



Ms Summa Rayner
nathanandsumma@outlook.com

3 June 2022

Dear Ms Rayner

Application No.	APP-0009250977
Applicant	Summa Jade Rayner
Application for Licence name	Packaged Liquor Licence The Deli
Proposed trading hours	Mondays 07:30 AM – 05:00 PM Tuesday to Friday 08:30 AM – 05:00 PM Saturdays 08:30 AM – 01:00 PM Sundays 10:00 AM – 12: 00 Midday
Proposed Premises	371/373 Argent Street BROKEN HILL NSW 2880
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 44, 45 and 48 of the <i>Liquor Act</i> 2007

**Decision of the Independent Liquor & Gaming Authority
Application for a packaged liquor licence – The Deli**

The Independent Liquor & Gaming Authority considered the application above, and decided on 13 April 2022 to **refuse** the application under sections 30 and 45 of the *Liquor Act* 2007

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, Leonie Jennings, at leonie.jennings@liquorandgaming.nsw.gov.au.

Yours faithfully

Philip Crawford
Chairperson

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

STATEMENT OF REASONS

DECISION

1. On 14 January 2022, Ms Summa Rayner (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”) for the premises at 371/373 Argent Street, Broken Hill (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 13 April 2022, and decided to refuse to grant the Licence under sections 30 and 45 of the *Liquor Act 2007* (“the 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.

MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. 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.
6. 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”).
7. A list of the material considered by the Authority is set out in Schedule 1.

LEGISLATIVE FRAMEWORK

8. 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 29-31: 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.
9. An extract of these sections is set out in Schedule 2.
10. 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

11. 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

12. 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
 - b) if the Licence were to be granted, liquor would be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act
 - c) section 31 of the Act does not apply to the Application, as the Proposed Premises is not intended to operate as is contemplated by the section.
13. 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

14. 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 Proposed Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Proposed Premises and the conditions to be imposed on the licence
 - c) the requisite development consent is in force, based on the Notice for Determination for DA 130/2021 in respect of the Proposed Premises, issued by Broken Hill City Council on 1 November 2021.

Community impact

Local and broader communities

15. 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 Broken Hill, and the relevant "broader community" comprises the Local Government Area ("LGA") of Broken Hill LGA.

Licence density

16. The Authority notes that, compared to the NSW state average:
- a) Broken Hill and Broken Hill LGA have a **higher** saturation of packaged liquor licences
 - b) Broken Hill and Broken Hill LGA have a **higher** saturation of licences authorised to sell packaged liquor (this includes packaged liquor, club and hotel licences)
 - c) Broken Hill and Broken Hill LGA have a **lower** clustering of packaged liquor licences
 - a) Broken Hill and Broken Hill LGA have a **lower** clustering of licences authorised to sell packaged liquor (this includes packaged liquor, club and hotel licences).

Crime data

17. The relevant BOCSAR data indicates that, in the year to September 2021:
- a) the Proposed Premises was located within hotspots for incidents of alcohol-related assault, domestic and non-domestic assault, alcohol-related disorderly conduct (offensive conduct) and malicious damage to property.
 - b) Broken Hill and Broken Hill LGA recorded **higher** rates of alcohol-related domestic assault, alcohol-related non-domestic assault, late-night alcohol-related non-domestic assault, alcohol-related non-domestic serious assault, alcohol-related offensive conduct and malicious damage to property, compared to the NSW state average.

Alcohol-related health data

18. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Broken Hill LGA recorded a **higher** than average level of alcohol-attributable

deaths for the period 2018/2019, and a **lower** than average level of alcohol-attributable hospitalisations for the period 2018/2019-2019/2020.

SEIFA

19. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that Broken Hill and Broken Hill LGA were disadvantaged compared to other suburbs and LGAs in NSW.

