



Night Time
Industries
Association

Email to: liquorpolicy@liquorandgaming.nsw.gov.au

Date: 27 June 2020

Re: Submission on the Liquor Amendment (24 hour Economy) Bill 2020

To whom it may concern

Thank you for the opportunity to make a submission regarding the Liquor Amendment (24 hour Economy) Bill 2020.

We look forward to working together towards a vibrant, diverse, inspiring and safe Sydney.

Yours faithfully,

Michael Rodrigues
Chair, Night Time Industries Association



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1. Background on the Night Time Industries Association (NTIA)

1.1 A new association for a new understanding of nightlife

The NTIA is a relatively new industry association having been formalised in November 2018. The NTIA had its genesis during the 2018 Parliamentary Inquiry into Music and Arts Economy in which it became clear to many Sydney businesses that the pressures they were facing extended far beyond Lockout.

Further, for a number of stakeholders, those interests were not being tabled meaningfully to Parliament, nor being reflected in the media discussion around Sydney's nightlife which had reduced all matters affecting the night time economy, to one unhelpful oversimplification: Lockout.

The formation of a Night Time Industries Association was a key recommendation of the Committee for Sydney's Commission on the Night Time Economy. The NTIA is part of a small but growing network of global NTIAs and we work with counterparts in other global cities to share knowledge and expertise.

1.2 Our primary objective

Our organisation was originally formed to promote Sydney as a vibrant and creative city, and to build a new positive narrative for Sydney's nightlife that includes:

1. that Sydney is a fun and inspiring place to live, work and play;
2. that Sydney's nightlife contributes to the cultural value of the city; and
3. nightlife stimulates creativity which is an important economic driver for NSW.

In recent times prompted by the impact of COVID, the NTIA has expanded its remit to limit the impact of the pandemic on businesses in our sector, and to aid in its recovery. This has prompted an expansion of the NTIA's membership base and territorial reach.

The NTIA is a member of the Industry Advisory Group that is developing the NSW 24 Hour Strategy. We work collaboratively with a number of other like minded organisations including Committee for Sydney and the Independent Bars Association (both of whom are NTIA members).

1.3 Members

The NTIA's members are from across the night time economy and consist of businesses from hospitality, entertainment venues, festivals, retail, arts and culture and music.¹

As far as hospitality is concerned our members tend to be food and beverage focussed enterprises that offer a premium product to the market.

¹ See www.ntia.org.au for a list of current members.



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Our membership has grown rapidly during the pandemic as a new generation of business owner looks to our principles and mission as the organisation best placed to represent their interests, while respecting the individuality of their businesses.



2. The context for our submission

2.1 The reforms generally

The reforms are a reasonably fair reflection of the Joint Select Committee's findings and the Government response to the Sydney Night Time Economy Inquiry, which recognised that small bars were a low risk category and deserved different treatment. It also recognised industry's broad call for a policing and licensing regime that rewarded good operators and punished bad operators.

That said, the proposed reforms have been drafted with respect to 2019 trading conditions and the recommendations flowing from the Sydney Night Time Economy report. Meanwhile a once in a generation event has occurred which will leave an indelible mark on the going out landscape, not only in our Sydney, but cities around the world.

The entire night-time economy has been disrupted by the pandemic, with many operators absolutely decimated. So much of the night-time economy depends on bringing people together, which is made challenging by physical distancing not only in-venue, but on public transport which is an essential component of a successful night time economy.

2.2 Government response during COVID-19

We acknowledge that since the pandemic the NSW Government has already demonstrated a willingness to be responsive and create a flexible trading environment through initiatives including:

- (a) changes to takeaway sales restrictions on bars, cafes and restaurants;
- (b) direction to police regarding security guard requirements appropriate to the time; and
- (c) lifting of the liquor freeze.

These changes have been welcomed by our stakeholders. More importantly they are signals to a previously disenfranchised stakeholder set that the NSW Government is striking out in a new direction when it comes to Sydney's nightlife. While we represent a cross section of businesses, many of our members are Gen X/Y small to medium business owners. We mention this because engagement and dialogue with the next generation of business leaders is crucial to our recovery in the short term, and future prosperity as a State.



2.3 An approach for the future

Prior to our more detailed recommendations which follow at Section 3 below, we see value in articulating the NSW Government's approach in the last few months as one that should continue well into the future and continue to be characterised as follows:

A. **Be bold**

The opportunity presented to the NSW Government by COVID is to think more boldly about building our nightlife the right way - a ground zero approach if you like - in contrast to retrofitting fixes to now non-existent problems.

