



Night Time  
Industries  
Association

13 December 2022

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To Whom It May Concern:

Please find below the Night Time Industries Association's submission to Liquor and Gaming NSW's *Liquor Licensing Reform Options - Discussion Paper*.

We welcome the opportunity to comment on the Discussion Paper and are readily available to provide further commentary and input as required.

The NTIA notes submissions made by other peak associations and representative bodies including MusicNSW and Independent Bars Association. Further consultation should be undertaken with these parties and the NTIA before any proposals are explored in greater detail.

Thank you for considering the NTIA's submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mick Gibb'.

Mick Gibb

Chief Executive Officer



# Night Time Industries Association | Submission re. Liquor Licensing Reform Options Discussion Paper

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

## 1.1 About the Night Time Industries Association

The Night Time Industries Association's (NTIA) mission is to rebuild, protect and grow night time experiences and industries - encompassing providers and supporters of hospitality, arts and culture, events, and performance. We represent these industries collectively - we advocate, we educate, and we collaborate to support growth and innovation in the night time economy. We embrace the voice of our younger audiences. We cover the entire night out.

The NTIA membership comprises stakeholders in the night time economy from multiple sectors, including hospitality, entertainment venues, festivals, arts, music, culture, precincts, comedy and the visitor economy. Our membership grew rapidly following the pandemic as a new generation of business owners entrusted us to represent their interests.

In mid-2022 the NTIA formed a Youth Advisory Council to provide people between 18 to 30 years of age with a voice to industry and decision makers. This group has shared its insights and views on Sydney's nightlife and the opportunities that exist to strengthen the night even more.

## 1.2 The value of night time economies

The night time industries make a huge contribution to the economy. According to research undertaken by Deloitte<sup>1</sup>, the value of the night time economy in greater Sydney alone in 2017 was \$27.2 billion, supporting 234,000 jobs, and with an estimated \$16 billion in unrealised economic potential and associated job creation.

A vibrant NTE is an ecosystem that relies on effective planning and collaboration. It is not solely about hospitality and entertainment – as important as they are – but creating attractive and safe public spaces, providing public transport and parking, offering a diversity of activities and state and local government working in partnership with the private sector.

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<sup>1</sup> Imagine Sydney (Play)- Deloitte, 2019

## 2. Part A - Liquor Licensing & Planning Approvals

### A) Overview

The NSW night time economy is experiencing a resurgence since the removal of the lockout laws in 2020 and the introduction of 24 Hour Economy Commissioner. Industry's ability to weather the worst of the pandemic thanks to staunch government support has played a key role. This resurgence has driven a spike in consumer demand to pre-pandemic levels and encouraged existing and new night time operators to broaden their footprint.<sup>2</sup>

The acknowledgement of the duplication of processes to obtain Development Approval (DA) and a Liquor Licence (LL) is a good first step in rectifying what has long been a burden for the industry. This first step may well help to sustainably support the expansion of the night time economy.

The NTIA has provided feedback and recommendations on the core elements raised in Part A - Liquor Licensing and Planning Approvals.

### B) Section 3 - Application Reform Options

The NTIA supports removing duplication of processes and simplifying the application process. This should remain the overarching objective of the licensing process throughout the short, medium and long term as outlined by L&GNSW in section 3.1.

Introducing a digital portal that launches parallel DA and LL applications would be welcomed by industry. However, it is important that any portal recognises the different types of operators that exist and their unique needs. For example, larger scale hospitality operators would benefit from a platform that allows multiple users to exist under the one group. In practice this would see Company X have its group account in which all venue information and application details are held, while its various licensees or venues would be able to log into the platform as users.

For this reason, the NTIA recommends that L&GNSW consults broadly with the full suite of industry operators of different size, scale and business type to ensure the platform caters to a diverse array of needs. This should take place once a platform design process is being decided.

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<sup>2</sup> Koziol, M 2022, 'If you thought the CBD was dead after dark, think again', *Sydney Morning Herald*, November 11.



Operators have reported ambiguity about what is the purview of the various regulatory and local government bodies involved in the application process. This has resulted in duplication and subsequent time delays as approvals, consultations and notification periods are completed again and again. A key problem to address in the application process is the time it takes to get approvals. All approving authorities should have strict decision timeframes to ensure operators have clear indications of how long it will take for a decision to be made so they can operate with less ambiguity.

One NTIA member recently applied for a Hotel Licence (General Bar) in June, with the licence finalised and issued 21 Nov 2022. Due to capacity issues, the application was pushed back a couple of times to be considered at the Independent Liquor & Gaming Authority Meeting. Once it was heard at the meeting and approved (13 Oct), it still took over a month to receive the official licence and approval to trade. This should be streamlined as the current review, determination and approval process takes too long and is convoluted.

A core element of the process of streamlining and simplifying the licence and DA approval process should be consolidating the number of various regulatory, government and stakeholder bodies involved in commenting on or approving an application and ensuring all remaining parties have delineated areas of authority. These delineations could also flow through to how any complaints or issues are managed in the future. For instance, sound and noise matters could be directed solely to council (regardless of whether a Special Entertainment Precinct exists) as they provided the conditions and approval on sound and noise matters.

### Features of a single entry portal

The features of the single entry portal outlined by L&GNSW are notionally a good starting point for the platform's design and development. There are some important considerations that must be made:

1. **Auto-population of applicant's details.** This process would support small to mid-sized operators but may not be fit-for-purpose for larger scale businesses. Consideration should be paid to how auto-population works for larger groups with many different venues and teams of people preparing/submitting DA and LL applications.
2. **Customer-friendly LL & DA selector tool.** Algorithmic support tools for DA and LL selection should serve as a guide and not be restrictive. In all cases, applicants should have the ability to select their own type of licence and/or seek counsel from the Hospitality Concierge or other support resources. This is particularly important for new entrants to the sector who may be unfamiliar with exactly what they need for their operations and growth plans.



