

To: NSW Government
NSW Independent Liquor & Gaming Authority
Jonathan Horton QC

From: Dr Anthony Todd Cook B.Med (Newcastle)

Re: Review of Newcastle CBD Liquor Licence Conditions

Submission

Capacity:

It is my intention to complete this submission in three different capacities as a citizen, a Newcastle CBD resident and a doctor.

AS A CITIZEN

I have significant concerns regarding the manner in which this review has come to be undertaken. I have significant concerns that there has been undue pressure exerted by the Australian Hotels Association of New South Wales (AHA NSW) on both the Independent Liquor and Gaming Authority (ILGA) and Newcastle City Council (NCC).

The “Terms of Reference” document related to the “NEWCASTLE CBD LIQUOR LICENCE CONDITIONS REVIEW” available on the NSW Independent Liquor & Gaming Authority website clearly states at paragraph 3 of the background that:

“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.”

This statement is internally contradictory. The very fact that the AHA NSW proposed the review to ILGA means that ILGA is not acting “on its own initiative” and would seem to undermine the applicability of s53(2)(b) of the *Liquor Act*.

Recommendation: That due consideration be given as to whether section 53(2)(b) of the *Liquor Act* gives ILGA the authority to revoke the conditions given that the review has not satisfied the requirement of being “on the Authority’s own initiative” and, if it is found that there is sufficient evidence (such as the statements contained in the Terms of Reference document) that the review is not be “on the Authority’s own initiative”, then the review process should be terminated.

It is my understanding that the review was initiated following a request by the AHA NSW in June of 2017, although it was only publicly announced on Tuesday 21 November 2017 after inquiries were made by the media. It is of great concern to me that public submissions were initially to close on Wednesday 13 December 2017, providing only 22 days for public submissions. So, while the well-resourced lobbying

body of the AHA NSW had months to prepare submissions, other stakeholders were initially to have only 3 weeks. With many of the other stakeholders being individuals with quite limited resources and extensive other work and family commitments this seemed to asymmetrically weight the process heavily in favour of the hotels association. Had it not been for adverse media coverage, it seems unlikely that there would have been an extension of the deadline for submissions to 24 January 2018 (and subsequently to 7 February only because of problems with unreceived submissions).

Notwithstanding ILGA had the AHA request in its possession for at least 5 months, the original ILGA requirement on Mr Horton to provide his report to ILGA by 22 December 2017, just 8 clear days after public submissions closed to consider the same and finalise his report, reflects just how dubious and tainted the review process is. The obvious conclusion from this ultra-compressed timeframe was that the outcome of the review process was a *fait accompli* – a done deal. Despite the Legislative Council rebuke and the current extended timeframe, nothing has changed to restore public confidence in the legitimacy, independence and likely outcome of the ILGA review.

After the announcement of the review, Newcastle City Council CEO, Jeremy Bath, was featured in the Newcastle Morning Herald newspaper, as early as 23 December 2017, endorsing the liquor licence review and against the “Newcastle Solution”. He expressed his personal opinion, without reference to any supporting evidence, saying “And my personal view is that a ‘one size fits all’ solution is not the right way to go.” There had been no public consultation as to the community’s opinions and whether they differed from Mr Bath’s personal view. This has remained the case, despite calls for a public meeting and community input to help shape an appropriate submission regarding the review from NCC. In fact, it is my understanding that the last community survey conducted by council showed an 80% approval rate amongst residents and patrons. So, if council were being guided by the opinions of their constituents their submission should be in support of retaining the existing conditions.

There has been no community consultation carried out in regard to the review of liquor licences. It is also my understanding that Newcastle City Council carried out no consultation with local police or representative of public health services (the local health services, doctors, nurses or ambulance officers) on the specific details of council’s proposed replacement model that meets or exceeds every single request of the AHA contained in their originating application to the NSW government in 2017.

