

Liquor & Gaming NSW

Report on Implementation of night-time economy reforms

Statutory report required under Part 11 of the
Liquor Act 2007 - Part B

30 October 2023

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Background

This report includes reporting Parliamentary reporting requirements as set out by Part 11 of the *Liquor Act 2007* (the Act). Part A of this report is in relation to section 163, and Part B of this report is in relation to section 163A.

Part A – available from the NSW Parliament website

Under section 163 of the Act, the Minister for Gaming and Racing is required to provide a report to Parliament on:

- the progress on the Parliamentary priorities to streamline liquor licensing and planning approvals and the development of live entertainment incentives (section 163); and
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Part B – this report

Under section 163A of the Act the Minister for Gaming and Racing is required to provide a report to Parliament on:

- the effectiveness of the reduction of fees and the extension of trading hours for dedicated live music and performance venues as well as report on a number of other initiatives included in the *Liquor Amendment (Night-time Economy) Act 2020* for the financial year 2022–2023.¹

¹ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-090#sec.163A>

Overview

The NSW Government made a number of election commitments to restore vibrancy in NSW. Many of these election commitments will further streamline liquor licensing and planning approvals and expand live entertainment incentives to support dedicated live music and performance venues.

The NSW Government has announced a package of reforms to:

- Empower the 24-hour Economy Commissioner to deliver a sustainable, thriving night-time economy
- Improve the night-time for workers
- Achieve sensible venue sound management and incentives for live music venues
- Facilitate vibrant, coordinated precincts
- Achieve modern planning and liquor licensing with common-sense approaches to risk; and
- Provide activated outdoors including dining and street festivals.

These reforms aim to create a vibrant night-time economy, in particular by encouraging the creation of more live music and performance venues.

Implementation and effectiveness of live music incentives

60-minute extended trading for live music and performance venues

Section 12A of the Act permits dedicated live music or performance venues to trade an additional 60 minutes past a venue's standard trading hours or extended trading authorisation that applies to the premises. The extension is subject to the condition that, on any night of the week on which the licensed premises trades the additional time, a live music performance or other arts and cultural event of at least 45 minutes duration must be held or provided after 8pm on the premises.

This report uses the same definition of 'live music venue and performance venue' as the definition in clause 61A of the Liquor Regulation 2018:

"The venue must have a room or space dedicated to live music performances that is a significant part of the venue and contain appropriate infrastructure to support the regular performances. The venue must also hold an average of at least 2 live music performances per week."

Venues eligible under the above criteria may apply to Liquor & Gaming NSW to be included on the list of live music and performance venues. Once they are approved and published on the Liquor & Gaming NSW website, venues qualify for the incentives under the Act. The above definition does not capture all venues in NSW that host live music or other cultural events.

In September 2023, Liquor & Gaming NSW wrote to all venues who were at that time listed on the Liquor & Gaming NSW website as a dedicated live music or performance venues as well as those venues that participated in the Great Southern Nights incentivised events requesting feedback on the use of the extended trading incentive. Venues were encouraged to respond but not required to.

Of the 226 venues that were contacted, 45 venues responded. Twelve of these venues advised that they used the 60-minute trading extension in the reporting period. Six of these venues are located in the Inner West Local Government Area (LGA), three in the Sydney LGA and one each in the LGAs of Balranald, Camden and Orange.

Even though 29 per cent of the venues who responded indicated they used the 60-minute extended trading incentive, 95 per cent of the respondents indicated that their venue had hosted live music during the reporting period (1 July 2022 – 30 June 2023). Venues advised that this disparity was due to several reasons, such as venues already having extended trading – therefore the incentive was not required, or it was not profitable to use the extended trading incentive.

Fee reductions

Under the Act, live music and performance venues are also entitled to an 80 per cent reduction on annual liquor licence fees, including base fees and trading hours risk loading, and an 80 per cent reduction on permanent extended trading application fees.

212 live music and performance venues claimed the fee reduction in the 2022-2023 financial year. Venues eligible for the fee reduction included all live music and performance venues as well as the seven venues that participated in the Enmore Road Special Entertainment Precinct incentivised event.² See Table 1 (in the Appendix) for a breakdown of the venues by LGA that received the fee reduction in the financial year 2022-2023.

No registered live music and performance venues claimed the reduction on permanent extended trading application fees.

Other initiatives

Special provisions to allow local councils to encourage the use of outdoor space for outdoor dining and performance

Part 12 of the Act outlines special provisions to allow local councils to encourage the use of outdoor space for outdoor dining and performance. These provisions are aimed at improving the planning and licence approval process for licensed and unlicensed venues applying for outdoor dining, enabling businesses to use a streamlined application process to temporarily change the boundary of a licensed premises for outdoor dining.

Section 166 of the Act provides councils with the power to temporarily allow the use of a footway or public open space associated with a licensed premises, or other lawful food and drink premises, entertainment, arts or cultural venue to be used as an outdoor dining area, extension of foyer space or a performance space.

Councils can also use section 166 to allow parking spaces within the council's local government area, close a road for which it is the roads authority, temporarily close a classified road or vary a development consent condition for use as an outdoor dining area, extension of foyer space or performance space.