3. **An application progress tracker.** An application progress tracker would be highly beneficial as a tool. What will determine its success is what information is input and made available. This should include in-depth details about the status of the application and the anticipated timeframes. It is noted that the Discussion Paper suggests the community could be notified via alerts about progress made through the application tracker. Further feedback is provided in the Community Consultation section, however industry does not support the use of alerts for notifying community stakeholders about the progress of an application.

No.	Recommendation
3.1	L&GNSW consults broadly with the full suite of industry operators of different size, scale and business type to ensure the digital platform caters to a diverse array of needs.
3.2	Streamline and simplify the licence and DA approval process by consolidating the number of regulatory, government and stakeholder bodies involved in approving an application and ensuring all remaining parties have specific and delineated areas of authority.
3.3	Ensure that any algorithm based selector tools still allow for individual operators to be able to select their own licence type and make best use of support services like Hospitality Concierge
3.4	Alerts via the application progress tracker should be available for the applicant and approving authorities only.
3.5	Develop strict decision timeframes for the various 'risk categories' to determine the amount of time it will take for an application decision to be made. These timeframes should be developed in consultation with industry to provide operators the ability to make informed decisions.



## C) Section 4 - Consultation Reform Options

The NTIA welcomes efforts to simplify and streamline the consultation process through a digital platform. Aligning DA and LL consultations in a more absolute manner is critical to removing the burden on operators, stakeholders and community groups. However, the NTIA acknowledges the complexities in this process and why L&GNSW has cited it as a long term objective.

Night time industry operators are committed to maintaining good working relationships with the communities in which they operate. Through initial consultations during the point of application and ongoing dialogue, night time operators invest a lot of resources into the community relationship, as is noted in the NTIA's '*Let's Hear It*' campaign which fostered connections between communities and venues.<sup>3</sup> However, despite this investment and focus on community engagement, night time operators are perceived as more likely to do more harm than good for the local community. This is even present in the language used in this Discussion Paper as the positive impacts a licensee may provide to the community are secondary to how they seek to mitigate any possible risks. How a matter is initially conveyed and framed will impact on how stakeholders interpret it and their possible response.<sup>4</sup> The NTIA recommends that the framing and language used in community consultation is reconsidered. Even from a very basic level of changing it from *Community Impact Statement* to something less emotive such as *Community Engagement Statement*. Removing emotive language and creating balance can help create a level playing field for community engagement.

### A single licensing consultation process for medium to higher-risk liquor licences

Removing the 30-day pre-consultation period is a simple measure to speed up the application and approval process. Similarly, it would make it easier for community members and stakeholders to provide their consultation through one mechanism rather than duplicating their efforts. However, removing one layer of administrative burden should not result in additional requirements being included. By reducing the initial consultation period, it is important that the overall application process is sped up. The case study below demonstrates why this is important.

#### **CASE STUDY | ODD CULTURE GROUP**

Sydney hospitality operator Odd Culture Group recently made headlines by receiving the first 4am Development Consent for a bar in Newtown in 100 years. It's a great sign of progress however the process was far from simple.

<sup>3</sup> *Let's Hear It* 2021, viewed 1 December 2022, Night Time Industries Association, Sydney  
<<https://ntia.org.au/resources/lets-hear-it-for-sound-management>>

<sup>4</sup> Schmidt, R 2016, Using behavioral design to overcome decision-making paralysis, Deloitte, viewed 1 December 2022  
<<https://www2.deloitte.com/xe/en/insights/focus/behavioral-economics/overcoming-decision-making-paralysis.html>>



The DA application was lodged in April 2022 with six months going by before approval was granted in October. Now, the operators must undergo the initial Community Impact Statement consultation before even attempting to seek a liquor licence.

It will be a full year before Odd Culture Group will have obtained all of the necessary approvals and ticked all of the necessary consultation boxes. Much of this time delay is spent on community consultation periods and regulatory stakeholders referring elements of an application to one another.

These time delays present a deterrent for good operators like Odd Culture Group to open exciting new venues that add to a vibrant 24 hour economy. The opportunity cost of investing in something new becomes far greater as the risk of regulators inadvertently slowing down the application increases.

In the words of Odd Culture founder James Thorpe, “The process should be unified and the responsibility of each department should be clear. Right now we have this situation where there are too many cooks in the kitchen.”

The NTIA has provided commentary on the items proposed in the Discussion Paper:

1. **Enhanced notification requirements prior to lodging a LL.** Automatically notified stakeholders should be targeted to organisations that focus specifically on public health and community safety. The proposed 30 day exhibition period for medium to high risk venues outlined within the paper is onerous and does not align with current planning practise. Section 2.21(2) and Schedule 1 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* set out minimum exhibition timeframes for certain types of planning applications. The EP&A Act prescribes a minimum 14 day notification period for a development application, and requires adjoining properties to be notified of the application. The proposed approach of doubling the minimum exhibition time and significantly increasing the notification area for a medium to high risk venue is inconsistent with the objectives of the Discussion Paper to 'streamline (the) approval process', and 'reduce overall approval timeframes and duplication'.
2. **Assistance for applicants to notify neighbours and key community stakeholders.** A centralised list by LGA and specific parameters of engagement would be welcomed.
3. **A new statement about the risk of harm, potential impacts and benefits of the liquor licence.** As detailed above, how a message is framed is important to the overall outcome. Should this document be made available to the community or stakeholder groups its title,





format and content should be required to be far more neutral in tone and structure. By focusing on the negatives from the outset, industry is immediately having to justify why it should exist. Neutral language that addresses the role the venue could play in the community should be used instead.

