

# ALCOHOLIC BEVERAGES ADVERTISING PROHIBITION BILL 2015 - SENATE INQUIRY 1 DECEMBER 2017

## QUESTIONS ON NOTICE

### LIQUOR PROMOTION COMPLAINTS

#### QUESTION BY MR JUSTIN FIELD

*Mr JUSTIN FIELD: Under the Liquor Act 2007 you have the capacity, or the director general has the capacity, to restrict or prohibit certain types of promotions. How many complaints would you have received in the last 12 months in regards to liquor promotions in New South Wales?*

*Mr NEWSON: Without being trite, I could probably say far less than what we historically received, and I would not mind pausing and speaking on that in some detail, if you indulge me. The key mechanism that Liquor and Gaming NSW puts into the market, the guidance that we put in the market, is the liquor promotion guidelines. They provide instruction for industry and the community, citizens, as to the type, nature and tone of liquor promotions that we, as the regulator, deem as acceptable within the regulatory framework. I mention those because they were revised and launched in 2013. Around 2013 we had a very significant focus on adverse, undesirable liquor promotions in New South Wales. There was very significant activity that we were engaged in.*

*If I can introduce some figures? In 2013-14, we investigated 92 matters, either on our own motion or through complaints made to us. Out of those we issued 59 orders of one nature or another. In 2014-15, we investigated 81 matters and issued 31 orders of one nature or another. In 2015-16, we investigated 104 matters and issued 11 orders. In 2016-17, we investigated 26 matters and issued four orders. I think that is instructive because we have an intelligence-led approach. We identified in 2013-14 that there was significant adverse, undesirable liquor promotion activity happening in New South Wales and we targeted it. Over a number of years we have successfully influenced industry behaviour. Directly to your question: in 2016-17, I said we investigated 26 and we issued four orders.*

*Mr JUSTIN FIELD: When you say "investigated", are they the ones you chose to investigate or are they all complaints that were made?*

*Mr NEWSON: I will take that point of clarification on notice if I can, because we do have a complaints assessment committee. We get hundreds and hundreds of complaints and every complaint goes to a complaints assessment committee. There is uniform criteria and they get assessed against what our priorities are for the year and the like, and then decisions are made around which matters are investigated and which are not. I would not mind taking it on notice just to clarify if those 26 are matters that were assessed by the*

*committee and then determined to be dealt with by complaint or whether that was the totality of matters raised around liquor promotions.*

## **RESPONSE**

Sections 102 and 102A of the *Liquor Act 2007* allow for the investigation and issuing of orders to restrict or prohibit liquor promotions.

For the avoidance of doubt, the 2016/17 figure (of 26) presented in evidence to the Inquiry by Mr Paul Newson represents the number of liquor promotion activities investigated under section 102A only. That section provides broader-ranging power to restrict or prohibit any promotional activities likely to encourage the misuse and abuse of liquor.

Five further promotions were investigated under section 102 of the *Liquor Act 2007* during 2016/17. Accordingly, in 2016/17, a total of 31 promotions were investigated by Liquor & Gaming NSW (L&GNSW).

L&GNSW's Complaints Assessment Committee sits on a weekly basis. All complaints including relating to liquor promotions are assessed against uniform criteria to determine what action, if any, is appropriate to take.

The Committee determined that all complaints received from external sources in 2016/17 would be investigated (a total of 25), which included six from members of the public. Six other investigations were independently initiated by L&GNSW.

The investigations resulted in five notices to restrict or prohibit specific promotions being issued for that period.

For the remainder, licensees undertook appropriate remedial action to amend, adapt or remove promotions on their premises where necessary to comply with the guidelines.

Examples included one licensee voluntarily cancelling the promotional activity after initial contact from L&GNSW, while another reduced the duration of the activity. In other instances, consultation between a licensee and L&GNSW resulted in a determination to take no further action, or to refer a licensee to NSW Police for appropriate consultation.