In the reporting period, only the City of Sydney Council used section 166 of the Act. The City of Sydney used this provision to permit live music and live performances at 16 road closure events for the Sydney Streets program. A total of 42 performance spaces were utilised during these events.

Further, the City of Sydney Council approved of 55 licensed premises applying to Liquor & Gaming NSW to temporarily extend their liquor licence boundaries for outdoor dining, extension of foyer spaces or for live performances purposes using the section 166 pathway.

Small live music and performance venues

The Liquor Amendment (Night-time Economy) Act 2020 added a definition into the Building Code of Australia definition for a 'small live music or arts venue' which is:

"A small live music or arts venue means: the whole or part of a Class 6 building that has a rise in storeys of no more than 2 – in which live music or arts are provided to the public, and that has a floor area of not more than 300 square metres"

Following this, the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (known

as the Codes SEPP) was amended in February 2022 to introduce a complying development pathway for small live music and arts venues. Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a council or an accredited certifier.

To enable more venues to become small live music or arts venues, the Codes SEPP was amended in September 2022 to allow certain shops and food and drink premises to change to a small live music or arts venue as exempt development. Venues using the exempt pathway are not required to report to the council or NSW Government on its use.

Special entertainment precincts

The Enmore Road Special Entertainment Precinct trial was established on 1 September 2022. The Enmore Road trial has been designated under the Act as an incentivised event, which provides participating venues who schedule live entertainment live music and performance venues which provide music, arts and cultural events, access to annual liquor licence fee reductions and extended trading. There are nine venues (six hotels and three small bars) participating in the trial.

The trial has now been extended to 31 December 2023 to allow Council time to monitor the ongoing operation of the Precinct, and to prepare to make the trial permanent.

Exempt development for low impact entertainment

Subdivision 15AB of the Codes SEPP allows low impact entertainment in existing premises as exempt development. There is no requirement for activities using exempt development to be reported or recorded by councils.

The use of loading zones by musicians

In 2021, the *Customer Service Legislation Amendment Act 2021* inserted a note into the Road Rules 2014 clarifying that a driver may stop in a loading zone to deliver music equipment at a venue.

While Revenue NSW publish data on the number of loading zones penalty notices, it is not possible to determine from this data if any relate to musicians. There is no requirement for this initiative to be reported on by any tier of Government in NSW.

The operation of the Environmental Planning and Assessment Act 1979, Schedule 8, Part 1 (Playing and performing)

Schedule 8 of the *Environmental Planning and Assessment Act 1979* permits a local council, by notice published on its website, to modify a development consent for a licensed premises by declaring that certain live entertainment conditions do not apply. Councils are not required to notify the Department of Planning and Environment if they use this clause.

Interim small bar authorisations

Small bars with the necessary planning approvals can be issued with an interim approval to start trading as soon as they lodge their liquor licence online. An interim small bar authorisation allows a venue to begin serving liquor two days after they have informed the NSW Police Force and the local council that they wish to operate, and after they have lodged a small bar liquor licence application with Liquor & Gaming NSW.

There were 18 interim small bar authorisations approved in the reporting period.

Hospitality Concierge

As part of Liquor & Gaming NSW's ongoing commitment to supporting the hospitality sector, in October 2022 the Hospitality Concierge was created. The Hospitality Concierge is a "one stop shop" that offers industry a simple

and interactive way to access information about liquor licence reforms, maximise the benefits of initiatives, reduce red tape and support the night-time economy.

The Hospitality Concierge team is made up of industry professionals, former licensees and senior leaders within the hospitality industry with a unique understanding of the challenges industry are facing and can provide support to industry.

In March 2023, in recognition of the positive impact it was having, the Hospitality Concierge was made a permanent function within Liquor & Gaming NSW.

Table 1 - Dedicated live music and performance venues benefitting from the annual liquor licence fee (ALLF) discount by Local Government Area

Licensed Premises by LGA	2022/2023 Financial Year
Albury	2
Armidale Regional	1
Ballina	3
Balranald	1
Bathurst Regional	2
Bega Valley	2
Bellingen	1
Blacktown	2
Blue Mountains	2
Byron	3
Camden	1
Canada Bay	1
Canterbury-Bankstown	1
Central Coast	5
Cessnock	1
Clarence Valley	2
Coffs Harbour	2
Cowra	1
Dubbo Regional	1
Federation	1
Georges River	1
Goulburn Mulwaree	1
Griffith	1
Gwydir	1
Inner West	28
Lake Macquarie	5
Lismore	3
Mid-Coast	1
Mid-Western Regional	1
Narrabri	1
Newcastle	11
North Sydney	2
Northern Beaches	4
Orange	1
Parramatta	2
Penrith	5
Port Macquarie-Hastings	1
Randwick	7
Shoalhaven	2
Snowy Monaro Regional	1

Licensed Premises by LGA	2022/2023 Financial Year
Sutherland Shire	5
Sydney	67
Tamworth Regional	3
The Hills Shire	1
Tweed	2
Wagga Wagga	4
Waverley	2
Willoughby	2
Wingecarribee	1
Wollongong	10
Woollahra	1
Grand Total	212

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