4. **Greater transparency for the community on how issues raised during consultation are addressed.** The NTIA supports this measure being optional, but insists that community concerns raised in submissions should be addressed based on thematics rather than specific details. For example, sound attenuation strategies could be discussed broadly instead of on a specific instance-by-instance basis.

No.	Recommendation
4.1	The framing and language used in consultation should be reconsidered to be more neutral and less centred on risk and impact. Even from a very basic level of changing consultation from Community Impact Statement to something less emotive such as Community Engagement Statement.
4.2	Automatically notified stakeholders should be targeted to organisations which focus specifically on public health and community safety. Notification by the applicant should be targeted too which is why they should not need to notify neighbours more than 50 metres from the venue in any direction and consultation windows should last for 14 days.
4.3	Should a new statement about the risk of harm, potential impacts and benefits of the liquor licence be made available to the community or stakeholder groups its title, format and content should be required to be far more neutral in tone and structure to elicit a balanced response from the community.
4.4	Community concerns raised in submissions should be addressed based on thematics rather than specific details.

## D) Section 5 - Conditions and Plans of Management

The industry welcomes proposals to reduce duplication, inconsistencies and uncertainties in Plans of Management (PoM) and licence conditions. Many operators report inconsistencies in their PoM and conditions which requires them to operate to the strictest condition rather than the most practical. For instance, a venue's conditions may require two guards be on duty at all times yet a PoM says that number can be reduced during quiet trading periods. The operator has to make a tough choice to pay the cost of two guards in an empty venue or risk a spot-inspection and enforcement action if they are caught without the guards.

As part of the reform of conditions and PoMs, attention must be paid to the language used to explain and detail what is required in a condition. When NSW Police Officers conduct an inspection of a venue the conditions should be simple, clear and easily understood. Writing conditions in plain english makes understanding their obligations much easier for both NSW Police and venue operators.

### Developing shared conditions

Streamlining and simplifying the conditions that could be imposed on a venue is supported. In particular, the NTIA welcomes that L&GNSW is proposing to categorise any shared conditions across DA and LL as model conditions rather than prescribed. This will allow the appropriate flexibility necessary to recognise the variability between venues and how they operate in their local community. The conditions listed in Attachment E in the document *Liquor Licensing Reform Options - Discussion Paper (Attachments)* are a good starting point. However, greater alignment should be made on 'Trading Hours' so a venue can operate to the full extent of its liquor licence. NTIA recommends that Trading Hours is the responsibility of L&GNSW.

### Single public database for conditions applied to a venue

A public register of conditions must be balanced by each condition having a single mechanism or regulatory body for managing any complaints. For instance, noise related conditions placed on a DA and PoM should be enforced by one regulatory body. While the introduction of Special Entertainment Precincts helps funnel complaints into council, areas that are not registered as SEPs still allow for multiple avenues of noise complaints. This means vexatious complainants can shop around the regulators until they find a response which suits their agenda. This process typically costs nothing for the complainant but is extraordinarily costly for the venue operator who must respond to each regulator about the complainant. The NTIA is concerned that a public register may result in more complainants trying their luck with various regulators if all conditions are listed in one central space.

However, the NTIA supports a single database being made available for operators and regulators only. This will assist NSW Police and other stakeholders to have a clear view of the conditions placed on a venue.

### Plans of Management

Of the two options presented by L&GNSW as strategies to simplify PoMs, the first option of a single shared PoM is preferable. Developing a 'menu' of typical conditions by licence and DA type would help operators get a clear understanding of what they must consider in their application. To try and maintain as much consistency as possible across the 'menu of conditions', NSW Police and approval authorities should be required to provide a rationale for the inclusion of any additional conditions. These 'off-menu' conditions should be negotiable and operators should be provided with avenues to remove those conditions by addressing specific concerns of approval authorities or NSW Police. Applicants should be able to add off-menu items with a rationale to pre-empt the possible concerns of approval authorities.

While the first option is the preference as it creates a 'single source of truth', option two also has merit. Efforts to prescribe specific elements of conditions to specific approval authorities is particularly noteworthy in its efforts to seek to remove duplication. However, without a single working document regulators may still implement varying conditions.

Increasing flexibility in council PoMs via legislative amendments would help operators more readily adapt and evolve to changing circumstances. The *Night Time Industries Recovery Roadmap* highlighted that in the post-pandemic context, many operators are seeking to diversify their businesses through expansion, change of offering and much more.<sup>5</sup> If council PoMs and conditions could be more readily changed it would help industry be more responsive to change and deliver a more resilient sector.

### Greater engagement and information exchange between L&GNSW and Councils

Among the hurdles in opening a new venue is the time it takes various approving authorities to communicate with one another and agree on what conditions should be imposed. The NTIA supports the intent to increase communication between different authorities but suggests that operators should be included in the correspondence to maintain full transparency about any concerns or questions and allow for quick responses to queries. Auto-notification to L&GNSW should occur and contact details should be provided.

