

# SUBMISSION IN RESPONSE TO THE DEPARTMENT OF JUSTICE SMALL BARS REVIEW, NEW SOUTH WALES

July 2016

## **Background**

My name is Martin O'Sullivan, and I am the President of the Small Bar Association, NSW.

By way of background, I am the owner of Grasshopper Small Bar in the Sydney CBD (Temperance Lane). Grasshopper Bar was the winner of the first Small Bar of the Year award with Bartender Magazine in 2010, and has won both the Small Business of the Year Award & Small Bar of the Year Award at the City of Sydney Business Awards.

Not only have I lived in the Sydney CBD for over 17 years, but I have worked in various bars, restaurants, nightclubs and small bars that whole time. I love this industry, am completely invested in it and its success, and strongly believe in its future.

This submission is made on behalf of the Small Bar Association, NSW. The Small Bar Association NSW represents [50-60 Small Bars including such famous and award winning venues as Pocket, Grandma's, Shady Pines, Tio's, Papa Gedes, Baxter Inn, Bulletin Place, etc...]. We believe in the need for Australia's largest city, Sydney, to have both a safe and vibrant night time economy and small bars form an essential part of it.

## **1. OBJECTIVES OF THE SMALL BAR LEGISLATION**

The Information Paper on Small Bars in NSW states that the objectives of the small bars legislation is to:

1. Provide clarity about what a small bar constitutes and thereby help to prevent 'venue morphing' (venue morphing occurs when a venue receives a liquor licence for a particular purpose, such as operating a small bar, and over time transforms into a different type of venue which may have an increased risk profile for alcohol-related violence, such as a nightclub);
2. Prompt investment in a different business model for licensed venues in NSW, encouraging more diversity in how liquor is sold and supplied and how licensed venues are operated;
3. Provide incentives for operators to establish smaller, lower risk venues across NSW; and
4. Help reduce the alcohol-related violence and anti-social behaviour that can be associated with larger licensed venues.

We broadly agree with these objectives, however the Small Bars legislation does not fully achieve these objectives for the following reasons:

### **Providing clarity about what a small bar constitutes:**

- Many of the bars, which the community would commonly consider to be “small bars”, are in fact licensed under either a Hotel – General Bar Licence or an On-Premise Licence with a PSA Authorisation. This is the very activity that the introduction of the Small Bar legislation was attempting to deter.
- The introduction of the Smalls Bars legislation has given little clarity as to what a small bar constitutes. If you consider any number of venues in the Sydney CBD which the average person would consider to be “small bars”, such as Grasshopper, Baxter Inn, Lobo Plantation, none of these venues are operating under a Small Bar licence. The 60 patron restriction of a small bar licence is too restrictive with rents in the Sydney CBD high to warrant opening a venue with a 60 person capacity – it just would not be commercially viable. Most venues continue to apply for Hotel – General Bar Licences as this licence type provides a better opportunity for a viable business, despite the greater regulatory and compliance processes they require.
- Anyone reviewing the Information Paper would be surprised to see that there are only 50 small bar licences currently on issue in NSW. Many of the bars listed in the Information Paper are so small that it is conceivable that a good proportion are unlikely to be in business within the next year. (4 have closed and another 4 are actually on the General Hotel (Small Bar) License).

### **Encourage diversity in how liquor is sold and supplied and how licensed venues are operated**

- Although small bars (and in this definition I include bars which have a capacity of 120 people and operate under a licence other than a “Small Bar Licence”) encourage diversity in how liquor is sold and supplied, we don’t believe that the legislation has encouraged diversity in how licensed venues are operated. In our view, it is a vast minority of small bars that are operating under the small bar licence. Rather, such venues are choosing other forms of licence under which the regulations for operation are not different. (General Hotel – Small Bar, Small Bar, Restaurant, PSA, Nightclub, etc...) For example, many small bar owners have a Hotel – General Bar Licence which requires a Community Impact Statement, an incident register to be maintained, are still subject to the liquor licence freeze in the Sydney CBD, and other regulatory controls that apply to premises operating under a hotel licence. This defeats the purpose of making a small bar licence available if it is not catering to the majority of venues that wish to operate as a small bar!
- The small bar culture also encourages diversity as they often need a point of differentiation to cut through and attract business. This diversity is often seen in the specialisation of drinks offered by these venues. For example, the following venues are renowned as experts and specialists in the following types of drinks: Baxter Inn - whisky; Lobo Plantation - rum; Tokyo Bird – Japanese whisky; Tio’s – Tequila; This Must Be the Place – spritzers. There are also unique offerings in the small bar culture which pair drinks and hospitality with other areas of interest. For example, the Barber Shop is literally a barber shop and a bar; Mojo sells vinyl music and is also a bar; Stitch is known for its burgers, and Grandma’s for its jaffles. As a result of this diversity, the bar continues to be raised (so to speak!) which makes for a more diverse and vibrant small bar scene.

