



Mr Justin Sammut
LAS Lawyers
by email to: j.sammut@laslawyers.com.au

25 October 2022

Dear Mr Sammut

Application No.	1-7957814379
Application date	7 April 2021
Applicant	Artisanal Cellars Newcastle Pty Ltd
Application for	Change of boundaries
Licence name	Artisanal Cellars Newcastle
Trading hours	<u>Retail</u> Monday to Saturday 07:00 AM – 10:00 PM Sunday 10:00 AM – 10:00 PM
Proposed Premises	Tenancy R.17/169-185 Hunter Street, Newcastle NSW 2300
Current Premises	Tenancy R.05/169-185 Hunter Street, Newcastle, NSW 2300
Legislation	Sections 3, 11A, 12, 29, 40, 44, 45, 48 and 53 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a change of boundaries – Artisanal Cellars Newcastle**

The Independent Liquor & Gaming Authority considered the application above, and decided on 29 July 2021 to **approve** the application under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Statement of reasons

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager, Glenn Barry, at glenn.barry@liquorandgaming.nsw.gov.au

Yours faithfully

Murray Smith

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. On 7 April 2021, Artisanal Cellars Newcastle Pty Ltd (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a change of boundaries (“Licence”) for the premises to Tenancy R.17/169-185 Hunter Street, Newcastle NSW 2300 (“Premises”).
2. The Authority considered the Application out of session and was formally approved on 29 July 2021 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.
4. A preliminary notification of this decision was sent to the Applicant on 29 July 2021, together with the licence document for the Premises.

MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
8. A list of the material considered by the Authority is set out in Schedule 2.

LEGISLATIVE FRAMEWORK

9. The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
 - a) Section 3: Statutory objects of the Act and relevant considerations.
 - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
 - c) Sections 29: Specific provisions in respect of a packaged liquor licence.
 - d) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
 - e) Section 44: Submissions to Authority in relation to licence applications.
 - f) Section 45: Criteria for granting a liquor licence.
 - g) Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
 - h) Section 53: the Authority may impose or revoke conditions.
 - i) Section 59: Removal of licence to other premises
10. An extract of these sections is set out in Schedule 3.

11. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

KEY FINDINGS

12. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading hour requirements

13. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12 and 40 of the Act, and
- b) liquor would be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act, and
- c) sections 30 and 31 of the Act do not apply to the Application, as the Premises is not intended to operate as is contemplated by the sections.

14. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

Fit and proper person, responsible service of alcohol, and development consent requirements

15. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the Development Consent DA2017/00700 in respect of the Premises, issued by The City of Newcastle Council on 4 January 2018.

Community impact

Local and broader communities

16. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Newcastle, and the relevant "broader community" comprises the Local Government Area ("LGA") of Newcastle.

Licence density

17. The Authority notes that, compared to the NSW state average:

- a) Newcastle and Newcastle LGA have a **higher** saturation of package liquor licences.
- b) Newcastle and Newcastle LGA have a **higher** saturation of licences authorised to sell packaged liquor (this includes packaged liquor, club and hotel licences).
- c) Newcastle has a **higher** clustering of package liquor licences.
- d) Newcastle LGA has a **lower** clustering of licences authorised to sell packaged liquor (this includes packaged liquor, club and hotel licences).

Crime data

18. The relevant BOCSAR data indicates that, in the year to December 2022:
- a) the Premises was located within hotspots for incidents of alcohol-related domestic and non-domestic assault, alcohol-related offensive conduct, and malicious damage to property.
 - b) Newcastle recorded higher rates of alcohol-related domestic and non-domestic assault, alcohol-related offensive conduct, and malicious damage to property, compared to the NSW state average.
 - c) The Newcastle LGA recorded higher rates of alcohol-related assault, domestic and non-domestic assault, and malicious damage to property, compared to the NSW state average

Alcohol-related health data

19. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Newcastle LGA recorded a **higher** than average level of alcohol-attributable deaths for the period 2015-2018, and a **lower** than average level of alcohol-attributable hospitalisations for the period 2017-2019.

SEIFA

20. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2021 indicates that Newcastle and Newcastle LGA were relatively advantaged compared to other suburbs and LGAs in NSW.

Business model

21. The Authority notes that the proposed business model involves the sale of packaged liquor for consumption away from the premises.

