

E – BRIEF



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Liquor, Licenses and Lockouts

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1 Reform of Liquor Laws

This E-Brief provides an update on changes to liquor laws, in particular the reform of licensing and changes to the sale of liquor, since 1 July 2008.

On 1 July 2008, NSW underwent the biggest shake-up of liquor licensing laws in 25 years with the passing of the *Liquor Act 2007* and cognate legislation and the making of associated regulations.¹

The new package creates a new liquor regulatory authority, establishes different categories of liquor licenses and implements a new fee structure. Outlined in this E-Brief are the salient changes to liquor laws introduced under the *Liquor Act 2007*.

In addition, new policies are being progressively rolled out to drive down the incidence of alcohol-related violence in and around problem drinking venues, with a freeze on issuing new 24-hour liquor licenses and the advent of a far-reaching 'lockout' scheme to take effect across parts of NSW on 1 December 2008.

2 The New Regime

On 1 July 2008, a new administrative authority – the Casino, Liquor and Gaming Control Authority ('the Authority') – came into existence. The Authority replaced the Liquor

Administration Board and the Licensing Court of New South Wales.

Since the reforms of July 2008, liquor license applications are no longer considered by the court, but instead are subject to an administrative process, designed to remove 'complexity and cost for the industry'.² The Authority is the independent body now responsible for determining liquor license applications and variations to existing licenses.

Under the *Liquor Act 2007*, the Authority has the power to consider disturbance complaints, issue closure notices, make late hour entry declarations ('lockouts') and impose other conditions or give directions in relation to liquor licenses.³ The Authority has the power to impose penalties in disciplinary matters, as well as varying or abrogating existing licenses. These matters are, however, reviewable by the Administrative Decisions Tribunal.⁴

3 Community Impact Statements

As part of the process of obtaining liquor licenses, applicants are required to draft community impact statements and lodge these statements with the Authority for its consideration. The objective of community impact statements is to gauge potential impacts of liquor outlets on local

communities as well as ascertaining popular sentiment.

In drafting these statements, applicants must consult with community representatives – such as local councils, police, health services and community organisations – to seek a range of views and possible concerns. The consultation process is set out in s11 of the *Liquor Regulation 2008*.

This new process differs from the old *Liquor Act 1982* in that prospective licensees are no longer required to advertise to give notice of their impact statements in local and State-wide newspapers⁵ nor do they need to pay a prescribed impact assessment fee⁶ as were the requirements under the old regime.

The new requirements also differ markedly from the process in Victoria where a prospective licensee must provide notice of their intended liquor outlet and invite objectors to lodge their concerns with the relevant authorities.⁷

4 Categories of Licenses

One of the major changes effected by this package is the creation of new categories of licenses. There are now, in total, six categories. Outlined below are the conditions and fees for three of those categories.⁸ They are:

Hotel Licenses – for premises whose primary purpose is the sale and supply of alcohol, for consumption both on and off the premises. The total ordinary fee for a Hotel License is \$2,000. Hotel Licenses may also be designated as *General Bar Licenses* in circumstances when bars do not provide gaming facilities or sell takeaway alcohol. The fee for this

license is considerably less than the fee for a hotel license, at \$500.

Club Licenses – as per the requirements set out in the *Registered Clubs Act 1976*. Existing clubs are entitled to unrestricted trading hours and new clubs are able to have their trading hours extended through the extended trading authorisation, subject to changes to trading hours under the *Liquor Legislation Amendment Bill 2008*. Club licenses are \$300.

On-Premises Licenses – for businesses where the sale and consumption of alcohol does not form the primary purpose of trade but is ancillary to another activity such as live music, dining or accommodation. On-Premises licenses are \$500.

The current license and free structure differs significantly from the scales set out under the *Liquor Act 1982*. In particular, the cost of license fees has been reduced significantly, for example, by abolition of the \$15,000 dine-or-drink authority. These changes follow a high-profile campaign by community action group ‘Raise the Bar’ and other lobbying to change Sydney’s drinking culture by making it easier and more cost effective to establish smaller drinking venues.⁹

5 Regulation and Control of a Licensed Premises

The *Liquor Act 2007* retains many of the laws requiring licensees to serve alcohol responsibly, prohibits the sale of alcohol to intoxicated individuals, and allows regulations to be made with respect to restricting or prohibiting promotions or activities that encourage the reckless or excessive consumption of alcohol. The policy framework underpinning the *Liquor Act 2007* stresses the primacy of harm minimisation. Harm minimisation

principles are also being applied to changes to the trading hours and introduction of lockouts, outlined below.

