

24 July 2018

2018 Remake of the Liquor Regulation
Liquor and Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

By email: policy.legislation@liquorandgaming.nsw.gov.au

Dear Sir/Madam,

RE: SUBMISSION ON THE 2018 REMAKE OF THE LIQUOR REGULATION

The AHA NSW represents over 1800 licensed premises across NSW, from small hotels in regional NSW to large, premium accommodation hotels in the Central Business District of Sydney. The predominant liquor licence held by our members is a hotel licence – permitting the sale and supply of liquor for consumption on premises or takeaway sales for off premises consumption.

The sale and supply of liquor by retail is governed by the *Liquor Act 2007 (the Act)*, with the supporting regulations contained within the *Liquor Regulation 2008 (the Regulation)* which both commenced on the 1 July, 2008. Whilst the Liquor Act 2007 was reviewed in 2013, the Regulation has not been formally reviewed until this time. Ten years after it commenced, and five years after changes to the Act were announced it is appropriate to review the Regulations.

AHA NSW is pleased to provide a submission on the proposed Liquor Regulation 2018.

Should you require further information, or wish to discuss any of the issues raised in the attached submission, do not hesitate in contacting AHA NSW Director of Liquor and Policing John Green by telephone on (02) 9281 6922, or by email at john.green@ahansw.com.au.

Yours faithfully,



SEAN MORRISSEY
Acting Chief Executive Officer

Encl.



AUSTRALIAN HOTELS
ASSOCIATION
NEW SOUTH WALES

**SUBMISSION
ON THE PROPOSED
LIQUOR REGULATION 2018**

24 July 2018

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Summary of recommendations

1.	Delete clause 13 - Location risk element
2.	Amend clause 23(4)(b) to: <i>“it is displayed at or near the front entrance (being the entrance specified in Section 95 of the Act) by which members of the public may enter the premises or land in such a position that a person coming in by the entrance would reasonably be expected to be alerted to its contents, and”</i>
3.	Delete clause 38(b)
4.	Delete clause 70(3)
5.	Delete clause 85 Alternatively; Clause 85, including all subsections relating to the nature and use of lockouts including the lockout period be reviewed.
6.	That venues with a demonstrated history of safe and compliant operation be permitted to apply for an exemption from the liquor sales cessation period.
7.	Delete clause 88(2)(b)
8.	Omit from clause 88(6) all wording relating to restrictions on the sale or supply of more than two alcoholic drinks after 2am. Insert instead a clause prohibiting the stockpiling of drinks after 2am.
9.	Delete clause 90(1)(e)
10.	The use of Patron ID scanning in the Kings Cross precinct be amended so that; (i) Operation of ID scanners removes the requirement for a lockout at subject premises, Or (ii) The operation of ID scanners are limited to Friday, Saturday and a Sunday/other day that precedes a public holiday
11.	Authorised trading hours in relation to the sale of liquor for takeaway be re-set to 12am Monday to Sunday
12.	That on or before the 1 June 2019, clause 122 be deleted

13.	Clause 127 be amended to include the Central Coast local government area
14.	OETC and MOETA be combined with two week notification of use, and available across NSW
15.	Amend the definition of CPI number in clause 1 of Schedule 1 Part 4 to; <p style="text-align: center;">“CPI number means the Consumer Price Index (All groups excluding alcohol and tobacco) for Australia [series ID A2332146W] published by the Australian Bureau of Statistics in the latest published series of that index”.</p>
16.	Licensees who have completed relevant training through peak bodies and industry associations be offered recognition of prior learning when completing RSA training.

Recommendations

Recommendation 1

Clause 13 – Periodic Liquor Licence Fees - location risk element (p16)

AHA NSW submits that the location risk component of the Periodic Liquor Licence fee be deleted. The additional loading currently relates only to Kings Cross and the Sydney CBD as prescribed precincts. AHA NSW submits that this additional loading is unfair, onerous and fails to recognise that premises within those precincts have suffered substantial losses due to the precinct restrictions, and have achieved a substantial reduction in their levels of assaults since 2014. As such, the additional fee is not justified.

Where Liquor and Gaming appropriately use the provisions of the Act to prosecute the small number of non-compliant venues they are able to seek investigation costs. The AHA NSW submit this is the more appropriate method of recovering enforcement costs.

Recommendation 1	Delete clause 13 - Location risk element
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Recommendation 2

Clause 23(4)(b) Notice relating to application to be fixed to premises “at or near every entrance...”

Some licensed premises have multiple entry points including from beer garden areas – for example, the Potts Point Hotel has five entry points and the Coogee Bay Hotel seven. The requirement to maintain notices at every entry point is not practicable and amounts to unnecessary red tape. Therefore, the requirement should relate to the principal entrance (main entry point) only – which is where the hotel licensee details are also affixed.

