

Responses received to additional questions

Independent Bars Association

Mr Karl Schlothauer

1. What are the current requirements for security in small bars in Sydney?

There is no specific requirement for security in small bars contained in the *Liquor Act 2007* (NSW) nor the *Liquor Regulation 2018* (NSW).

a) How are those agreed?

The current process sees security conditions imposed by local councils during the process of applying for development consent to operate a small bar. The general practice is a 1:100 ratio, meaning that one security guard is required for venues with a capacity of 100 patrons. Many small bar operators accept this condition to expedite the process of attaining a liquor licence, believing it can be easily removed once they have commenced operating. This condition is also often applied to venue with a capacity less the 100.

However, once a security condition is applied to a small bar's development consent, it is often applied to the liquor licence. If a licensee then seeks to be exempted from this condition, they must apply separately to the local council and Liquor & Gaming NSW. This is just one example of the administrative burden placed on small bar operators due to the disjointed nature of the liquor licence process.

b) How are those enforced?

Security conditions can be enforced by local council, Police and Liquor & Gaming NSW.

In our submission, we cited the example of *This Must Be The Place (TMBTP)* – a NSW Independent Bars Association member operating a small bar under a general licence, with venue capacity of up to 120 patrons. An additional condition to have security at *TMBTP* on Friday and Saturday night was automatically applied to this venue's development consent when a new licensee took over the licence and sought to extend its trading hours. This condition was applied simply because the venue was located in the CBD and subject to the CBD Plan of Management. The condition had not applied for the previous ownership and the venue never had any alcohol-related incidents on-site. Indeed, the venue was not known at all to Police. *TMBTP* spent over \$65K in security fees until this condition was removed from its development consent and liquor licence – a significant cost for a small business, with no material safety benefit to justify the cost.

There is often little coordination between local council planning and compliance teams when making these conditions for small bars. Some councils offer an opportunity for a pre-development consent consultation but often agreements made with compliance staff do not flow onto planning divisions who apply blanket conditions to venues, regardless of their track record of good compliance or venue management.

c) Is there a better way to do this?

The NSW Independent Bars Association firmly believes there is room for improvement with respect to security for small bars. Under the current arrangement, security guards are the first and last interactions customers have with a small bar – this can be intimidating for some and the mere presence of security at the doors may suggest to others that the venue is unsafe. This interaction does not in any way reflect the positive engagement customers have with small bar staff and the unique experiences offered in

our venues.

A better approach would be to offer small bars the flexibility of a trial period for security at venues. We recommend this trial last for three to six months so that the licensee can use this time to develop an understanding of their patronage and assess their venue's risk profile. This trial period should be included in the venue's plan of management with Police Local Area Command, thereby removing the requirement to re-engage the local council and Liquor & Gaming NSW if security is not required.

We understand such a change may be a point of contention for the various stakeholders currently involved in this process; we believe this is an example of an issue a Night-time Mayor could champion and resolve with stakeholders to negotiate an agreed, practical alternative to the current requirements for security at small bars.

2. Is there a way to distinguish between rules governing the rapid consumption of shots and the consumption of neat, often high end, spirits?

While it may be technically possible to differentiate between neat serves and shots, we do not believe this approach adequately addresses issues arising from the rapid consumption of alcohol. Indeed, any beverage – alcoholic or otherwise – can be rapidly consumed. Such distinction would also not resolve current restrictions on serving cocktails not listed on menus after midnight.

The NSW Independent Bars Association believes the regulatory approach needs to shift from the current focus on customers' choice of beverage to their behaviour.

The Liquor Act and regulation provide clear guidance as to the responsible service of alcohol (RSA) and the Three Strikes Scheme provides the necessary recourse to address instances of serious and repeated non-compliance with RSA.

As highlighted in our submission, there is no evidence to suggest that spirits consumers are more likely to engage in risky or antisocial behaviour. As such, we believe the current specific restrictions relating to the service of spirits after midnight contained in the legislation and regulation are misguided and have detrimentally impacted Sydney's reputation as a nightlife destination by unduly limiting customer choice.

The NSW Independent Bars Association recommends simultaneously repealing references to 'rapid intoxication drinks' that restrict the sale of spirits in licenced venues after midnight in both instruments, specifically:

- *Liquor Act 2007* (NSW) sch 4, s 5; and
- *Liquor Regulation 2018* (NSW) pt 7, div 1, cl92.

