lower risk liquor licenses be considered. Following the review by Liquor & Gaming NSW, the patron capacity recommendation was adopted. This came into effect in December 2016.
120. There are currently six venues holding a small bar licence in Newcastle. Small bar licences were a point of contention in this Review. On one hand, they are thought to carry lower risk than, for example, hotels and nightclubs. As the

⁷⁴ Liquor & Gaming NSW, 'Review of Small Bars Legislation' (September 2016), available at <https://www.liquorandgaming.nsw.gov.au/Documents/public-consultation/small-bars-review-report-sept-2016.pdf>.

Second Reading speech quoted above makes clear, small bars are thought to reduce the alcohol-fuelled violence and antisocial behaviour often associated with larger venues. Those who advocate them say they permit greater supervision by bar staff (because they have fewer patrons), and encourage more moderate consumption of alcohol because they might charge higher prices for drinks and because they often have a more diverse mix of patrons (that is, older and younger people).

121. Others, the Police and Mr Brown included, warn against such venues being (or becoming over time) no different in substance from a hotel or nightclub. The Police raised a further concern that a lack of consistency in licensing conditions across venues may cause those venues the subject of more stringent conditions to agitate for relaxation of their conditions on that basis. They also say that small bars act as ‘feeders’ for hotels and nightclubs, with the result that patrons might have consumed alcohol before they attend one of those other venues. I have some difficulty in seeing how this poses any greater risk than drinking at home before going out, which both the studies and actual experience show to be commonplace.
122. An illustration of this debate is the case of small bar licence granted to a new venue called ‘Big Poppys’. In August 2017, a delegate of ILGA granted that venue its licence without imposing any of the 2008 Conditions. Big Poppys is licensed to trade between 12pm and 12am Monday to Saturday, and 12pm and 12am on Sunday. The licence was granted subject to three conditions:
 - a. liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4am and 10am during each 24 hours. The licensee must comply with the closure period, along with any other limits specified in the trading hours;
 - b. consumption on premises is not permitted on Good Friday and Christmas Day, and is restricted to normal trading hours on New Years Eve. The venue can obtain an extended trading authorisation to trade into the early morning on Good Friday and Christmas Day, but no later than 5am.
 - c. the licensee must maintain a CCTV system on the premises.

123. In making this decision, the delegate stated:

[t]he granting of the licence will contribute to the diversity of small low risk venues in Newcastle, which will enable gym goers and the community to enjoy a drink with or without a meal in a safe and sophisticated setting.

124. This decision was challenged by the Newcastle City Local Area Command.

The Police proposed that a further four licence conditions be imposed, including one similar to the drink restrictions condition.

125. In its decision of 19 January 2018, the ILGA Board accepted the proposal of the Police and decided to add those four conditions to the licence. In its statement of reasons, the ILGA Board accepted that Police maintained ‘generally credible’ concerns that standard trading venues with more liberal licence conditions operating in proximity to other late trading venues had the potential to act as ‘feeder’ venues for the later trading venues. It also noted that the five small bars that operated in reasonable proximity to Big Poppy’s were also subject to the four proposed licence conditions. ILGA did, however, note that NSW Government policy is not to impose conditions upon small bars on a uniform basis by reference to the licence category alone, and its intent is not to burden venues with licence conditions without a reasonable evidentiary basis.

126. Small bars are considered by some legislators and policy makers to carry a lower risk. They are a means by which late night drinking can lawfully occur, but on a smaller scale from a traditional hotel or nightclub (maximum 100 patrons), and in an environment thought to be less likely to result in excessive drinking and anti-social behaviour. Their introduction occurred after the imposition of the 2008 Conditions. This is a very important consideration. There now exists an alternative for late-night alcohol consumption to hotels and nightclubs. It is thought to produce less alcohol-related harm than other venues. When complaints are made of the violence and anti-social behaviour that existed before the imposition of the 2008 Conditions, it is necessary to bear in mind that they arose in circumstances which did not include small bars. That is not to suggest that small bars are a panacea for all late night problems from drinking. They represent, however, a new kind of venue that there is reason to

think may cause less alcohol-related harm than some traditional nightclubs and hotels.

Three strikes

127. The three strikes disciplinary scheme commenced on 1 January 2012. It was revised in October 2017. It targets repeat offenders, and applies where a licensee or an approved manager of a licensed venue has been convicted of one of a range of the most serious offences, as identified in s 144B of the *Liquor Act*.
128. A first strike is incurred if an approved manager or licensee commits a prescribed offence, no other strike is in force against the person when the offence was committed, and ILGA decides to impose the first strike because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence.⁷⁵ A number of licence conditions may be imposed as a result of a first strike.⁷⁶ Some of the first strike sanctions are similar to the 2008 Conditions, including a requirement for Plans of Management⁷⁷ and that persons be engaged to promote the responsible service of alcohol.⁷⁸ Discretion is also conferred upon ILGA to impose a second strike where an approved manager or licensee commits a prescribed offence, and one strike was in force at the time of the offence.⁷⁹ The imposition of a second strike triggers the power to impose further conditions on a licence,⁸⁰ including placing restrictions on patrons entering licensed premises at certain times,⁸¹ and the prohibition on the sale or supply of certain types of liquor.⁸²
129. A third strike may be imposed if a licensee or approved manager of a licensed premises commits an offence while already being subject to two strikes.⁸³ Such disciplinary action open to ILGA in those circumstances, includes:

⁷⁵ *Liquor Act* s 144E(1).

⁷⁶ *Liquor Act* s 144G(1).

⁷⁷ *Liquor Act* s 144G(1)(a).

⁷⁸ *Liquor Act* s 144G(1)(c).

⁷⁹ *Liquor Act* s 144E(2).

⁸⁰ *Liquor Act* s 144G(2).

⁸¹ *Liquor Act* s 144G(2)(d).

⁸² *Liquor Act* s 144G(2)(e).

⁸³ *Liquor Act* s 144E(3).

- a. by order in writing, suspend the licence for up to 12 months,
- b. by order in writing, cancel the licence and disqualify (for up to 12 months) any of the following persons from being granted a licence in respect of the premises to which the cancelled licence related (the *subject premises*):
 - i. any person who was a business owner under the cancelled licence at the time the prescribed offence resulting in the third strike being incurred was committed,
 - ii. any close associate of any such business owner,
- c. impose a condition on the licence, or any subsequent licence issued in respect of the subject premises, that a person who is disqualified under paragraph (b) must not be employed or otherwise engaged as an employee or agent of the licensee or manager of those premises,
- d. impose a condition on the licence relating to any matter referred to in subsections (1) and (2),
- e. impose, vary or revoke any other condition on the licence that is not inconsistent with this Act.

Periodic licensing fees

130. The periodic licence fee scheme under Part 2A of the Liquor Regulation came into effect in 2014. It creates, among other things, a financial incentive for venue operators to minimise the number of alcohol-related violent incidents attributable to their premises and the risk posed by them. Each venue is liable to pay a base annual fee for their licence. A loading is added to that charge calculated by reference to four elements:

- a. compliance history risk loading, which increases by reference to the number of relevant prescribed offences committed by the licensee or manager of the licensed premises, which have occurred in the relevant compliance period. A relevant prescribed offence event occurs when, in summary:

- i. a court convicts a person of a prescribed offence; or
 - ii. an amount is paid under a penalty notice in respect of such an offence; or
 - iii. a penalty notice enforcement order under the *Fines Act* 1996 is made against the person in respect of such an offence;
- b. trading hours, which increases in accordance with the number of hours the licensee is authorised to sell or supply liquor to patrons after midnight as at the relevant assessment date;
 - c. location, which is only payable if a compliance history risk loading element is payable, and applies if the licensed premises is located within a prescribed precinct; and
 - d. patron capacity, which is only payable if a compliance history risk loading element is payable, and increases in accordance with the patron capacity of the licensed premises as the relevant assessment date.

Violent venues scheme

131. This scheme took effect from 1 December 2008.

132. By operation of s 11(1A) and Schedule 4 of the *Liquor Act*, venues to which high numbers of alcohol-related violent incidents can be attributed can be categorized as either a level 1 (generally 19 or more incidents), level 2 (generally 12–18 incidents) or level 3 (generally 8–11 incidents) venues. The Regulator has powers under the Act to apply special licence conditions to level 1 and level 2 venues, while level 3 venues are effectively put on notice that they risk regulatory intervention should the number of incidents increase further.

133. One venue in Hamilton is currently identified as a ‘level 1’ venue. It is the second most violent venue in the State, in terms of absolute numbers of alcohol-related violent incidents. This venue was identified repeatedly in the course of my Review by many interested persons. I am not privy to the detail of this venue’s compliance history, and have not formed a view as to the adequacy of any regulatory treatment of it. I would observe, however, that a key to good

regulation of licensed venues in my view is that those do not have a good compliance history not receive the same treatment as those which do. It seems within the public interest, and the self-interest of the licensee, that there be good compliance and less regulatory attention along with it. Such an approach reduces the burden on the venue and makes fewer demands on public resources, such as policing and the Regulator's own activities. It means that regulatory efforts can be directed to other functions.

134. Each of the aspects of licensing and regulation set out above (small bars, the violent venues scheme, periodic licensing fees and the three strikes scheme) were instituted after imposition of the 2008 Conditions. Each represents a marked change in the regulatory landscape.

