



## **SUBMISSION ON PROPOSED NSW LIQUOR REGULATION 2108**

### **Summary**

Spirits & Cocktails Australia believes that the expiry of the current regulation supporting the Liquor Act of 2007 presents an opportunity to rethink how it can better support the objectives of the legislation. Unfortunately, instead of taking the opportunity to frame a principle and evidence-based approach the proposed new regulation takes a very similar approach to the previous one. As such it misses a great opportunity to promote the responsible elements of the hospitality industry and to help revive the NSW night time economy.

Whilst welcoming some of the incremental changes proposed, Spirits & Cocktails Australia recommends the new regulation only be adopted for a five year period and that a more comprehensive review be undertaken to allow a simpler and more efficient system to be implemented by 2023.

### **About Spirits and Cocktails Australia**

Spirits & Cocktails Australia is an incorporated association with a vision to promote and protect a spirits sector which improves Australia's drinking culture to create social and economic opportunities for future generations. The association represents the interests of spirits drinkers and all involved in the production and supply of spirits in Australia. Our members are:

Bacardi-Martini Australia

Beam Suntory

Brown-Forman Australia

Bundaberg Distilling Company

Diageo Australia

Moët Hennessy Australia

Pernod Ricard Australia

Remy Cointreau

William Grant & Sons Australia

## Response to the Proposed Liquor Regulation 2018

Spirits & Cocktails Australia welcomes the opportunity to contribute to the development of the proposed *Liquor Regulation 2018*.

Spirits & Cocktails Australia believes it is essential that the new regulation fully supports the objectives set out in the Act:

- a) regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- b) facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality, and
- c) contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

Spirits & Cocktails Australia's position is that the regulation of the liquor industry has focussed on the control aspect to the detriment of a flexible and balanced regulatory system and to the responsible development of the hospitality and tourism industry in NSW.

Our view is that the expiry of the current regulation provided an opportunity to rebalance the regulation to better address the three objectives of the Act.

Unfortunately, in general the proposed regulation continues the previous approach of micro regulation rather than adopting a principles-based approach centred on the responsibility of participants in the industry to promote and implement the responsible service of alcohol. Of specific concern to the spirits sector is the failure to embrace the reality that alcohol related harm generates from the behaviour of individuals, not from the type of beverage they drink. Intoxication is driven by the level and rate of alcohol consumed not the form consumed. This is recognised by the relevant road traffic regulations and should be reflected with a "behaviour not beverage" approach. Intoxicated persons or those demonstrating rapid consumption behaviour should be refused service of all alcohol products to minimise harm to themselves and others.

Independent analysis undertaken by the School of Demography at the ANU of the 2013 AIHW National Drug and Alcohol survey showed that spirits drinkers had no greater risk of either exceeding recommended drinking levels or partaking of anti social behaviour compared to beer and wine drinkers. Spirits & Cocktails Australia would be pleased to provide a more detailed briefing on this analysis.

It is therefore disappointing to see that the non evidence based approach adopted in the previous regulations is proposed to be continued in Sec 88 of the proposed regulation:

### **Certain drinks and other types of liquor sales prohibited during general late trading period**

(1) This clause applies to subject premises (other than a small bar) if liquor is authorised to be sold for consumption on the premises. (2) The following drinks must not be sold or supplied on subject premises during the general late trading period: (a) any drink (commonly referred to as a “shot”, a “shooter” or a “bomb”) that is designed to be consumed rapidly, (b) any drink containing more than 50% spirits or liqueur, (c) any ready to drink beverage with an alcohol by volume content of more than 5%, (d) any drink prepared on the premises that contains more than 30 ml of spirits or liqueur. (3) Subclause (2) does not (subject to subclause (4)) prevent the sale or supply of any alcoholic drink (commonly known as a “cocktail”) that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly. (4) Subclause (3) applies only if: (a) the alcoholic drink is listed on a document prepared by the licensee that is displayed on the subject premises and itemises the cocktails that may be sold or supplied on the premises during trading hours and the amount payable for each such cocktail throughout or during any particular period during those trading hours (the cocktail list), and (b) no alcoholic drink listed on the cocktail list is sold or supplied on the subject premises between midnight and 3.30 am (or such earlier time at which the premises are required to cease serving liquor) at less than the amount specified on the cocktail list. (5) During the general late trading period, no more than: (a) 4 alcoholic drinks (whether or not of the same kind), or (b) the contents of one bottle of wine, may be sold or supplied on subject premises to the same person at any one time. (6) Despite subclause (5), no more than 2 alcoholic drinks (whether of the same or a different kind) may be sold or supplied on subject premises to the same person at any one time between 2 am and 7 am (or such earlier time at which the premises are required to cease serving liquor).