Additionally, we recommend any parallel references to these restrictions in Liquor & Gaming NSW 'Prevention of Intoxication Guidelines (GL4002)' – Part 3(d)(i)–(iii) also be removed. These guidelines could be updated to provide practical examples to prevent the rapid consumption of shots and neat serves of spirits. Indeed, they currently provide guidance as to the number of drinks that can be served to a customer at any one time which should

already provide the necessary guidance to prevent against rapid consumption.

In making their recommendations, the Committee may wish to reflect upon some of the evidence given by other industry representatives; the people of NSW are increasingly choosing to consume alcohol at home and none of these restrictions apply in this environment. The recommendations of this inquiry should seek to make participation in the night-time economy more appealing to NSW residents and visitors. The necessary safeguards to prevent rapid consumption already exist in RSA and relevant regulatory materials. The focus should now shift to the enforcement of these requirements, rather than introducing new restrictions which may act as a barrier to customer participation in Sydney's night-time economy.

3. What other steps or regulatory changes could be taken to encourage small bars in NSW?

Small, independent bars are an integral part of NSW's night-time economy, and their continued growth can only enhance the customer experience and diversity of our night-time offering.

The regulatory burden placed on independent bars – from applying for a liquor licence to complying with conditions imposed by multiple authorities – is onerous and unnecessarily complex.

It is the view of the NSW Independent Bars Association that regulatory change will encourage the growth and diversification of small bars. We recommend:

- The regulatory approach needs to shift to an 'innocent until proven guilty' approach, which acknowledges good venue management and an operator's compliance history. Independent bars are more controlled environments, which offer higher staff-to-patron ratios, allowing for closer monitoring of customer behaviour and greater capacity to intervene to prevent intoxication and anti-social behaviour. As such, new licensees with no compliance history should be offered the flexibility of a trial period to assess their risk profile and develop an understanding of their patronage before conditions, such as a requirement to have security, should apply. If conditions are breached or antisocial activity occurs on-site during the trial period, then restrictions and conditions should be imposed. If not, the operator should be trusted to provide a safe and enjoyable environment for their customers and comply with relevant regulations. The expedited liquor licence approval given to restaurant operators could also be considered as an alternative to the current licensing approval, as the customer experience offered in each is not dissimilar.
- Removing overly prescriptive regulatory requirements that do not materially improve customer safety: such as restrictions on the service of spirits after midnight, CBD Plan of Management conditions and provisions relating to the size of the font for the word 'security' on security staff shirts (note, the current requirement is for this to be written in 100pt font on both sides of security staff shirts). Additionally, the enforcement focus should shift to ensuring compliance with the responsible service of alcohol, rather than non-compliance with minor infractions such as not having the correct liquor signage displayed within venue.

- A single licence type should be considered for venues operating as a bar to remove the current discrimination between small bar, general bar and primary service authorisation licences to allow greater participation of small and independent bars in NSW's night-time economy. This will simplify the compliance requirements for these very similar bar operations, which in turn makes enforcement of relevant regulation simpler, too. Such a change would also provide customers with a greater choice of lower-tempo venues during late-night trading – under the current licensing arrangement, the standard closing time for general bar and primary service authorisation licences is midnight, whereas small bars is 2.00am. This will create a more level playing field for bars with very similar operations.
- Remove liquor licence freeze in CBD to allow small bars operating under a general licence to apply to extend their trading hours.
- A single liquor licence application portal and assured processing timeframe should be adopted to streamline the application process. This will provide greater business certainty for small and independent bar operators to plan to commence their business, enabling them to enter into leases without the risk of protracted approval processing timeframes, and make other arrangements to commence trading. Such an approach will also provide time efficiencies to reduce the administrative burden on small business owners.

Again, we appreciate that recommendations that involve the cooperation and agreement of multiple authorities requires effective negotiation and strong leadership. Again, we feel this would fall under the remit of a Night-time Mayor or equivalent. We understand the NSW Government's historical reticence to implement change to improve Sydney's night-time economy for fear of unintended consequences or adverse outcomes. However, the NSW Independent Bars Association firmly believes the time has come for real action to ensure Sydney can compete as a night-time economy and destination of choice for international visitors and business investors.

4. It has been suggested that small bars often accept conditions as they are setting up that are then very difficult to remove. Is this true?

The NSW Independent Bars Association can confirm that this statement is absolutely true.

a) What sorts of conditions are most likely to cause this issue?

The conditions most likely to cause this issue are those applied by councils in the development consent process, and others imposed by Liquor & Gaming NSW that create issues with compliance and expose venues to breaches when enquiries are made as to their intent.