6 Trading Hours

Section 12 of the *Liquor Act 2007* stipulates a standard period of trade. The standard hours of trade are from 5:00am to midnight, Monday to Saturday, and 10:00am to 10:00pm on Sunday. Licensees are able to apply for trade extensions, although there are trade restrictions from midnight to 5am on certain days for particular licences. The longstanding prohibition on trade of alcohol on Good Friday and Christmas Day remains in force.

The issue of trading hours has, however, been the subject of some discussion lately. The Premier, Nathan Rees, flagged in mid October that the Government would be making 'a fundamental change to the policy settings'¹⁰ of liquor trading after stating that he was 'yet to be convinced of the merits of 24-hour licences that allow unrestricted access to alcohol around the clock'.¹¹ NSW Police Commissioner, Andrew Scipione, echoed similar sentiments regarding the need for tougher restrictions on the opening and closing hours of drinking venues.¹²

These views were generated in light of a high rate of late-night assaults and unruly behaviour at or around late-night drinking venues. Alcohol-related assaults have increased by 4.7% in the past two years and there were 21,000 alcohol-related assaults across NSW in 2007.¹³

In foreshadowing changes to liquor trading in NSW, the Minister for Gaming and Racing, Kevin Greene, said:

The community is fed up with people who think that it's okay to get drunk and take part in abusive, offensive or violent behaviour.¹⁴

On 13 November 2008, the Minister introduced into parliament legislation that significantly alters the prospects for further all-night drinking venues by placing a freeze on the issuing of new 24-hour liquor licenses.

Specifically, the new provision makes any license granted after 30 October 2008, or any license granted extended trading after 30 October 2008, subject to a continuous 6-hour closure period during each consecutive period of 24 hours. Section 11A(4) provides that the closure period is from 4am to 10am unless varied by the Authority upon receipt of an application lodged by the licensee.

Breaches of the new license conditions will carry a maximum penalty of \$11,000.

7 Lockouts

Tighter regulation on allowing all-night access to drinking premises has also been the subject of discussion, with a particular focus on the rollout of 'lockouts' in bars, pubs and clubs, both in NSW and other States.

A 'lockout' is a policy to prevent individuals from entering bars, pubs and clubs at designated venues, usually in trouble hotspots, after a certain time. Existing patrons are permitted to stay, but once they exit the premises, they will be refused re-entry. Lockouts differ from mandatory closure periods in that drinking premises are able to remain open, but cannot accept new patrons.

Lockout periods have been supported by police and others as another way of

driving down the incidence of late night violence, largely a result of drunken behaviour.

Proponents for lockouts argue that they: discourage patron migration ('pub crawls') and the excessive consumption of alcohol that results; prevent patrons ejected from one venue for rowdy behaviour from entering another; and control the movement of people, enabling police to target trouble hotspots at key times. There is some data to suggest that existing lockouts are reducing the number of early morning alcohol-related assaults by up to 42% in some areas.¹⁵

There have also been arguments against lockouts, including a spirited anti-lockout campaign in Victoria during that State's trial period in mid 2008.¹⁶ Concerns have been raised that lockouts unduly infringe on civil liberties by denying individuals a choice on the time they choose to enter a premises and their ability to drink freely. The lockout period may also adversely affect the trade of some establishments, particularly smaller ones, placing them at a competitive disadvantage to larger venues.

Although pilot schemes have so far been deemed a success, there is little long-term data on the effect of lockout periods given their relative recency as public policy in Australia.

Jurisdictions other than NSW have had lockouts, with mixed results.

Queensland has had a State-wide 3am lockout since 1 July 2006, which had been preceded by a State-wide trial period and various regional lockouts.¹⁷

In Victoria, a controversial 2am lockout was trialled between June and

September 2008 and applied to designated trouble spots in Melbourne. Once concluded, the Victorian Government declined to extend the trial and has since announced that the policy has been abandoned altogether.¹⁸

In South Australia, 3am lockouts are in effect in many venues, although these lockouts are completely voluntary. As a result, the lockout policy has not been universally agreed upon nor is it widely adhered to.¹⁹

In Western Australia, a trial lockout that comes into effect two hours before the designated closing time of the venue is under consideration. This approach differs markedly from the blanket coverage of 2am or 3am lockouts experienced in other States.²⁰ However, in considering such a lockout, a meeting of the Perth Liquor Accord, which involves an agreement between the local licensees and relevant authorities designed to minimise the harm caused by excessive consumption of alcohol, voted in June 2008 to postpone a trial period for 12 months and as such, no formal lockout policy applies.²¹

In NSW, lockouts have already existed at a local level, arranged through either a local liquor accord or by council mandate. In Newcastle, a council-backed plan that took effect earlier this year requires lockouts from 1am, with all drinking establishments required to close by 3am. Local alcohol accords, such as the one in Manly, provide for voluntary lockouts, as in South Australia.