Recommendation 2	Amend clause 23(4)(b) to: <i>“it is displayed at or near the front entrance (being the entrance specified in Section 95 of the Act) by which members of the public may enter the premises or land in such a position that a person coming in by the entrance would reasonably be expected to be alerted to its contents, and ... ”</i>
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Recommendation 3

Clause 38 Incident registers (cl.28 2008 Reg)

The clause makes it a requirement to record in the incident register “any incident on the premises involving a substance that the licensee suspects of being a prohibited plant or prohibited drug”.

Compelling licensees to record any and all “incidents” based upon their “suspicion” that illicit substances may have been involved is necessarily a subjective exercise. Other incidents required to be recorded in incident registers (namely, violence, anti-social behaviour, patron exclusion from the premises, and patrons requiring medical attention) do not involve such subjectivity.

Section 77(2)(d) of the *Liquor Act 2007* (NSW) already requires licensees to non-voluntarily exclude from the premises patrons who use or have in their possession any substance that is suspected of being a prohibited plant or a prohibited drug. All incidents of patron exclusion – including patrons removed for drug use and possession – are already required to be recorded in incident registers.

Furthermore, the detection within the premises of a discarded item of potential drug paraphernalia, such as a small re-sealable bag, does not relate to an action of a person (possessing, using or supplying illicit substances), nor is it a matter involving violence or intoxication. Requiring licensees to record “incidents” of these discarded materials places an unfair onus on a licensee to subjectively determine whether an item found is related to, or has been involved in the use, sale or possession of, illicit substances.

The AHA NSW submit that the proposed clause not only duplicates the existing requirement to record patrons excluded for drug use or possession, but introduces unnecessary subjectivity and red tape by requiring the recording of incidents that have nothing to do with improving venue safety or amenity.

Recommendation 3	Delete clause 38(b)
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Recommendation 4

Clause 70(3) RSA qualifications for Kings Cross (cl.39C(4) 2008 Reg)

The Regulation proposes that licensees, staff and RSA marshals working in the Kings Cross precinct cannot renew their RSA Competency Card by refresher course, and have to complete the full RSA course every five years. AHA NSW submits that this additional requirement is onerous, and frankly, impossible for Liquor & Gaming NSW to effectively administer, implement and educate.

Staff working at Kings Cross venues, as well as other holders of RSA Competency cards, will regularly work across suburbs and precincts, and renew their qualifications by refresher as they become available.

As Liquor & Gaming NSW do not have a database of “Kings Cross personnel”, apart from licensees and approved managers, and given the fluidity of employment within the industry, we question whether ensuring education about and compliance with such a requirement is achievable.

Further, it is widely accepted that Kings Cross trade has been severely impacted by existing trading restrictions, with both pedestrian movement and staffing levels significantly reduced. The imposition of red tape upon those venues will only compound these issues, particularly when that red tape takes the form of a disincentive for staff to commit to working in the precinct.

Recommendation 4	Delete clause 70(3)
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Recommendation 5

Clause 85(1) Lockouts for subject premises (cl.53C 2008 Reg)

Lockouts were imposed in February 2014 following two tragic incidents that did not take place late at night, or in licensed premises.

The AHA NSW maintains the view that lockouts as a legislative imposition are not an effective method of reducing alcohol related harms – they punish all venue and patron types regardless of their behaviour.

What lockouts do is exclude a range of law-abiding persons from entering the venue of their choice, including hospitality workers that have just finished their shift, or vulnerable persons who have found themselves out of licensed venues after the lockout has commenced and are unable to re-connect with colleagues and friends within subject premises.

The Sydney CBD and Kings Cross Precinct have seen significant reductions in violence in the previous 4 1/2 years and both patrons and venues alike have modified non-compliant behaviour. The CBD and Kings Cross of today are very different to that of 2014. In Kings Cross there is now a residential focus to the area and it is clear the old Kings Cross will never return.

Sydney is a mature, international city. We are Australia’s number 1 city - and yet we have laws that close down our city every night.

We question whether it is reasonable to penalise:

- all venues – simply because they are located in the CBD or Kings Cross
- all staff who wish to work additional hours in these venues

- all patrons who want to visit our venues after 1:30am

We question whether the Sydney lockouts have been effective, particularly when non-domestic assault rates on licensed premises have fallen to record low levels across NSW, including areas without lockouts.

We question a policy that imposes unproven social controls on the adults of Sydney and visiting tourists, who according to these laws can't be trusted to go out at night and behave in a responsible manner.