It will undoubtedly be argued that the NSW government’s invitation for public submission to the unilateral review of the Newcastle conditions represents best practice of openness and transparency to ensure a fully informed final decision. This however, would be seriously overstating the situation. Self-initiated submissions by community members such as myself, require a significant amount of time and effort to prepare. For every person who is sufficiently motivated to prepare such a personal submission there will be thousands that share their opinion but whose lives don’t permit them the time and energy to ensure that their voice is heard. This is especially the case when representative bodies, such as council, don’t help facilitate these individuals by offering venues that make it easy for them to have their voices heard. Government bodies, such as local councils are supposed to be protecting these individuals interests as much, if not more than the interests of business set to profit from the easing of restrictions.

There has been a complete lack of fully informed, open and honest public consultation including briefings of all councillors by our most trusted, impartial and independent health, police and academic leaders and researchers prior to the council endorsing any of its own proposals to critically undermine or eliminate the current Newcastle conditions. Because of this lack of consultation, NCC’s submission

should be seen as no more than an expression of personal opinion which has been potentially influenced by powerful political lobby groups.

Recommendation: That the Newcastle City Council submission to the review should carry no greater weight than any other submission received and not been seen as a legitimate reflection of the view of the community.

In addition to NCCs lack of consultation with local residents the terms of reference of the review state:

“The review will take into account...the views of interested persons including indigenous groups, local residents...expressed through an appropriate consultation process”

Despite this statement in the terms of reference, there has been no active consultation process carried out by any government body in regard to this review. There seems to be a reliance only on submissions by individuals which materially disadvantages residents compared to well-funded political lobby groups such as AHA NSW. By way of example, I have found it exceedingly difficult to find the six hours of time amongst my heavy work, family and volunteer commitments, that it has taken to prepare this submission.

Recommendation: That a formalised active impartial consultation process is carried out with the local community, in particular those most likely to be affect by the change, being local residents, rather than a passive reliance on affected individuals providing a submission in regards to this review.

AHA NSW, local musicians and other well-funded groups with vested interests, have made attempts in the local media, online and via social media campaigns to link the review to concerns about Newcastle’s live music industry. They have tried to play upon people’s interest in live music to rally supporters for a relaxation to or exemptions from the lockout laws. Attached to this submission is a copy of a paid advertisement run on page 19 of the Newcastle Morning Herald on Wednesday, 31 January 2018. The advertisement quotes a survey of “2,046” respondents run through a website that promotes itself as “the Hunter’s premier online music, entertainment and lifestyle guide”. It clear displays the attempts being made by powerful lobby groups with significant resources behind them and sufficient funds to pay for online surveys and large format advertisements in the local paper. It clearly displays the attempts to link the review of the “Newcastle Solution” to the unrelated issue of having “more live music in Newcastle venues”. 2,046 respondents from the total greater Newcastle population of 540,796 represents a sample of just 0.37% of the population. The survey is likely to have recruited respondents through a mail out to “Newcastle Live” subscribers, a clearly biased and non-representative group making it finds not scientifically valid. 2,046 respondents is less than half of the 4,296 residents of the Newcastle CBD, but undoubtedly the survey does not represent the opinions of 50% of the residents who will be the most heavily affected by the adverse consequences of a weakening of the Newcastle CBD licensing conditions. None of the conditions under review relate to live music and, as such, the issue does not form part of the terms of reference of the review.

The paramountcy of public and emergency workers safety should never be allowed to degenerate into a “popularity contest” favouring those with the greatest followers on social media and ready access to the internet.

Recommendation: That references to Newcastle’s live music industry or changes proposed that relate to the live music industry including protecting existing venues from so-called “gentrification”, rather than to the control of alcohol and alcohol-related behaviour should be excluded from the review.

Recommendation: That any such surveys or polls run by biased groups including AHA NSW, Newcastle Live and even Newcastle City Council (given its already stated position in support of a review) should be excluded from the review process, or, at the very least, be subject to rigorous scientific review before being allowed inclusion.

