

Draft submission on proposed Liquor Regulation 2018

July 2018

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW thanks Liquor & Gaming NSW for the opportunity to comment on the consultation draft of the Liquor Regulation 2018 (draft Regulation) and for the opportunity to meet to discuss the draft Regulation.

This submission is in draft form until endorsed by the LGNSW Board. Any revisions made by the Board at that time will be forwarded to Liquor & Gaming NSW in the form of an updated submission.

Purpose

The Liquor Regulation 2008 is due to expire on 1 September 2018. Liquor & Gaming NSW has sought comment on a consultation draft of the Liquor Regulation 2018, which is intended to replace the Liquor Regulation 2008.

Liquor & Gaming NSW has also prepared a Regulatory Impact Statement to explain the effect of the proposed Regulation and its costs and benefits.

In August 2017 Local Government NSW (LGNSW) made a submission in response to Liquor & Gaming NSW's discussion paper, *Evaluation of the Community Impact Statement Requirement for Liquor Licence Applications*.¹ LGNSW's 2017 CIS submission was endorsed by the LGNSW Board on 1 September 2017 and is referred to throughout this submission.

LGNSW recognises that ease of doing business is vital to attracting and retaining the businesses that contribute to the social and economic vibrancy of our communities. LGNSW also appreciates the natural tension between appropriate oversight and minimising regulatory burden and welcomes Liquor & Gaming NSW's engagement with stakeholders to ensure an appropriate balance in this regard.

This submission on the draft Liquor Regulation 2018 will focus on key areas of concern for local government.

Single stage consultation process

At present, most liquor licence applications require a Community Impact Statement (CIS) to be undertaken by an applicant prior to lodging an application. The CIS process is used by the Independent Liquor and Gaming Authority to consider stakeholder feedback on a proposed application. The CIS is prepared by the applicant (or their agent) and allows councils, stakeholders and communities to provide input on the overall social impact of a liquor licence

¹ LGNSW's August 2017 submission on the Evaluation of the Community Impact Statement Requirement for Liquor Licence Applications is available on the LGNSW website at www.lgnsw.org.au/about-us/submissions.

application and the effects of alcohol supply on the well-being of the local or broader community. When a liquor licence application is subsequently lodged, councils, stakeholders and communities again can make a submission on the application, directly to the Independent Liquor and Gaming Authority.

LGNSW's 2017 CIS submission suggested that undertaking a thorough and independent CIS process at the application stage would reduce potential conflicts or objections and assure the community and stakeholders that their concerns had been adequately addressed. The submission also called for comments on a CIS to go directly to the Independent Liquor and Gaming Authority for consideration, rather than to the applicant.

LGNSW's concerns with the CIS process, that were outlined in the 2017 submission, included that:

- information can be lost from the CIS when prepared by an applicant
- a CIS should be developed by qualified independent assessors with the expertise to identify and rigorously assess community impacts and develop appropriate responses.

The draft Regulation moves the community consultation process for liquor licences from before an application is lodged with the Independent Liquor and Gaming Authority, to after the application is lodged, for most liquor licence applications. The draft Regulation proposes to do this by exempting most liquor licence applications from the existing CIS process, and instead bolstering the consultation and community impact assessment process once an application has been lodged.

The draft Regulation strengthens the consultation process at the application stage by having the impact on community assessed directly by the Independent Liquor and Gaming Authority, rather than the applicant. The draft Regulation's proposed consultation process also reduces complexity by moving from a two-stage consultation (before and after lodgement of the application) to a single stage consultation.

While LGNSW welcomes moves to improve the integrity and rigour of the assessment of community impacts, simplify the application process and reduce the regulatory burden on small businesses, the changes proposed by the draft Regulation should be approached with caution. By proposing to remove the pre-application CIS process (the 'first stage') and invite input only once an application has been lodged, the opportunity for community and stakeholder consultation and input is reduced.

Recommendation 1:

LGNSW recommends that Liquor & Gaming NSW and the Independent Liquor and Gaming Authority ensure that the streamlined liquor licence application process allows for adequate community, council and stakeholder consultation over a 30-day period.