Governments have an important role to play through good regulation, but under the current lockout laws many good venues with a proven record of safe operation are punished – we question the fairness of this policy.

We support a policy where the few rogue operators who do the wrong thing are targeted.

We also note the success of voluntarily imposed conditions in Newtown whereby new patrons cannot enter premises after 3am on key trading days unless they have taken steps to plan their night.

In 2019 the Sydney lockouts will have been in place for 5 years. After 5 years it is appropriate to closely examine whether such an extreme policy has been effective, whether it is the right policy for Sydney, and whether it is still needed.

Recommendation 5	Delete clause 85 Alternatively; Clause 85, including all subsections relating to the nature and use of lockouts including the lockout period be reviewed.
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Recommendation 6

Clause 86 Liquor sales cessation period

In September 2016 the independent statutory liquor law review recommended a trial 30 minute relaxation of the liquor sales cessation period for live entertainment venues, stating that such a trial “may go some way to an orderly restoration of vibrancy and employment opportunities in [Kings Cross and the Sydney CBD]”.

To date, 29 venues have successfully applied for this extension. There is no evidence to suggest that the additional 30 minutes has had a negative impact upon levels of violence or anti-social behaviour at those venues.

The AHA NSW have long advocated that demonstrably safe, well-managed venues should not be burdened with the same restrictions as those run by rogue operators.

To this extent, we submit that venues with a proven history of safe and compliant operation be granted the opportunity to apply for an exemption from the liquor sales cessation period.

Recommendation 6	That venues with a demonstrated history of safe and compliant operation be permitted to apply for an exemption from the liquor sales cessation period.
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Recommendation 7

Clause 88 Certain drinks and other types of liquor sales prohibited during general late trading period

AHA NSW notes that while the current draft clause 88 exempts small bars from all restrictions regarding certain drinks being sold for consumption during the general late trading period, we do not advocate subject premises be permitted to sell drinks designed for rapid consumption including drinks commonly known as shots, shooters, slammers or bombs.

Clause 88(2)(b)

However, for many patrons the ability later in the evening to enjoy a single nip of spirit or liqueur served in a drinking vessel designed to allow the drink to be savoured rather than consumed rapidly is a valid, and reasonable request – be that a single malt whiskey, Baileys or similar, or fortified product. The current exemptions provided by a cocktail list do not permit this type of drink.

Recommendation 7	Delete clause 88(2)(b)
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Recommendation 8

Clause 88(6)

During the general late trading period, groups of people continue to appreciate the ability to purchase and consume champagne and other fine wines that are prohibited by the restrictions imposed after 2am. The clause is apparently designed to stop stockpiling prior to the 3am cessation of alcohol service. If a restriction on stockpiling of drinks is the intent, then that is what the restriction should relate to, rather than preventing patrons from purchasing their beverage of choice.

Recommendation 8	Omit from clause 88(6) all wording relating to restrictions on the sale or supply of more than two alcoholic drinks after 2am. Insert instead a clause prohibiting the stockpiling of drinks after 2am.
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Recommendation 9

Clause 90 “Round the clock” incident register

Please refer to recommendation 3 in relation to the requirement to record in the incident register “any incident on the premises involving a substance that the licensee suspects of being a prohibited plant or prohibited drug”.

Recommendation 9	Delete clause 90(1)(e)
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Recommendation 10

Clause 102 Time and Use of Patron ID Scanners

The use of ID scanners seven days per week between 9pm and the commencement of standard trading on the following day has resulted in sustained financial and regulatory burdens on venues in Kings Cross required to comply with this provision. Bureau of Crime Statistics and Research (BOCSAR) data clearly shows that the peak times for violence in Kings Cross were between 9pm and 3am on Friday and Saturday nights, and a Sunday that precedes a public holiday. Maintaining ID scanning every day has a substantial cost, resource and regulatory burden. The AHA NSW submits one of two amendments;

Option A. Exempt any venue that operates a patron ID scanning system from the provisions set out under clause 85 in relation to lockouts, meaning that *on any day that a Patron ID scanning system is in operation in accordance with cl.102, the premises are exempt from the provisions set out under cl.85*

Option B Insert an additional clause under 102 providing that the days of operation for use of patron ID scanning will be *any Friday, Saturday, Sunday or other day that precedes a public holiday, or other day ordered by the Secretary*

Recommendation 10	<p>The use of Patron ID scanning in the Kings Cross precinct be amended so that;</p> <p>a. Operation of ID scanners removes the requirement for a lockout at subject premises,</p> <p style="text-align: center;">Or</p> <p>b. The operation of ID scanners are limited to Friday, Saturday and a Sunday/other day that precedes a public holiday.</p>
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Recommendation 11

Former clause 53T Liquor Regulation 2008 – Alcohol sales data – Kings Cross

AHA NSW acknowledges that earlier this month, the Government announced that a requirement set out in clause 53T of the Regulations for licensees in Kings Cross to provide Alcohol Sales data has been removed.