Business model

20. The Authority notes the Applicant's proposed business model involves the sale and supply of Australian owned boutique beers and small batch wines along with other ancillary products to complement liquor sales (such as packaged food and delicatessen products). The Authority notes the Applicant's intended primary purpose of the business will be the sale of liquor, with estimates of sales percentages to be 60% liquor, 30% food and 10% gifts.

Purported benefits

21. The Authority has had regard to the Applicant's purported benefits, including that the Proposed Premises will offer a range of Australian produced liquor products from boutique wineries and craft breweries, and that the Proposed Premises will offer other ancillary products to complement liquor sales.

Stakeholder submissions

22. The Authority has had regard to the submissions from:

- a) **NSW Police Force** (Police), which objects to the Application on the basis that:
 - i. The requirement contained in section 30(1) of the Act that packaged liquor is to be sold in a 'liquor sales area' if the primary purpose of the Proposed Premises is not the sale of liquor for consumption off the premises
 - ii. The Proposed Premises currently operates as, and will predominantly remain, a gourmet deli grocer/gift shop, despite supporting documentation provided by the Applicant indicating that the intention is to have alcohol sales reportedly comprise 60% of business activity
 - iii. Police raised the issue of a liquor sales area with the Applicant on 8 February 2022, and the Applicant conceded her inability to facilitate a liquor sales area due to the current size and layout of the Proposed Premises
 - iv. Police object to the Application and note it should be the Authority's position that the Application be refused as the liquor sales area requirement pursuant to section 30 of the Act has not been met.
- b) **Liquor & Gaming NSW (L&GNSW) Compliance**, which did not identify any adverse holdings regarding the Applicant.
- c) **Broken Hill City Council** (Council), which did not approve or object to the Application. The Authority notes Council confirmed:
 - i. Notice of Determination for DA 130/2021 is in place.
 - ii. The conditions regarding trading hours for the Proposed Premises are within the approved hours on DA 130/2021.
 - iii. There are no specific conditions Council wishes to suggest for inclusion on the Licence.

23. The Authority has also had regard to the Applicant's submission in response and notes:

- a) The Applicant acknowledged the submissions of L&GNSW Compliance and Council.
- b) Food preparation is handled off site as the Applicant's home kitchen has been approved by Council to prepare all food for sale at the Proposed Premises.
- c) The primary purpose of the business is to remain a gourmet grocer/bespoke gift shop and will only be offering takeaway boutique beers and small batch wines.
- d) The Proposed Premises will offer takeaway meal options which will be ancillary to the sale of liquor.
- e) The Applicant is able to offer a separate point of sale and service area for the sale of liquor by utilising the Proposed Premises' mobile phone and having a second terminal on the 'Square App' to transact these sales, therefore not being processed at the main counter.
- f) Staff will process these sales at the other end of the counter which is approximately five metres from the main point of sale.
- g) A one metre counter space will be built to achieve this with its own cash float and retail packaging.
- h) Liquor will not just be sold from behind the counter, but instead will be displayed on the 'four tier' shelving throughout the store as represented on the Proposed Premises plan.
- i) There is only enough room for the Proposed Premises to display six dozen bottles of wine and six 6-packs of beer at any one time, with the surplus stock being stored in the back storeroom.

Decision

24. Having regard to the relevant statistics and submissions received, including the Applicant's reply submissions, the Authority finds that it is unable to warrant a grant to the Application based on the following two grounds.

Liquor sales area required if Proposed Premises is part of another business activity