Management and Compliance

135. I asked Liquor & Gaming NSW to provide data and information showing what change, if any, there had been in the compliance of licensed venues with the regulatory regime and enforcement activity in 2008 and currently. I did so in order to see if there had been changes which had some relevance to the question whether and to what extent the 2008 Conditions can be said to remain appropriate.
136. In Newcastle and surrounding areas, compliance and enforcement activity in 2009 and 2017 is, in summary, as follows:
- a. in Cooks Hill, there was little variance in the rate of prosecutions or penalties. The rate of inspections has reduced from its peak of 19 in 2009;
 - b. in Hamilton, few desk audits were carried out, however the number of inspections was markedly higher. A decrease in these was seen from 59 to 13. After 2010, there was a sharp drop in the rate at which compliance notices were given;
 - c. in Newcastle itself, the number of desk audits has fluctuated over the period, but overall increased from 10 to 38. A dramatic decrease was seen

in compliance warnings from 99 in 2009 to 4 in 2017. Penalty notices also decreased from 37 to zero.

137. It is difficult to draw meaningful conclusions from these figures. The apparent improvement in compliance may have been a result of the effect of the 2008 Conditions, or it might be the consequence of better and more responsible conduct on the part of licensees, or, indeed, a combination of both. I have not found these figures, taken on their own, to have been of real assistance.

Rates of violent incidents

138. In Newcastle and surrounding areas, little change is evident in the rates of alcohol-related non-domestic violence assaults in the period 2006-2017. Islington and Hamilton South saw limited change. Hamilton saw a steady decrease in the crime rate, with the exception of a sharp rise in 2017. Newcastle West experienced a steady increase in violent incidents between 2008 and 2011.
139. Newcastle experienced a sharp immediate reduction in the rate of alcohol-related non-domestic violence assaults after the imposition of the 2008 Conditions. There was a later rise, however, between 2009 and 2013. Overall, however, the rate of alcohol-related non-domestic violence decreased over the relevant period. So too did the rate in the State as a whole. Those decreases seem to have occurred at a similar rate.
140. One particularly difficult question is the extent to which the marked decrease in the rate of commission of non-domestic violence in Newcastle and its surrounding areas can be attributed wholly or in part to imposition of the 2008 Conditions. The AHA NSW said in its June 2017 submission that reductions in the rate of assaults on licensed premises were experienced in other areas of the State from 2008, and in some places were greater than the reduction experienced in Newcastle. That is true. I have expressed the view, however, that the 2008 Conditions did, most likely, have this effect and set out my reasons for that conclusion.⁸⁴

⁸⁴

See paragraph 83 above.

141. In Newcastle there was a decline in the rate of alcohol-related violent incidents⁸⁵ from 125 to 38 between 1 October 2006 and 30 September 2017, but increases between 1 October 2008 to 30 September 2009 (80) and 1 October 2010 to 30 September 2011 (143). Most of the incidents seem to have occurred at a small number of licensed venues. In the suburb of Newcastle, there was an overall reduction from 66 to 23 between 1 October 2009 to 30 September 2010 and 1 October 2016 to 30 September 2017. The occurrence peaked between 1 October 2010 to 30 September 2011, with 87 incidents recorded. There was a reduction in alcohol-related violent incidents on-premises⁸⁶ in the Newcastle Local Government Area, from 242 in the period 1 October 2006 to 30 September 2007 to 173 in the period 1 October 2016 to 30 September 2017. For the Newcastle Local Government Area as a whole, the number of alcohol-related non-domestic assaults fell from 749 in the year 1 October 2005 to 30 September 2006 to 427 in the year 1 October 2016 to 30 September 2017, with a peak of 806 between 1 October 2006 to 20 September 2007.
142. Rates of alcohol-related domestic violence fell from 278 in the year 1 October 2005 to 30 September 2006 to 208 in the year 1 October 2016 to 30 September 2017, with a peak of 338 in the year 1 October 2008 to 30 September 2009. There is a temporal correlation between the imposition of the 2008 Conditions and a decrease in incidents at about that time. The rates of domestic violence in Newcastle were, in the early part of the period, lower than the State average, but were greater from 2012.
143. I attempted to investigate what effect the 2008 Conditions and any alteration of them might have on the rates of domestic violence. I raised this issue with a

⁸⁵ 'Violent incidents' include 'actual bodily harm', 'grievous bodily harm', 'riot and affray', 'assault officer', 'common assault' and 'violent disorder' offences. The figures in the tables above are based on data provided to L&GNSW by BOCSAR for the declared premises scheme. These figures will undergo an internal 'cleansing' process by L&GNSW (e.g. amending violent incident counts that are successfully contested by venues or that are subsequently determined to have occurred off-premises) to determine the final number of assaults attributed to each venue for the declared premises scheme.

⁸⁶ 'Violent incidents' include 'actual bodily harm', 'grievous bodily harm', 'riot and affray', 'assault officer', 'common assault' and 'violent disorder' offences. The figures in the tables above are based on data provided to L&GNSW by BOCSAR for the declared premises scheme. These figures will undergo an internal 'cleansing' process by L&GNSW (e.g. amending violent incident counts that are successfully contested by venues or that are subsequently determined to have occurred off-premises) to determine the final number of assaults attributed to each venue for the declared premises scheme.

number of stakeholders, including the Newcastle City Local Area Command and with Professors John Wiggers and Peter Miller. It is difficult on the information available to me to make any direct or reliable link between certain licensing conditions or types of conditions and the rates of domestic violence attributable to them or to alcohol consumption in general. There is, of course, a force, however, in the general proposition that some domestic violence is caused by alcohol consumption and that alcohol contributes substantially to its severity to its incidents. It was one reason why the hours within which takeaway alcohol could be sold across the State were reduced in 2014 (and only extended slightly in 2016).

144. Likewise, I attempted to investigate what special considerations might affect Aboriginal and Torres Strait Islander people in the Newcastle CBD and surrounding areas. None of my inquiries revealed a need to treat these people differently or separately from other members of the general population.

The night-time economy and activities

145. Newcastle City Council is preparing a new strategy for the development of a night-time economy, the *Newcastle After Dark: Night Time Economy Strategy 2018-2022*. A core principle in the draft plan is to increase the diversity of late-night time offerings and options to go beyond those that are solely alcohol-focused. The strategy is expected to be presented to Council in March 2018. The strategic priorities of *Newcastle After Dark*, include:

- a. to prevent and mitigate the harmful and anti-social impacts of alcohol;
- b. to encourage and enable a sustainable, safe and diverse night-time economy;
- c. to design, implement and maintain safe and attractive night-time spaces;
and
- d. to establish the city after dark as a site of diverse participation in cultural activity.

146. Council is pursuing a number of initiatives under this strategy, including piloting a night-time Safe Streets outreach project in partnership with the

Salvation Army; supporting strong growth in small bars and other low-impact venues; and investing in the delivery of improved night-time way finding for the entertainment precincts.

147. In our meeting, the Chief Executive Officer of the Newcastle City Council, Mr Jeremy Bath, conveyed to me a desire that Newcastle remain and be known as an ‘event city’. I visited Newcastle immediately after the City had hosted the finale of the Virgin Australia Supercars Championship, known as the Newcastle 500. 190,000 people attended that event. Few anti-social or violent incidents occurred. Close and careful management by the Council and by Police assisted in bringing about that pleasing result.
148. Council published a document in 2016 entitled *Events Plan 2016 - 2019*, which recognised the role of events in building social capital, engaging community participation and enhancing tourism opportunities. The plan was created to ensure that the substantial resources Council invests annually to facilitate events deliver social and economic benefit in the community. This document followed on from events strategies published in 2000 and 2010.
149. Revitalising Newcastle regularly supports and facilitates a number of grass roots events within the city, offering free events ranging from health and fitness activities in Civic Park to live music and kids entertainment options. The success of these initiatives has been recognised by the International Festival and Events Association, having been awarded that Association’s Event City Award for four consecutive years from 2012 to 2016.

Part Three – Submissions and Stakeholder Views

150. I received some 93 submissions, as well as an online petition. Submitters and petitioners share a sense of pride in Newcastle, and a desire to see its betterment for existing and future residents and visitors. Submitters on all sides state that significant change has occurred in the decade since the introduction of the 2008 Conditions.

Submissions in favour of variation or revocation

151. Many submitters acknowledge the reduction in violence and anti-social behaviour that resulted from or occurred after the introduction of the 2008 Conditions. Many also recognise the modernisation and development that has occurred in and around the City in the intervening period. This group of submitters, however, share a concern that the 2008 Conditions, in their unaltered form, stand in the way of Newcastle continuing to become a vibrant city, and to possess the kinds of late night venues and entertainment options that these submitters wish to enjoy.
152. Some submitters say that the reduction in alcohol-related violence that Newcastle has experienced cannot properly be attributed to the 2008 Conditions. I have considered that argument in discussing the scholarly work on this topic and expressed the view that I do not agree with it.
153. The particular variations for which these submitters contend differ in nature and degree. Some argue simply for a relaxation of them, saying that is necessary in order to achieve a more cosmopolitan, modern and less strict approach to the regulation of licensed venues. Many argue for later closing times or for the lockout to commence later, or for the latter to be abolished altogether. Some advance that argument on the basis that their ought be ‘parity with Sydney’ (being the arrangements that apply to venues in the Kings Cross and Sydney CBD Entertainment Precincts). Many submitters (and, indeed, the petitioners) seek variations to the drink restrictions condition to adopt the changes instituted in Sydney in recent times. They argue for a pre-approved list from which cocktails may be served after 10pm. Others argue for the ability to be served a neat whisky (or like drink) after 10pm. Some submitters explain that the

purpose to which this particular condition is directed ought be addressed by proper management and compliance with responsible service of alcohol requirements by venue owners and operators, bar and security staff. Some submitters argue in favour of exemptions being given to licensed venues for particular occasions or for a limited number of days per year.