Clause 115 – Exemption relating to take-away liquor trading hours (cl.70AB 2008 Reg)

In 2014, standard trading hours for the sale of takeaway liquor were reduced from midnight until 10pm. Following the Callinan Review, in 2016 this was extended under Regulation 70AB until 11pm (remaining 10pm on a Sunday). The Government committed to further reviewing those hours. We submit that standard trading hours for the sale of takeaway liquor be set at midnight on any day of the week, including Sunday.

Recommendation 11	Authorised trading hours in relation to the sale of liquor for takeaway be re-set to 12am Monday to Sunday.
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Recommendation 12

Clause 122 Temporary freeze on licences and other authorisations in prescribed precincts

On 1 June 2019, the “temporary” freeze on licences in prescribed precincts will have been in effect for nine and a half years. Although a range of exemptions have been provided for on premises, small bars and other venue types, hotel licences in that precinct remain the subject of the freeze despite a number of hotel licences becoming dormant, being surrendered or changed to other licence types. Hotel licensees throughout that time have been unable to renovate or refurbish, or more recently to undertake renovations of construction that would otherwise intensify the patron numbers.

AHA submits there is currently sufficient oversight in place through planning and liquor licence applications processes to ensure that any liquor application or modification in the precinct is suitably assessed.

Recommendation 12	That on or before the 1 June 2019, clause 122 be deleted.
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Recommendation 13

Clause 127 Definition of “metropolitan area – s.66 of Act (p.67)

The proposed clause defines the metropolitan area as comprising the LGAs of Lake Macquarie, Newcastle and Wollongong, as well as the Greater Sydney Region within the meaning of the *Greater Sydney Commission Act 2015*.

As the *Greater Sydney Commission Act* does not include the Central Coast LGA in the definition of the Greater Sydney Region, the Regulation should name the LGA specifically.

Recommendation 13	Clause 127 be amended to include the Central Coast local government area.
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Recommendation 14

Clause 128 Multi-Occasion Extended Trading Authorisation (MOETA) cannot be granted for metropolitan licensed premises (cl.80A 2008 Reg)

A MOETA authorises a licensed premises that would otherwise close at midnight to trade beyond those hours up to 12 times per year. It was introduced with a stated objective to reduce the number of collective licensed hours. Under cl.80A, a MOETA was restricted to regional NSW, and six weeks notification to local council/police was required. A MOETA saw actual extended trading hours rescinded – resulting in a substantial loss in the value of a liquor licence as it no longer had an ETA attached

Occasional Extended Trading Conditions (OETC) were introduced the following year. An OETC retains the extended trading hours on the liquor licence, however imposes an administrative condition limiting the number of occasions trade can be extended. An OETC is open to all venues across the State, and requires only two weeks notification to local police and council.

The AHA NSW submits that the notification period for a MOETA should be reduced to two weeks, with availability expanded to include the Metropolitan area.

Recommendation 14	OETC and MOETA be combined with two week notification of use, and available across NSW.
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Recommendation 15

Schedule 1 Part 4 – Adjustment of fees for inflation (p.74)

The AHA NSW notes that the draft regulation introduces the concept of a “fee unit”, initially set at \$100 in the fee years 2018-19 and 2019-20, and indexed using the

