

**Submission
No 11**

INQUIRY INTO ALCOHOL CONSUMPTION IN PUBLIC PLACES (LIBERALISATION) BILL 2024

Organisation: NSW Government

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NSW Government response



Inquiry into Alcohol Consumption in Public Places (Liberalisation) Bill 2024

July 2024



Acknowledgement of Country

The NSW Government acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Submitted by the NSW Government.

Inquiry into Alcohol Consumption in Public Places (Liberalisation) Bill 2024

Acknowledgements

The NSW Government acknowledges the contribution of the Botanic Gardens of Sydney, Greater Sydney Parklands, Liquor and Gaming NSW, the NSW Ministry of Health, the NSW Police Force, the Office of Local Government and Placemaking NSW in preparing this submission.

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Introduction

The NSW Government is committed to supporting and encouraging the flexible use of outdoor spaces to encourage vibrant, diverse, accessible and safe precincts.

To achieve this vision, strong collaboration between councils, business owners, regulatory and enforcement bodies and the general community is needed. It is recognised that reducing red tape by streamlining regulatory processes (such as liquor licensing and development applications) also plays an important role in fostering vibrant public spaces.

However, at a population level, alcohol causes the greatest degree of harm, compared to all other substances. Of all the evidence for harm, the strongest link is between alcohol density and availability with violence, particularly domestic and family violence.

Alcohol consumption in public places may result in adverse public amenity outcomes, particularly, violence or reduced perceptions of personal safety. Increased visibility of alcohol consumption, particularly by minors, contributes to normalisation of drinking culture. This may lead to early initiation or promote increased demand, which is associated with public health risks. It is therefore critical that an appropriate balance be struck between increased flexibility, public safety and ensuring all stakeholders have the necessary tools to effectively manage alcohol in public places.

The Alcohol Consumption in Public Places (Liberalisation) Bill 2024 (draft Bill) would conflict with existing legislation that establishes appropriate safety measures around alcohol sale and consumption in public areas. The NSW Government raises concern with the draft Bill and notes a particular lack of support from the NSW Police Force.

Extensive consultation with impacted stakeholders, considering the challenges and benefits of any proposed legislative amendments, and gathering sound evidence for reform, would allow for the preparation of appropriate supporting analysis to facilitate more considered and robust outcomes.

This submission has been prepared with input from across the NSW Government, including:

- Botanic Gardens of Sydney
- Greater Sydney Parklands
- Liquor and Gaming NSW
- NSW Ministry of Health
- NSW Police Force
- Office of Local Government
- Placemaking NSW

Detailed comments

Clause 2. Commencement

Should the draft Bill progress, it is recommended that Clause 2 be amended to state ‘commencement on proclamation’ rather than ‘on date of assent’. This would enable NSW Government agencies to develop robust supporting materials, such as communications and or guidelines for key stakeholders such as local Councils.

Clause 6. Relationship with other Acts and laws

Across NSW legislation, the control of alcohol is managed through a variety of Acts and regulations. The proposed Bill would reduce the powers of public land managers (e.g. local councils) to encourage public alcohol consumption in appropriate places and regulate anti-social drinking behaviour in others. Additionally, the draft Bill would implement a one-size-fits all solution, which does not recognise the diversity of public spaces and communities across NSW.

By overriding the range of legislation that currently regulates the public consumption of alcohol, Section 6 of this Bill is likely to have significant impacts upon authorities with roles and responsibilities under that legislation.

Liquor Act and Regulation

The *Liquor Act 2007* (Liquor Act) and *Liquor Regulation 2018* (Liquor Regulation) cover a variety of restrictions on the sale and consumption of alcohol. There are concerns that application of the Liquor Act may be unduly restricted by the draft Bill, particularly as it seeks to prevail over any inconsistencies with other Acts, as per clause 6(1). It is recommended that further clarification be provided on how the draft Bill would affect the application of several clauses of the Liquor Act and Regulation, including:

- **Liquor Act, Part 3 – Liquor Licences:** the sale and supply of alcohol and its consumption can be permitted for events in public spaces if an appropriate liquor licence has been obtained. Liquor licences have strict conditions, including a defined boundary in which the consumption of alcohol is permitted as well as obligations and responsibilities under the Liquor Act to:
 - minimise harm associated with misuse and abuse of liquor;

- encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and
- ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life.

The draft bill would also create confusion as to whether alcohol could legally be taken into and consumed within licenced food and beverage operations that have a tenancy agreement with a public land manger, without appropriate guidance around site, venue and behaviour management. This could undermine existing and future commercial arrangements within leased and licenced premises.