154. One submission I received was from a person who had experience in licensing compliance and enforcement within the NSW Police and the Office of Liquor, Gaming and Racing. The submitter argues that the 2008 Conditions were a necessary response to the environment at the time, but says that in 2012, Newcastle's licensed venues continued regularly to feature on the Violent Venues List. This submitter argues that the downward trend in assaults in the ensuing years was not only a product of regulatory intervention and enforcement, but also because of the improved approach taken by particular licensees, with the support of the AHA, local police and the regulator, in particular in reducing the number of incidents associated with their venues. This submitter considers the formation of the Newcastle Entertainment Precinct (NEP)⁸⁷ to have been beneficial, and to be an example of the improvement in compliance by some licensees. This particular submitter urges a flexible approach to liquor licensing, rather than a one-size-fits-all approach.
155. I received submissions from the operators of two venues that were participants in the s 104 conference which gave rise to the 2008 Conditions. Both are now owned and operated by persons different from those who did so when the 2008 Conditions were imposed.
156. One venue, M J Finnegan's Hotel, was listed as a Level 1 venue on the violent venues list during Round 5 (from 1 January 2010 to 31 December 2010), and was removed from it in Round 9 (from 1 January 2012 to 31 December 2012). This particular operator was a founding member of the NEP. The owner, Mr Paul Hunter, submits that the three-monthly audit requirement of the Plan of Management ought be revoked, on the basis that it adds to the licensee's administrative tasks with no-real world benefit.

⁸⁷ See paragraph 195 below for a discussion of the NEP.

157. Mr Hunter argues that drink restrictions condition should reflect paragraph 3(d) Liquor & Gaming NSW's *Prevention of intoxication on licensed premises guidelines* (**the guidelines**). That paragraph, under the heading 'Implementing harm minimisation measures', states:

- d. the following drinks are not sold or supplied between midnight and 5am:
 - i. any drink (commonly referred to as a 'shot', a 'shooter' or a 'bomb') that is designed to be consumed rapidly,
 - ii. any ready to drink beverage with an alcohol by volume content of more than 5%, and
 - iii. any drink prepared on the premises that contains more than 30 ml of spirits or liqueur, other than a cocktail that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly.

158. He submits that the limitation on the sale of more than four alcoholic drinks at one time be delayed until midnight, and the prohibition on stockpiling be revoked. This condition, he says, is addressed under responsible service of alcohol measures, and is explicitly prohibited in the guidelines.

159. He submits that the condition that requires venues to cease service of alcohol 30 minutes before closing time be revoked, on the grounds that s 104 of the *Liquor Act* provides for a 30 minute period at the cessation of trade to allow patrons to vacate the premises. Further, he notes that this condition is a condition imposed on licenses for venues on the violent venues list. Revocation of this condition, he says, provides an incentive for licensees to avoid being 'listed' and by doing so lose half an hour's trading.

160. The shared radio network, in Mr Hunter's opinion, has been rendered redundant.

161. Mr Hunter's venue was one of the three venues which did not to receive an extension of the lockout condition to 1.30am, and is the only one of those venues which presently trades past 1am. The disparity in lockout time between this and other venues, he says, creates confusion, which could lead to potential conflict. That may be so in my view, but there is benefit also in staggering the times at which lockouts come into operation, because that is the time when

some patrons finish their night out. The demands on policing and traffic are less acute if the departure time differs between places and/or venues. Moreover, the imposition of different times, for example, at which a lockout commences is one way also of adapting conditions to take account of venue management practices or compliance, the location of venues and the patronage of them. It represents a capacity for flexibility in the licensing regime which in my view is not necessarily undesirable.

162. The second venue, the Great Northern Hotel, is currently closed for renovation but is to reopen with food and beverage outlets and will host 90 rooms in hotel accommodation. The licensee of this venue, Mr Myles Plenty, argues that it will be ‘imperative to the hotel’s operation and viability that [it is] able to offer the complete experience...’. He seeks the reduction or elimination of the restrictions on the types of drinks that can be served after 10pm. He seeks an exemption from the requirement to have a dedicated RSA supervisor after 11pm for the majority of the early week period.
163. Mr Plenty asserts that his aim is to encourage and improve the night-time economy in Newcastle, which will create economic benefits and enhance tourism.
164. I received a submission from the Live Music Office, which seeks to maximise performing opportunities at licensed premises. This submission refers favourably to the live music exemption introduced in Kings Cross and the Sydney CBD precincts mentioned earlier in this report⁸⁸ as a ‘way forward’, to support local jobs and create opportunities for artists.
165. Live music is important in Newcastle. It has historical significance and well as modern relevance. There is a concerted effort there to support the industry. A live music roundtable took place in Newcastle on 2 February 2018. A number of the comments on the Change.org petition submitted to me supported the industry and sought that more be done to encourage it. There are two ways of doing so in my view: granting an extension in trading hours of the kind Mr Callinan considered open in his September 2016 review of licensing

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See para 35 above.

arrangements in Sydney, or perhaps more appropriately for Newcastle, granting an exemption from licensed venues genuinely offering live music, from Condition 7 which requires the cessation of the service of alcohol 30 minutes before closing time. The reason why alcohol sales might be allowed to continue in that circumstance is because live music often requires such sales to subsidise the cost of it.

166. I am aware of an Inquiry by a Committee of the Legislative Council of New South Wales into the music and arts economy in this State. That Committee's proceedings are still underway and a report is yet to be delivered. ILGA may wish to have regard to that report in deciding its approach on this topic.
167. I received a written submission from Keep Sydney Open, which advocates for a relaxation of the 'lockout laws' in Newcastle and the introduction of a system in which venues are restricted on a case-by-case basis, and for unmixed drinks to be served until midnight. It calls for smaller bars and other well-run venues that currently trade until midnight to be allowed to trade until 2am. This submission suggests a number of measures said to lead to both increased safety and night-time activity, including diversifying night-time businesses and activities; providing more adequate public transport which runs all night; more visible police and first aid personnel; improvement in lighting around night-time hotspots and taxi ranks; and incentivising well-run venues. Many of these measures, the submission points out, were supported by the City of Newcastle and Newcastle Youth Council in its 2014 publication, *Young People and the Night Time Economy*. These are all matters which might assist in the better management or prevention of anti-social behaviour associated with alcohol consumption. They have not, yet at least, proved to be as effective as the kinds of factors the subject of the 2008 Conditions. The latter have a demonstrated effect in reducing alcohol-related violence.
168. The Change.org petition I received gave petitioners an opportunity to provide reasons for signing. Such responses include a desire to see a vibrant nightlife culture, with a diversity of night time offerings including live music, and a reduction in restrictions with a greater emphasis on personal and venue accountability for alcohol-related violence and anti-social behaviour of patrons.

I read each of those explanations and found them informative of the reasons that moved many of the petitioners to seek variations to the 2008 Conditions or a lifting of them, and, indeed, to explain the kinds of changes they wish to see.

Submissions in favour of retaining and/or strengthening the 2008 Conditions

169. Submitters in this category included past and present residents of Newcastle, members of the medical profession, academics and research bodies, and healthcare advocacy groups. A very large number of the submissions I received are from medically trained people who argued for no change to the 2008 Conditions. Those submissions generally rely upon the very substantial evidence base which exists to the effect that the 2008 Conditions, and indeed controls elsewhere of that kind, do result in a marked reduction in assault, in presentations to emergency departments, as well as contributing to general wellbeing and reducing the very substantial cost to the community of alcohol-related health problems: a list of 60 of them was given in the submission made by the Australian Medical Association (NSW) (**AMA (NSW)**). A submission from Dr John Boulton MD FRACP adds Fetal Alcohol Spectrum Disorder to that list. I found those submissions very persuasive, supported as they were by a body of data and scholarship.
170. I received submissions from the AMA (NSW), the Australasian College for Emergency Medicine, the New South Wales Nurses and Midwives' Association, the Royal Australasian College of Physicians, the Hunter General Practitioners Association, the Last Drinks Coalition, and the Royal Australian College of Surgeons, and others. These bodies all argue for the retention of the 2008 Conditions, on the basis that since their introduction, there has been a significant reduction in the level of alcohol-related non-domestic violence and anti-social behaviour. They rightly point to the body of scholarly work and data that supports this. The submitters argue that business had not suffered as a result of the 2008 Conditions, but rather that the number of on-premises liquor licenses in the Newcastle CBD has increased by 140%. This is an accurate observation, and that increase was achieved without noticeable increases in alcohol-related violence.

171. It is said that there is clear community support from Newcastle residents for the 2008 Conditions. The submitters cite surveys of attitudes conducted in the local community and across NSW and say they show that a great majority of those surveyed are in favour of restrictions on alcohol such as those implemented as part of the 2008 Conditions. I mentioned some such studies of public attitudes earlier in this report. They show a public distaste for interventionist measures at their outset, but greater support once beneficial effect is perceived.
172. These submissions also point out the problems associated with excessive alcohol consumption, both in terms of the burden it adds to the healthcare system (in the short and long term) and the dangers that staff in emergency departments face at the hands of aggressive patients who are under the influence of alcohol. They are vomited on, spat at, and are verbally or physically abused and threatened. There is a great deal of evidence to support these facts, and a number of the submissions made by medical staff in their personal capacity, who are also residents of the Newcastle area, attest to this.
173. The AMA (NSW) asserts a connection between excessive alcohol consumption and incidents of domestic violence and child abuse. I have not found it possible in this review to form reliable views on the extent to which this occurs. It might readily and safely be inferred that excessive alcohol consumption would contribute to those problems.
174. The Nurses' and Midwives' Association says that any reduction of the conditions would need to be accompanied by sufficient measures to ensure that regular reviews and relevant research are conducted regarding the future effects of any reduction.
175. The Newcastle Sexual Assault Service submitted that while it is difficult to ascertain the impact of the 2008 Conditions on the figures on sexual assault incidents (collated by BOCSAR), anecdotal evidence has seen a shift away from the CBD area as a focus for drug and alcohol-related assault, and a decline in the number of stranger assaults occurring after a night out in the Newcastle CBD.