- 25. There is concern regarding the intended business model and primary purpose of the Proposed Premises as the Applicant asserts the primary purpose is the sale of liquor, despite contraindications from the Applicant to Police and L&GNSW that the business will remain predominantly as a boutique grocer/bespoke gift shop.
- 26. The strong objection of Police challenges the Applicant's intended primary purpose of the Proposed Premises and highlights the Applicant's inability to facilitate a liquor sales area at the Proposed Premises in accordance with section 30(1) of the Act due to the current size and layout of the Proposed Premises.
- 27. Police and L&GNSW have discussed the nature of a liquor sales area with the Applicant, who has submitted an alternative point of sale counter in the Proposed Premises, which does not satisfy the liquor sales area requirement.
- 28. Liquor will be visible on shelving in the Proposed Premises to persons entering or shopping in the general area of the Proposed Premises, rather than being visible within the liquor sales area
- 29. Taking into account the Applicant's intended business model and the structural inability of the Proposed Premises to facilitate a liquor sales area which is adequately separated from parts of the Proposed Premises in which other business activities are carried out, the Authority on balance is not satisfied that the Proposed Premises' primary purpose is for the sale of liquor for consumption away from the Proposed Premises nor that the Proposed Premises is able to

facilitate a liquor sales area which is sufficient enough under section 30(1) of the Act to warrant a grant.

Overall social impact

30. The rates of alcohol-related crime in Broken Hill and Broken Hill LGA are significantly higher than the NSW state average.
31. The Proposed Premises is located within hotspots for incidents of alcohol-related assault, domestic and non-domestic assault, alcohol related disorderly conduct (offensive conduct) and malicious damage to property.
32. NSW Health data indicates the rate of alcohol-attributable death is higher than the NSW rate.
33. The local and broader community is relatively socio-economically disadvantaged.
34. The saturation of packaged liquor licences is above the NSW average.
35. Higher proportion of vulnerable residents, including significantly higher than average proportion of Indigenous people.
36. Notwithstanding the Applicant's efforts to mitigate the potential for the Proposed Premises to exacerbate existing alcohol-related harms, taking into account the significantly elevated risk factors in the local and broader communities, the Authority on balance is not satisfied that the existing and proposed harm minimisation measures will sufficiently mitigate the risk of alcohol-related harm to the community to warrant a grant.

Conclusion

37. The Authority considers that, if the Licence is granted, there is a risk that the dual business model of the Proposed Premises would physically and visually integrate, and potentially result in issues relating to irresponsible attitudes and practices towards the promotion, sale and supply of liquor
38. Additionally, the Authority considers that, if the Licence is granted, there is a risk that the liquor sold at the Proposed Premises would exacerbate the existing alcohol-related problems in the community and, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities.
39. Having considered the technical issues arising from the Application, and the risk of future harm that could potentially be caused by these issues, the Authority is not satisfied that the Proposed Premises has sufficiently addressed the liquor sales area requirement pursuant to section 30(1) of the Act
40. Further, having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is not satisfied that the overall social impact of granting the Licence would not be detrimental to the well-being of the local and broader communities.
41. Accordingly, the Authority has decided to refuse to grant the Licence under sections 30 and 45 of the Act.



Philip Crawford

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 <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> 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 is at <http://www.ncat.nsw.gov.au/>.

Schedule 1 – Material considered by the Authority The Deli

Application material

1. Trading hours and 6-hour closure period and proposed licence conditions.
2. Plan of Management documents for the Proposed Premises, titled Liquor Plan of Management and dated 30 September 2021.
3. Completed application dated 14 January 2022.
4. Completed Category B Community Impact Statement dated 27 January 2022.
5. Completed certification of advertising dated 27 January 2022.
6. ASIC business records in relation to the Applicant extracted on 27 January 2022.
7. Floor plan for the Proposed Premises, indicating the proposed licensed premises.

Development consent

8. Notice of Determination issued by Broken Hill City Council on 1 November 2021, approving development application 130/2021 for the Proposed Premises.

Liquor & Gaming LiveData Report

9. L&GNSW Liquor & Gaming LiveData Report for the suburb of Broken Hill, generated on 7 March 2022, which sets out that:

Outlet diversification

- a. There are **56** authorised liquor licences in Broken Hill. Of these, 29 are authorised to sell packaged liquor. This includes 7 packaged liquor stores, 6 registered clubs and 16 hotels.