**Prompt investment in a different business model, encouraging more diversity in how liquor is sold and supplied:**

- In our view, given the small number of small bar licences currently issued in NSW, the ordinary person on the street refers to a “small bar” not as one of the 40 bars in NSW with a small bar licence, but rather as a “culture”. This small bar culture does encourage diversity – it is generally cocktail / wine or premium spirits focused, it provides a safe and low risk environment for people to socialise and a different offering in the nighttime economy. In a small bar you often find that the person who is making your drink and picking up your glass has a vested interest in the business. It is a culture built around accessibility, intimate service, cocktails and wine, not the type of licence that you have. It is a culture that encourages the craft of the bartender or mixologist, has brought innovation to cocktail making, a resurgence of interest in classic cocktails, and a culinary approach to the making of drinks.
- The small bar culture has enabled diversity in that it encourages entrepreneurs and people who are passionate about the industry to have a go and open a business, rather than only the next of kin of pub families, private equity firms and big business being able to afford to do so. However, these businesses are NOT viable if restricted just to 60 patrons.

## **2. REVIEW OF THE SMALL BARS LEGISLATION**

The Information Paper sets out a number of areas for examination by the current review. We comment as follows:

- **Stakeholder awareness of the small bar licence and its conditions:** We note that the special licensee course no longer exists in NSW, with licensees now only required to complete Responsible Service of Alcohol training. We believe that a form of licensee training should be reintroduced. This would assist with stakeholder awareness of the types of licences that exist, as well as to help with the progress, education and capability of people in the industry. In addition, we believe the availability of small bar licences unlocks the ability of entrepreneurs in the hospitality industry to open their own businesses. These licences bring the hospitality industry to young owners besides pub families, private equity funds and big business.

We also believe from experience in the industry that there is a lot of confusion amongst OLGR, general NSW Police and the NSW licensing police about which regulations apply to the relevant forms of liquor licence. In my own experience, my venue has been visited by all 3 on separate occasions in the one evening, with differing views on what regulations do and don't apply.

- **Uptake of small bar licences:** as is evident from the short list of 50 small bar licences (really 40) currently issued in NSW, uptake of these licences has not been high, given that in the Sydney CBD small bar licences are exempt from the City of Sydney's licence freeze. The 60 patron capacity requirement would be a large factor. We find it surprising that given the exemptions from hotel licence regulation that small bar licences enjoy, including no requirements for CIS, ID Scanners, security staff etc, that more licences have not been applied for. However, we believe many bar owners are confused about the differences between small bar licences and Hotel – General Bar Licences.