- **Liquor Act, Clause 114K – Liquor not to be supplied in alcohol-free zones, alcohol prohibited areas or restricted alcohol areas:** this clause prohibits same day alcohol deliveries in alcohol-free zones (AFZs) and alcohol prohibited areas (APAs) (established by councils under the *Local Government Act 1993*), and Restricted Alcohol Areas (RAA) (as declared under Division 2 of the Liquor Act). If passed, the Bill might allow same day liquor deliveries into these zones and areas.
- **Liquor Act, Clause 116 – Provisions relating to making of regulations declaring restricted alcohol areas:** the Minister for Gaming and Racing may declare an RAA to prevent the sale, supply, possession or consumption of liquor on any premises (licensed or otherwise) if it is in the public interest and has majority support from the community affected by the declaration. As the power to designate RAAs only relates to premises (not public places), it is unclear if there would be any impact of this power via the draft Bill.
- **Liquor Act, Division 1: Underage Drinking:** minors must not consume liquor on licensed premises. As the Bill is drafted, any ‘person’ could possess and consume alcohol in a public place without it being an offence. There could be unintended consequences for minors by providing more places where they could legally consume alcohol.
- **Liquor Regulation, Clause 99 - Persons prohibited to enter subject premises after drinking in AFZ or APA near the premises:** premises in prescribed precincts (other than Kings Cross precinct) must not allow entry if a person has been observed to consume alcohol in an AFZ or APA. The application of this clause may be impacted by the draft Bill.

Other legislation

Alcohol-related control measures are addressed across a variety of other Acts and laws that govern public spaces. Ensuring the draft Bill aligns with existing provisions requires ongoing consultation and engagement with relevant state agencies and local councils.

A high-level review of how various organisation who own or manage public spaces legislate alcohol restrictions is attached at **Appendix A**.

Clause 7. Freedom of consumption of alcohol in public places

Public safety

Ensuring safety in our public spaces is of utmost importance. To support this, the consumption of alcohol in public places is primarily restricted by the establishment of AFZs and APAs. NSWPF data demonstrates the effectiveness of APZs. For example:

- between 2000 – 2020, there was a 45% reduction in violent offending in the Sydney CBD, which correlated to AFZ locations in the Sydney CBD;
- upon the declaration of AFZs across the Inner West Local Government Area in 2019:
 - there was a corresponding decrease in street offences within those AFZs. The percentage drop each year was 13% (2020), 38% (2021), 50% (2022) and 38% (2023);
 - no grievous bodily harm or wounding offences committed in these AFZs; and
 - between 2019 and 2021, common assaults have remained relatively flat, as did actual bodily harm (ABH) assaults across 2019 to 2021 and more recently, ABH assaults dropped to zero in 2022 and 2023.

AFZs and APAs provide public land managers, including local councils, with flexibility to make decisions based on local priorities in line with community demands. This flexibility allows councils to deal with either long or short-term use of public spaces, many of which are unique to each local government area (LGA) and vary considerably across the state.

Coupled with other regulatory measures and enforcement, AFZs and APAs can proactively assist in reducing alcohol related crime and its impact upon the community, including:

- litter, vandalism and other environmental impacts (broken glass, vomit);
- noise impacts (consumption disrupting the amenity of nearby residents);
- perceptions of safety (detering participation of minorities in certain areas);
- alcohol-related violence or antisocial behaviour;
- managing 'pre-loading' of alcohol in public places before entering other venues;
- public health and safety impacts, e.g. pedestrian injury, swimming while under influence of alcohol; and

- protecting vulnerable demographics (such as minors) from public alcohol consumption.

Clause 7 of the draft Bill would remove available mechanisms to mitigate these risks and it is recommended that alternative options be considered, and there is concern that the proposed Bill would remove the ability to respond to local community needs and safety issues.

Noting the importance of managing alcohol consumption in areas and during events requiring an enhanced degree of public safety and security, it is recommended that the draft Bill consider:

- restrictions on bringing and consuming liquor during major events such as New Years Eve, VIVID events, Australia Day or Fan events such as Sporting Live Sites, and restrictions outside the perimeter of such events;
- the need for management agencies to be able to develop and implement harm minimisation strategies; and
- the Independent Liquor and Gaming Authority Guideline 6, the social impacts of alcohol consumption in places near transport hubs or with a high Aboriginal population, high violence and family domestic violence rates or low socio-economic status.

Alternative approaches

The NSW Vibrancy Reforms passed by Parliament in November 2023 provide an example of an alternative approach to enhancing vibrancy in public spaces. The reforms supported more flexible licensing arrangements and use of outdoor space while maintaining restrictions on public alcohol consumption, including items listed below.

- **Activated outdoors:** councils are now permanently empowered to approve temporary street closures for outdoor dining, performance, and extension of foyer space, and have established an ‘exempt development’ pathway for outdoor dining on private land and registered clubs. Additional support for councils to make it easier for creative workers and community groups to stage pop-up events and festivals is also forthcoming.
- **Streamlined licensing:** restaurants and small bars can apply for an authorisation allowing them to sell a limited amount of liquor for takeaway and home delivery
- **Vibrant, coordinated precincts:** new powers in Special Entertainment Precincts for councils to automatically adjust trading hours on development consents to support diverse late-night offerings.

The NSW Government has committed to deliver a second tranche of Vibrancy Reforms in 2024 that will empower councils to support more flexible uses of public space for art, culture and social connection.