176. Research bodies such as NSW/ACT Alcohol Policy Alliance (**NAAPA**) and the Australasian Professional Society on Alcohol and Drugs and the Centre for Alcohol Body Research emphasise the significance of the 2008 Conditions as having paved the way for evidence-based policy interventions successfully to reduce violence in other-night time entertainment precincts. I agree. The 2008 Conditions have been used as a basis for similar measures elsewhere.
177. I received a number of submissions from residents of Newcastle CBD and surrounding areas, many of whom had lived in the area before the 2008 Conditions had come into effect and who are therefore well placed to observe the difference before and after those conditions were imposed. They say that before 2008, noise disturbances were more frequent, and higher incidents of brawling, assaults, sexual assaults and vandalism were observed. A consistent theme of these submissions is that residents did not feel safe to walk in their neighbourhoods before 2008. Some argue that the 2008 Conditions resulted in a significant and sustained reduction in alcohol-related violence, demonstrated by academic publications from researchers at the University of Newcastle and elsewhere. Some residents argue against claims that Newcastle's night-time drinking culture had matured, stating that ongoing episodes of anti-social behaviour experienced by inner city families contradict those claims. One submitter says that he continues to experience disturbances and occasional vandalism at his property on Friday and Saturday nights. The 2008 Conditions, many of these submitters argue, addressed these issues. A common concern among these particular submitters is that any relaxation or exemption to the 2008 Conditions could lead to a re-escalation of this behaviour and could cause a return to higher rates of alcohol-related violence and related crime, a view shared by health professionals, academics and the Newcastle Local Area Command. This concern is well placed in my view, and calls for care in thinking through and implementing any variations to, or revocations of, the 2008 Conditions.
178. I did receive some submissions from residents who continue to experience noise disturbances, emanating from a late night fast food venue in close proximity to a certain licensed venue. These residents speak favourably of the venue owner

(with whom I met), who, they say, has taken positive and successful steps towards rectifying the issue. It is not clear to me that any changes to licensing arrangements would improve this situation. The problem seems to be that people congregate near that fast food restaurant and consume alcohol and behave anti-socially. The cause of the behaviour is not said to be a licensed venue. The operator of the nearby hotel, as I have noted, was uniformly praised for his responsiveness. This seems to me to be a problem, therefore, the control of which is unlikely to be assisted one way or the other by the 2008 Conditions. It is, perhaps, however, an example of behaviour which might worsen if alcohol were more available and accessible and something which emphasises, once again, the need for care in considering possible changes to the 2008 Conditions and the implementation of any such variations or revocations.

179. A number of research bodies, including NAAPA, medical professionals and residents argued in favour of strengthening the 2008 Conditions, on the basis that while reductions in violence have been experienced, the reported figures of non-domestic assaults remain above the State average. Some submitters propose that the lockout and closing time conditions be brought forward to 12am and 2am respectively. Others suggest that a reduction in trading hours (to an unspecified time) should be imposed until the rate of assaults in the Newcastle CBD falls below the State average. Others argued in favour of extending the conditions to venues in Hamilton⁸⁹ and to areas beyond. This has already occurred with the imposition of the Hamilton Conditions in 2010.

Newcastle City Council

180. The Council's written submission notes the marked decline in non-domestic alcohol-related violence since the introduction of the 2008 Conditions. It said that Newcastle's revitalisation has accelerated considerably during the last decade and Council's view was that a well-managed night-time economy has a valuable role to play in the urban and economic renewal process. Council supports measures to address excessive alcohol consumption and crime. It advocates that a balance be achieved of the relevant factors. Various

⁸⁹ See, for example, the submissions of Dr N G Humphreys, Mark Burslem, David and Catherine Turner.

recommendations are put forward which are consistent with Council's Safe City Plan 2017-2020 and its draft Night-time Economic Strategy 2018-2021.

181. The latter of these includes ways of making Newcastle's prominent nightlife areas more diverse, more inclusive and safer. It advocates greater diversity in late-trading offerings and options beyond those focused solely on alcohol. That strategy is due to be put before Council in March 2018, recommending its release for public comment.
182. Council's submission makes a number of recommendations.
183. One recommendation is that there be a requirement that Plans of Management be more robustly prepared and vetted by Liquor and Gaming NSW, that the frequency of audits be replaced with a tiered framework of compliance audits that rewards venues that show good management practices and harm-reduction measures. The Council's view is that Plans of Management have historically been highly variable and the assessment of them has been neither consistent nor clear.
184. Council supports a 1.30am lockout time, an 'homogenised' 3.30am closing time and drink restrictions commencing at 10pm. Bringing all closing times to 3.30am would be to grant an extension to those which presently trade until only 3am. Its position, however is that mixed drinks with more than 30mls of alcohol (ie cocktails) ought be permitted to be sold until midnight.
185. Council controls trading hours by its development assessment process. Council anticipates assessing venues as being of low, medium or high impact and imposing trading hours accordingly via exemptions which could be revoked for failure to comply with criteria to be devised. It proposes that low impact venues be permitted to trade beyond midnight within this system.
186. Council accepts that the shared radio network requirement has been rendered obsolete by new communication technologies.
187. It favours the grant of exemptions to venues which have demonstrated good management policies and practices. Venues that achieve this by satisfying the

criteria for low impact status which would be designed to create incentives for venues to adopt improved practices. A model is put forward outlining various characteristics and impact indicators that could be adopted. Council's suggestion is that this be done on a trial basis, with exemptions being for a period of 12 months, to be reviewed annually.

188. The last six of Council's recommendations are directed in large part to investigation, research, evaluation and collaborative input directed to understanding more about the effectiveness of liquor licensing reforms in Newcastle following the 2008 Conditions. It is said that a revised package of liquor conditions for Newcastle can only be realised if grounded in a strong research base. Those activities are ones undertaken by Liquor & Gaming NSW. I do not presently see a need for the duplication of those functions.
189. Council's submission contained many interesting ideas about different approaches to liquor licensing and regulation. I think it preferable that I work within the existing structure that Parliament has prescribed and to focus on the 2008 Conditions which exist under that regime. It goes beyond my Terms of Reference to consider widescale reforms to the statutory licensing regime. They are matters for the Executive and for Parliament. I consider the existing statutory regime adequately to provide for the kinds of factors to answer the Terms of Reference.
190. Of considerable importance in this Review is Council's plans for the City's event capacity, its approach to the night time economy and its desire for the planning and amenity of the CBD and surrounding areas. I have given considerable weight to Council's views of these matters, to which I consider it proper to afford considerable deference.

Newcastle City Local Area Command: NSW Police

191. The Newcastle City Local Area Command strongly supports the retention of the 2008 Conditions, and firmly resists any alteration at all to them. If anything, it says, consideration ought be given to strengthening the conditions by bringing forward the time at which licensed venues must cease to trade (2am was suggested) and imposing the lockout at an earlier time (perhaps midnight).

192. The Newcastle Police were the original complainants to the Board in the process which led ultimately to the imposition of the 2008 Conditions. The Police were then, and remain, firmly of the view that the lived experience of those 2008 Conditions is that they reduced alcohol-related violence in the Newcastle CBD. Data produced by the Police tended to support the results of the scholarly work to which I referred earlier in this report and was to the effect that before imposition of the 2008 Conditions, there was a much higher incidence of alcohol-related violence, and harm in a general sense, than afterwards.
193. A contributor to the reduction in alcohol-related violence and harm is the model of policing adopted in Newcastle since imposition of the 2008 Conditions. ‘Consequence policing’, as it is called, seeks to change behaviour by ensuring consequences for anti-social behaviour. It has a preference for the laying of charges for offensive behaviour, rather than, for example, repeatedly exercising move-on powers, or intervening in a way avoids a consequence for unlawful behaviour. Commander Gralton, the head of the Newcastle City Local Area Command until 30 November 2017, is an advocate of that model, which, he says, is part of the cause of the serious reduction in alcohol-related violence within his command area.
194. The Police point to four critical events which marked falls in the occurrence of alcohol-related (non-domestic violence) assaults. The first is the imposition of the 2008 Conditions in March 2008; the second is the introduction of consequence policing in early 2011; the third is declared premises being ‘put on notice’; and the fourth was the introduction of ID scanning and group banning. The last two of these require explanation. In late 2012, Commander Gralton said that the operators of licensed premises declared as violent venues under s 11(1A) and Schedule 4 of the *Liquor Act* were put on notice that the law would be strictly enforced against them.
195. ID scanning and group banning is something with which I deal further in discussing the submissions made by and on behalf of hoteliers. The Police expressed a favourable view of that system. It operates within an area styled the ‘NEP’. Operators of about 10 venues in that precinct operate on a shared basis,

an ID scanning system, which assists in identifying persons who have engaged in anti-social behaviour, or who have been identified as more likely to engage in aggressive, violent or anti-social behaviour. The system bans some such people from entering premises involved in the arrangement. The Police see this as a beneficial initiative, but say its integrity is crucial, as is its proper and responsible management. The Police are not involved in that system, but there is consultation with them from time to time about its operation. The Police see this system as so successful that they would wish to have made a licensing requirement that all venues install ID scanner systems as has been required in areas of Sydney. I explore this topic later in this report.

196. Many individual venues who are not participants in the NEP have stand-alone ID scanners. The weakness of them, it would seem, is that without the experience of other venues and a sharing of knowledge and data, the system is less informative and, moreover, any system of banning is far weaker, given it can only apply to one or very few licensed premises.
197. The Police raised with me concerns as to PSAs (which I have explained above are Primary Service Authorisations) available under s 24(3) of the *Liquor Act*. A PSA allows venues to sell or supply liquor to patrons without it being provided with another product or service. However, the primary purpose of the business or activity carried out at the premises cannot be the sale or supply of alcohol, whether or not a PSA is held.
198. The Police gave as an example of this, a venue operating under a restaurant licence but also holding a PSA that was found to be operating more in the nature of a nightclub. *Soho on Darby* in Cooks Hill was recently the subject of an application to ILGA by Liquor and Gaming NSW for revocation of its PSA. The application was based on two contentions. *First*, that the primary purpose of the business is a licensed restaurant, however, in reality, the premises was operating more like a bar or nightclub, with the primary purpose of selling liquor. Liquor & Gaming NSW relied upon observations made by Police in support of its application, including that the vast majority of patrons were on the first floor of the venue, with DJ entertainment being provided, with no tables or chairs in that area, few (if any) patrons could be seen consuming a meal, and no

staff visible in the kitchen. A staff member said that a limited menu only was available. *Secondly*, Liquor & Gaming NSW argued that the numerous incidents of alcohol-related disturbance on or connected to that premises were a consequence of the way in which the licensed business is operated.