AS A NEWCASTLE INNER CITY RESIDENT

I own and live, with my wife and young 7 year old child, in the old Newcastle CBD between Newcomen and Bolton streets. My residential unit is on the second storey above street level and has windows on the main bedroom that face the street. We have been resident at this location for 10 years. We live within 250 metres of, at least, 17 licensed premises, 3 of which hold hotel liquor licences.

By way of background, Newcastle City Council has for over a decade now allowed, and indeed actively promoted, increased residential development within the CBD and particularly the Honeysuckle, CBD East and Newcastle East zones. They have had strategy to develop the CBD West as the new commercial core of the city while developing CBD East zone between Darby St and Watt St as a residential and retail precinct. This eastern zone is now a heavily residential neighbourhood. In recent years, however, Newcastle City Council has shown little regard for the residents of this neighbourhood, evening to the extent of allow a car race, in the form of the Supercars Coast Hire Newcastle 500, through the streets of this heavily residential suburb passing within metres of resident’s front doors in places. I have growing concerns that little consideration is being displayed to the now numerous inner-city residents and the amenity of their homes. I feel that Newcastle City Council is not taking inner-city residents into consideration in its decision making and its submission regarding the changing the licensing laws is another example of this.

Recommendation: That the Newcastle City Council submission to the review should carry no greater weight than any other submission received and not be seen as a legitimate reflection of the view of CBD residents.

My family and I frequently walk around our local neighbourhood streets after dark. My 7 year old daughter is already too frequently exposed to the sight of anti-social alcohol-related behaviour. Although improved since the introduction of the lock-out laws the rates of violence in the Newcastle CBD remain higher than the state average and I have experienced occasions when I feel fear when out walking home. I have experience irrational aggression displayed, by intoxicated individuals, towards myself and my daughter when she accidentally bumped into somebody while walking in the Hunter St pedestrian mall. Had I not managed to defuse the situation I would not have been capable of physically protecting her. Understandably, as a protective father and husband, any decision that has potential to increase the risk of experiencing alcohol-related violence in the Newcastle CBD, the suburb that is my home, is of the utmost concern to me. This has not been sufficient consideration by Newcastle councillors when endorsing their replacement model of the successful package of Newcastle conditions.

We and our neighbours suffer significant disruption to the peaceful enjoyment of our home from loud on-street anti-social behaviour by people as they move on foot between various licensed venues and locations within the city. The level of undue disturbance correlates with the most popular times of the surrounding venues including Wednesday – “Uni Night”, Friday and Saturday nights and special occasions such as Christmas, New Year’s Eve, Australia Day, St Patricks Day etc.

The Council’s proposal to encourage and enable all our licensed premises excluding late trading pubs to trade an additional two hours to 2am, sell higher strength drink and increase the trading hours of some of the late trading pubs by half an hour (with no substantive justification), is a sure formula to a substantial increase the dangerous levels of intoxication in the CBD with the well-known disastrous consequences supported by ample independent scientific research that Newcastle council is unwilling to accept

Although, I’m sure that most people walk along the street quietly or engaging in no more than normal volume conversation which causes residents no disruption there exists however, a significant number of groups that will walk around the city at night and cause significant disturbance by yelling, swearing and screaming at each other and often engaging in arguments at high volume. The clear majority of the individuals creating such disturbance are under the influence of alcohol, with the most disruptive likely to be the most intoxicated. When this behaviour occurs, particularly after 10:30pm, it is sufficient to wake us from sleep (even with windows closed) and has occurred even mid-week (particularly on Wednesday evening “Uni night” when I understand the late trading venues offer discounts and early Thursday morning to 3.30am) leading to sleep disturbance prior to working days. It should be noted that even weekend disturbance can be greatly disruptive to shift workers. It should be remembered that for residents who are there 7 days a week that disruption coming from patrons of each licensed premises on an only occasional basis for each establishment, can add up together to give near continuous disruption for the residents and families. The 2016 census listed 4,296 residents living in Newcastle-Newcastle East-Newcastle West, so the number of potentially disturbed individuals is large.

