



Report required under section 163A of the *Liquor Act 2007* on the effectiveness of various amendments included in the *Liquor Amendment (Night-time Economy) Act 2020* and its related legislation.

October 2022

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Background

1. This report is made by the Minister for Hospitality and Racing as required under s163A(1) of the *Liquor Act 2007*. The report sets out the effectiveness of the reduction of fees and the extension of trading hours for dedicated live music and performance venues consequent on the enactment of the *Liquor Amendment (Night-time Economy) Act 2020* (NTE Act) and its related legislation, for the financial year 2021-2022.
2. It is noted that Greater Sydney and other parts of NSW were in lockdown at different times throughout the financial year 2021-2022 due to the COVID-19 pandemic. These lockdowns, to varying degrees, resulted in venues not trading for extended periods. It should also be noted that the hospitality sector is still recovering from the ongoing impacts of the COVID-19 pandemic.

Live music and live performance events conducted under Part 12

3. Part 12 of the *Liquor Act 2007* outlines special provisions relating to the COVID-19 pandemic to allow local councils to encourage the use of outdoor space for outdoor dining and performance to assist with social distancing measures.
4. These measures 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.
5. As an example of the operation of Part 12, the City of Sydney has advised Liquor & Gaming NSW that it utilised section 166 (within Part 12) several times to support approval for live music and performance in the 2021-22 financial year for live performance in outdoor foyers, including through the Sydney Summer Streets program.
6. It is noted that venues are not required by legislation to report to the NSW Government on the number of live music and live performance events conducted under Part 12.

Extended hours for dedicated live music and performance venues under section 12A

7. Section 12A of the *Liquor Act 2007* permits a dedicated live music or performance venue to trade an additional 60 minutes past a venue's standard trading hours or extended trading authorisation that applies to the premises.
8. The extension is subject to the condition that, on any night of the week on which the licensed premises trade 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.
9. To gather information on this reporting requirement, Liquor & Gaming NSW wrote to all 196 venues which were listed as a dedicated live music or performance venue in the 2021/2022 financial year and which were eligible to utilise the extended hours under section 12A.
10. Of the 196 venues contacted, 54 venues responded. Three venues advised that they have used the 60-minute extension. Two of these are located in the City of Sydney LGA and one in the Randwick LGA. 51 venues advised they were not using the extension, with some indicating they may use it in the future.
11. For those not using the 60-minute extension, feedback indicated that a number of venues already had unrestricted trading, and therefore, did not need to take advantage of the 60-minute trading extension. Other venues already had extended trading hours and chose not to use the 60-minute extension, while others that provide live music and performances chose not to trade past their standard trading hours.
12. See Table 1 (in the Appendix) for a breakdown of the venues listed as a dedicated live music or performance venue by LGA in the financial year 2021-2022.

Any licensing incentives developed or implemented to encourage licensed premises to program live entertainment, being licensing incentives of the kind or similar to those referred to in section 163(1)(b)

13. During the financial year 2021-2022, additional licensing incentives were developed and implemented to encourage licensed premises to program live entertainment. These were implemented on 29 November 2021 through an amendment to section 12A of the *Liquor Act 2007*.
14. Prior to 29 November 2021, the incentives only applied to dedicated live music and performance venues located in the City of Sydney LGA, or a special entertainment precinct. On 29 November the incentive was provided to all venues state-wide.
15. Venues that are listed as dedicated live music or performance venues are entitled to:
 - an 80% reduction on annual liquor licence fees – including base fees and trading hours risk loading
 - an 80% reduction on permanent extended trading application fees
16. Dedicated live music and performance venues receiving the 80% annual liquor licence fee reduction are required to provide regular performances or events at least twice per week (on average).
17. The 80% fee reductions are available until 31 December 2024, when they are due to be reviewed. 196 venues claimed the fee reduction in the 2021-2022 financial year.
18. These dedicated live music and performance venues continue to be eligible for the 80% annual liquor licence fee reduction until 31 December 2024.

Special entertainment precincts

19. A special entertainment precinct is a defined area where sound from licensed venues with amplified music is managed by councils through a Noise Management Plan. This approach lets councils set sound levels for amplified music and prepare their own plans to support live music and performance in the precinct. Any requirements on amplified music that would normally be in place under the *Liquor Act 2007*, will not apply in the precincts, including any licence conditions related to amplified music.
20. Councils can identify a precinct by amending their Local Environmental Plan and publishing the noise management plan on their website. A precinct may be a single venue, streetscape or other defined area.
21. The Department of Planning and Environment exhibited an Explanation of Intended Effect from 10 June until 8 July 2022 for changes to the Inner West Council's Local Environmental Plan for a 3 month trial special entertainment precinct on Enmore Road, Enmore. The trial started in September 2022.
22. The NSW Government is supporting special entertainment precincts through a multi-agency working group, including Liquor & Gaming NSW, Office of Local Government, Department of Planning and Environment, 24 Hour Commissioner's Office, the NSW Police Force and three pilot councils.

