

## Support for pubs, bars, and live music: exempt development trial for outdoor dining and 24 hour economy reforms to Liquor Act

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Some welcome relief for the hospitality industry is on its way in the form of a 12 month pilot trial of outdoor dining as exempt development for pubs and bars in the City of Sydney, including fast track licensing approvals, and some long overdue reform to the Liquor Act that will:

- Replace the Three Strikes and declared premises provisions of the Act with an integrated demerit point system
- End the CBD licence freeze, replacing it with cumulative impact assessments
- Abolish restrictions on live entertainment
- Allow for interim small bar authorisations
- Regulate same day deliveries of alcohol

## Outdoor dining trial for pubs and bars

Outdoor dining on public or road land associated with a café or restaurant is a type of exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. However, the exemption does not apply to pubs and small bars, which must obtain development consent for outdoor dining. An amendment to the Codes SEPP is currently on public exhibition which would extend the exemption to pubs and small bars within the City of Sydney. The exemption would also apply to cultural venues such as theatres and cinemas that have a food and drink outlet.

While the City's late night trading management provisions of its DCP will not strictly apply, because no development application will be required, the City's Outdoor Dining Guidelines will apply, which state that trading hours for outdoor dining areas will generally follow the DCPs outdoor trading hours.

The repeal of the temporary licence freeze (explained below) will allow applications to change licensed boundaries to be made and an amendment to the liquor regulation is also proposed which would simplify and fast track applications to change boundaries to include any new outdoor dining area.

It is proposed that a 12 month trial of exempt outdoor dining will operate from 30 October 2020.

Although described as a "trial", suggesting that it may become a permanent and more widely available exemption in the future, it is clear from the government announcements that it is intended as a temporary short term measure only, to make it faster and easier for pubs, bars, and cultural venues within the City of Sydney to implement outdoor dining to enable better social distancing during the pandemic.

# 24 hour economy reforms to the Liquor Act

The *Liquor Amendment (24 Hour Economy) Bill 2020* was passed by the lower house on 23 September 2020 and it will make some important, and very welcome, reforms. The Bill is scheduled for second reading in the upper house on 23 October 2020 where we expect it will be passed without controversy and we anticipate that the amendments will commence before the end of this month.

## Repeal of Three Strikes and declared premises

The Three Strikes and declared premises provisions are repealed and replaced with a demerit point scheme.

The demerit scheme is overall less harsh than the Three Strikes system – for example, a licence could be suspended for up to 12 months, or even cancelled, for three strikes whereas the new demerit point scheme cannot result in licence cancellation and the maximum period for licence suspension is 14 days.

However, the court can still cancel a licence when convicting someone for an offence under the Act (as was the case prior to the introduction of the Three Strikes provisions).

## End of licence freeze and introduction of cumulative impact assessments

The temporary licence freeze for the Sydney CBD and Kings Cross precincts will finally come to an end, after being extended numerous times since its initial introduction 11 years ago.

The new tool for managing the density of licensed premises in a particular area will be through cumulative impact assessments which the Authority can prepare for a particular area where the Authority considers that the overall social impact of the new or altered premises will be detrimental to the well-being of the local or broader community. Where a cumulative impact assessment is published for an area, this will impact on the ability to relocate, or obtain, certain types of licences or approvals (such as an extension of trading hours or boundaries) within that area. The Authority must consult with relevant stakeholders in relation to a draft cumulative impact assessment before finalising and publishing it.

We expect that these cumulative impact assessments will essentially act as a de facto licence freeze for the relevant area, although the Authority may vary or revoke a cumulative impact assessment at any time (subject to consulting with relevant stakeholders), and it is hoped that the new process will be more refined and evidence-based than the previous temporary licence freeze.

As of the date of commencement of the amendments, the City of Sydney will be the only area prescribed by the Regulation to be an area to which a cumulative impact assessment may apply. However, it would be possible for other areas to be added to the list by amending regulation in the future.

## Small bars

Interim small bar authorisations will be added to the Regulation meaning that where a premises has development consent to operate as a small bar, it will now be possible to commence trading as a small bar while awaiting the determination of an application for a small bar licence, just as is currently the case in relation to restaurants.

However, in order to be able to access an interim small bar authorisation, the application for development consent for a small bar must be notified to the local police and the Secretary within two working days of the development application being made.

Amendments have also been made in relation to minors in small bars.

## Abolition of restrictions on live entertainment

From the commencement of the amendments live entertainment conditions will cease to have effect. These are conditions which restrict:

- The genre of music that may be played or performed
- The number of musicians or live entertainment acts that may perform
- The type of instruments that may be played

In addition, no new entertainment conditions can be imposed on a licence (other than in response to a complaint under section 79, or in relation to adult entertainment of a sexual nature). These are conditions which have the effect of limiting the entertainment that may be provided, or the way in which entertainment may be provided, on licensed premises or an area adjacent to licensed premises.

Licensees will also be able to apply, for free, to vary or revoke any existing conditions on their licence that prohibit or restrict the playing of amplified music or providing live music / entertainment.

A related measure which may serve to reinvigorate the live music scene in NSW, is restricting disturbance complaints under section 79 of the Act in relation to noise emitted from the premises itself to only the Police Commissioner or the local council. This means that local residents will no longer be able to make a disturbance complaint under section 79 in relation to noise emitted from licensed premises.

## Regulation of same day alcohol deliveries

Until now, there has been a gap in the regulatory framework in relation to the same day delivery of alcohol. This is because the Liquor Act generally only regulates the sale and supply of liquor on licensed premises, and has been silent on the delivery of liquor that occurs off licensed premises after a sale has already occurred on licensed premises by phone or internet.

While this had historically not been a problem when there was a significant time delay between the order and delivery of liquor, the advent of on demand and same day delivery of packaged liquor suddenly created intoxication and responsible service of alcohol issues that had not previously existed.

The amendments seek to plug this regulatory gap by:

- Extending the application of the Liquor Act to “same day delivery providers” who may include a third party who facilitates the delivery of liquor on behalf of the licensee or licensed business, and extends to people involved in the same day delivery of liquor within NSW irrespective of whether the sale itself occurs outside of NSW
- Making a same day delivery provider vicariously liable for the acts of its employees and agents who deliver liquor on its behalf
- Regulating the hours during which the same day delivery of liquor can occur

- Requiring that the delivery can only be made to the adult person specified in the order to accept the delivery (and requiring identity and age to be checked on delivery, and records kept)
- Requiring training in the responsible supply of alcohol
- Prohibiting delivery to an intoxicated person
- Requiring the keeping of records in relation to the refusal to deliver liquor and prohibiting a same day delivery provider from financially penalising an employee or agent who refuses to make a delivery on legitimate grounds
- Allowing for self-exclusion agreements with same day delivery providers

The regulation excludes the following deliveries from the definition of “same day delivery”:

- Where the liquor is part of a food hamper and the total volume of liquor is less than 1.5 litres
- Where the liquor is delivered to a person authorised to sell liquor

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