Outlet density (annual rate per 100,000 residents)

- b. saturation of packaged liquor licences in Broken Hill (**39.3**) is **lower** compared to Broken Hill LGA (**39.5**), and **higher** compared to NSW (**30.7**)
- c. saturation of licences authorised to sell packaged liquor in Broken Hill (**162.8**) is **higher** compared to Broken Hill LGA (**158.1**), and **higher** compared to NSW (**75.9**)
- d. clustering of packaged liquor licences in Broken Hill (**1.4**) and Broken Hill LGA (**1.4**) is **lower** compared to NSW (**3.1**)
- e. clustering of licences authorised to sell packaged liquor in Broken Hill (**3.4**) is **lower** compared to Broken Hill LGA (**3.5**), and **lower** compared to NSW (**7.1**).

Offence data (annual rate per 100,000 residents)

In the year to September 2021:

- f. alcohol-related domestic assault in Broken Hill (**478**) was lower compared to the Broken Hill LGA (**480.6**), and higher compared to all NSW (**227.8**)
- g. alcohol-related non-domestic assault in Broken Hill (**256.1**) was lower compared to the Broken Hill LGA (**257.5**), and higher compared to all NSW (**176.5**)
- h. late-night alcohol-related non-domestic assault in Broken Hill (**119.5**) was lower compared to the Broken Hill LGA (**120.1**), and higher compared to all NSW (**50.7**)
- i. alcohol-related non-domestic serious assault in Broken Hill (**113.8**) was lower compared to the Broken Hill LGA (**114.4**), and higher compared to all NSW (**65.9**)
- j. alcohol-related offensive conduct in Broken Hill (**56.9**) was lower compared to the Broken Hill LGA (**57.2**), and higher compared to all NSW (**45.7**)
- k. malicious damage to property in Broken Hill (**1843.6**) was higher compared to the Broken Hill LGA (**1825.1**), and higher compared to all NSW (**1247.8**)

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

- l. In the period 2018/2019 the alcohol-attributable death rate in Broken Hill LGA (**26.9**) was higher compared to the average across all of NSW (**19.7**)
- m. In the period 2018/2019 – 2019/2020 the alcohol-attributable hospitalisation rate in Broken Hill LGA (**424.6**) was lower compared to the NSW average (**513.2**).

SEIFA

- n. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Broken Hill and Broken Hill LGA are socio-economically disadvantaged and disadvantaged respectively (**bottom 7%** and **bottom 7%** of NSW households, in terms of household income and residents in skilled occupations).

Stakeholder submissions

- 10. Submission from L&GNSW Compliance, dated 3 February 2022.
- 11. Submission from Broken Hill City Council, dated 28 February 2022.
- 12. Submission from NSW Police, dated 1 March 2022.

Other relevant information

- 13. Google map images extracted from the Google website, showing the location and photos of the Proposed Premises in map view.
- 14. Correspondence between L&GNSW staff and the Applicant between 25 January 2022 and 28 March 2022 in relation to the assessment of the Application.
- 15. Correspondence between L&GNSW staff between 28 January 2022 and 31 January 2022 regarding noticeboard extension.
- 16. Applicant identification documents including:
 - a. Medicare card.
 - b. NSW Driver Licence.
 - c. Credit card.
 - d. National Police Certificate issued on 2 March 2022.
- 17. Document outlining the primary purpose of the Proposed Premises.

Schedule 2 – Relevant extracts from the *Liquor Act 2007*

The Deli

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 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 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.

30 Liquor sales area required if bottle shop is part of another business activity

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (**the liquor sales area**) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

31 Restrictions on granting packaged liquor licences

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that—

- (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
 - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section—

general store means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

service station means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

take-away food shop means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

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),
 - (e1) an application for an extended trading authorisation in relation to a small bar licence (but only if the authorisation will result in trading on a regular basis at any time between 2 am 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, other than if the authorisation would result in trading on a regular basis at any time between 2 am and 5 am,

(d) an application to vary an extended trading authorisation for a small bar, other than if the variation would result in trading on a regular basis at any time between 2 am and 5 am.

(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.