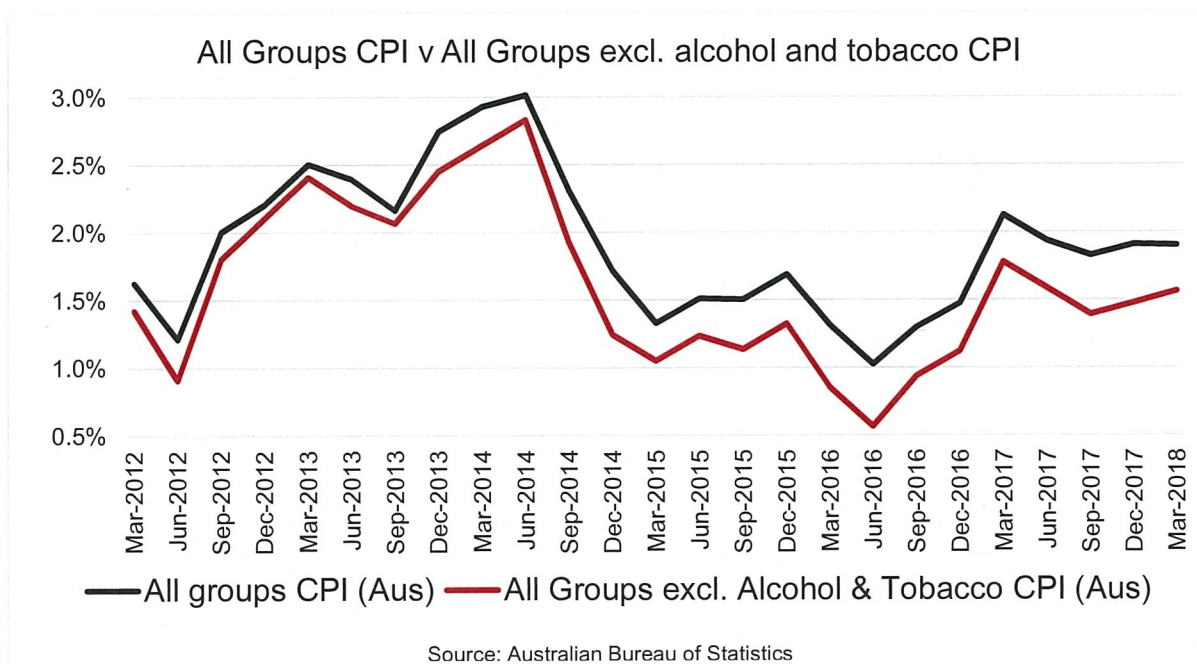
Consumer Price Index (All Groups Index) for Sydney, published by the Australian Bureau of Statistics. While the AHA supports the concept of a “fee unit”, we submit that it is inappropriate to index this amount using the Consumer Price Index (All Groups Index) for Sydney.

The All Groups Index is a weighted index of goods purchased by consumers. Basic economic theory stipulates that when certain goods become significantly more expensive, many consumers engage in either substitution or purchase cessation. The CPI does not take this into account, instead assuming consumers are continuing to buy the same amount of increasingly expensive goods.

This is particularly pertinent when considering the excise regime applying to alcohol, and even more so for tobacco. In April 2010, the Federal Government introduced a 25% increase in the tobacco excise and excise equivalent customs duty, as well as annual 12.5% increases that will continue between 2018 and 2020 inclusive. Similarly, alcohol excise was indexed to the CPI by the Hawke Government more than three decades ago, and has been rising year-on-year since then.

These rises in alcohol and tobacco excise have been substantial contributors to the All Groups CPI index rises, despite the fact that per capita consumption of both products has been falling for some time. The graph on the following page illustrates the disparity between the percentage changes in All Groups CPI and the All Groups (excluding alcohol and tobacco) CPI in recent years, which indicates that Federal Government policy in relation to alcohol and tobacco excise is a significant ‘artificial’ driver of overall CPI increases.

Furthermore, the All Groups Index for Sydney places undue emphasis on the relatively high cost of housing in Sydney, which does not accurately reflect the economic experience of regional areas of New South Wales. Using a broader index, such as the weighted average of all capital cities, would better control for the influence of Sydney housing price rises on future indexation.



For the reasons above, the AHA NSW submit that if adjustments for fees are to be made beyond 2019-20, a more appropriate index would be the *All Groups CPI excluding Alcohol and Tobacco; Australia* (ABS series ID A2332146W).

Recommendation 15	<p>Amend the definition of CPI number in clause 1 of Schedule 1 Part 4 to;</p> <p><i>“CPI number</i> means the Consumer Price Index (All groups excluding alcohol and tobacco) for Australia [series ID A2332146W] published by the Australian Bureau of Statistics in the latest published series of that index”.</p>
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Recommendation 16

Recognition of Prior Learning for Responsible Service of Alcohol Training

The AHA NSW supports the introduction of a tiered framework for Responsible Service of Alcohol training. However, the model proposed in the draft Regulation does not recognise that many licensees have undertaken additional training through their respective industry associations and peak bodies.

The AHA offers half-day seminars to members wishing to build their knowledge across a range of topics, including work health and safety, industrial awards, managing bullying, and harassment and discrimination. In particular, our Hotels and the Law seminar provides a thorough grounding in the various legislative requirements of running a hotel, with a strong focus on the Liquor Act 2007.

For those licensees who have completed such a course, the AHA submit that the new 'tiered' RSA training framework offer recognition of prior learning, through the recognition of a credit, or a discount on the cost of completing RSA training.

Recommendation 16	Licensees who have completed relevant training through peak bodies and industry associations be offered recognition of prior learning when completing RSA training.
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