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<sup>5</sup> Night Time Industries Association 2022, *Night Time Industries Recovery Roadmap*, <<https://ntia.org.au/report-night-time-industries-recovery-roadmap>>



No.	Recommendation
5.1	Write conditions in plain english to make understanding obligations much easier for both NSW Police and venue operators.
5.2	Recognise the variables that exist across venues by maintaining conditions as 'model conditions' instead of 'prescribed conditions'.
5.3	A shared database of conditions imposed on a venue should only be available to regulatory bodies and the venue operator. This will mitigate the risk of vexatious complainants using the database as a tool to help them shop around complaints.
5.4	Of the two options presented by L&GNSW as strategies to simplify PoMs, the first option of a single shared PoM is preferable.
5.5	Under option one, NSW Police and approval authorities should be required to provide a rationale for the inclusion of additional conditions that are 'off-menu'. Applicants should be able to add off-menu items with a rationale to pre-empt the possible concerns of approval authorities.
5.6	Any 'off-menu' conditions should be negotiable and operators should be provided with avenues to remove those conditions by addressing specific concerns of approval authorities or NSW Police.
5.7	Regardless of which option of simplification is chosen, legislative amendments should be made to introduce greater flexibility into council PoM.

## 3. Part B - Risk-based Licence Model

### A) Overview

After years of lockouts and lockdowns, night time industry operators have become incredibly resilient and responsive to changing circumstances. They have changed their businesses to reflect the challenges of the time all the while manoeuvring within a complex and convoluted licensing regime. The NTIA is supportive of L&GNSW taking action on Action 15 of the NSW Government's 24-hour Economy Strategy for Greater Sydney by exploring a risk-based model.

Of course, alcohol isn't the central element of what makes a night time vibrant, but it is an important offering that must be diverse and cater to various types of audiences. Younger audiences (18 to 30 years old) will have an entirely different demand than others. It's important that licensing regimes allow for a proliferation of venues that support the diversity of the night.

As we have cited in Part A of this submission, language and framing has a considerable impact on how a topic is perceived. Using the term 'risk-based' creates an immediate perception that licensed venues are inherently risky. This poses real problems for operators as they try to gain public liability insurance from an insurance sector that is increasingly walking away from night time operators.<sup>6</sup>

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<sup>6</sup> Rangiah, L 2022, 'Music venues hit with increasing public liability insurance premiums as fears grow for future of industry', *ABC News*, 6 September, viewed 1 December 2022, <<https://www.abc.net.au/news/2022-09-06/qld-music-venues-increasing-public-liability-insurance/101405518>>



## B) Section 7 - Ongoing licensing reform options

The NTIA would support a reduction in the number of liquor licenses and classes to offer operators more opportunities to diversify. Diversification of revenue sources is a core element of the *Night Time Industries Recovery Roadmap* and was cited by a working group of 100 industry leaders as a critical factor that will help them get back on track post-pandemic and post-lockdowns.<sup>7</sup>

### A 'licence-builder' approach

A licence builder model would assist operators to diversify their offerings and may encourage more entrants into the night time economy. Making it a simpler process with less red tape will make venue ownership and operation a more accessible option for entrepreneurs.

The specific endorsements and the conditions attached to them will require consultation with night time industries to ensure the conditions are fit for purpose. The sample conditions provided in the discussion paper must be discussed in more robust detail with industry. While the intent seems to be to remove niche authorisations there must be room available for context and the differences between venues. A one size fits all approach is inappropriate for the very diverse and dynamic night time economy across NSW.

### Using a limited off-premises endorsement to sell take-away and home deliver alcohol in limited ways

The NTIA supports the intent of seeking to enable small bars, restaurants and cafes and others to sell take-away and home delivery alcohol to further diversify their offering.

No.	Recommendation
7.2	Consult with industry specifically on the specific conditions that will be applied to each of the endorsements.

<sup>7</sup> Night Time Industries Association 2022, *Night Time Industries Recovery Roadmap*, <<https://ntia.org.au/report-night-time-industries-recovery-roadmap>>

## C) Section 8 - Customer-centric, risk based licensing

The NTIA is supportive of a licensing model that recognises the context and differences within the night time industries. However, it remains concerned about the language used to describe different types of venues. To have a vibrant night time economy there must be a diversity of patrons participating in the night - young families, teens, workers and seniors must all feel safe and join in. By labelling venues on 'risk' or 'impact', the unintended consequence is consumers assume there is an inherent danger with being out at night. If all stakeholders are going to work toward a more vibrant, inclusive and diverse night time offering, we need to ensure those diverse groups feel they have a place in the night. Diversity is important, 62 per cent of Sydneysiders say a key drawcard for visiting the CBD is being amongst a diverse array of people.<sup>8</sup> The language that is used to categorise venues and the licence type is important too and must not create negative connotations that deter different groups from going out.

Labelling and licensing venues by a risk categorisation has impacts on operators. Not only do tarnished consumer perceptions impact the likelihood of night time visitation, it makes running a venue a much harder prospect for operators. The case study below shows how perceptions of risk can have incredibly costly ramifications for night time operators seeking to gain public liability insurance.

### CASE STUDY | NTIA MEMBER

An iconic venue and part of the fabric of Sydney's nightlife for more than 30 years, this member is one of many venues facing extraordinary hurdles to access and afford insurance.

Compared to 2021, the cost for public liability insurance for this member is expected to increase by 121 per cent - from \$19,000 to \$42,000. To make matters worse, that insurance is still yet to be guaranteed, meaning operators must make a painstaking decision to personally assume the risk of running a business or to shut their doors. If ever there was a deterrent to running a business, the enormous risk of personal liability is it.

By continuing to perpetuate the narrative of 'risk', venues like this will continue to face greater challenges to access and afford insurance. If L&GNSW's aim is to support a vibrant 24 hour economy, we must move away from risk-centric language.