We have observed a marked reduction in this loud, anti-social on-street behaviour since the introduction of the last drinks-lockout laws. I don’t believe any of the currently available metrics measure this outcome, but for CBD residents this is a significant factor which affects them even when not outside their residences. Most residents no longer report the disturbances out of frustration with a lack of action by the council and other authorities. From a resident’s perspective the moderation in last drinks times and lockout laws have worked to reduce, though not completely eradicate such noise disturbance and anti-social behaviour.

Advocates for substantially watering down the Newcastle CBD liquor licence conditions to their own financial advantage, talk of increased “maturity” in terms of “responsible consumption of alcohol” in Newcastle but provide no evidence to support their opinions. Ongoing episodes of anti-social behaviour experienced by inner city families refute these claims. It is of great concern to us that any relaxation or exemptions to the current integral package of conditions could likely lead to a re-escalation of this behaviour with its associated negative impact on residents, their families, surrounding businesses and our front-line emergency workers responding to these alcohol fuelled problems.

Recommendation: There be no change made to the Newcastle CBD Liquor Licence conditions that have proved effective over the last 10 years. I support a

further modest reduction in last drinks times for the late trading venues as raised by the former Local Area Police Commander Supt John Gralton until such time as the rate of assaults in the CBD fall to the current average level of assaults in NSW.

AS A DOCTOR:

I am an Australian trained and registered medical doctor. I work in Emergency Medicine and have spent over 10 years of my life working in public hospital emergency departments particularly of an evening and overnight. The emergency department is the frontline and must deal with the repercussions of alcohol-fuel violence. It is also the part of the health system in which staff are at the most risk of alcohol-related physical and verbal violence. I personally have been subjected to unprovoked threats of physically violence by intoxicated patients more times that I can remember. I would say it was an almost nightly occurrence whenever I was on shift. I've been fortunate, only thanks to the assistance of security and nursing staff, to avoid suffering personal physical harm however I know many colleagues that have been injured by intoxicated patients. I've treated police and ambulance officer victims of physical violence from intoxicated individuals. I have experienced an intoxicated patient spitting blood stained saliva into my face and eyes as I've attended them to suture facial laceration sustained in an alcohol-fuelled assault. Besides being a repulsive experience, it also carried potential infection risk for me from incurable blood borne diseases such as HIV and Hepatitis C.

The cost to society and the health system from alcohol is massive and this is paid largely from the public purse while the alcohol industry reaps its profits.

Reliable estimates from our leading local academic researchers suggest that the introduction of the modest licence restrictions in Newcastle has led to over 6000 less assaults between 2000 and 2015. There has also been significant 31 per cent reduction, for the same period, in serious alcohol-related facial injury assault cases at John Hunter Hospital. This effect is ongoing. I have not had the opportunity to review the AHA NSW submission in great detail however, my examination of the Newcastle City Council submission, which claims to be "evidence based" reveals that all the evidence referenced in their submission establishes beyond any reasonable doubt the overwhelming effectiveness of the package of Newcastle CBD licence conditions. NCC's submission references the "strong evidence of correlations between extended hours of trade and levels of alcohol related violence". It references studies that show "one extra hour of additional trade after midnight was associated with a 70 per cent increase in late-night violence" and yet they make unconvincing suggestions devoid of any independent supporting evidence to substantially extend trading hours for all 130+venues. For example, the submission states "a venue trading under a small bar license for an extra hour may not have an equivalent impact". Equally, however, it MAY have an equivalent or even greater impact - without data it is only guesswork. All medical research trials require informed consent from participants. Nobody wants to be an involuntary subject in NCCs experiment. The mere out of context quoting of "evidence" does not constitute an "evidence-based" submission particularly when the conclusions drawn and suggestions proposed by the council are inconsistent with or diametrically opposed to the same research they purport to rely upon. This includes so called "research" that seeks to cast critical doubt on the effectiveness of a modest reduction in late trading hours in Newcastle. This "research" is not publicly available or published in any well recognised peer reviewed scientific journals.