## **COMPARISONS WITH OTHER STATES**

### **QUESTION BY THE CHAIR, REVEREND THE HON. FRED NILE**

*The CHAIR: I have some general questions. You said earlier in your opening remarks "in comparison, New South Wales" and so on. Is that comparison with all the other States?*

*Mr NEWSON: That is my understanding, yes.*

*The CHAIR: Are you sure of that? Is there some comparison between every State or just some States?*

*Mr NEWSON: I would not want to speak in certainty. That is my understanding from having read the Chief Medical Officer's report. I can take on notice to clarify that.*

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*The CHAIR: Whether it is comparing it with the east coast, Queensland and Victoria, or Western Australia and so on.*

*Mr NEWSON: I will take that on notice. My understanding certainly was that it was a comparison of Australian jurisdictions.*

## **RESPONSE**

The observed comparisons, contained in the 2016 Report of the NSW Chief Health Officer titled “*Trends in Alcohol Use and Health-Related Harms in NSW*”, compare NSW with all other Australian states and territories. Specifically, the observations referred to in evidence by Mr Paul Newson at the Inquiry note that NSW was found to have:

- the lowest proportion of persons drinking at levels that increase immediate risk of harm, and
- the second lowest proportion of long-term risky drinkers.

These findings are published on page 16 of the Chief Health Officer’s 2016 report.

## **LIQUOR PROMOTIONS THAT HAVE BEEN ORDERED CANCELLED**

### **QUESTION BY THE CHAIR, REVEREND THE HON. FRED NILE**

*The CHAIR: Would you be able to provide, perhaps on notice, a list of promotions that you have ordered to be cancelled?*

## **RESPONSE**

In the 2016 calendar year, L&GNSW issued seven notices with the effect of restricting or prohibiting the identified promotions or activities. These were as follows:

- ‘\$15 all you can drink package – 3.5 hours’ at Major Oak Restaurant, St Marys.
- ‘Let’s get slushie sloshed’ at The Lord Anson, Orange.
- ‘Unlimited sake for two hour period’ at Izakaya Oyako, Strathfield.
- ‘Friday nights 8pm – Midnights “Let’s B Frank” \$20 Beer Buckets – Matilda Bay and \$10 Teapot Cocktails’ at Central Hall/Bacchus Restaurant, Newcastle.
- ‘Uni Night After Party drink specials incl. \$2 Gin & Juice’ at Beer Deluxe, Wagga Wagga.
- Sale of shots and drinks designed to include confectionery (with a special appeal to minors) at Soho on Darby, Newcastle.
- Sale of full bottles of spirits and ‘free pouring’ drinks at Golden Star Palace, Cabramatta.

In the 2017 calendar year (as at 19 December 2017), five notices were issued with the effect of restricting or prohibiting the identified promotions or activities. These were as follows:

- ‘Free beer ‘til first points scored [State of Origin Promotion]’ at Tattersalls Hotel in Goulburn.

- 'Free schooners until first try then discounted for the remainder of the game [State of Origin Promotion]' at Terminus Hotel, Marulan.
- '50th Anniversary – Beer at Historical Prices' at Koorinal Hotel, Koorinal.
- 'Free Booze – Bowl-A-Rama After-party' at Beach Road Hotel, Bondi
- 'Hens night special - \$92 for 3 hour drink package' at MIIND Nightclub, Darlinghurst.

## **INITIATIVES TO REDUCE ALCOHOL RELATED HARM**

### **QUESTION BY THE HON. BEN FRANKLIN**

*Could you give us some information about what Liquor and Gaming has done to reduce alcohol-related harm in the community? We would like some facts and statistics about what you have done in the last five or so years. That would be appreciated. Is that okay?*

### **RESPONSE**

L&GNSW administers the regulatory framework for liquor licensing in NSW, as well as the regulatory frameworks for registered clubs, casinos and gaming and wagering activities in NSW. Within the liquor regulatory framework, this includes the provision of policy advice to the Government, liquor licence decision-making, supervision of licensed venues and enforcement of the NSW liquor laws across the State.