199. ILGA found:

... there is insufficient evidence ... to conclude that the licensed business on the whole has operated outside of the scope of authorisation provided by its on premises (restaurant) licence. The evidence or material provided by the Applicant gives rise to a reasonable suspicion that the sale of liquor and the provision of live entertainment are the dominant purposes of the business in the evenings.

200. Nevertheless, ILGA revoked the PSA on the following grounds:

The evidence and material ... indicates that the patrons of this small licensed restaurant are giving rise to a disproportionate level of anti-social conduct and adverse interaction with law enforcement that is at odds with the public interest. The Authority is satisfied that the preferable course of action to serve the public interest would be for the Primary Service Authorisation to be revoked. This will ensure that the licensed business operates more comprehensively in the mode of a licensed restaurant, with the service of liquor ancillary to the service of food at all times.

201. The two licensees of the venue were, more recently, convicted of selling and supplying liquor contrary to authority. It had been alleged that the venue was operating as a nightclub.

202. The solution to the problem of ‘creep’ in connection with venues holding PSAs is diligent policing and not, in my view, a change to the policy underlying it. PSAs are granted on the basis that the primary purpose of the business or activity carried out on the licensed premises is not at any time the sale or supply of liquor, and that any authorisation to sell liquor otherwise than with, or ancillary to, the primary product or service provided on the licensed premises is subject to the requirement that the primary product or service must be available at all times when liquor is being sold under the authorisation. If the venue seeks to do otherwise, then statutory sanctions are available. The case cited above is an example of this. The resolution of that case turned upon the evidence before ILGA.

203. I also received a submission from Acting Commissioner David Hudson APM, on behalf of the NSW Police Force. That submission strongly supported the retention of the 2008 Conditions on the basis that any watering down of them will inevitably result in a significant increase in the number of assault victims.
204. The policing perspective is a very important one in licensing decisions. I do not disagree with what was submitted. There are, however, factors are than policing considerations which bear upon the matters the subject of my Terms of Reference. Those other factors need to be weighed against real and pressing concerns about public order and safety.

Newcastle and Hamilton Liquor Accords

205. I met with Mr Russell Richardson, Chairman of the Newcastle Liquor Accord, and Mr Steve Hunt, Chairman of the Hamilton Liquor Accord in Newcastle on 29 November 2017. Mr Richardson owns three venues in Newcastle, Argyle House, the Cambridge and the King Street Hotel, and one venue in Hamilton, the Green Roof Hotel. Mr Richardson was the owner of the King Street Hotel at the time of the imposition of the 2008 Conditions, and has since acquired the other licensed venues. Those other venues in Newcastle were also party to the Board's decision.
206. Mr Hunt, by his company Hunt Hospitality, owns and operates five hotels, including the Kent Hotel in Hamilton, the Duke of Wellington in New Lambton, the Rutherford Hotel in Rutherford, the Lakeside Village Tavern in Raymond Terrace and the Ocean View Hotel in Urunga. Mr Hunt previously owned and operated the CBD Hotel, a venue which was also the subject of the Board's decision.
207. Mr Richardson is opposed to the 2008 Conditions, but acknowledges that some good things have come as a result of them. He says that the reduction in trading hours did have a significant effect upon alcohol-related incidents. Mr Richardson recorded a drop in patronage at his venues after the conditions were introduced, consistently with what is said in the June 2017 submission of the AHA NSW. Once the restrictions were introduced in Sydney, he observed a leveling out, but those incidents did not return to their pre-2008 levels.

208. Mr Richardson says that the habits of young people have changed, as have the ways in which they treat a night out. It is not only the patrons that have changed, but also the venues. The venues today are operated better and differently, he says. The types of venue owners and operators have also changed for the better in his view.
209. Both Mr Richardson and Mr Hunt are a part of the NEP. Mr Richardson, along with the owner of MJ Finnegans, Mr Paul Hunter, formed a company known as the Newcastle Entertainment Precinct Pty Ltd. It owns and operates an ID scanning system for member venues and to oversee the responsible sharing of data between systems in the different venues. It does so for a precinct designed to share banned patron information between particular venues to provide a safer environment.
210. Both Mr Hunt and Mr Richardson express the view that the scanning system works effectively by identifying ‘troublemakers’ and supporting a private barring system. Mr Richardson says that the scanning system also acts as a deterrent to individuals who may not want their faces and identities recorded because of being engaged in illicit or anti-social activities. Not all operators in Newcastle are members of the NEP.
211. Mr Richardson says that scanners are not a cure-all, and that operators need to believe in the ethos in it to be a part of it and to consistently meet the standard considered appropriate by those operators who are presently a part of it. There needs to be trust between venues that each will responsibly and not arbitrarily conduct itself. Mr Hunt says, and I agree, that the system’s efficacy would be threatened if venues were permitted to join whose licensees lacked the high standards and the necessary discipline properly and responsibly to bar patrons and to keep and share sensitive information.
212. Mr Richardson said that the shared radio network the subject of condition 10) is outdated. The venues, especially those involved in the NEP, are connected by ID scanners and by phone. Mr Richardson considers the Plan of Management audit condition to be unnecessary and overly burdensome. Mr Hunt says that the Plan of Management is a useful tool in planning and management between

owner and licensee, but there is a need for common sense in respect of it. Mr Richardson wishes to be able to serve cocktails and shots until midnight. He suggests that there be a pre-approved or stated cocktail list similar to that in existence in Sydney, from which cocktails can be served until midnight.

213. Mr Richardson says that the restriction on ready to drink (RTD) packaged beverages of greater than 5% is problematic because only one company sells drinks at that strength. Mr Richardson says that that stockpiling should not be an issue unless the venue is badly run. He would like to see the stockpiling rule relaxed to midnight.
214. Mr Richardson does not think that there ought, at this stage at least, be any reconsideration of the lockout and cessation of trade conditions, not because he was a supporter of them, but because any relaxation of them could create uncertainty in the City in the way that the imposition of the 2008 Conditions did. This, he says, is detrimental to the perception of Newcastle as a cosmopolitan, metropolitan, forward-thinking city. But patrons, he says, seem to have adjusted to the different opening hours and further changes to them now risks uncertainty.
215. Mr Hunt seeks that the time at which the lockout commences be synchronised at 1.30am and that the standard closing time be made 3.30am closing time for all licensed venues. He also seeks a relaxation of drink restrictions, allowing licensed venues to serve cocktails until 1am, and to permit bar staff to sell more than four drinks to one customer.
216. The different lockout and closing times in Newcastle may lead to some confusion amongst patrons. That may be case, but it is necessary to bear in mind that it is not simply licence conditions that dictate a venue's trading hours. Development approval, lease conditions and an operator's own business model all impact upon those matters. Uniformity, even if the licence conditions were to change, cannot therefore be guaranteed. Furthermore, as I have already observed above, having times for the commencement of the lockout and for closing times which are not uniform may serve to reduce the load on police and transportation at these crunch points.

Mr Tony Brown

217. I met with Mr Brown on 29 November 2017 in Newcastle. I had met him initially in 2016 in the course of my assisting Mr Callinan AC in his review.
218. Mr Brown has a deep and important interest in the location and operation of licensed venues, the way in which those venues are regulated and operated and in minimising alcohol-related harm to his community. He has lived in Newcastle most of his life. He was a participant in the proceeding before the Board which led to the imposition of the 2008 Conditions. Mr Brown expresses frustration that the research and data which shows that the 2008 Conditions were successful in reducing alcohol-related violence are not given paramountcy. They are not the only reasons why the 2008 Conditions ought remain untouched in his opinion, but they justify, he says, a further reduction in the hours during which alcohol is available in Newcastle and a bringing forward of the time at which the lockout comes into operation (to 2am and midnight respectively).
219. I do not perceive matters in exactly the same way as did Mr Brown. The reputable scholarly work on the effect of the 2008 Conditions, so far as I could tell, has been treated by the decision makers (including ILGA) as having cogency. That does not mean either that the opinions and data in those studies are the only factors to be considered in policy-making and licensing enforcement. And nor does it mean that the studies ought be treated as definitive in a way that they do not claim themselves.
220. Another of Mr Brown's principal contentions is that the community ought be more involved in what he describes as a collaborative approach to liquor licensing and regulation. He seeks procedures by which community representatives would have 'a seat at the table' with Government, to decide matters of liquor licensing enforcement. One reason for Mr Brown's desire for greater collaboration was borne of his frustration that the data and research showing a marked reduction in alcohol-related violence after the imposition of the 2008 Conditions had not been given sufficient importance and weight in public decision-making. One difficulty with that position as I see it is that the liquor licensing regime in New South Wales, as elsewhere, does make

allowance for public comment and participation.⁹⁰ The need for finality in decision-making and orderly procedures necessitates that public views be distilled in this necessarily aggregated manner. Just as elected representatives must mediate between the diverse views of their constituents, so too community views must be channeled through orderly means. Public decision makers face the difficult task of weighing considerations which are often in tension with each other. The task involves value judgment, and the law affords an area of decisional freedom to such decision-makers.

