



Liquor Regulation Regulatory Impact Statement
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Northern Sydney Local Health District Health Promotion submission regarding the Regulatory Impact Statement and the proposed Liquor Regulation 2018

Thank you for providing the opportunity to comment on the Regulatory Impact Statement and the proposed Liquor Regulation 2018.

Background and context

Northern Sydney Local Health District (NSLHD) Health Promotion has an active interest in measures to prevent or reduce alcohol-related harms such as malicious damage, interpersonal violence, accidental injury and long-term health impacts. We also have a history of working to reduce the potential of liquor outlets to be a source of alcohol for minors, either by direct purchase attempts or secondary supply avenues, through high-profile projects such as the “Stop the Supply” campaign.

In this regard, we are concerned with several elements of the Regulatory Impact Statement and the proposed Liquor Regulation 2018, which significantly favour the liquor industry and pose unacceptable risks to the community. We are also concerned with the lack of public consultation for the proposed Liquor Regulation 2018, taking into account the significant changes proposed.

General comments

The Regulatory Impact Statement offers four options to achieve the Regulation’s objectives including; adopting the proposed Regulation, allowing the current Regulation to lapse, industry self-regulation or co-regulation and addressing matters through administrative procedures. To ensure a level of transparency and accountability exists within the liquor industry, who financially benefit from the sale of this harmful product, it is imperative that any form of deregulation or weakening of regulatory powers does not occur. It is our strongest recommendation that a Liquor Regulation be reinstated prior to the 1st September 2018 to protect the community from the harms generated from the sale and consumption of alcohol in NSW.

However, the proposed Liquor Regulation 2018 in its current form contains significant omissions and amendments designed to support the liquor industry, to the detriment of public health and community safety. The following recommendations will ensure the community have some opportunity to engage in the liquor licensing process and the harms associated with alcohol are minimised.

1. Retain the requirement of a Community Impact Statement to accompany liquor licence applications

Clause 118 of the proposed Liquor Regulation 2018 provides an exemption from the requirement to provide a Community Impact Statement (CIS) with a liquor licence application. The findings from the CIS evaluation undertaken in 2017 are yet to be published and reviewed by stakeholders, so any action on this requirement is premature.

This exemption will essentially remove what little onus of proof that currently exists from the Applicant and place the onus solely on the community to provide evidence of likely harm. This is at odds with the Authority's own Community Impact Test declared in a decision report for the refusal of the ALDI Lake Haven, which states:

*"Under section 48(5) of the Act, the Authority must not grant a licence... unless it is satisfied... that the overall social impact of the licence... being granted will not be detrimental to the well-being of the local or broader community."*¹

The test is not that the Authority must grant a licence unless it is satisfied that the overall social impact is detrimental. The test is that it must not grant a licence unless it is satisfied that the overall social impact is *not* detrimental.

A comprehensive CIS transparently details the social context the licence will operate in, the current alcohol outlet density and alcohol-related harms in the local community, any community concerns raised and outlines the reasons why the granting of the proposed licence will not contribute to them. Social considerations and harms include:

- Low income households/social housing
- Proximity to vulnerable facilities (youth centres, schools, early childhood centres etc.)
- Alcohol Free Zones/Alcohol Prohibited Areas
- Alcohol-related assault counts and rates
- Alcohol-attributable hospitalisation counts and rates
- Risky drinking rates
- Domestic assaults counts and rates
- Malicious damage counts and rates

It is both unfair and unrealistic to expect the community to have the capacity to present this kind of empirical evidence. The applicant is the party who stands to financially benefit from the increased supply of a product known to cause significant negative social, health and economic impacts. Therefore it is the Applicant who should be required to empirically demonstrate that there will be *no harm* caused by the granting of a licence through the development of a CIS.

It appears that Liquor & Gaming NSW (L&GNSW) consider the current regulatory requirements to be an unacceptable burden for applicants. To this end, NSW Health (including NSLHD Health Promotion) is currently developing a systematic set of evidence-based criteria to estimate potential for alcohol related harm in a given local area. We invite L&GNSW to participate in this process and commit to agreed criteria whereby a geographical mapping tool can be developed, published and utilised (by applicants and the community alike) to objectively indicate locations that are (or are not) appropriate for liquor outlets.

Using our proposed mapping tool, for any applications pertaining to a location objectively identified as being at higher risk for alcohol-related harms, there would be a rebuttable presumption *against* granting the licence. The burden of proof would lie with the applicant to adequately demonstrate that their licensed premises will not add to these harms. The community and stakeholders would then have the final right of reply to respond to the Applicant's reasoning. Conversely, if the location is identified as having lower rates of alcohol-related harm, there would be a rebuttable presumption *for* granting the licence, and the burden of proof would fall on the community to provide evidence why the license should not be granted. The Applicant would then be afforded the opportunity to respond to any community concerns.