In addition to the regional and voluntary schemes in place, the Government has moved to formalise a partial lockout scheme.

On 30 October 2008, the Premier, Nathan Rees, announced a range of measures that would come into force in 50 problem venues across the State from 1 December 2008. These measures include a mandatory 2am lockout, the first comprehensive lockout scheme of its kind in NSW. Additional rules applying to these venues include:

- a cessation on the sale of alcohol 30 minutes prior to the venue closing;
- plastic or polycarbonate cups for beer purchases after midnight. (This measure has been introduced to reduce the spate of 'glassing' attacks that have taken place. Many pubs and bars have already voluntarily replaced glass with plastic or polycarbonate);
- a prohibition on shot purchases and limited drink purchases after midnight; and
- ten minute alcohol sale time-outs every hour after midnight.²²

The scheme is being piloted at 50 specific venues and could be altered depending on the outcome of the current lockout arrangements.²³

8 Further Changes to Liquor Laws

In addition to changes to trading hours and introduction of a lockout scheme, the *Liquor Legislation Amendment Bill 2008* amends the *Local Government Act 1993* with respect to the seizure and forfeiture of alcohol being consumed in alcohol-free zones.

Specifically, a replacement section 642 removes the requirement for mandatory warnings to be given prior

to any action taken and instead affords police and enforcement officers the power to immediately confiscate and 'tip out' alcohol held by a person who is either drinking or has already drunk alcohol in an alcohol-free zone, or is in the immediate possession of alcohol and there is a reasonable cause to believe the person is about to drink the alcohol.

Lastly, the *Liquor Amendment Bill 2008* amends the *Road Transport (Driver Licensing) Act* to allow regulations to be made to impose new sanctions against minors who use false evidence-of-age documents to gain access to or remain in a drinking venue, or who use them to obtain liquor. The Government has flagged that forthcoming regulations will require minors who commit an offence by using fake IDs to extend the duration in which they must stay on their provisional driver licenses for an additional six months.

9 Conclusion

2008 has seen a big shake up in the liquor trade in NSW. The changes in 2008 have reformed the process of obtaining licenses and restructured the fee scale to promote greater ease and flexibility in establishing a drinking venue. Meanwhile, subsequent reforms place additional restrictions on some venues on how, and when, liquor is to be sold.

¹ For a background reading on this subject see Lenny Roth, *Liquor Licensing Laws: An Update*, New South Wales Parliamentary Library, Briefing Paper No 12/07.

² Graham West in NSWPD, 28 November 2007, p 4632.

³ *Liquor Act 2007* (NSW) ss 79 – 90.

⁴ *Liquor Act 2007* (NSW) s 144.

⁵ *Liquor Act 1982* (NSW) s 62E (repealed).

⁶ *Liquor Regulation 1996* (NSW) s18C (repealed).

- ⁷ Sunanda Creagh, *Liquor laws stifle small bars*, Sydney Morning Herald, 8 November 2008.
- ⁸ See *Liquor Act 2008* (NSW) ss 10 – 39.
- ⁹ See <http://www.raisethebar.org.au>
- ¹⁰ Andrew Clennell, Dylan Welch and Matthew Moore, *Rees calls in booze blitz*, Sydney Morning Herald, 21 October 2008.
- ¹¹ Joe Hildebrand and Angela Saurine, *24-hour pubs to have their day?*, Daily Telegraph, 14 October 2008.
- ¹² Ibid.
- ¹³ Kevin Greene in NSWPD, 13 November 2008, pp 68 – 70.
- ¹⁴ *New alcohol measures go into parliament*, The Australia, 13 November 2008.
- ¹⁵ Jacqui Jones, *Call to widen Newcastle curfew*, The Herald, 26 August 2008.
- ¹⁶ See <http://www.melbournelockedout.com>
- ¹⁷ See the Queensland Office of Liquor Gaming and Racing's website at <http://www.olgr.qld.gov.au> for more information.
- ¹⁸ Peter Rolfe, *2am lockout lifted on Melbourne bars and clubs*, The Herald Sun, 31 August 2008.
- ¹⁹ Nick Henderson, *Police demand 3am lockout in Adelaide pubs and clubs*, The Advertiser, 18 June 2008.
- ²⁰ Tim Wilson, *Cops, not liquor regulations, reduce street violence*, IPA Review, November 2008 at p 29.
- ²¹ Glenn Cordingley, *Liquor lockouts plan rejected*, Perth Now, 4 June 2008.
- ²² Nathan Rees, *New measures to get tough with alcohol-related violence*, News Release, 30 October 2008.
- ²³ Ibid.

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