B. **Be Flexible**

Sydney's economic recovery will in part be function of the flexibility afforded to venues to trade (in a COVIDSafe way). We would encourage Liquor and Gaming to put business flexibility at the core of the legislation.

C. **Be Collaborative**

The real question is whether or not these reforms will be effective. Our view is that they will not be effective unless a collaborative approach between venues and police replaces the sometimes confrontational approach that may have existed in the past. The NTIA asks Government to use the COVID crisis and the passage of this legislation to unite us all, police, health, industry and punter in a communal ambition of truly making NSW the Premier State .

We appreciate that not all of these concepts are easily codified, nor necessarily directly applicable to the strict drafting exercise of the Liquor Amendment (24-hour Economy) Bill 2020 (the **Bill**). However we state them at the outset so as to give Liquor & Gaming a reference point for our comments.



3. Recommendations

3.1 Incentives and Sanctions scheme

We are broadly supportive of the incentives and sanctions system which we think is a genuine reflection of the findings from the Sydney Night Time Economy and Lockout inquiry in 2019 (the *Inquiry*) but would observe that:

- a) the incentives are not overly generous. In practical terms a 5% discount on liquor license fee for a small bar equates to \$11. What well traded venues in the sector deserve is more favourable treatment from regulators if they are incident free. For example removal of other restrictions on their license; and
- b) the threshold levels for incident numbers while referable to small bars for example, are not suitable for large scale venues which welcome significant numbers of patrons in comparison, noting also that the demerit points might be obtained “on or near” the licensed premises

3.2 Cumulative Impact Assessments

We believe that this construct reflects the recent historical context of Sydney and in particular Kings Cross pre 2014 - the implied assumption is that a concentration of liquor licenses in and of itself will result in harm.

As was noted during the Inquiry alcohol consumption per capita is declining. For example the National Drug Strategy Household Survey conducted by the Australian Institute of Health and Welfare - has found that over the last 10 to 15 years, there have been significant declines in people drinking at risky levels:

- Per capita alcohol consumption is at a 50-year low²
- The sharpest declines are amongst 18-24 years olds;³
- Most Australians are drinking less frequently on a daily and weekly basis, and more people are deciding not to drink at all⁴

While the NTIA understands the issue the Cumulative Impact Assessment is attempting to address we would argue that a better model would be the Purple Flag scheme⁵.

The Purple Flag scheme accredits areas that achieve standards of excellence in managing the night time economy. There is a strict process for accreditation, but participants have noted that accredited

² Australian Bureau of Statistics, National Health Survey: First Results, 2017-18 (2018)

³ Australian Institute of Health and Welfare 2017. National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics series no. 31. Cat. no. PHE 214. Canberra - <https://www.aihw.gov.au/reports/illegal-use-of-drugs/ndshs-2016-key-findings/contents/summary>

⁴ Ibid

⁵ <https://www.atcm.org/purple-flag>

areas enjoy an increase in wider patronage and increased expenditure; lower crime and anti-social behaviour and a more successful mixed use economy in the longer term.

This scheme has four aspects to its core policy agenda:

1. **Wellbeing:** welcoming, clean and safe
2. **Movement:** a secure pattern of arrival, circulation and departure
3. **Broad Appeal:** a vibrant choice and a rich mix of entertainment and activity
4. **Place:** a stimulating destination and a vital place

The scheme requires active consideration of the mix of businesses in an area and would be a step towards managing over concentration of licensed premises, without being viewed solely through the arguably restrictive lens of the Cumulative Impact Assessment scheme.

We have argued previously that the scheme could be piloted in one or two precincts as a partnership between State Government, Local Council and industry, involving existing Liquor Accords.

Should the Cumulative Impact Assessment scheme proceed we would request there be industry representation through the NTIA amongst others alongside Council, NSW Police and the Ministry of Health.

3.3 Takeaway alcohol sales

The COVID catalysed flexibility afforded venues previously not authorised for the sale or supply of liquor for consumption away from the premises, has been a positive development for many bars and restaurants as it has given rise to an additional revenue stream. We recommend this be made permanent, and on terms in line with that outlined in Schedule 3 (regulatory framework for same day alcohol delivery).