221. There is some force in my view in Mr Brown's point that the demonstrable success of the 2008 Conditions in reducing alcohol-related violence ought be given weight, and perhaps considerable weight, in any reconsideration of licensing arrangements in Newcastle CBD and surrounding areas. He urges that a focus be maintained on the large number of persons who have been saved from being victims of assault or other anti-social behaviour in the period since the 2008 Conditions were imposed. His desire to see as many as possible avoid unnecessary injury and harm comes from his very commendable desire to protect others, especially young people, from preventable harm.
222. Where Mr Brown's arguments face opposition is their intersection with other, contrary, contentions which also have merit. Patrons of licensed venues, often younger people, assert an entitlement and a desire to socialise and spend their leisure time at licensed venues, and to do so at night and into the early hours of the morning. Most, if not all, would of course not justify or condone violent or anti-social behaviour, but they do assert that entitlement even though it does carry with it, risk of harm, and indeed, a greater burden on policing and health services. There are wider community interests, by which I mean interests and causes not limited to any one age group, who wish to have greater choice of the

⁹⁰ See, for example, s 48 of the *Liquor Act* makes provision for a process by which ILGA is 'made aware of the views of the local community' by community impact statements (see also 'Consideration social impact under Section 48(5) of the Liquor Act 2007'); s 79 concerns the making of complaints by 'a person' that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed; s 116 allows a group of persons who, in the opinion of the Authority, represent the interests of the community in that area, to make a request that an area be declared a restricted alcohol area; under s 132, a community or residents' group with an interest in alcohol-related harm or the amenity of the relevant local area may be a party to a local liquor accord; and s 136A(2) states that a community representative for the relevant area may participate in their local precinct liquor accord or community event liquor accord.

kinds of alcoholic drinks that are available later at night than the 2008 Conditions allow. Those conditions preclude the sale of cocktails after 10pm. They preclude the sale, for example, of malt whiskies, and they preclude the sale of shots. The last of these seems to be the most controversial. But the first two might seem to be ordinary expectations of conservative or moderate drinkers. Many people prefer to consume spirits or cocktails than beer or wine for reasons other than the higher alcohol content of the former.

223. Mr Brown lodged a thoughtful and wide-ranging written submission. It seeks a half hour reduction in 'last drinks' time for late trading premises until the current rate of assaults and health indicators significantly improves, 'sensible' limits on the grant of PSAs, retention of the drink restrictions condition, more and better resourced local licensing police and a review of alleged 'fatal flaws' in the reactive risk-based approach (his terminology) to compliance by Liquor and Gaming NSW.
224. Part of Mr Brown's submission seeks to raise matters beyond my Terms of Reference, such as ILGA's capacity to sustain its 'alleged "fierce" independence', the way in which the AHA conducts itself in these matters (which Mr Brown criticises), 'jurisdictional and related errors in this review process' and Newcastle City Council's alleged unwillingness to allow a public briefing of all elected councilors by the 'Lastdrinks Coalition'. These and many other matters raised by him are not matters which are within the proper scope of my Review.
225. Mr Brown's central points include that the alcohol industry is driven by commercial self-interest; that the majority of Newcastle citizens expect a strengthened package of unbiased evidence-based laws that will further drive down assaults and related harms; that only a small number of people are frustrated by the existing modest controls on the provision and duration of higher strength drinks; and assertions that Newcastle has matured or grown up are unquantifiable.

Hunter New England Local Health District

226. Hunter New England Local Health District, in its written submission, point to the negative impacts of alcohol misuse on health and wellbeing, on community order, and safety. The District says that alcohol has posed a greater problem historically in the Hunter New England region than New South Wales as a whole. The District has an interest in the subject matter of this review, given its statutory function, which includes to promote, protect and maintain the health of the community.⁹¹ The District repeats the findings of research which, as I have already stated, shows a likelihood that the 2008 Conditions caused or contributed markedly to the reduction of alcohol-related violence in Newcastle. That manifests itself in both a reduction in police interventions, and also in the number of presentations to hospital emergency departments. The District opposes the removal or reduction of the 2008 Conditions, and says they ought to be enhanced.
227. The District says that the 2008 Conditions have brought about an environment conducive to the continued and enhanced operations of the licensed businesses the subject of those conditions. All but one of them, it says, continues to trade. That is not entirely correct. While some venues may in name be the same, the reality is that many others have changed ownership or are fundamentally different from how they were in 2008. The submission goes on to observe, correctly in my view, that the number of premises licensed to serve alcohol in Newcastle has increased, and that the improved safety and amenity in Newcastle since 2008 has enabled the City to benefit from the growth in this form of activity. The District points out that many of these new licensed premises are small bars or have PSAs, which demonstrates ‘marked diversification opportunities for the consumption of alcohol in Newcastle since 2008, a goal shared by local and state Governments and the community’.
228. The submission cites credible research to the effect that an increase in trading hours would bring about an increase in alcohol-related violence. The District strongly opposes any changes to closing times and the types of alcoholic products sold on the basis that they ought be the same as applicable in Sydney

⁹¹ *Health Services Act 1999* (NSW) s 9(b).

CBD. It says there is no independent evidence justifying such an approach. The District says that the conditions concerning the auditing of Plans of Management are a proven strategy in both public and private organisations for achieving organizational performance and compliance benchmarks. The District supports that condition in its current form, but acknowledges that there could be tailored treatment for late-trading, high-risk premises and those with a poor compliance history.

229. The District's written submission made a number of recommendations which included that the 2008 Conditions be retained in full, and that additional licence conditions directed to alcohol-related harm be imposed.

AHA NSW

230. The AHA NSW made a submission dated 22 June 2017. It pre-dated the establishment of this Review. It proposes that ILGA, on its own initiative, 'take action' under s 53(2)(b) of the *Liquor Act* to vary or revoke a condition of liquor licences. In the period during which the 2008 Conditions have operated, the AHA NSW says, Newcastle's CBD experienced a substantial reduction in anti-social behaviour, non-domestic related assaults both in and away from licensed premises. At the same time, Newcastle CBD's has experienced significant growth, the removal of the heavy rail, as well as development. So much, in my view, is correct.
231. Some of the measures comprising those conditions have, that body says, become outdated or superfluous. So too the 14 venues the subject of the Board's 2008 decision have, it is submitted, made substantial changes since 2008. There have been changes in licensees, owners and practices. I summarised them in paragraph 86.
232. ID scanning has been introduced voluntarily in many venues. The management and compliance of licensed premises generally have been improved, and there have been regulatory and statutory changes, including the introduction of the three strikes disciplinary scheme (Part 9A of the *Liquor Act*, periodic licence fees (Part 2A of the *Liquor Regulation*) and the violent venues scheme (Schedule 4 of the *Liquor Act*). I have said something above about each of

these because they too form part of the changed circumstances since the 2008 Conditions were imposed.

233. The AHA NSW seeks what it describes as the following ‘modest variations/revocations’:

- a. Revocation – outdated
 - i. Shared radio network
 - ii. Plan of Management audits
- b. Variation – to align with other jurisdictions
 - i. Drink restrictions from 10pm – to commence from 12am
 - ii. Drink restrictions – quantity
 - a) Adaptation of Sydney CBD ‘cocktail list’ for cocktails, martinis, single nips and other drinks not designed as to promote rapid consumption or intoxication
- c. Introduce the ability to apply for exemptions.

234. Only the last of these requires explanation because the others I have already discussed already in the course of this Report. As I understood it, the exemptions contemplated by the AHA NSW were to introduce a degree of flexibility into the licensing system. Such exemptions might be granted during major events, on special occasions or to relieve a well-managed venue and one with a good compliance history from one or more of the licence conditions that would otherwise operate. The benefit of exemptions from a public administration perspective is that they can be given to some premises and not others, and given without sacrificing or excusing compliance with the substantive licence obligations. It has the attribute of flexibility, and permits the regulator to retain the underlying substantive licensing regime. It is, however, not a system which is free from weakness. Experience elsewhere (principally in Melbourne in 2008⁹²) teaches that if exemptions are granted too widely or too regularly, it may thwart the efficacy of the underlying regulatory purpose.

⁹² For a discussion of this, see paragraphs 3.36 to 3.49 of Mr Callinan AC’s September 2016 report.

Part Four – Identification of Options and Advice

235. My Terms of Reference direct me to compile, summarise and distil relevant material and to identify and advise upon statutory and other measures open to ILGA. The form which this part of the Report takes is to identify and advise upon the options open to ILGA with respect to the licence conditions of venues in the Newcastle CBD and surrounding areas.
236. It is open to ILGA, in my opinion, to vary or revoke the licence conditions in the ways identified below. In discussing each basis for variation, I explain the reasoning which supports it. There are stronger arguments in favour of some adjustments than others. Where that is the case, I make this clear.
237. The exercise in which I have been engaged is not one which can be determined exclusively by any one of the factors mentioned in the objects to the *Liquor Act*. Some submitters assumed considerations of community safety ought to be determinative of the question whether the 2008 Conditions ought to be varied or revoked. Others suggested that changes sought by the AHA NSW to the licensing conditions were ‘publican demands’ prompted by self-interested commercial considerations. Yet other submitters suggested that widespread community endorsement of the 2008 Conditions ought to result in their retention – unaltered – in their current form. The objects of the *Liquor Act* treat all these factors as ones which bear upon the statutory regime and its implementation. No one factor is afforded paramountcy, and a balance must be achieved between, for example, community expectations and needs, the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries and a desire for a flexible and practical regulatory system with minimal formality and technicality.
238. The advice I set out below seeks to achieve a balance which accords with the objects of the *Liquor Act* and the factors to which persons exercising functions under that Act are to have due regard.