Purported benefits

22. The Authority has had regard to the Applicant's purported benefits, including that:
- the one stop shop convenience will benefit local residents and business owners and visitors who wish to purchase packaged liquor while shopping at the retail and residential East End Development;
 - being centrally located in a new commercial development will improve community amenity through better security and access for visitors; the distinct business model of a modern-style bottle shop with upmarket furnishings and boutique product range is designed to attract a mature clientele including existing customers, tourists and guests staying at the nearby 5-star QT hotel, and
 - being located within a consumer public transport hub and with longer trading hours provides added convenience for customers.

Stakeholder submissions

23. The Authority has had regard to the submissions from:
- a) **NSW Police Force**, which notes no objections to the grant of the Application submitting no adverse findings were found in relation to the grant of the liquor licence.
 - b) **L&GNSW Compliance**, which notes no objections to the grant of the Application submitting compliance records did not identify any adverse findings in relation to the application, premises owner or the licensee.

- c) **The City of Newcastle Council**, which notes no objections to the grant of the Application submitting the current development approvals are appropriate for the proposed use at the premises with the hours of operation approved under the current development consent.
- d) **Four members of the public**, objected to the grant of the liquor licence submitting the grant of the application would increase local crime rates and saturation rates in the suburb. Also submitted were issues with community engagement, advertising and signage including the premises address. The objections also noted the premises was in cease to trade for an extended period and appeared ready to trade prior to the application being approved.

24. The Authority has also had regard to the Applicant's submission in response contending no Police or Council objection was received and that all residents were notified as per the CIS requirement. The Applicant also noted the application seeks to change the licence boundary of the current packaged liquor licence to a new tenancy located at the same street address. The premises owner and the business will continue to operate upon the move to the new tenancy, therefore, the class of licence applied for is appropriate to the proposed business model and the proposed trading hours are within the standard trading period.

The Applicant also submitted a comprehensive liquor plan of management has been provided with measures to minimise potential impacts and re-iterated the premises site is a continuity of the current tenancy and ownership with the grant of the application having a positive impact on the community by promoting business diversity. The licence is no longer in a dormant capacity with a qualified licensee and manager appointed to the roles.

Findings of concern

25. The Authority notes that there may be a risk that if the Application were to be granted, liquor sold from the Premises will, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities, and in other areas of the State.

Mitigating factors

26. The Authority is nevertheless satisfied that the risk is sufficiently mitigated by the following:

- a) relatively small size of the area in which liquor will be sold or supplied;
- b) above average socio-economic advantage in the suburb and LGA;
- c) alcohol-attributable hospitalisations are aligned to NSW;
- d) although licence saturation is high, the application is to change the licensed boundary within the same building address to a new tenancy;
- e) incidents of crime show a decrease over five (5) years;
- f) the new tenancy size is less than the current licensed area;
- g) additional conditions have been consented to by the applicant;
- h) approved trading will reduce by twenty-four (24) hours per week;
- i) experience of the applicant as an operator of existing licensed premises with sound compliance records, and
- j) the harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

CONCLUSION

27. Having considered the positive and negative social impacts that are likely to flow from granting the Application, the Authority is satisfied that the overall social impact of granting the Application would not be detrimental to the well-being of the local and broader communities.
28. The Authority is also satisfied that the other legislative criteria for the granting of the Application have been met.

Accordingly, the Authority has decided to grant the Application under section 45 of the Act.

Yours faithfully



Murray Smith

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the [Liquor & Gaming NSW website](#) and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The [NCAT website](#).

**Schedule 1 – Licence conditions to be imposed
Artisanal Cellars Newcastle**

Retail Sales

1. Restricted trading and NYE (std)
Good Friday Not permitted
December 24th Normal trading Monday to Saturday
8:00 AM to 12 midnight Sunday
Christmas Day Not permitted
December 31st Normal trading

Social impact

2. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of granting the change of licence boundaries on 27 July 2021.

Plan of Management

3. The premises is to be operated at all times in accordance with the Plan of Management dated June 2021 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

Liquor Accord

4. The licensee or its representative must join and be an active participant in the local liquor accord.

5. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises (“the premises”) in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close,
 - (b) recordings must be in digital format and at a minimum of ten (10) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system’s cameras must cover the following areas:
 - (i) all entry and exit points to the premises, and
 - (ii) all publicly accessible areas (other than toilets) within the licensed premises.
- 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and

- (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

6. Incident register

- 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
 - (a) any incident involving violence or anti-social behaviour occurring on the premises,
 - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
 - (c) any incident that results in a person being turned out of the premises under section 77 of the *Liquor Act 2007*,
 - (d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
 - (a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
 - (b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

In addition, pursuant to section 53(2)(b) of the Liquor Act, the Authority has decided to revoke the following condition from the licence:

Condition 3010

Good Friday	Not permitted
December 24 th	Normal trading Monday to Saturday 8:00 AM to 12:00 midnight on a Sunday
Christmas Day	Not permitted
December 31 st	Normal trading Monday to Saturday 10:00 AM to 12:00 midnight on a Sunday

Schedule 2 – Material considered by the Authority

Artisanal Cellars Newcastle

Application material

1. Completed application dated 17 March 2021.
2. ASIC business records in relation to the Applicant and EAST END STAGE 1 PTY LTD dated 3 May 2021.
3. Completed Category B Community Impact Statement dated 16 June 2021.
4. Completed certification of advertising dated 17 June 2021.
5. Plan of Management documents for the Premises, titled ARTISANAL CELLARS NEWCASTLE and dated June 2021.
6. Floor plan for the Premises, dated 8 April 2021, indicating the proposed liquor sales area .

Development consent

7. Notice of determination issued by The City of Newcastle Council on 4 January 2018 approving the Development Application DA2017/00700 for the Premises, along with the Complying Development Certificate 21/0117-01 dated 8 April 2021.

Liquor & Gaming LiveData Report

8. L&GNSW Liquor & Gaming LiveData Report for the suburb of Newcastle, generated on 8 June 2021, which sets out that:

Outlet diversification

- a. There are **105** authorised liquor licenses in Newcastle. Of these, 23 are authorised to sell packaged liquor. This includes 5 packaged liquor licences, 3 registered club licence and 15 hotel licences.

Outlet density (annual rate per 100,000 residents)

- b. saturation of package liquor licences in Newcastle (**181.6**) is **higher** compared to Newcastle LGA (**32.8**), and **higher** compared to NSW (**30.1**)
- c. clustering of package liquor licences in Newcastle (**4.4**) is **higher** compared to Newcastle LGA (**2.4**), and **higher** compared to NSW (**3**)

Offence data (annual rate per 100,000 residents)

In the year to December 2020:

- d. alcohol-related domestic assault in Newcastle (**318**) was higher compared to the Newcastle LGA (**112.9**), and higher compared to all NSW (**112.7**)
- e. alcohol-related non-domestic assault in Newcastle (**1112.9**) was higher compared to the Newcastle LGA (**189**), and higher compared to all NSW (**91.3**)
- f. alcohol-related offensive conduct in Newcastle (**477**) was higher compared to the Newcastle LGA (**43.5**), and higher compared to all NSW (**23.6**)
- g. malicious damage to property in Newcastle (**3147.9**) was higher compared to the Newcastle LGA (**1161.4**), and higher compared to all NSW (**657.6**)

Alcohol-attributable hospitalisations & deaths (per 100,000 residents)

- h. In the period 2015-2018 the alcohol-attributable death rate in Newcastle LGA (**26.9**) was higher compared to the average across all of NSW (**20**)

- i. In the period 2015-2019 the alcohol-attributable hospitalisation rate in Newcastle LGA (**524.5**) was lower compared to the NSW average (**542.1**).

SEIFA

- j. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Newcastle and Newcastle LGA are socio-economically advantaged (**Top 9%** and **Top 27%** of NSW households, in terms of household income and residents in skilled occupations).

Stakeholder submissions

9. Submission from NSW Police, dated 7 April 2021.
10. Submission from City of Newcastle Council, dated 27 May 2021.
11. Submission from L&GNSW Compliance, dated 11 June 2021.
12. Submission from member of the public, dated 15 June 2021.
13. Submission from member of the public, dated 26 June 2021.
14. Submission from member of the public, dated 27 June 2021.
15. Submission from member of the public, dated 29 June 2021.
16. Submission from City of Newcastle Council, dated 6 July 2021.
17. Submission from member of the public, dated 8 July 2021.

Other relevant information

18. Correspondence between L&GNSW staff and the Applicant between April 2021 and July 2021 in relation to the assessment of the Application.
19. Video file detailing community notification dated 2 June 2021.
20. Previous approved manager application correspondence dated 3 June 2021.
21. LiveData report dated 8 June 2021.
22. L&G noticeboard correspondence dated 18 June 2021.
23. Liquor licence report dated 28 June 2021.
24. Google map images extracted from the Google website on showing the location and photos of the Premises in map view, compiled 6 July 2021.
25. Newcastle crime data compiled 16 July 2021.
26. Previous refused application correspondence dated 23 July 2020.