Clause 8. Limitations on confiscation of alcohol & Clause 10. Exception for intoxicated and disorderly conduct

There is concern that sub-clauses 8 and 10 would result in Police Officers being the only person(s) authorised to confiscate alcohol. This may present a social policy risk or be negatively perceived by the public.

Council Rangers are currently authorised to do so within AFZs or APAs under the *Local Government Act 1993*. It is concerning that the draft Bill may result in the removal or reduction of Council Ranger powers to respond to instances of intoxicated and disorderly conduct.

It is recommended that the draft Bill:

- consider penalty frameworks and community safety risks, as well as broader social and economic issues;
- clarify the role of Council Rangers, noting the possible impacts on the community if their capacity to confiscate alcohol is reduced or removed;
- consider the capacity of NSW Police to prioritise and respond to alcohol-related matters; and
- prepare a detailed Regulatory Impact Statement (RIS) and Cost Benefit Analysis (CBA) to analyse and document the potential resource burden on councils, the judicial system, and other enforcement and regulatory agencies such as NSW Police and the Department of Communities and Justice.

Clause 9. Exceptions for public places of cultural or religious significance

Children's playgrounds are specific areas in the public domain to which public safety measures are paramount. It is recommended that clause 9 be amended to include children's playgrounds.

Further clarification is also requested on what constitutes a place of cultural or religious significance, including how the examples of 'war memorial' and 'place of worship' are defined.

Appendix A

Location	Alcohol sale and consumption controls	Relevant legislation
Centennial Park and Moore Park	<ul style="list-style-type: none"> Alcohol can be brought into Centennial Parklands for personal use (or sold at events with a liquor licence) Consumption is permitted within most of the property, including picnic areas. The Trust or Chief Executive may declare alcohol-free zones. Authorised officers to make discretionary decisions about alcohol consumption and harm minimisation. 	<u>Centennial Park and Moore Park Trust Regulation 2014</u>
Luna Park	<ul style="list-style-type: none"> Liquor licence applies to the entire site. For compliance and risk management purposes, entry conditions do not permit alcohol to be brought onto the premises. However, alcohol can be purchased and consumed in over-18 areas including the Hungry Horse Bar and at events, including in the Big Top. During over-18 special events (such as New Years Eve) open carry is permitted throughout the site. 	<u>Luna Park Site Act 1990</u>
National Parks NSW	<ul style="list-style-type: none"> National Parks NSW may declare alcohol-free zones. In practice, this is fairly limited. 	<u>National Parks and Wildlife Regulation 2019</u>

Location	Alcohol sale and consumption controls	Relevant legislation
Parramatta Park	<ul style="list-style-type: none"> Alcohol can be brought into Parramatta Park for personal use (or sold at events with a liquor licence). The Trust or Chief Executive may declare AFZs. Authorised officers to make discretionary decisions about alcohol consumption and harm minimisation. 	<u>Parramatta Park Trust Regulation 2019</u> ;
Royal Botanic Gardens and the Domain	<ul style="list-style-type: none"> Alcohol can be brought into the Royal Botanic Gardens and the Domain for personal use (or sold at events with a liquor licence). Persons who are, or appear to be intoxicated may be prohibited from entering. Consumption is permitted within most of the property, including picnic areas. The Trust or Chief Executive may declare alcohol-free zones and can impose conditions of entry. 	<u>Royal Botanic Gardens and Domain Trust Act 2020</u>
Sydney Olympic Park	<ul style="list-style-type: none"> Alcohol can be brought into Sydney Olympic Park for personal use (or sold at events with a liquor licence). Consumption is permitted within most of the property. The Sydney Olympic Park Authority can establish AFZs. 	<u>Sydney Olympic Park Authority Regulation 2018</u>
Western Sydney Parklands	<ul style="list-style-type: none"> Alcohol can be brought into the Western Sydney Parklands for personal use (or sold at events with a liquor licence). Consumption is permitted within most of the property. The Trust or Chief Executive may declare alcohol-free zones. 	<u>Western Sydney Parklands Regulation 2019</u>

Location	Alcohol sale and consumption controls	Relevant legislation
	<ul style="list-style-type: none"> • Authorised officers to make discretionary decisions about alcohol consumption and harm minimisation. 	
Place Management NSW	<ul style="list-style-type: none"> • Manages several precincts and properties that are AFZs. • In October 2021, alcohol bans on some of these sites were temporarily lifted for approximately six weeks during the State’s reopening following COVID-19 lockdowns. 	Place Management NSW Regulation 2017
Local Government Areas	<ul style="list-style-type: none"> • Councils are the closest form of government to the community and each council and community is best placed to make decisions about the use and enjoyment of public spaces based on local needs and wants. • Currently councils exercise functions relating to public alcohol consumption under the Local Government Act 1993, including the implementation of AFZs and APAs. • Councils are required to review AFZs every 4 years under <i>the Local Government Act 1993</i>. However, they can at any time review APAs and adjust or remove them in response to community needs and it is best practice for them to do so. 	Local Government Act 1993