- **The extent to which venues have converted from a general bar hotel licence or an on-premise licence to a small bar licence:** from our anecdotal evidence, we are not aware of any such conversions. In fact, we believe it would be the case that more people are converting to Hotel – General Bar Licences from Small Bar Licences. However, this is not the case in the Sydney CBD due to the liquor licence freeze in the City of Sydney local government area. We believe this freeze gives existing hotel licence operators a closed workshop in the city – discouraging competition.
- **The extent to which venues that market themselves as a small bar operate under a small bar licence instead of another type of licence.** As stated above, we believe there has been minimal uptake of small bar licences compared with Hotel – General Bar Licences and Primary Service Authorisations, given the small number of patrons for small bars being so restrictive. For example, neither of the two venues that I own and operate, which are known as “small bars”, operate under a small bar licence. This is so for the majority of members of the Small Bar Association NSW. The definition is just too narrow to enable a viable business to be run under a small bar licence.
- **The appropriateness and outcomes of small bar licence features and requirements, including the 60 patron limit, the automatic extended trading right and the exemption from the requirements of the CIS:** as stated throughout this submission, the 60 patron limit for small bars is TOO small. A 60 patron limit is not conducive to sustainable business, particularly given the costs of running businesses such as rent and other outgoings. We submit the 60 patron limit should be raised to 120 patrons. If this was the case, more venues which currently operate under the other types of liquor licence available would convert to small bar licences. If the patron limit was raised to 120 patrons, then we would not expect the automatic exemption from the CIS would be a reasonable expectation in all circumstances.
- **Whether the availability of a small bar licence has contributed to a decrease in the risk of and actual levels of alcohol-related violence and anti-social behaviour:** any decrease in violence cannot with any certainty be attributed to the availability of a certain type of liquor licence. The small bar licences were introduced around the same time as the *Liquor Amendment Act 2014* was introduced (known as the “lock-out laws” or “last drinks laws”), which have seen a decrease in the number of people visiting the CBD and Kings Cross areas at night since their introduction. The circumstances in which the *Liquor Amendment Act 2014* was introduced have been well documented. Since 2012, more than 30 additional regulations have been placed on licensees in Kings Cross and 21 across the broader CBD. Not only has this put an enormous burden on licensees, it has also made it near impossible to know what has contributed to improved assault rates and what has had a negligible or potentially detrimental impact. However, the fact is that the rate of alcohol related assaults in NSW was already declining significantly in the years prior. Looking specifically at the Sydney Entertainment Precinct, the number of **alcohol related non-domestic assaults in licensed premises fell on average 8.2% per annum** over the five years to September 2015. Similarly, the number of **alcohol related non-domestic assaults outside licensed premises fell on average 9.5% per annum** during the same timeframe.<sup>1</sup> While the rate of decline in assaults increased post February 2014, it is an interesting fact that assaults were on a significant downward trajectory prior to this time. Small bar licences cannot be attributed as the sole reason for this. However, we do believe that the small bar culture (as opposed to the licence) is of significant benefit in this area. As mentioned elsewhere in this submission, the small bar culture has seen a change in culture. This culture is one of inclusion and socialisation, with no television, no UFC, no gambling. It is a culture of accessibility, premium cocktails, intimate service, and attracts people from all demographics and age groups. Smaller venues

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<sup>1</sup> [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Alcohol\\_Related\\_Violence.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Alcohol_Related_Violence.aspx)

create a safe environment. It is easy to monitor patrons and recognise signs of intoxication in a small venue, and easier for staff to discharge their RSA obligations.

### **3. WHAT WOULD AN IDEAL SMALL BAR LICENCE LOOK LIKE?**

In our view, a Small Bar Licence would permit up to 120 patrons on the premises rather than the current 60 patrons. This would enable the majority of small bars to be more commercially sustainable.

We agree that Small Bars in terms of regulation should continue to be restricted to the service of food and alcohol, with no gambling.

We believe the automatic extended trading authorisation to 2am should not be automatic for **any** form of liquor licence. Rather, good behaviour and commercial practices should entitle a licensee to extend the licence by an extra hour of service for every year of responsible trading, up to a cap of 3am.

If the Small Bar Licence had a patron capacity of 120 we would expect that the CIS exemption should still apply. Local Council, Development Approval & Police is more than enough already.

We believe the extension of a Small Bar Licence in this way would prevent confusion among stakeholders, would encourage more venue owners to hold a small bar licence rather than the Hotel – General Bar Licence. It would also enable more operators to open new and innovative small venues in the Sydney CBD to encourage more vibrant and diverse patronage to the night time economy – something that this city is really craving since 2014 when the Liquor Act Amendment was implemented.

We also disagree with restrictions on the type of drinks that are able to be sold after midnight in the Sydney CBD under all liquor licences. The small bar culture is one of premium drinks, primarily spirits and wine, with bartenders well educated in their craft and creating amazing, innovative drinks offerings. However, since the implementation of the CBD Plan of Management in 2014, we are prevented after midnight (if licensed beyond that time) from selling neat whiskies, whisky (or any spirit) on ice, various liqueurs and other classic cocktails such as Negroni, Manhattans, Martinis, as the CBD Plan of Management prohibits the sale of drinks that comprise more than 50% spirits or liqueur, and drinks that do not fall within the definition of a “cocktail” (i.e. a spirit with more than one ingredient). This is absurd, discriminatory regulation, as intoxication and risk is determined by how many standard drinks have been consumed and over what time period, not by the type of alcohol consumed. Yet in a pub or hotel, you could still order a jug of beer or a bottle of wine after midnight, which both contain more alcohol than one serve of the aforementioned drinks?

As many small bars have a focus on premium spirits, we recommend that the spirits restrictions implemented in the CBD Plan of Management be wound back.

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**President of the Small Bar Association NSW**  
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