Spirits & Cocktails Australia submits this is an example of unnecessary micro regulation which is contrary to available evidence. It ignores the reality that all alcohol can be consumed rapidly and that the regulation as well as guidance to licensees and RSA training should focus on discouraging rapid intoxication across the board.

Spirits & Cocktails Australia also believes that this form of regulation does not contribute to the Act’s objective of creating a “flexible and practical regulatory system with minimal formality and technicality”. In fact, the detailed and prescriptive nature of the regulation creates a much greater risk that venues will be less vigilant by creating a ‘tick and flick’

approach to preventing intoxication rather than focussing on genuine reasonable steps appropriate for the venue.

Spirits & Cocktails Australia recognises that a fundamental simplification of the regulatory approach would require extensive consultation and may be beyond the scope of the current process. If this is so, we recommend the proposed Regulation be only put in place for 5 rather than 10 years and that a more extensive review be undertaken from 2020.

Pending a major simplification, the spirits industry has welcomed steps taken in the last year on liquor policy reform, most recently the announcement in September 2017 to remove restrictions on small bars in the Sydney CBD and Kings Cross from serving neat spirits and cocktails not listed on bar menus after midnight. This was a step in the right direction.

We hope to see further reform in this area. Ultimately, we believe the current presumption in the regulations is misplaced – the regulations presume that licensed venues should carry the burden of seeking exemptions to trading restrictions, rather than a default position that operators who have a strong compliance history be exempt from many of the restrictions.

An example of the type of approach Spirits & Cocktails Australia believes is more consistent with the objectives of the Act is that taken with the proposed *Sec 33 Inner West micro-brewery applications*. For clarity we believe this should be retitled Inner West Producer Applications reflecting that it also applies to distillers as well as brewers.

Other measures Spirits & Cocktails Australia believes worth pursuing include relaxation of current regulations such as extending the exemption on post-midnight restrictions to include ‘cocktail-style’ venues under a general bar licence. Other Australian cities are benefiting from a growth in the more sophisticated drinking culture, one which underpins sociability, hospitality and tourism. Whilst there currently around 70 small bar licences across NSW there are also a range of venues one would reasonably consider a ‘small bar’ in terms of style – high quality drinks and service, lower tempo, low risk of alcohol-related issues and good compliance records – actually operate under general bar licences.

The aim of creating a more vibrant, sophisticated and diverse hospitality environment in Sydney and NSW must always be balanced, and in line with, community expectations. The industry supports this, primarily through its active participation in Liquor Accords.

While we recognise the existence of ‘low’ and ‘high’ risk venues in the Liquor and Gaming NSW (L&G) liquor licensing evaluation process, it is important to note that the 21 conditions in the CBD Plan of Management (36 in Kings Cross) all automatically apply to operators regardless of compliance record, style of venue etc. We encourage a more focused but flexible approach to these conditions for low risk venues.

Spirits & Cocktails Australia encourages NSW to adopt recent changes made in Western Australia that will ensure the potential tourism, community and cultural benefits of any new licensed venue are considered, along with public health and safety. Under the change, the chief executive of Tourism WA will be able to lodge a submission around tourism, which will be given equal weight to those of police and health authorities.

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