



Ms Natalie Wright
A/Executive Director Policy & Programs
Liquor & Gaming NSW - Hospitality & Racing

RE: Draft Disturbance Complaint Guidelines

Dear Ms Wright,

The Night Time Industries Association (NTIA) welcomes the opportunity to comment on the Draft Disturbance Complaint Guidelines. Throughout the development and enactment of the Vibrancy Reforms Act, Liquor and Gaming NSW has consulted extensively with a broad cross section of industry, including the NTIA. This broad consultation is greatly appreciated and recognised by both the NTIA but its peers and members within the industry.

Specific feedback to the subject headlines of the Draft Disturbance Complaint Guidelines has been provided below. However one general prevailing theme emerges in the document. There is a need to differentiate between what is sound and what is noise. Sound is live music, performance and arts and culture - it is a by-product of successful communities. Noise is a necessary facet of urban existence, be it the jackhammer in a construction site or a truck barrelling down the highway. There is a clear and defined difference between the two.

The NTIA encourages L&GNSW to consider sound and noise matters in a manner that recognises that in large part licensed venues are creating sound.

Thank you for your consideration of this submission. Should you have any further questions or seek additional input or commentary please do not hesitate to contact us.

Yours sincerely,

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

Mick Gibb
Chief Executive Officer | Night Time Industries Association

Noise conditions

The intent to mitigate undue impact on the quiet and good order of a neighbourhood through licence conditions should not come at the expense of venues. The NTIA suggests that any conditions placed on a liquor licence should have a high degree of permanency and are not subject to seasonal, demand or market related fluctuations. Any conditions that are impacted by various forces throughout the year should exist on a Plan of Management. This approach allows a venue to operate with greater ease, reduced cost and in a manner which can appropriately respond to any neighbourhood concerns without being in breach of a liquor licence.

Development consent conditions

The removal of development consent conditions is a significant achievement of the Vibrancy Reforms. The NTIA applauds L&GNSW and the Office of the 24 Hour Economy Commissioner for the considerable consultation and effort made to achieve this.

Regarding the list of noise conditions which will no longer have effect under 'Category 1', the NTIA suggests that two further points be included:

- Conditions relating to limitations or restrictions on the number of performers, musicians, types of instruments or format of performance.
- Conditions relating to the genre, style or any other curatorial matter regarding the performance.

Among the NTIA membership, curatorial related conditions are often placed on liquor licenses or DAs. The NTIA fervently believes no such conditions should be placed on businesses.

Offensive noise and improvement notices

NSW Police has a vital role to play in maintaining public order and safety at night. Where a NSW Police Officer issues an improvement notice to a licensed venue to address a sound related matter evidence should be collected and submitted to L&GNSW. This approach provides greater certainty to L&GNSW that the matter was indeed serious enough to warrant an immediate response. Further, it provides an avenue of recourse for the venue to challenge the improvement notice and any subsequent actions if the evidence is found as insufficient to warrant the notice.

Threshold for upholding a complaint

It is clear that without language defined in the Liquor Act, L&GNSW must seek to provide its own terminology to manage complaint processes. While the NTIA appreciates that this is a particularly challenging task, language that is more direct would serve to benefit all parties. The current language for 'Undue disturbance' is deliberately vague and may well give rise to inconsistencies in findings and subsequent misinterpretations. The NTIA suggests greater detail is provided about what the 'particular context' entails.

In addition to language considerations, longer term opportunities exist to standardise the decibel levels for live performance venues across asset classes.

Determining the order of occupancy

Order of occupancy provides a solid framework to recognise the existence of long standing venues but consideration must also be given to the changing shape of the State. Significant programs such as the Transport Oriented Development Program will see a significant boost to the number of new residential dwellings in key inner-suburban and inner-city areas. While the order of occupancy considerations may give protection to the longstanding corner pub, what considerations will be given to the bar, restaurant, nightclub or other licensed venue that came into operation at the same time as the new residents? Many of these developments will include space for hospitality or commercial activity in the lower levels of the buildings where sound emitting businesses may exist. This challenge will require careful consideration and consultation by L&GNSW to ensure a revised framework is developed that strikes the right balance between new venues and new residents.

The NTIA notes the ability for individuals to make a complaint in serious or unique circumstances. This mechanism requires clarification to ensure it is not used as a backdoor by vexatious complainants. In particular, classification should be provided for what is a 'serious or unique circumstance' and how the remedies are applied. The evidence that would be considered should also be specifically outlined and remove any subjective means of assessment.

Making a complaint

Requiring a complainant to seek to mediate the issue with a venue prior to lodging a complaint is a common sense approach. To mitigate the risk of intentionally failed consultation the NTIA suggests that all efforts to resolve the matter should be made across multiple mediums including phone, in-person and written correspondence. Further, the complainant must demonstrate a considerable effort was made to engage the venue and either:

- The venue responded and no solution could be achieved, or



- The venue failed to respond to the correspondence within 14 days

To avoid any ambiguity the complainant should articulate what the specific issue is and avoid generalisations of 'noise or sound'. It should seek to point to specific sound and noise emitting activities and locations. Additionally, where a conference is called by L&GNSW to address a complaint, the process should be mandatory for all parties.