3.4 Security Guards

Few would argue that the presence of security professionals is important in crowd management generally, with additional considerations required where alcohol service is involved. However the inflexibility of their appointment to licensed premises has resulted in:

- a) cost overburden particularly when the number of security guards required is linked to the licensed capacity of the venue, rather than the actual number of patrons on the premises;
- b) in some cases negative impact on guest experience through the presence of high visibility or prominently uniformed personnel; and
- c) arguably punitive policing on occasion, where venues have been fined for alleged non-compliance with the strict terms of license conditions relating to security,

amongst other challenges.

The current statement of regulatory intent regarding security guard requirements has alleviated at least one cost to businesses, particularly small bars, as they begin recovery.

Further the incentives and sanctions scheme proposed puts the onus for good operation on the venue owner - they risk demerits for non-compliance. Individual decisions around security levels should be left to their discretion.

In this context we recommend that all conditions relating to security guards on liquor licenses be eliminated, with the security requirement instead sitting in the Plan of Management.

Lastly there should be an express prohibition on the “100 person rule of thumb” that has previously been applied to liquor licenses in determining security guard requirements for venues. It is arbitrary and unfair and not in keeping with the legislative intention behind the Bill.

3.5 Police Restrictions Generally

Police currently have the ability to impose restrictions on:

- a) Venue DAs;
- b) Venue liquor licenses; and
- c) Venue Plans of Management.

When the industry says “please remove red tape” this is what it is referring to. Three bites of the cherry is two, too many.

The DA should deal with the restrictions on use of the building. The Liquor license should deal with service of liquor. The Venue plans of management are the correct area of oversight for police.



3.6 Lockout

The word “Lockout” has been a blight on brand Sydney. This has been empirically demonstrated as follows:

- the Committee for Sydney’s 2018 report, *Sustaining the Advantage: Benchmarking Sydney’s Performance*, found that Sydney’s visitor and destination appeal and its image, brand and influence had both declined since 2016; and
- the Time Out Global City Index (March 2019) in a survey of more than 34,000 people in 48 cities globally, rated Sydney as 39th in the world to live, and 48 out of 48 in terms of nightlife.

Due to COVID-19, every city in the world has had its nightlife obliterated. We are back to the level. The opportunity presented by the pandemic is for Sydney to wipe the slate clean.

We well understand the political challenges posed by resident objection and health concerns, but the passage of this bill is an opportunity to bring forward the 12 month review of lockout and once and for all declare Sydney open.

Indeed if Don Draper was responsible for Sydney’s global marketing we are confident his advice in respect of Lockout would be “this never happened”.

3.7 Mirrorballs

We support the immediate removal of outdated conditions and ask that this also include the elimination of prohibitions against mirrorballs currently affecting a number of licenses.



4. Planning Matters

It really does.

There are a few key concepts that sit outside amendments to the Liquor Act that urgently need to be addressed in order for Sydney and NSW to realise its ambition for a 24 hour economy.

4.1 Pavement Dining

This is an obvious way to permit trading under physical distancing while taking advantage of our temperate climate.

4.2 Noise

While crickets currently control the playlist, noise complaints will in due course again become a burden on operators. In the past, a single noise complaint has had the propensity to cost operators many thousands of dollars to resolve.

While the bill proposes the elimination of one agency from the mix (reducing the total number from 7 down to 6), a noise complaint can still be made to the local council, Planning, Police, the EPA, and even Roads and Maritime Services as well as Property NSW in certain cases.

Having one agency responsible for managing noise complaints will help streamline the system and ensure only genuine complaints are raised and they are resolved in a way that is fair for residents and venue operators. It may well be that this agency sit within the Customer Service portfolio.

The NTIA is also supportive of:

(a) the principle of the 'agent of change' model, which ensures that a new residential development is responsible for managing the noise impacts from an existing music venue. Similarly, new entertainment venues would be required to ensure existing residential properties are not impacted from noise;

(b) the Good Neighbour policy initiated in the Inner West which requires parties to a complaint to sit down and speak at a suitable decibel level to find a resolution before an official complaint will be received by (hopefully) one designated noise complaint agency.

4.3 City of Rooftops

Sydney should seek to establish itself as a City of Rooftops, not least of all due to fresh air, sunshine and Sydney's picturesque aspect. Need a catalyst? Look no further than the post COVID anxiety of commercial landlords eager to make a buck. And Sydneysiders current aversion to lifts might quickly be overcome by its enthusiasm to ascend to rooftops as new places for social gathering.



5. Conclusion

The NTIA remains grateful for the opportunity to engage in a productive dialogue with the NSW Government on the Bill and to participate in the development of the 24 Hour Economy Strategy through the Industry Advisory Group.

If we can be of further assistance please feel free to contact us at any time.