Within local council, there are often lists of standard conditions; however, these are selectively applied. Some examples of conditions include:

- *The premise must not operate any pin ball or arcade machines*

- *All licensed security officers whilst employed at the premises are to wear clearly identifiable security attire at all times, with the word "SECURITY" clearly identifiable in bold print at least 100mm high, on the front and back*
- *When more than one security guard is on duty, security officers and management shall communicate by hand held radios at all times*
- *Security guards are to be provided at the premises on Fridays and Saturdays from 9.00pm at a minimum ratio of 1 security staff member to 100 patrons or part thereof.*
- *A sign (in lettering not less than 50mm in height on a contrasting background) shall be displayed in a conspicuous location at the main entrance to the premises and worded as follows; "APPROVED OCCUPANCY CAPACITY - 80PERSONS"*
- *A sign must be displayed at the main entry point to the building in a prominent position stating the maximum number of persons, as specified in the development consent, that are permitted in the building*
- *Entertainment shall be restricted to soloists, duos, trios and low background/amplified music where volume is controllable*
- *No patrons may enter or re-enter the premises after 1.00am, including for the purpose of cigarettes or smoking. **This condition has been applied to member venues located in regional NSW that are authorised to trade until 2.00am.***

It is also important to note that the penalties for not complying with these conditions are disproportionate to the risk associated with non-compliance. For instance, non-compliance with the conditions above will attract a \$6,000.00 fine per condition breached.

Similarly, conditions imposed on liquor licences by Liquor & Gaming NSW include:

- *The licensee must provide sufficient seating for persons consuming liquor. Liquor is not to be served to any person where there is no seating available to them.*
- *On any night that the licensed premises trades after 12.00 midnight the licensee must engage two (2) licensed security officers, with the first to be on duty from 8:00 PM and the second on duty from 10.00 PM. Both security officers must continually patrol the premises and the vicinity of the premises until 30 minutes after the premises ceases to trade or until the last patron leaves the vicinity of the premises, whichever is the sooner. When two security officers are on duty, one officer must patrol the premises while the other shall patrol the vicinity of the premises. For the purpose of this condition. "vicinity" means a distance of 50 metres from the entry point to the Premises in either direction, running along the footpath on the premises and incorporating the laneway. **For one NSW Independent Bars Association member, the 50m rule meant that they were expected to patrol the beach.***
- *There is to be no live entertainment or amplified music within the premises after 1.30am. **This condition is applied even if the venue has approval to trade until 2.00am.***

Similarly, some venues have been asked to install CCTV cameras when they have commenced operating to cover areas which are known to be problem areas to Police before the bar existed; thus, shifting the burden of responsibility to the venue operator to monitor this area and maintain CCTV footage.

These are just some of the examples of conditions applied by authorities involved in the liquor licence approval process and these lists are, by no means, exhaustive. Relevantly, the conditions applied often depend on the authority, and at times the individual bar operator,

as to which conditions are applied and how strictly authorities monitor their enforcement.

The process to amend conditions the conditions placed on a bar's development consent and liquor licence are time-consuming, costly (\$500 per condition to be removed from a liquor licence and additional legal and administrative costs to process such changes with authorities), and often do not take into account the compliance history of the venue.

What is consistent across both local council and Liquor & Gaming NSW approvals – although worded differently in each – is the requirement for a Plan of Management to be established in consultation with NSW Police:

- **Liquor & Gaming requirement:**
The premises is to be operated at all times in accordance with the Plan of Management filed with the Authority on 21 August 2018 as may be varied from time to time after consultation with NSW Police
- **Local council condition:**
The use must always be operated / managed in accordance with the Plan of Management, titled Code of Practice and Security Management Plan, signed and dated <date> that has been approved by Council.

It is our view that the solution to resolving the issues relating to liquor licence conditions lies in removing operational conditions from the development consent and liquor licence, and placing them in the Plan of Management lodged with NSW Police. This will offer the flexibility for bar operators to assess their patronage and risk profile once they have opened rather than having blanket rules applied from the outset, which are then difficult, costly and time-consuming to have removed.

For example, if a venue determined it required security due to increased patronage upon opening but experienced a decline in patronage two years later, the cost of maintaining a security presence at the venue would have a significant financial impact on the viability on the venue. This condition could be altered in a more timely and responsive manner by including it as a condition in the venue's Plan of Management, rather than having to amend it in both its liquor licence and development consent – a process which currently takes 3–12 months.

It is in our interest as bar operators, and the interest of Police and authorities involved in monitoring compliance, that we get the balance right to ensure liquor licence conditions meet the unique needs of individual venues to provide a safe environment for customers.

Again, we appreciate that recommendations that involve the cooperation and agreement of multiple authorities requires effective negotiation and strong leadership. Again, we feel this would fall under the remit of a Night-time Mayor or equivalent.