Notification radius for occupiers of neighbouring premises

Clause 20 of the draft Regulation proposes to increase the notification radius for a liquor licence application. The draft Regulation proposes to amend the definition of 'neighbouring premises' to include buildings within a radius of 200 metres from the venue, an increase from

the existing 100 metre radius. The draft Regulation also introduces a discretionary power for the Independent Liquor and Gaming Authority to vary this distance.

The Regulatory Impact Statement asserts that the discretion to vary the notification radius is intended to ensure that 'additional community viewpoints can be considered'. LGNSW understands that the power to increase the notification radius to a distance greater than 200 metres may be appropriate in some circumstances, such as in non-metropolitan areas and in cases where a venue is expected to have a more significant impact on the surrounding community. LGNSW's 2017 CIS submission recommended that liquor licence applications for large premises where patronage could reach across suburbs should require a more robust CIS across the entire area impacted. LGNSW welcomes the discretionary power for the Independent Liquor and Gaming Authority to increase the notification radius in such cases.

As part of the consultation on the draft Regulation, LGNSW sought clarification from Liquor & Gaming NSW as to whether it had intended to introduce into the draft Regulation the possibility that this notification radius could be varied *downwards*, as the Regulatory Impact Statement did not deal with this possibility. Liquor & Gaming NSW advised that this was the intention, and that it envisaged that the Independent Liquor and Gaming Authority may determine to reduce the notification radius below 200m in densely populated areas where notification requirements may be more onerous on a liquor licence applicant.

Densely populated localities are likely to be more greatly affected by a liquor licence and may also be affected by the cumulative impact of multiple existing licenced venues in a given area. It is LGNSW's view that a discretionary power to reduce the notification radius – without a lower limit on the variation – is inappropriate. Further, the notification radius should in no circumstances be reduced below the existing distance of 100 metres.

Recommendation 2:
LGNSW recommends that clause 20 of the draft Regulation be amended to provide that the Independent Liquor and Gaming Authority must not vary the radius notification distance to less 100 metres.

Range of stakeholders consulted

Clause 22 of the draft Regulation outlines the persons who must be notified of a licence application, in addition to the occupiers of neighbouring premises.

LGNSW's 2017 CIS submission recommended notification be extended to include community service providers working on alcohol abuse issues, community drug action teams, domestic and family violence groups, and local chambers of commerce.

LGNSW is pleased to see that the draft Regulation proposes that the following organisations now be notified:

- any organisation located in the local government area that provides Aboriginal medical services
- any organisation located in the local government area that provides domestic violence support services

- in the case of an application for an extended trading authorisation in relation to a hotel or club licence—any organisation located in the local government area in which the hotel or club is situated that receives funding from the Responsible Gambling Fund under the *Casino Control Act 1992* for the specific purpose of providing gambling-related counselling or treatment services.

Misuse of alcohol can have major impacts on public health and community safety and wellbeing. All relevant stakeholders should be given the opportunity to, and encouraged to, respond to liquor licence applications.

Recommendation 3:
LGNSW recommends that consideration be given to amending clause 22 to require notification to community service providers working on alcohol abuse issues, community drug action teams and local chambers of commerce.

Reduced 14-day (or shorter) consultation for certain applications

Subclause 27(3) of the draft Regulation proposes to reduce community consultation time to 14 days for on-premises restaurant licences that do not require a CIS and that are made online. This subclause further allows for a period of consultation *shorter than* 14 days if the Independent Liquor and Gaming Authority so determines.

The provision allowing a shortened consultation period for restaurants has been inserted in the draft Regulation alongside existing² application types that are of a limited or temporary nature, such as special occasion extended trading authorisations, or on-premises licences of a temporary nature.

It is LGNSW's view that there may be legitimate and reasonable circumstances in which *limited or temporary* liquor licence applications may warrant a consultation period of 14 days or fewer. This is particularly the case where this regulatory flexibility can ensure a licence is in place for events at short notice or with limited warning that the event would take place.

LGNSW understands that this shortened 14-day consultation period for restaurant on-premises licences is intended for lower risk applications. However, the Regulatory Impact Statement accompanying the draft Regulation does not provide any detail on the circumstances in which the Independent Liquor and Gaming Authority may determine that a period *shorter than* 14 days is warranted, as allowed for by subclause 27(3) of the draft Regulation.

LGNSW's August 2017 CIS submission considered that the existing consultation timeframe of 30 days was adequate, but should under no circumstances be shorter, and that additional time should be provided over Christmas and holiday periods.