Small live music and performance venues

1. The NTE Act inserted clauses into the Environmental Planning and Assessment Regulation 2000 to vary the Building Code of Australia for 'small live music or arts venues'. Amendments included that a small live music or arts venue is the whole or part of certain buildings that have a rise in storeys of no more than two, in which live music or arts are provided to the public, and that has a floor area of not more than 300 square metres.

2. Following this, the State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP) was amended in February 2022 to introduce a complying development pathway for a range of land uses in which a small live music and arts venue may be established. In the case of some existing buildings, such as shops and restaurants, a change of use to a small live music and arts venue is exempt development and requires no approval at all.
3. A 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. Complying development applies to homes, businesses and industry and allows for a range of things like the construction of a new dwelling house, alterations and additions to a house, new industrial buildings, demolition of a building, and changes to a business use.

Exempt development for low impact entertainment

4. 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.
5. In relation to take-up of exempt development for low impact entertainment, the Live Music Office advised Liquor & Gaming NSW that the exempt development provisions have been particularly useful in their “Live and Local” micro festivals in regional NSW, providing a precise navigation point and removing any uncertainty as to how ancillary live performance may be hosted in retail businesses.
6. Exempt development for low impact entertainment was also deployed by the Sydney Fringe Festival through their Sideshow in February and March 2022. The Sydney Fringe Festival Sideshow brought together leading independent artists in collaboration for performances and site-specific activations, bringing to life five vacant buildings within the Rocks Precinct. The buildings were taken over and activated as pop-up theatres and gallery spaces. Within the five buildings, seven separate performance spaces were created that hosted 96 ticketed and free performances.

The use of loading zones by musicians

7. 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. 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)

8. 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 licensed premises by declaring that certain live entertainment conditions do not apply.

The temporary use of outdoor spaces under section 166

9. Part 12 of the *Liquor Act 2007* includes special provisions relating to the COVID-19 pandemic, such as section 166, which provides local councils with temporary powers to encourage the use of outdoor spaces.
10. Among a suite of other NSW Government initiatives to encourage the use of outdoor spaces by licensed premises, section 166 encourages the use of outdoor spaces to support food, beverage, entertainment, arts and cultural businesses in expanding their outdoor dining onto footpaths and public spaces.
11. Under section 166, councils can, until 11 December 2023, 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.

12. 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.
13. In the period 1 July 2021 to 30 June 2022, the City of Sydney approved 40 licensed premises applying to Liquor & Gaming NSW to temporarily extend their liquor licence boundaries for outdoor dining and extend foyer spaces for live performance purposes using the section 166 pathway.
14. Separate to section 166, the following NSW Government initiatives are focused on encouraging the use of outdoor spaces by licensed premises:
 - a fast-track approval process for licensed premises wanting to temporarily change their liquor licence boundary to include new outdoor space, such as onto footpaths and roads. Liquor & Gaming NSW approves applications within three days and application fees are waived, and
 - enabling pubs, small bars, restaurants and cafes to use an exempt development pathway for their outdoor dining areas. This is permitted under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). It allows these premises to use adjacent private land, such as carparks, laneways or open space, to serve food and drinks with the landowner's consent.

Interim small bar authorisation under the Liquor Regulation 2018, Part 3, Division 4, Subdivision

15. Since 30 April 2021, eligible small bars with the necessary planning approvals could be issued with an interim approval to start trading as soon as they lodge their liquor licence application online.
16. An interim small bar authorisation (ISA) allows a venue to begin serving liquor two days after they have informed the NSW Police Force and their local council that they wish to operate, and after they have lodged a small bar licence application with Liquor & Gaming NSW.
17. Venues are not eligible to apply for an interim small bar authorisation if they are required to provide a [Category B Community Impact Statement \(CIS\)](#). Reasons where a CIS is required is outlined at: <https://www.liquorandgaming.nsw.gov.au/operating-a-business/community-involvement/community-impact-statements-cis>.
18. Four interim small bar authorisations were approved in the 2021-2022 financial year.

Appendix

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	2021/2022 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	2
Camden	1
Canada Bay	1
Canterbury-Bankstown	1
Central Coast	6
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	19
Lake Macquarie	5
Lismore	3
Mid-Coast	1
Narrabri	1
Newcastle	9
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	2021/2022 Financial Year
Sutherland Shire	5
Sydney	64
Tamworth Regional	3
The Hills Shire	1
Tweed	2
Wagga Wagga	4
Waverley	1
Willoughby	2
Wingecarribee	1
Wollongong	10
Woollahra	1
Grand Total	196