¹ Liquor and Gaming NSW, ALDI – Lake Haven Decision Report. Available at: https://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/Decision-ALDI_Lake_Haven-Application-PLL-Refused-Nov2015.pdf (Accessed 17/07/2018)

Such a tool would minimise the need for both the applicant and the community to invest time and resources either defending or objecting-to liquor licence applications. We believe this action would increase the health and wellbeing of our community and also achieve L&GNSW's stated objective of reducing costs and regulatory burden for applicants. However, until such time that a process of this kind is established, it is critical that the CIS requirement remains.

2. Extend notification requirements beyond the proposed 200m radius to a minimum 1km radius and develop an online notification tool

The extended notification requirements proposed in the Liquor Regulation 2018 are still inadequate and do not sufficiently inform the wider community about proposals that are likely to impact on them. In decision reports published on the L&GNSW website, when identifying the community impacted by a licence, the Authority deems the local community as the suburb and the broader community as the Local Government Area. However, under the proposed regulations the Applicant will only be required to consult with local residents and businesses within a 200m radius of the proposed premises, leaving the majority of impacted residents uninformed.

The NSW Ombudsman stipulates that the rules or principles of procedural fairness (ie. natural justice) must be observed by public officials when exercising statutory powers which could affect the rights, interests or legitimate expectations of individuals². The *Notice Rule* is one of the common law rules for procedural fairness, requiring any person likely to be affected by a decision to be given notice of the issues in sufficient detail for the person to be able to respond meaningfully². In this situation, the potential for procedural fairness is only provided to the minority of residents that happen to live within 200m of the proposed licence (if they read their mail). However, in reality we know that the harms associated with licensed premises extend far beyond a 200m radius. It is unreasonable to expect the rest of the local community to notice the small application notice on the premises or routinely visit the ILGA Noticeboard to scan for new licence applications.

To ensure those impacted by the granting of a liquor licence are properly notified, it is strongly recommended that L&GNSW take a coordination role in our proposed 1km notification process, with the additional administrative costs to be incurred by the Applicant. Furthermore, L&GNSW should develop an 'opt-in' online notification tool for community members and stakeholders (similar to <https://www.planningalerts.org.au/>) that will generate an automated email once a liquor licence application is received by the Authority within a suburb or postcode.

3. Remove the provision for Interim Restaurant Authorisations

Part 3 Applications in the Liquor Regulation 2018 allows for the issuing of Interim Restaurant Authorisations to applicants applying for on-premises licenses attached to a restaurant. We do not support Interim Restaurant Authorisations as they represent a further weakening of current liquor regulation, which has the potential to set a dangerous precedent for more high risk licence types in the future.

The on-premises licence type (used by restaurants) accounted for the majority of strikes (101/189) under the previous 3-Strikes Scheme³. This indicates that a substantial number of licensees were either unaware or unwilling to comply with their licence conditions or requirements under the Act. It appears counterintuitive to relax regulation on a licence type that has a history of non-compliance.

² Wheeler, C., What is fair and reasonable depends a lot on your perspective, NSW Ombudsman Website. Available at: https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0011/50006/What-is-fair-and-reasonable-depends-a-lot-on-your-perspective.pdf (Accessed 17/07/2018).

³ NSW Justice, Review of the Three Strikes Disciplinary Scheme – Background & Key Issues. Available at: <https://www.liquorandgaming.nsw.gov.au/Documents/public-consultation/three-strikes-issues-paper.pdf> (Accessed 17/07/2018)

Interim authorisations also do not take into account the social context in which the licence will operate. Factors such as outlet density, alcohol-attributable hospitalisations, alcohol-related assaults, domestic violence hot spots and drink-driving incidents are temporarily dismissed and the granting of an on-premises licence, even on an interim basis, has the potential to place an already vulnerable community further at risk.

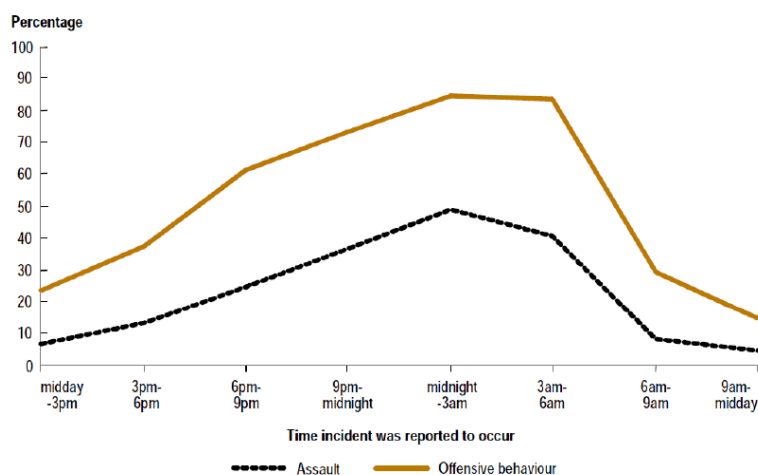
4. Remove automatic extended trading hours and drink type exemptions for small bars in prescribed precincts

An objective of the original small bar licence category was to help reduce the alcohol-related violence and anti-social behaviour that can be associated with larger licensed venues⁴. However, *Part 7 Prescribed Precincts* and *Part 9 Exemptions and Exceptions* of the proposed Regulation include clauses that have the genuine potential to undermine this objective.