L&GNSW also supports the effective operation of the Independent Liquor and Gaming Authority (ILGA). ILGA determines contentious licensing proposals, reviews certain delegated decisions by L&GNSW, and conducts disciplinary proceedings where formal complaints are made.

A key objective of the framework includes ensuring our regulatory approach to the promotion, sale and consumption of liquor is consistent with community needs and expectations. At the forefront to this approach, L&GNSW prioritises harm minimisation and public safety by administering the NSW liquor laws effectively and complementing this effort with innovative alcohol-related initiatives, measures and controls, and rigorous engagement with a broad range of stakeholders.

A selection of key initiatives of L&GNSW and its predecessor, the Office of Liquor, Gaming and Racing, over the last six years is provided below. It includes agency-led initiatives as well as key reforms that have been supported and implemented by the agency to help deliver the Government's agenda to reduce alcohol-related violence and other harms. It is not intended to be an exhaustive list but provides a broad representation of some key activities.

#### Key efforts in 2012

- implemented and began administering the Three Strikes disciplinary scheme to deter irresponsible conduct and target rogue operators who repeatedly breach the most serious obligations under NSW liquor laws

- conducted sustained monitoring and enforcement of responsible service of alcohol obligations in higher risk precincts including Kings Cross, Wollongong and Newcastle
- conducted a comprehensive audit of licensed premises in Kings Cross, leading to the development of a Kings Cross Plan of Management and imposition of special licence conditions to reduce alcohol-related violence and disturbance in the precinct, as well as improve venue safety and community amenity
- implemented reforms to strengthen the integrity of Responsible Service of Alcohol (RSA) training and the training organisations approved to deliver it
- implemented a risk-based and intelligence led compliance program which identified and targeted known and emerging risks with escalating regulatory intervention
- escalated monitoring, investigation and enforcement action against suspected irresponsible liquor promotions
- conducted intelligence led covert operations targeting suspected liquor law breaches such as illegal liquor sales and deliveries, resulting in the prosecution and shutdown of two unlicensed operators

#### Key efforts in 2013

- developed and implemented new liquor promotion guidelines setting out the acceptable standards for the promotion of alcohol by NSW licensed venues
- conducted intensive engagement with Newcastle declared (violent) premises, which resulted in a noticeable reduction in violence and improved patron behaviour
- developed and ensured successful implementation of a Byron Bay Alcohol Action Plan to respond, in collaboration with stakeholders including NSW Police, to seasonal escalations in alcohol-related violence and anti-social behaviour
- led the successful introduction of networked patron ID scanners in high risk premises in Kings Cross to help deter troublemakers, assist law enforcement inquiries where alleged offences occurred and effectively support precinct banning orders.

#### Key efforts in 2014

- led the policy development and implementation of the Government's watershed liquor law reforms including introduction of risk-based licensing and annual liquor licence fees, lock-out laws and associated precinct plans of management in Kings Cross and Sydney CBD
- contributed to development of the Government's 'Stop Before It Gets Ugly.' advertising campaign targeting violence associated with excessive drinking and misuse of alcohol
- implemented and began administering the Government's escalating sanctions scheme to impose significant penalties including licence suspension and disqualification on licensed premises that sell liquor to under 18s

- conducted intensive one-on-one engagement with venues to ensure compliance with the special licence conditions imposed on Sydney CBD venues under the new Plan of Management to improve safety and amenity of the precinct

#### Key efforts in 2015

- developed new guidelines detailing best practice steps that licensees can take to manage risks and prevent intoxication on licensed premises, and
- implemented a state-wide ban on powdered alcohol by declaring it as an undesirable liquor product under the NSW liquor laws