Attachment J in the document *Liquor Licensing Reform Options - Discussion Paper (Attachments)* highlights a concerning element of how the night is viewed. Simply by trading beyond midnight a bar

<sup>8</sup> EY 2022, *Flicking the Switch: Research and insights to help Sydney's CBD turn the lights on a new era*, viewed 1 December 2022.

becomes high risk. For a small bar, any trade beyond 2am means its risk profile is elevated. This is despite BOCSAR statistics showing a 6.8 per cent decline in incidents of alcohol related assault occurring during nights on licensed premises from July 2014 to June 2022. Rates were higher during lockout laws. Aside from creating a negative subconscious connection between midnight and danger, this approach has impacts on operators. The NTIA recommends that rather than imposing greater cost burdens on operators due to their trading hours, L&GNSW explores what model conditions could be implemented after that time frame based on operational data of that specific venue.

Recognising the different business models of venues is an important element of a risk-based licence model. The context of each venue should be taken into consideration. For example, at the Enmore Theatre the average ticket price is \$73, and the average spend per head at the bar is between \$15 to \$16, including non-alcoholic beverages, snacks and confectionery. However, under the proposed measures this venue would be deemed high risk. Where a recognised venue's primary function is live ticketed concerts, a different classification should apply. This could be derived from the CreateNSW list of dedicated live music venues used in the Performing Arts Support Package.

Adopting technology solutions to simplify the licensing process is welcomed by the NTIA. Using algorithms and user pathways to help guide applicants to the appropriate licence may help to simplify processes. While algorithms can give useful direction, the NTIA recommends that human stop-gap measures remain in place to support applicants when they need it. For example, a new entrant to the night time industries who is quizzed about their primary business activity may find it difficult to understand exactly what they need and incorrectly navigate towards an inappropriate licence. Human stop-gaps could be achieved by using the Hospitality Concierge and enabling that service to access application details.

### Primary business activities

Primary business activity alone is an insufficient indicator of how a venue will integrate into the community and its risk profile. Assessing the potential risk a venue poses is entirely contextual and should not be a one-size-fits-all approach based solely on primary business activity. Further analysis into how the venue plans to operate - staffing, guard numbers, history of incidents (and the context behind each one), operator experience - are important considerations.

Allowing multiple primary business activities is a welcome initiative. However, rather than fees paid on the highest risk level a business operates on, it should be based on the proportion of overall trade. For instance, a restaurant that trades as a restaurant Monday to Thursday and operates as a small bar for Friday and Saturday should only pay the highest rate for 33 per cent of trade with the remaining fees charged at the lower rate.





As stated in earlier sections of this submission, consultation processes should be focused on how a venue anticipates it will integrate into the local community. Utilising the other elements of primary business activities should guide the extent to which an operator must consult neighbours.

#### Risk based oversight and improvement notices

Oversight of licensed venues should be based on the licence type or primary business activity. As noted above, further analysis into the operations of the venue is required before categorisation is made. Further, venues risk status should be based on the rate of incidents proportionate to the total patronage of the venue. The NTIA recommends that incidents are considered per 1,000 patron capacities to better reflect the variability that inherently occurs dependent on scale.

The NTIA welcomes improvement notices as a method to remove immediate fines and provide operators with an opportunity to rectify any concerns before fines or demerit points occur. Outside of serious breaches, improvement notices should be the first means of enforcement before other avenues are pursued. As part of this process it is important that operators have a means to appeal an improvement notice if they contest the justification for it being issued.

#### Controls to prevent venues morphing and risk based fees

The NTIA supports flexibility that allows entertainment, live-music and nightclubs to operate with liquor as ancillary to their primary offering.

The NTIA supports a proportionate fee structure that reflects primary business activity and recommends that fee discrepancies between categorisations remain neutral to prevent businesses from avoiding certain types of operations based on fee and compliance costs.

No.	Recommendation
8.1	Reframe the language used to discuss liquor licensing categories. Current discourse about 'risk' and 'impact' negatively stigmatise both night time operators and the night time experience as inherently dangerous. This is counter-productive to changing the narrative about the night time economy and incentivising a broad array of patrons out at night.
8.2	Retain human stop-gap measures to support applicants during a technology based licensing solution.
8.3	L&GNSW should broaden licence categorisation beyond primary business activity to include contextual elements which influence how a venue operates. This list should be developed with detailed industry consultation.



8.4	Where multiple primary business activities are listed, rather than fees paid on the highest risk level a business operates on, it should be based on the proportion of overall trade.
8.5	Rather than imposing greater cost burdens on operators due to their trading hours, L&GNSW explores what model conditions could be implemented after that time frame.
8.6	Outside of serious breaches, improvement notices should be the first means of enforcement before other avenues are pursued.
8.7	Operators must have a means to appeal an improvement notice if they contest the justification for it being issued.
8.8	Ensure fees based on primary business activity are proportionate and do not act as a disincentive to operators to open certain types of venues.
8.9	The NTIA recommends that incidents are considered per 1,000 patron capacities.