Prescribed precincts have been established in Kings Cross and the Sydney CBD in response to high levels of alcohol-related violence⁵. Special licence conditions apply to these precincts and have consistently shown reductions in violence⁶. The Callinan Report in 2016 concluded that the special conditions have made the Kings Cross and Sydney CBD precincts safer and they are valid⁷.

However, the proposed Regulation removes the initial standard trading hour restrictions of 12pm for small bars in prescribed precincts and permits automatic extended trading hours until 2am. A study undertaken by the Bureau of Crime Statistic and Research (BOCSAR) in NSW identified a substantial increase in the percentage of alcohol-related assaults and offensive behaviour commencing from 6pm and continuing to increase until 3am (see Graph 1 below)⁸. The clause will extend trading for an additional two hours during a period identified as problematic for alcohol-related assaults and offensive behaviour. This BOCSAR data is particularly relevant for prescribed precincts experiencing significant violence associated with alcohol.

Graph 1 – Time Periods Alcohol-Related Assaults and Offensive Behaviour Occurred



⁴ Liquor and Gaming NSW, Small Bars Review – Information Paper. Available at: <https://www.liquorandgaming.nsw.gov.au/Documents/public-consultation/Information%20Paper%20%28Small%20Bars%20Review%29%20final.pdf> (Accessed 17/07/2018)

⁵ Liquor and Gaming NSW Website, Prescribed Precincts. Available at: <https://www.liquorandgaming.nsw.gov.au/Pages/liquor/law-and-policy/precincts.aspx> (Accessed 17/07/2018)

⁶ Liquor and Gaming NSW, Liquor Law Review – 1.30am lock outs, 3am cease alcohol sales, 10pm take-away liquor & periodic liquor licence fee laws, Department’s Background Paper. Available at: <https://www.liquorandgaming.nsw.gov.au/Documents/public-consultation/independent%20liquor%20law%20review/Statutory-review-of-lock-outs-and-last-drinks-background-paper.pdf> (Accessed 17/07/2018)

⁷ Callinan, I., Review of Amendments to the Liquor Act 2007 (NSW) – Reviews under clause 47 to Schedule 1 of the Liquor Act, clause 50 of the Liquor Regulation 2008, and at the request of the Executive Government, 2016. Available at: <https://www.liquorandgaming.nsw.gov.au/Documents/public-consultation/independent%20liquor%20law%20review/Liquor-Law-Review-Report.pdf> (Accessed 17/07/2018)

⁸ Briscoe, S., Donnelly, N., Temporal and regional aspects of alcohol-related violence and disorder. Alcohol Studies Bulletin, 2001

Furthermore, Clause 88 of the proposed Regulation exempts small bars from the restriction on licensed premises in prescribed precincts from serving the following problematic drink types during late trading periods:

- Any drink (commonly referred to as a “shot”, a “shooter” or a “bomb”) that is designed to be consumed rapidly
- Any drink containing more than 50% spirits or liquor
- Any ready to drink beverage with an alcohol by volume content of more than 5%
- Any drink prepared on premises that contains more than 30ml of spirits or liquor

In principle, regulations are most effective when universally applied without exception. That is, partial bans are never as effective as total bans. Exceptions tend to dilute and eventually undermine the positive effects of the regulation. This exemption, combined with automatic extended trading hours until 2am, are likely to escalate harms in precincts with a long history of alcohol-related violence. In the long term, they have the potential to establish small bars as a particularly problematic licence type in prescribed precincts and undermine the positive outcomes achieved by the 2014 Liquor Licence Reforms.

5. Include alcoholic beverages sold in soft drink bottles in the *Undesirable Liquor Products* list

There has been a recent trend of particular alcoholic beverages being packaged in plastic soft drink bottles. These products often appear similar to regular soft drinks and it could be argued that the labelling appeals to minors.

Section 100 of the NSW Liquor Act 2007 prescribes any liquor product that is likely, for any reason, to be confused with soft drinks or confectionery as an *undesirable liquor product*. However, the proposed Regulation omits this category from the list of *undesirable liquor products*. These alcohol beverages are likely to appeal to minors as they replicate regular soft drinks. The normalisation of alcohol products is likely to shape their drinking behaviour and lead to earlier initiation to drinking. Inclusion of these beverages on the list of *undesirable liquor products* will restrict licensees from selling or supplying them to customers.

Thank you again for the opportunity to comment and if you have any questions about this submission, please do not hesitate to contact Jonathon Noyes, NSLHD Health Promotion (Lower North Shore) on 02 9462 9568 or jonathon.noyes@health.nsw.gov.au.

Kind regards,



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