Clearly, AHA NSW believes that an extension of trading hours would lead to more alcohol sales otherwise they would not be advocating for this review. If there was the belief that extended trading hours would simply mean the same amount of alcohol consumed over a longer period the liquor industry would not be advocating for this review. Profits would be maximised by the same liquor sales over a shorter period with its associated reduction in staffing costs. There is an obvious anticipation of increased liquor sales if the liquor industry manages to push through detrimental alterations to the successful Newcastle solution. With increased liquor sales will come increased alcohol-related harm and anti-social behaviour.

Recommendation: That there be no extension of trading times or reductions in the current sale of alcohol controls.

Some of the criteria proposed in NCC's submission to differentiate between "low", "medium" and "high impact" venues, such as the "Hours of Trade" provide no differentiation whatsoever, showing how poorly considered and incompletely formed the council's "incentivisation" proposals are.

Recommendation: That decisions cannot be made on an "indicative...framework" as proposed in the Newcastle City Council's submission since such incomplete/non-definitive frameworks are, by way of their "unfinalized" status, subject to later changes and amendments. Such alterations are unknowns and any decision to adopt an indicative framework can never be a fully informed decision.

Nowhere at all does the council submission consider the strong scientific evidence correlating alcohol outlet density with alcohol related harms¹⁻⁶. Council's underlying supportive presumption that a significant increase in the outlets, net volumes, strength and extended later duration that alcohol is available and supplied in our CBD is a pre-requisite for the city's further "revitalisation", "investment" and "growth"; is a dangerous and deadly foolhardy fallacy.

I would welcome the opportunity to discuss in person my submission with Mr Horton and subsequently have the opportunity to present the same to the ILGA board in person preferably in Newcastle at a publicly convened conference of all relevant stakeholders including local inner city residents.

References

1. Livingston M, W. C. (2016). *Community impact of liquor licences*. An Evidence Check for the NSW Ministry of Health, Sax Institute. Retrieved from <http://www.saxinstitute.org.au/wp-content/uploads/Community-impact-of-liquor-licences-1.pdf>
2. Peter Miller, A. P. (2013). *Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED)*. Monograph, National Drug Law Enforcement Research Fund. Retrieved from <http://www.ndlerf.gov.au/publications/monographs/monograph-46>
3. Peter Miller, J. T. (2012). *Dealing with alcohol-related harm and the night-time economy (DANTE)*. Monograph, National Drug Law Enforcement Research Fund. Retrieved from <http://www.ndlerf.gov.au/publications/monographs/monograph-43>

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5. Peter Miller, T. C. (2015). *Interventions for reducing alcohol supply, alcohol demand and alcohol-related harm*. Monograph, National Drug Law Enforcement Research Fund. Retrieved from <http://www.ndlerf.gov.au/publications/monographs/monograph-57>
6. Prof Peter Miller, E. C. (2016). *Alcohol/Drug-Involved Family Violence in Australia (ADIVA)*. National Drug Law Enforcement Research Fund. Retrieved from <http://www.ndlerf.gov.au/sites/default/files/publication-documents/monographs/monograph-68.pdf>

AND THE SURVEY SAID...

2046 Novocastrians responded to a survey on Newcastle's nightlife. Here are the questions and the results:



Almost a decade on, do you agree it is time to review the conditions imposed in 2008 as part of the Newcastle Solution? **YES: 92%**



Sydney's lock out laws allow patrons to order drinks of their choice until 12am. Should Newcastle patrons be able to do the same? **YES: 88%**



Do you agree the ability to buy a cocktail whenever a venue is open would be reasonable? **YES: 93%**



Would one consistent Newcastle lock out time make it easier to meet up with friends and/or plan a night out? **YES: 82%**



Would you like to see more live music in Newcastle venues? **YES: 96%**

This online survey was commissioned by Newcastle Live using surveymonkey.com between Monday 8th January and Friday 26th January 2018.

IT'S TIME. Speak to your local Councillor to support live music and a vibrant & safe night time economy in Newcastle.

NEWCASTLE

LIVE!

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