## D) Section 9 - Options to support a vibrant, safe 24-hour economy

### Standard trading hours across all days of the week

The NTIA welcomes efforts to standardise trading hours for retail liquor sales. This will enable more operators to trade later which will create more jobs, encourage more performance in venues and encourage patrons to engage more actively with the night time economy. Currently, the holiday trading conditions have been inconsistently applied. For one NTIA member, a venue has different conditions for trade on Christmas, Good Friday and New Years Eve leading to confusion for venue managers and licensing enforcement. A standardised trading period would simplify this. The NTIA also recommends the following be undertaken:

- **Amend the maximum extended trading period from 18 hours to 24 hours.** People are drinking less alcohol, in particular the youth audience,<sup>9</sup> yet they still want to be entertained and are deciding to stay out later to see performances and live music.<sup>10</sup> The NTIA notes the proposals in ‘9.3 More Support for Live Performance, Creative and Cultural Spaces’ and provides further commentary on that proposal below. For venues without that primary business activity, they should still be able to diversify their offering to put on live performances as needed to drive patronage. This will support more performance in more varied types of venues and greater diversity of industry. The NTIA would like to see a 24 hour trading window exist 7 days a week.
- **Reduce or remove the six hour mandatory closure period.** In line with allowing 24 hour trade, the NTIA recommends the mandatory six hour closure period be reduced or removed to facilitate the ability of live music and performance to be a part of the night time economy. This approach could be trialled at ‘entertainment: live and creative’ licenced venues during weekends.
- **Remove the 3:30am liquor sales cut-off period for the Sydney CBD and Kings Cross.** The restrictions on the Sydney CBD and Kings Cross are excessively onerous and do not reflect the changed drinking behaviours of consumers.<sup>11</sup> Although live performance venues can trade for an extra 30 minutes, operating without the sale of alcohol beyond this time is not commercially viable. To facilitate more culture and performance in venues across the heart of Sydney should be able to trade freely.

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<sup>9</sup> *Alcohol, tobacco & other drugs in Australia 2022*, viewed 1 December 2022, Australian Institute of Health and Welfare <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/alcohol#consumption>>

<sup>10</sup> Night Time Industries Association 2022, *Night Time Industries Recovery Roadmap*, <<https://ntia.org.au/report-night-time-industries-recovery-roadmap>>

<sup>11</sup> Ibid 9.



### More support for live performance, creative and cultural spaces

The NTIA supports allowing venues to provide live music and performance 24/7 under a primary business activity of 'entertainment: live and creative'. In conjunction with the ability to have multiple primary business activities as mentioned in section 8.1 of the Discussion Paper, this initiative could support more venues across NSW to host live music and performance.

To ensure the artistic and performance community are adequately supported and represented throughout this process the NTIA recommends:

- That Kings Cross and Sydney CBD venues not be excluded from this primary business activity due any special licence conditions which are imposed on those venues.
- That venues which seek to operate with this type of primary business activity do not need to provide advance notice to L&GNSW, Police or council ahead of each event. This creates an excessive and unnecessary regulatory burden for operators who wish to host creative performances each night of the week. It may also result in unintended curation of music styles or performance types to ensure approval from all regulatory stakeholders.
- That venues with this primary business activity (or as part of a multiple primary business activity) are supported to understand the regulatory landscape for engaging performers and artists and their responsibilities as venues. This will ensure that a stronger connection is made between the artistic community and operators.
- That L&GNSW's proposal for a streamlined DA and LL application and consultation period contextualises any objections or community comments regarding 24/7 trade against the overarching objective of fostering more creative performance in NSW. Complaints must be weighed against the broader community benefit of increased jobs, economic output and social capital that is generated by performing arts.

### More support for producers – brewers, distillers and wineries

The NTIA supports the proposed changes that will support a wider and more diverse array of producers to promote and display their produce.

### Opening more opportunities to extend trade for special events

The NTIA supports extended trading being available to a broader range of licensed venues. However, these venues should not be required to adhere to strict parameters on the type of venue, event type or location. In particular, requirements that an event is in connection with a larger special event is a handbrake on venue creativity and product offering. It unnecessarily constrains the creativity that could be employed to allow for types of performance and live music. For example during the NRL Grand Final venues in Sydney's CBD trading under an 'entertainment: live and creative' licence would be hard pressed to find a live music or performance connection to that special event.

#### Reducing red tape around licensee training requirements

The NTIA supports the option for licensees and managers to re-enter the industry and renew their RSA certification by completing the licensee training course. However, the course content should reflect the significant changes that have occurred in Sydney's nightlife since the repeal of the lockout laws.

#### Enhancing approaches for managing intoxicated patrons

The NTIA supports the intent of creating a safe and vibrant night time economy through the considered management of intoxicated patrons by introducing proactive RSA measures. Specifically, the NTIA welcomes proposed changes to the *Liquor Act* which would mean it would not be an offence for a person to remain if they are intoxicated under specific parameters of proactive RSA.

The proposal to facilitate harm reduction areas requires greater detail on how it would work in practise. Requiring that a specific area is "fully outside of the licensed boundaries of the premises where liquor is authorised to be sold and supplied, making it an offence to sell or supply liquor in that area" would be highly dependent on the layout of the venue and the practicalities of creating such a space. For example, if an intoxicated person is in the harm reduction area and then exits the area to go to the bathroom would the licensee be considered in breach? For industry to comment on this proposal more detail is required.

In the interim, other options such as providing alcohol-free (ie. those which appear or are branded as alcohol free beer or spirits) or ultra-low alcohol beverages to intoxicated patrons could help them become sober in the venue. In the event the patron sought their friends to purchase alcohol on their behalf all members of that group would be required to leave the venue. One benefit of this approach is that it could support patrons' safety at night as people who are intoxicated or drink spiked would not be forced off the premises and separated from their group. If the individual coerced their friends to purchase alcohol for them they would still be removed but in a much safer context.

The NTIA recommends that a broader consultation on harm minimisation strategies be undertaken with industry to ensure that enforcement of licensing conditions, alcohol consumption and consumer



behaviour are aligned. As part of this broader consultation the NTIA recommends that actions from the *Night Time Industries Recovery Roadmap* are considered, in particular consulting women and young people about their concerns of safety at night.