Schedule 3 – Relevant extracts from the *Liquor Act 2007*

Artisanal Cellars Newcastle

3 Objects of Act

- (1) The objects of this Act are as follows:
 - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
 - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
 - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
 - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.
 - (d) the need to support employment and other opportunities in the—
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
 - (a) any licence granted on or after 30 October 2008, and
 - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
 - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
 - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:

- (a) the period as last approved by the Authority, or
 - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
- (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
 - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the ***standard trading period*** means—
- (a) for any day of the week other than a Sunday—
 - (i) the period from 5 am to midnight, or
 - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
 - (b) for a Sunday—
 - (i) the period from 10 am to 10 pm, or
 - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the ***standard trading period*** for a small bar is the period from noon to midnight on any day of the week.

Note—

Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1)(b), the ***standard trading period*** for premises to which this subsection applies ends at midnight on a Sunday that falls on 24 or 31 December.
- (1C) Subsection (1B) applies to the following premises or part of premises—
- (a) if the primary purpose of the business carried on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
 - (b) if the primary purpose of the business carried on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
 - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may—
- (a) apply to a specified class of licensed premises, and

- (b) apply in relation to a specified day or days, and
 - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises— specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2)(a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

29 Authorisation conferred by packaged liquor licence

- (1) **Retail sales** A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only—
- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
 - (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to midnight on that day.
- (2) **No retail trading on restricted trading days** Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.
- (3) **Selling liquor by wholesale or to employees** A packaged liquor licence also authorises the licensee—
- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
 - (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.
- (3A) An extended trading authorisation must not authorise the sale of liquor for consumption away from the licensed premises—
- (a) on a Sunday that does not fall on 24 or 31 December—after 11 pm, and
 - (b) on any other day—after midnight.
- (4) **Tastings** A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
- (a) an individual, or
 - (b) a corporation, or
 - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the *Registered Clubs Act 1976*.
- (3) An application for a licence may not be made by:
- (a) an individual who is under the age of 18 years, or
 - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
 - (c) an individual who is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

Note. Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (4) An application for a licence must:
 - (a) be in the form and manner approved by the Authority, and
 - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
 - (c) be advertised in accordance with the regulations, and
 - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

Note. See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

44 Submissions to Authority in relation to licence applications

- (1) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.
- (2) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the licence.

45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
 - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
 - (c) if development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

Note. Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.

- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
- (a) that the person:
 - (i) is a member of, or
 - (ii) is a close associate of, or
 - (iii) regularly associates with one or more members of,
 a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and
 - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
- (a) is of good repute, having regard to character, honesty and integrity, and
 - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it would provide employment in, or other opportunities for, any of the following—
- (a) the live music industry,
 - (b) the arts sector,
 - (c) the tourism sector,
 - (d) the community or cultural sector.

48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
- (a) the views of the local community, and
 - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
 - (c) whether the granting of the application would provide employment in, or other opportunities for, any of the following—
 - (i) the live music industry,
 - (ii) the arts sector,
 - (iii) the tourism sector,
 - (iv) community or cultural sector.

- (2) In this section:

relevant application means any of the following:

- (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
- (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
- (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
- (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
- (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
- (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
- (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).

(3) A relevant application must be accompanied by a community impact statement.

(3A) However, a small bar application is not required to be accompanied by a community impact statement if:

- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
- (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.

(3B) For the purposes of subsection (3A), a **small bar application** means any of the following:

- (a) an application for a small bar licence,
- (b) an application for approval to remove a small bar licence to other premises,
- (c) an application for an extended trading authorisation for a small bar,
- (d) an application to vary an extended trading authorisation for a small bar.

(3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:

- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
- (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.

(3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:

- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
 - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
 - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
 - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
 - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
 - (b) the matters to be addressed by a community impact statement,
 - (c) the information to be provided in a community impact statement,
 - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
 - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

53 Authority may impose, vary or revoke licence conditions

- (1) Without limiting any other provision of this Act, the Authority may at any time—
- (a) on application by the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative, impose conditions on a licence.
- (1A) The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions—
- (a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and
 - (b) restricting the trading hours of, and public access to, the licensed premises.
- (2) The Authority may at any time—
- (a) on application by the licensee, the Secretary or the Commissioner of Police, or

- (b) on the Authority's own initiative, vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.
- (3) An application under subsection (1) or (2) must—
- (a) be in the form and manner approved by the Authority, and
 - (b) in the case of an application by a licensee—be accompanied by the fee prescribed by the regulations, and
 - (c) be accompanied by such information and particulars as may be prescribed by the regulations, and
 - (d) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
 - (e) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
- (4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has—
- (a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and
 - (b) taken any such submissions into consideration before making the decision.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.
- (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.