

25 July 2024

Hon Jeremy Buckingham MLC
Legislative Council- Portfolio Committee No. 1- Premier and Finance
Parliament of NSW
By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Mr Buckingham

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

Thank you for the opportunity to a submission to the Legislative Council Portfolio Committee No. 1- Premier and Finance on the Alcohol Consumption in Public Places (Liberalisation) Bill 2024 (**the Bill**).

Legal Aid NSW provides legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. Our feedback is informed by the experience of lawyers working in our criminal law division, including our experience representing defendants in criminal proceedings.

Legal Aid NSW supports, in principle, what the Bill aims to achieve. We do however have concerns about the scope of the bill, the potential for unintended consequences, and the challenges which may arise in operationalising widespread change through overriding legislation.

Criminalisation of vulnerable people

The current restrictions on alcohol consumption in public in NSW are piecemeal and inconsistent. In public areas where alcohol consumption is penalised, the maximum penalties vary significantly, from 1 penalty unit¹ to as high as 50 penalty units.²

We have observed that restrictions on the consumption of alcohol in public can lead to increased police interactions with already over-policed groups. It has a disproportionate impact on Aboriginal people, young people, and people experiencing

¹ *Sydney Olympic Park Authority Regulation 2018* (NSW) reg 9(2).

² *Lord Howe Island Regulation 2014* (NSW) reg 78(2).

homelessness. Those who have little alternative than to occupy public spaces for shelter, community and essential services should not be criminalised for merely possessing or consuming alcohol if they are not acting in an offensive or dangerous manner.

To the extent that the Bill would result in reduced police interaction with these overpoliced and marginalised groups, it is supported. Importantly, the Bill should not remove the NSW Police Force (**NSWPF**) powers under Part 14 of the *Law Enforcement (Powers and Responsibilities Act 2002 (NSW) (LEPRA)*. The limited powers police have to issue ‘move on’ directions under sections 197 and 198 of LEPRA are appropriate and should be preserved. Under section 198 of LEPRA a police officer may give a direction to an intoxicated person who is in a public place to leave the place and not return for up to six hours if the person's behaviour:

- a) is likely to cause injury to any other person or persons, damage to property or otherwise give rise to a risk to public safety, or
- b) is disorderly.³

If a person fails to comply with this direction, they face a fine of up to \$1,650.⁴

Comments on drafting

Public places

Noting the number of separate legislative definitions encompassed by the proposed definition of ‘public place’ in section 4, we are concerned that this may inadvertently capture some enclosed recreational spaces where prohibition on alcohol may be reasonable in the circumstances (for example, swimming pools, playgrounds, community gardens).

Inconsistency and operationalisation

We note that the Bill is drafted in a way that it would prevail over various other pieces of legislation.⁵ This approach could cause difficulties and in our view it would be preferable instead to amend the various Acts over which this legislation is intended to prevail.

³ *Law Enforcement (Powers and Responsibilities Act 2002 (NSW)*, s 198.

⁴ *Summary Offences Act 1988 (NSW)* s 9.

⁵ Including:

- *Local Government Act 1993 (NSW)* which allows a Local Council to declare an area an alcohol-prohibited area (under section 632A) or an alcohol free zone (under section 644).
- Parts of LEPRA, including section 87C, which allows police to declare an area an emergency alcohol-free zone.
- Various regulations concerning public land, for example, the *National Parks and Wildlife Regulation 2019*, which prevents drinking in a sign-posted National Park, and the *Royal Botanic Gardens and Domain Trust Regulation 2020* (clause 35(4), which prevents drinking in the Sydney botanic gardens.

We are concerned that having contradictory legislation in force may result in confusion for the NSWPF, Local Council Rangers, and the general public. This may result in unlawful infringement notices being issued, and unnecessary litigation.

To avoid confusion and educate key stakeholders we recommend the Bill, if passed, be accompanied by an information campaign aimed at NSW and Council Rangers. We also recommend any relevant 'Alcohol Free Zone' signs be removed in a timely manner.

Section 7 – scope of application

We are concerned about the drafting of section 7, which provides “*a person does not commit an offence under an Act or law related to the person’s consumption of alcohol in a public place.*” On its face, this appears potentially to make lawful other offences which are beyond the intended scope of the bill. For example:

- it may be argued that section 7 invalidates an offence of ‘fail to leave’ or ‘attempting to re-enter’ a premises from which a person has been refused admission under s.77(4) or (6) of the *Liquor Act 2007*; or
- where the gravamen of an offence of ‘offensive conduct’ under s.4 *Summary Offences Act 1988* is behaviour directly caused by alcohol intoxication.

Conversely, section 7 does not appear to encompass mere possession of alcohol in a public place. This may result in a perverse situation where it remains an offence to possess an unopened bottle of wine, but not to pour or drink from it in public.

Thank you again for the opportunity to provide a submission.

Yours sincerely



Monique Hitter
Chief Executive Officer