No.	Recommendation
9.1	Standardise normal trading hours from 5am to midnight on all days of the week.
9.2	Amend the maximum extended trading period from 18 hours to 24 hours.
9.3	In line with allowing 24 hour trade, the NTIA recommends the mandatory six hour closure period be reduced or removed to facilitate the ability of live music and performance to be a part of the night time economy. This approach could be trialled at 'entertainment: live and creative' licenced venues during weekends.
9.4	Remove the 3:30am liquor sales cut-off period for the Sydney CBD and Kings Cross.
9.5	Venues with the 'entertainment: live and creative' primary business activity (or as part of a multiple primary business activity) are supported to understand the regulatory landscape for engaging performers and artists.
9.6	That L&GNSW's proposal for a streamlined DA and LL application and consultation period contextualises any objections or community comments regarding 24/7 trade against the overarching objective of fostering more creative performance in NSW. Complaints must be weighed against the broader community benefit of increased jobs, economic output and social capital that is generated by performing arts.
9.7	That Kings Cross and Sydney CBD venues not be excluded from the 'entertainment: live and creative' primary business activity due any special licence conditions which are imposed on those venues.
9.8	That venues which seek to operate with the 'entertainment: live and creative' type of primary business activity do not need to provide advance notice to L&GNSW, Police or council ahead of each event. This creates an excessive regulatory burden for operators and may result in unintended curation of music styles or performance types to ensure approval from all stakeholders. Instead, in line with the functionality of Special Entertainment Precincts, venues should provide notice to council of the event so any noise and sound attenuation or local amenity matters can be managed through a single regulatory vehicle.
9.9	Venues using extended trade during special events should not be required to adhere to strict parameters on the type of venue, event type of location. In particular, requirements that an



	event is in connection with a larger special event is a handbrake on venue creativity and product offering.
9.10	The course content for licensees and managers completing a RSA recertification should reflect the significant changes that have occurred in Sydney's nightlife since the repeal of the lockout laws.
9.11	Intoxicated persons are allowed to remain on premises under specific parameters of proactive RSA which ensures intoxicated patrons and their friends' alcohol consumption is monitored.
9.12	The NTIA recommends that a broader consultation on harm minimisation strategies be undertaken with industry to ensure that enforcement of licensing conditions, alcohol consumption and consumer behaviour are aligned. As part of this broader consultation the NTIA recommends that actions from the Night Time Industries Recovery Roadmap are considered, in particular consulting women about their concerns of safety at night.



## E) Section 10 - Temporary licensing options

The NTIA supports the introduction of a temporary licence to facilitate more small, medium and large events, pop-up bars and producer promotions.

### An applicant-centric, digital system to simplify the application process

The NTIA supports a mechanism that makes it simpler for temporary licences to be obtained through a digital portal, but it is concerned about the need for minimum timeframes for notifications/application submission. These timeframes are referred to in Attachment K. Under the proposed timeframes, if the Socceroos Round of 16 FIFA World Cup appearance occurred at a later time of day and alcohol was intended to be served no temporary liquor licences could have been issued for the major event held in Sydney’s CBD as 30 or 60 days notice was an impossibility.

The NTIA is strongly opposed to live music venues requiring to provide notice of events (as per Attachment K). There is no justification for live music or performance venues needing to provide advance notice of their events. This is an unnecessary overreach which will increase the regulatory burden on operators, act as a disincentive for putting on performance and create a risk that types of music or performance will be curated to authorising regulators’ tastes.

### Simpler, risk-based licensing criteria for temporary events

The NTIA supports removing requirements to demonstrate social benefits before a temporary licence is granted but is concerned that the phrase, “genuine and in the public interest” may be too broad to ensure consistent interpretation and application. Instead, the NTIA recommends that clear parameters of what the public interest is are developed so applicants are able to articulate how their event will support that objective.

No.	Recommendation
10.1	That notification periods for temporary licences are drastically wound back to be within two working days to facilitate rapid response events to significant milestones.
10.2	Those proposals requiring live music and performance venues to register their acts 24 hours prior to performance are swiftly abandoned. No prior notice is necessary.
10.3	Clear parameters of what the public interest is are developed so applicants are able to articulate how their event will support that objective.





## 4. Recommendation list

### Section 3 - Application Reform Options

No.	Recommendation
3.1	L&GNSW consults broadly with the full suite of industry operators of different size, scale and business type to ensure the digital platform caters to a diverse array of needs.
3.2	Streamline and simplify the license and DA approval process by consolidating the number of regulatory, government and stakeholder bodies involved in approving an application and ensuring all remaining parties have specific and delineated areas of authority.
3.3	Ensure that any algorithm based selector tools still allow for individual operators to be able to select their own licence type and make best use of support services like Hospitality Concierge.
3.4	Alerts via the application progress tracker should be available for the applicant and approving authorities only.
3.5	Develop strict decision timeframes for the various 'risk categories' to determine the amount of time it will take for an application decision to be made. These timeframes should be developed in consultation with industry to provide operators the ability to make informed decisions.

### Section 4 - Consultation Reform Options

No.	Recommendation
4.1	The framing and language used in consultation should be reconsidered to be more neutral and less centred on risk and impact. Even from a very basic level of changing consultation from Community Impact Statement to something less emotive such as Community Engagement Statement.
4.2	Automatically notified stakeholders should be targeted to organisations which focus specifically on public health and community safety. Notification by the applicant should be targeted too which is why they should not need to notify neighbours more than 50 metres from the venue in any direction and consultation windows should last for 14 days.
4.3	Should a new statement about the risk of harm, potential impacts and benefits of the liquor licence be made available to the community or stakeholder groups its title, format and content should be required to be far more neutral in tone and structure to elicit a balanced



	response from the community.
4.4	Community concerns raised in submissions should be addressed based on thematics rather than specific details.