#### Key efforts in 2016

- L&GNSW was established as a new “fit for purpose” regulator, with the role of the ILGA refocused as an independent statutory board for determining contentious licensing and disciplinary matters
- made a successful disciplinary complaint to ILGA seeking imposition of a 10-year state-wide liquor industry ban on a former licensee of a nightclub for repeatedly allowing intoxication and committing other serious breaches of the NSW liquor laws
- worked with NSW Police to achieve lifetime industry bans and the issue of long-term closure orders for operators of two licensed strip clubs in Kings Cross through the detection of drug use and other serious liquor offences
- for the first time, implemented a round of the violent venues scheme where no licensed premises were listed at Level 1 (i.e. the level with the highest number of assaults) following sustained reductions in violence in and around NSW venues over many years administering the scheme
- developed and introduced compulsory Responsible Service of Alcohol (RSA) online refresher training to enable staff to keep their skills up-to-date and promote a continued focus on obligations under the liquor laws, harm minimisation, and best practices in venue management

#### Key efforts in 2017

- imposed additional risk-based loading fees under the annual liquor licence fee system on venues with an adverse compliance event in the previous 12 months, including venues caught by the Violent Venues Scheme
- established a comprehensive monitoring and evaluation programme to examine and assess the impact of the Government’s reforms following the Callinan and other statutory liquor laws reviews completed in 2016
- intensified compliance operations across Kings Cross and Sydney CBD and nearby areas to respond to potential displacement effects, promote responsible service practices, and enforce compliance with liquor laws
- continued to promote the development of effective and sustainable liquor accords, including engagement with venues and local communities to promote and support various local solutions targeted at reducing alcohol-related harm

- intensively engaged individuals and community groups across NSW through a new, ongoing Community Access program to improve their understanding and access to liquor licensing processes and decisions
- embarked on a licensing transformation initiative that aims to maximise risk-based decision-making on liquor licence applications, where ILGA continues to deal with licensing decisions identified as being higher risk and more contentious

There is strong evidence that these illustrative efforts have, and are continuing, to help drive positive change and influence industry and patron behaviours. For example, the latest statistics from Bureau of Crime Statistics and Research (BOCSAR) show a 6.7% per annum reduction in alcohol-related non-domestic assaults across NSW over the last five years.

NSW Government reforms aimed at reducing violence and improving public amenity in the Sydney CBD and Kings Cross precincts are also proving effective. BOCSAR data shows that, following the introduction of the lock out and cease service restrictions in Kings Cross and the Sydney CBD in February 2014, non-domestic assaults declined by 49% in Kings Cross and by 13% in the Sydney CBD precinct (by September 2016).

These positive outcomes are being achieved on the back of a strengthened risk-based L&GNSW compliance and enforcement program that is continually targeting and taking action against rogue operators that break the law and disregard public safety.

During the 2016/2017 financial year, compliance activities included responding to 1,421 complaints and conducting 1,289 on-site inspections, 1,357 desk audits (i.e. remote inspections) and 1,060 other engagements with industry. These activities resulted in the detection of 775 legislative breaches and the issuing of 647 warning notices, 33 penalty notices and 15 prosecutions before the courts.

This effective use of compliance resources is also being complemented by a range of industry education initiatives and proactive engagement with local communities. L&GNSW continues to support local Liquor Accord groups to develop resources and campaign materials aimed at reducing alcohol-related issues, anti-social behaviour and violence.

In 2016/17, L&GNSW collaborated with Accords to launch the “Ask for Angela” campaign and education resources targeting violence against women in Wagga Wagga, Albury and the Manning Valley. The initiative is extending to other regions in 2018.

In consultation with NSW Police and the Byron Bay Liquor Accord, the “Party Right” campaign and resources were launched in October 2016 to remind younger people about the dangers of drink spiking and alcohol-related harm across the North Coast region.

The “Party Right” campaign ran in the North Coast Region during the “Schoolies” period and the Christmas and New Year holiday period.

Over 1,000 hospitality workers across NSW attended a series of RSA on the front line education sessions, covering recent industry changes and a refresh of RSA best practice.

The establishment of the Community Access Team has enabled L&GNSW to connect and respond to community expectations for a safe and responsible liquor environment. Since 2016, the team has met with close to 80 community groups across the State to improve the understanding of and access to local licensing decisions for community stakeholders.