Radio network

239. The requirement that there be a shared radio network is outdated. The use of radio transmitters and receivers has in large part been superseded by the availability of mobile telephones and communication apps such as *WhatsApp* and *Facebook Messenger*. Where once only landline telephones might be used to communicate in urgent circumstances over distances and only between two people, now licensees can communicate with mobile telephones and using Apps and texts facilities which allow instant communication, whether between individuals or on a group or broadcast basis. The advantage of a radio network, and perhaps the only part of it which has not been wholly superseded by newer technologies, is that it was a system dedicated to one particular purpose and was more difficult to ignore or overlook than a mobile telephone ringing or the notification of receipt of a text or other message. It is not difficult, for example, not to hear a mobile telephone or notifications of incoming text messages in the noisy and busy environment of a well-patronised late night venue.
240. Mobile telephones and all their features have become the primary medium of communication. To require the maintenance and use of a shared radio network in addition to this natural and primary mode of communication risks burdening licensees unnecessarily so as might subvert the very purpose the condition seeks to achieve, namely efficient and expeditious communication between licensees. The more forms of communication licensees are required to use, the less likely any one particular form is likely to receive the attention required. The simplicity of a mobile telephone is preferable to a licensee being obliged not only to carry a mobile phone but also to have a radio transceiver for the shared radio network, as well, perhaps, as a transceiver for internal communications with security providers and the like. The reality that, apart from the shared radio network, licensees might well have two other modes of communication, works against the intent of that condition.
241. If the purpose of the condition was to ensure that licensees have a dedicated frequency and means of communication in times of emergency, or to identify troublesome individuals or groups of people, then that objective is met by mobile telephones and in some cases by the use of ID Scanners and associated

technology. Not all venues in the Newcastle CBD use ID scanners. Fewer venues use that technology in conjunction with a data network such as that established by the participants to the NEP. That system is in my view a very effective way of singling out individuals who are more likely than others to behave in an anti-social manner.

242. It is open to ILGA to revoke condition 10. The case for revocation is in my opinion a strong one with respect to those venues which participate in the NEP, and less strong (but nevertheless justified) for those who can demonstrate the efficacy of their ID scanners and associated arrangements. If a number of licensed venues have this condition removed, then it would be futile to retain it for the remainder.

Plan of Management Audits

243. Plans of Management serve the purposes of compelling the licensee to turn his or her mind to the day-to-day practical arrangements required to discharge obligations arising under the *Liquor Act*. The Last Drinks Coalition describes the quality of these plans as ‘highly variable’. Such plans assist, some venue owners told me, in communications with the licensees for those venues about management and in discussions with senior staff. That process results in a document with which there must be ‘continuous compliance’ and it must be audited quarterly by a person not employed in the hotel or in an ongoing financial arrangement with it. The nature of the audit and its thoroughness is not prescribed. Nor is the expertise of the auditor. The benefit of the audit in these circumstances is questionable.
244. Licensees for the most part seem to consider the Plan of Management to be a useful tool in the operation of their businesses and to form part of their compliance activities. Whether there is utility in the requirement that the Plan of Management be audited, and quarterly, by some third party of unknown and unspecified skill, experience or expertise is a different question.
245. Licensees say the audit requirement adds little to the condition to have a Plan of Management and has ‘no real world benefit’. Having another person ‘audit’ the Plan may involve little more than a perfunctory review by someone with less

knowledge of the venue and its operations than the author of the Plan. The audit in any event, they say, imposes an administrative burden and a cost of doing business that offers little benefit in a management, regulatory or compliance sense.

246. I am of the opinion that the requirement of quarterly auditing of Plans of Management is disproportionate to the benefit which the frequency of such audits deliver. It would be preferable if audits were required to be done annually only. There is a greater prospect of the audits being treated more seriously if they are conducted less regularly, and less like a routine and regular process which is cursory in nature. Inspection of Plans of Management can, in any event, be effected by authorities pursuant to s 21 of the *Gaming and Liquor Administration Act 2007* (NSW) which permits access to business records of licensees.
247. Condition 3, whilst requiring licensees to settle the contents of the Plan of Management with the Newcastle City Local Area Command and Mr Brown at its development stage, placed no ongoing requirement for licensees to liaise with Police as to the ongoing status of, or in relation to, any changes to it. There may be, I understand, a practice however, of consulting with Police and with Liquor & Gaming NSW in the development of those plans.
248. One alternative or further variation ILGA might consider making to the condition is that the auditor be a 'suitably qualified person' or that they possess particular skills, expertise or experience. Doing so may assist in making the audits less perfunctory and an occasion for considered reflection. Whether or not that be done, quarterly audits of Plans of Management are in my view too frequent.

Drinks restrictions

249. Many submitters (Keep Sydney Open included) and the petitioners, seek drinks restrictions which are less restrictive than the 2008 Conditions. Various arguments are advanced, including that: night-time workers are not accommodated by restrictions commencing at 10pm; nightlife needs to be more balanced; and that doing so will contribute to the night-time economy. More

general arguments were made about Newcastle being brought into the modern era as a world-class city.

250. There is no scholarly or other work of which I am aware which directly links drinks restrictions (or the absence of them) of the kind imposed by Condition 6, to alcohol-related violence. There is, however, a body of work which shows that the greater the accessibility to and availability of alcohol, the greater the alcohol-related violence. That would logically include drinks with a higher alcohol content, or ones amenable to rapid consumption (especially shots).
251. Condition 6 imposes drinks restrictions at an earlier time of the evening than in the Sydney CBD and other entertainment precincts such as Kings Cross. There is no clear reason why the rules that operate in Newcastle with respect to drinks restrictions ought align with those in the metropolitan areas of Sydney. The two places are two hours' drive distant, and one is a regional city (albeit a very large one) and the other is a State capital city and the largest city in Australia.
252. The experience, however, in Sydney is of some assistance in asking what restraints might be placed upon the drinks that might be served late at night and in what quantities and forms. In Sydney, drink restrictions of the kind specified in Condition 6 commence at midnight. Some difficulties and anomalies were experienced after their introduction there. The prohibition on the sale of shots after 10pm, for example, precludes the sale of a single malt whisky or other spirits which are consumed by many without producing problems of the kind to which the 2008 Conditions were directed. The restriction on the sale of mixed drinks with more than 30mls of alcohol precludes the sale of cocktails with more than one alcoholic component after that time.
253. 10pm is an early time from which to preclude the sale of these drinks. It is well short of midnight from which time the studies say the risk of alcohol-related violence markedly increases. Young people who, demographically speaking, tend to be the main patrons of venues late at night consider 10pm to be too early a time to preclude the sale of shots. It is early too for those who have their evening meal later in the day, or those who wish to drink after dinner. For this

section of the community, drink restrictions coming into effect at 10pm is something which is not consistent with their expectations.

254. The AHA NSW submits that drink restrictions ought be less restrictive. The Newcastle City Council also submits that the drink restrictions condition ought be varied along similar lines to allow the sale of mixed drinks with more than 30mL of alcohol to midnight. The petitioners seem to agree.

255. In the Sydney CBD, the rules that have operated in this regard since September 2017 are as follows.⁹³

The following drinks must not be sold or supplied on the licensed premises on any night of the week after midnight until closing or, in the case of premises that trade 24 hours, between midnight and 7am (except in small bars):

- a. any drink (commonly referred to as a ‘shot’ or a ‘shooter’) that is designed to be consumed rapidly*
- b. any drink containing more than 50% spirits or liqueur
- c. any “ready to drink beverage” containing more than 5% alcohol
- d. any drink prepared on the premises that contains more than 30mls of spirits or liqueur (e.g. ‘doubles’)*.

Restrictions annotated with an * above do not apply to cocktails, provided that certain restrictions are met regarding the sale of cocktails.

In addition, the following drink quantity restrictions apply after midnight until closing or 7am (whichever is the earlier) (except small bars):

- Between midnight and 2am:

No more than four alcoholic drinks, or one bottle of wine, can be sold or supplied to the same person at a time.

- Between 2am and 7am:

No more than two alcoholic drinks can be sold or supplied to the same person at a time

If the venue is subject to the cease service (last drinks) condition, then no alcohol may be sold or supplied between 3am and 5am.

⁹³ Liquor & Gaming NSW, Fact Sheet, Special Licence Conditions for Premises in Kings Cross. Available at <https://www.liquorandgaming.nsw.gov.au/Documents/liquor/law-and-policy/fs3045-special-licence-conditions-for-premises-in-Kings-Cross.pdf>. Accessed 4 March 2018.

256. It is open in my view for ILGA to apply these arrangements with adaptations to Newcastle. To do so better singles out than presently the kinds of alcoholic drinks which are less closely associated with rapid consumption and intoxication than others and which moderate drinkers commonly enjoy. There are many reasons why such an adjustment might be considered desirable: the consumption of such drinks is an ordinary expectation of moderate drinkers in this country and overseas; allowing their sale after 10pm facilitates the objectives for the night time economy stated by the Newcastle City Council; and there is a prospect that if licensed venues are permitted to sell drinks of this kind after 10pm that the mix of patrons in those venues will be more varied than would otherwise be the case (it seems to be accepted by many that a mix of age groups in licensed venues is one way in which anti-social behaviour might be reduced).
257. Shots in my view are in a different category. Their capacity to produce intoxication rapidly means they are more likely than other kinds of drinks to give rise to harm. RTDs too carry heightened risk because they are sweet and it is easier to consume them without being conscious of the alcohol content.
258. My view is that there is a case for adopting the list I have mentioned so as to permit the sale and supply of spirits and cocktails after 10pm and until midnight.
259. There is also a case, albeit one attended with greater risk of harm, in permitting the sale or supply of RTDs and shots on the same basis. I am not as well placed as ILGA to assess those risks and weigh them against any benefits of permitting their sale or supply. It is more accustomed than I, and better equipped, to decide them.
260. I do not presently see a case for varying the current drink restrictions after midnight. To do so could have a similar effect to extending trading hours, something which the research suggests would risk an appreciable increase in alcohol-related violence. After midnight, there is a greater inherent risk that alcohol consumption will lead to alcohol-related violence.