## Section 5 - Conditions and Plans of Management

### No. Recommendation

5.1	Write conditions in plain english to make understanding obligations much easier for both NSW Police and venue operators.
5.2	Recognise the variables that exist across venues by maintaining conditions as 'model conditions' instead of 'prescribed conditions'.
5.3	A shared database of conditions imposed on a venue should only be available to regulatory bodies and the venue operator. This will mitigate the risk of vexatious complainants using the database as a tool to help them shop around complaints.
5.4	Of the two options presented by L&GNSW as strategies to simplify PoMs, the first option of a single shared PoM is preferable.
5.5	Under option one, NSW Police and approval authorities should be required to provide a rationale for the inclusion of additional conditions that are 'off-menu'. Applicants should be able to add off-menu items with a rationale to pre-empt the possible concerns of approval authorities.
5.6	Any 'off-menu' conditions should be negotiable and operators should be provided with avenues to remove those conditions by addressing specific concerns of approval authorities or NSW Police.
5.7	Regardless of which option of simplification is chosen, legislative amendments should be made to introduce greater flexibility into council PoM.

## Section 7 - Ongoing licence reform options

### No. Recommendation

7.2	Consult with industry specifically on the specific conditions that will be applied to each of the endorsements.
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## Section 8 - Customer-centric, risk based licensing

### No. Recommendation



8.1	Reframe the language used to discuss liquor licensing categories. Current discourse about 'risk' and 'impact' negatively stigmatise both night time operators and the night time experience as inherently dangerous. This is counter-productive to changing the narrative about the night time economy and incentivising a broad array of patrons out at night.
8.2	Retain human stop-gap measures to support applicants during a technology based licensing solution.
8.3	L&GNSW should broaden licence categorisation beyond primary business activity to include contextual elements which influence how a venue operates. This list should be developed with detailed industry consultation.
8.4	Where multiple primary business activities are listed, rather than fees paid on the highest risk level a business operates on, it should be based on the proportion of overall trade.
8.5	Rather than imposing greater cost burdens on operators due to their trading hours, L&GNSW explores what model conditions could be implemented after that time frame.
8.6	Outside of serious breaches, improvement notices should be the first means of enforcement before other avenues are pursued.
8.7	Operators must have a means to appeal an improvement notice if they contest the justification for it being issued.
8.8	Ensure fees based on primary business activity are proportionate and do not act as a disincentive to operators to open certain types of venues.
8.9	The NTIA recommends that incidents are considered per 1,000 patron capacities.

## **Section 9 - Options to support a vibrant, safe 24-hour economy**

No.	Recommendation
9.1	Standardise normal trading hours from 5am to midnight on all days of the week.
9.2	Amend the maximum extended trading period from 18 hours to 24 hours.
9.3	In line with allowing 24 hour trade, the NTIA recommends the mandatory six hour closure period be reduced or removed to facilitate the ability of live music and performance to be a part of the night time economy. This approach could be trialled at 'entertainment: live and creative' licenced venues during weekends.
9.4	Remove the 3:30am liquor sales cut-off period for the Sydney CBD and Kings Cross.



9.5	Venues with the 'entertainment: live and creative' primary business activity (or as part of a multiple primary business activity) are supported to understand the regulatory landscape for engaging performers and artists.
9.6	That L&GNSW's proposal for a streamlined DA and LL application and consultation period contextualises any objections or community comments regarding 24/7 trade against the overarching objective of fostering more creative performance in NSW. Complaints must be weighed against the broader community benefit of increased jobs, economic output and social capital that is generated by performing arts.
9.7	That Kings Cross and Sydney CBD venues not be excluded from the 'entertainment: live and creative' primary business activity due any special licence conditions which are imposed on those venues.
9.8	That venues which seek to operate with the 'entertainment: live and creative' type of primary business activity do not need to provide advance notice to L&GNSW, Police or council ahead of each event. This creates an excessive regulatory burden for operators and may result in unintended curation of music styles or performance types to ensure approval from all stakeholders. Instead, in line with the functionality of Special Entertainment Precincts, venues should provide notice to council of the event so any noise and sound attenuation or local amenity matters can be managed through a single regulatory vehicle.
9.9	Venues using extended trade during special events should not be required to adhere to strict parameters on the type of venue, event type of location. In particular, requirements that an event is in connection with a larger special event is a handbrake on venue creativity and product offering.
9.10	The course content for licensees and managers completing a RSA recertification should reflect the significant changes that have occurred in Sydney's nightlife since the repeal of the lockout laws.
9.11	Intoxicated persons are allowed to remain on premises under specific parameters of proactive RSA which ensures intoxicated patrons and their friends' alcohol consumption is monitored.
9.12	The NTIA recommends that a broader consultation on harm minimisation strategies be undertaken with industry to ensure that enforcement of licensing conditions, alcohol consumption and consumer behaviour are aligned. As part of this broader consultation the NTIA recommends that actions from the Night Time Industries Recovery Roadmap are considered, in particular consulting women about their concerns of safety at night.

## Section 10 - Temporary licensing options

No. Recommendation



10.1	That notification periods for temporary licences are drastically wound back to be within two working days to facilitate rapid response events to significant milestones.
10.2	The proposal requiring live music and performance venues to register their acts 24 hours prior to performance are swiftly abandoned. No prior notice is necessary.
10.3	Clear parameters of what the public interest is are developed so applicants are able to articulate how their event will support that objective.