LGNSW maintains this position. A consultation period of 14 days – or even shorter – for *permanent* liquor licences for restaurants is inappropriate. Fourteen days is insufficient to reasonably allow for thorough and considered community, council and stakeholder feedback

² Existing in the Liquor Regulation 2008

on an application for a permanent liquor licence. If planning approval for a restaurant had not included a public exhibition period advertising that the restaurant intended to serve alcohol, then the proposed 14-day consultation for the liquor licence would be the only opportunity in which members of the community or other stakeholders could provide comment.

LGNSW's recommends that the category of on-premises licences relating to restaurants be subject to the standard 30-day consultation period.³ Further, the draft Regulation should be reworded so that permanent on-premises restaurant licences are not grouped with temporary or limited licences that are subject to the Independent Liquor and Gaming Authority's discretionary power to determine a consultation period of *fewer than* 14 days.

Recommendation 4:

LGNSW recommends that on-premises licences for restaurants be subject to the standard 30-day consultation period.

Recommendation 5:

LGNSW recommends that the Regulation not provide discretionary power for the Independent Liquor and Gaming Authority to determine a consultation period of fewer than 14 days for an on-premises licence for a restaurant.

Interim restaurant authorisations

Clause 32 of the draft Regulation proposes to continue the issuance of interim restaurant authorisations, permitting the immediate service of liquor following lodgement of an online liquor licence application. Interim restaurant authorisations apply in certain lower risk restaurants applications, provided the criteria are met (including that the restaurant's application for planning approval was subject to a public consultation process under the *Environmental Planning and Assessment Act 1979*, indicating that the premises were intended to operate as a licensed restaurant).

LGNSW understands that a significant proportion of interim restaurant authorisations have been invalidly issued, as a result of incorrect information being provided by applicants to Liquor & Gaming NSW.

LGNSW lodged a submission to Liquor & Gaming NSW's evaluation of the interim restaurant authorisation scheme in November 2017 and this submission was endorsed by the LGNSW Board on 9 February 2018.⁴ That submission raised concerns about how Liquor & Gaming

³ LGNSW also notes that regulatory relief is already available to lower risk restaurant applicants seeking an on-premises licence by way of the interim restaurant authorisation scheme. This scheme allows for the immediate service of liquor on lodging a licence application, provided that a restaurant meets eligibility criteria, including that the restaurant's application for planning approval was subject to a public consultation process under the *Environmental Planning and Assessment Act 1979*, indicating that the premises were intended to operate as a licensed restaurant.

⁴ LGNSW's November 2017 submission to the Evaluation of Interim Restaurant Authorisations is available on the LGNSW website at www.lgnsw.org.au/about-us/submissions.

NSW verifies the information put forward by licence applicants, and sought to ensure that the administrative burden to resolve inappropriately issued authorisations did not fall to councils.

Recommendation 6:
The recommendations of LGNSW's November 2017 submission to the Evaluation of the Interim Restaurant Authorisations should be considered by Liquor & Gaming NSW as part of its consultation on the draft Liquor Regulation 2018.

Conclusion

LGNSW is pleased to have had the opportunity to comment on the consultation draft Liquor Regulation 2018.

In summary, LGNSW recommends that:

1. Liquor & Gaming NSW and the Independent Liquor and Gaming Authority ensure that the streamlined liquor licence application process does not impair adequate community, council and stakeholder consultation.
2. Clause 20 of the draft Regulation be amended to provide that the Independent Liquor and Gaming Authority must not vary the radius notification distance to less 100 metres.
3. Consideration be given to amending clause 22 to require notification to community service providers working on alcohol abuse issues, community drug action teams and local chambers of commerce.
4. On-premises licences for restaurants be subject to the standard 30-day consultation period.
5. The Regulation not provide discretionary power for the Independent Liquor and Gaming Authority to determine a consultation period of fewer than 14 days for an on-premises licence for a restaurant.
6. The recommendations of LGNSW's November 2017 submission to the Evaluation of the Interim Restaurant Authorisations should be considered by Liquor & Gaming NSW as part of its consultation on the draft Liquor Regulation 2018.

For further information on this submission please contact LGNSW's Social and Community Policy team on 02 9242 4063 or at lgnsw@lgnsw.org.au.