261. There is an expectation in the community⁹⁴ that cocktails and spirits be available for sale after 10pm. That expectation is held by fewer people after midnight. The real difficulty with permitting the sale of such drinks after midnight is that it is in tension with the object of the *Liquor Act* to minimise harm associated with misuse and abuse of liquor⁹⁵ and to ensure the sale and consumption of liquor contributes to, and does not detract from, the amenity of community life. Midnight would seem to be the point at which those important objects come into real tension.

Trading hours

262. Some few exceptions aside, no venue owner or licensee (and no industry body) suggested to me that the hours during which licensed venues are permitted to sell alcohol ought be extended. As I explained above, the view of licensed venues seemed to be that they had adjusted to the hours prescribed by the 2008 Conditions and any change might be undesirable owing to the commercial uncertainty to which it would give rise.
263. Many who signed the petition I received gave as a reason for doing so that trading hours ought to be longer to accommodate, for example, workers who do not work ordinary hours and also the live music industry. Some community representatives seek further restrictions in trading hours, principally on the basis that the data suggests that for every hour of trading after midnight, the rate of violent incidents increases by 20%.
264. Extending the trading hours for licensed venues would in these circumstances require a compelling basis. The existing hours have proved successful in reducing alcohol-related violence to an acceptable level, since those hours were set. Venue owners, for the most part at least, do not press for any extension or indeed say they would wish to take advantage of it, and small bar licences have been introduced as a way of permitting drinking later at night. To increase the hours would, in all likelihood, lead to greater violence.
265. Nor is there a sufficiently cogent case for the reduction in opening hours, or for imposing an earlier closing time. There is a community expectation which

⁹⁴ See objects of the *Liquor Act*, s 3(1)(a).

⁹⁵ *Liquor Act* s 3(2)(a).

accords with the current trading hours. To curtail them further would be unreasonably to encroach upon the activities of those who enjoy late night and early morning activities, the nighttime economy, and the live music industry.

The Lockout

266. Nor do I consider there to be a basis to revoke the lockout condition, or vary the time at which it comes into operation. Although the evidence about the benefits or otherwise of lockouts is not definitive, it is likely in my view that the fact they keep patrons from moving between venues means that the amenity of community life in the Newcastle CBD and surrounding areas is likely to be better than without them. Police say that lockouts assist greatly with their responsibilities. Differences in the time at which lockouts commence, although productive of some confusion among patrons perhaps, will be overcome as they learn what times apply to particular venues or areas. In any event, logistical and related benefits are derived by avoiding a pinch point at which large numbers of people are likely to finish their night out and require transport home.

Other measures

267. A range of other possible variations were raised by some submitters: that condition 7 which requires alcohol sales to cease 30 minutes before closing time be revoked or reduced to 15 minutes; that the no stockpiling condition (No 8) be revoked because it is addressed by RSA responsibilities; and that the requirement of a dedicated RSA supervisor after 11pm (Condition 5) be revoked.
268. I would reject these suggestions, save for one. The benefit of an RSA supervisor will only increase if ILGA were to revoke or vary any of the 2008 Conditions. I think it important, because a return to the pre-2008 levels of alcohol-related violence and anti-social behavior must be avoided. Responsibilities of kind assist in achieving that goal. So too, the drink stockpiling prohibitions. It is true to say that they do overlap with a licensee's RSA responsibilities. That overlap, however, is desirable because no stockpiling conditions give a less evaluative criterion than the more general requirement not to serve an intoxicated person. Enforcement and proof of the latter can be difficult. Although the non-stockpiling condition can have

unfortunate consequences (eg one person seeking to buy drinks for an entire group of friends, none of whom seek to drink to excess), it retains a marked benefit, especially if any of the 2008 Conditions are varied or revoked. It serves to provide some clear limit on the quantity of alcohol which might otherwise be sold, or at least slows the rate at which that occurs.

269. The requirement that the service of alcohol cease 30 minutes before closing time is in my view something which might be varied.⁹⁶ The possible bases for doing so may be that a venue can demonstrate a good compliance history, or that live music is offered in the relevant period. That is a matter for ILGA perhaps to be decided on a case-by-case basis. There is a benefit in bar staff having this clear rule.

Epilogue

270. A return to the violence and anti-social behaviour experienced in the Newcastle CBD and surrounding areas before the 2008 Conditions were imposed must be avoided. The advice I have set out above seeks to preclude a return to that, while allowing for a variation of conditions in the interests of modernisation, and in order to permit the City to continue the responsible development of its hospitality, tourism, entertainment and live music industries, preserving the amenity of its community life and doing so consistently with community expectations, needs and aspirations.

⁹⁶ I note the provisions of s 104 of the *Liquor Act* which may to some extent overlap with this.

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Appendix 1 – Meetings

Organisation	Attendees	Position
28 November 2017		
Liquor & Gaming NSW	Sean Goodchild	Director, Compliance Operations
29 November 2017		
Newcastle City Local Area Command	John Gralton Trudi Cupples	Commander Licensing Sergeant
Newcastle Liquor Accord	Russell Richardson	Chairman
Newcastle Liquor Accord	Stephen Hunt	Chairman
AHA NSW Hunter Branch	Mr Rolly de With	President
Newcastle City Council	Mr Jeremy Bath	Chief Executive Officer
	Mr Tony Brown	
18 December 2017 (By telephone)		
Deakin University Centre for Drug, Alcohol and Addiction Research	Professor Peter Miller	Professor of Violence Prevention and Addiction Studies
18 January 2018 (By telephone)		
Hunter New England Local Health District	Mr Michael DiRienzo Professor John Wiggers	Chief Executive A/Director Clinical Research and Translation

22 January 2018		
Liquor & Gaming NSW	Mr Peter Cox Dr Gavin Faunce	Director, Program Implementation and Improvement Manager, Evaluation & Continuous Improvement
8 February 2018		
AHA NSW	Mr John Whelan Mr John Green	Chief Executive Officer Director of Liquor & Policing

Appendix 2 – Submitters

A

AHA NSW
Alcohol and Drug Foundation
Australian Health Promotion Association
Louise Askew
Australian Medical Association
Australasian College for Emergency
Medicine
Australia Professional Society on Alcohol
and other Drugs

B

Zsolt J Balogh
Marion Bannister
Matt Barrie
Dr John Boulton
L J Brennan
Dr Jennie Broughton
Bernice Brown
Tony Brown
Joan Browning
Mark Burslem

C

The Centre for Alcohol Policy Research
Norm Chapman
Maria Charlton
Dr Stanley Chen and Dr Judith Kermode
Cicada Group
Rosalie and John Collins
Dr Anthony Cook
Kevin Cooper
Naomi Cooper

D

Dr Adrian Dunlop and Ms Maryanne
Robinson
Barry Damsa
Keran and Roger Davis
Ian Dibley

E

Dr Ben Ewald

F

Dr Susan Fekety
William and Noelene Ferrier
Stephen and Barbara Ferris
Foundation for Alcohol Research and
Education
Dr Elizabeth Freihaut

G

Sean Gaddes
Dr J P Galvin
Luke Giles
Gina Gray
Sid and Susan Gray
The Great Northern Hotel

H

Hamilton Liquor Accord
Carla Hetherington
Emeritus Professor Peter Howe
Dr Nigel Humphreys
Hunter New England Local Health District
Hunter General Practitioners Association

J

Peter Jamieson
S Johnson

K

Keep Sydney Open
Milo Kei
G M Keogh

L

Last Drinks
Live Music Office

M

M J Finnegan's Hotel
Chris McDonald
Ros McKie
Peter McNair
Kay Moore
Dr Jane Morgan
Mothers and Babies Research Centre of
the Hunter Medical Research Institute

N

Geoff Nattrass
New South Wales Nurses and Midwives'
Association
Newcastle City Council
Newcastle East Doctors
Newcastle East Residents Group
Newcastle Sexual Assault Service
NSW Police Force
NSW/ACT Alcohol Policy Alliance

P

Mr Tim Pollard & Dr Wayne Mullen
Patrick Paroz
Denise and Neville Pollock
Dr Roger Przybylski

R

Karen Read
Laura Robertson
Noumali Roddenby-Jenkins
Royal Australasian College of Physicians
Royal Australasian College of Surgeons

S

Mark Sampson
Dr Peter Saul
Alan Squire
Dr Kevin Sweeney

T

Robert Tiedeman
Christopher Tonks
The Turner Family
David and Catherine Turner
Nick Turner

W

Dr Marney Wilson

Confidential submission x 3
Name Illegible x 1

I also received an online petition signed by
some 1,282 people, who I do not list
individually here

Appendix 3 – Change.Org Petition

Give Newcastle a fair go...

Dear Jonathan Horton QC

I love Newcastle. I want to see it prosper. I want to be proud of my city and I want to enjoy a vibrant night time economy.

As you carry out your review of current licensing conditions that affect the specified venues in my city, I ask you to consider all we have learned in the past decade. I ask you to allow us the freedom to live in a city that we can be proud to call home.

And Newcastle is a city. In NSW, it is second in size only to Sydney, and as such, I would like to enjoy parity with Sydney - where laws were reviewed after just two years based on modern views on restrictions - including parity of lock out times and the freedom to purchase drinks of my choice until 12am, so long as its contents are listed.

In the past decade we have experienced a decline in the occurrence of non-domestic assaults at licensed venues, but so have other areas that are comparable to Newcastle.

Parramatta, Penrith, Wollongong have also experienced declines, some of up to 70%, and these are areas with no lock out restrictions at all.

We have learned our lesson and we have grown, both as a city and as a community.

Please allow us the chance to enjoy the freedoms we have earned together.

Appendix 4 – Map of Newcastle

Newcastle Region : Licences as at 11/12/2017

