

Exemption from special conditions on declared premises

Schedule 4 of the *Liquor Act 2007* sets out the special conditions that apply to declared premises (ie a premises to which a level 1 licences or a level 2 licences relates).

Declared premises must comply with the relevant special conditions unless an exemption is ordered by the Director-General or the venue is omitted from the schedule.

Clause 8 of Schedule 4 provides that the Director-General may exempt any declared premises from any specified provision of the schedule (ie a special condition), subject to the specified statutory tests being met.

Specifically, the Director-General may exempt declared premises only if the Director-General:

- (a) is satisfied that conditions other than the specified provision to which the exemption relates will be more effective in reducing the risk of alcohol-related violence in or about the declared premises concerned; and
- (b) imposes those other conditions on the licence for the premises under any relevant provision of the *Liquor Act 2007*.

An exemption may be in respect of 1 or more of the special conditions applicable to the declared premises. Further, the exemption may be in respect of the entire declared premises or a specified part of the premises.

During the agreement in principle speech for the *Liquor Amendment (Special Licence Conditions) Bill 2008*, the Government stated the exemption power is a “reserve power” that will be exercised on a case-by-case basis.

When may the Director-General order exemptions?

The Director-General’s consideration of an order for exemption could be triggered by a request from a licensee or any other person.

This application will be considered the licensee’s submission for the purpose of section 54 of the *Liquor Act 2007* if the licensee’s proposed alternative condition is accepted in substance by the Director-General.

What information would assist the Director-General to consider a request for exemption?

A request for the Director-General to order an exemption from 1 or more special conditions would be assisted by the provision of the following information:

1. The name and address of the declared premises and the licence number, as well as the name and contact details of the licensee.
2. A statement of the special condition(s) for which exemption is sought, including whether the exemption is sought in respect of the whole declared premises or a specified part of it. If the exemption is in respect of a specified part of the premises, the specified part must be precisely defined (for example, through the inclusion of a floor plan drawn to scale).
3. The reasons why the exemption is being sought. The reasons could include a description of the nature of the risk of alcohol related violence in or about the declared premises or a specified part of the premises. The description could include the nature of the incidents and where, in or about the venue, the incidents occurred. The reasons could also refer to the risks and strategies set out in the venue's safety plan.
4. A proposal for an alternative condition(s) in lieu of the condition(s) for which the exemption is being sought. This should be framed in a precise manner.
5. An explanation as to why the proposed alternative condition(s) will be more effective than the special conditions in reducing the risk of alcohol-related violence in or about the declared premises.

What types of alternative conditions would be acceptable?

Any request for an order granting exemption from the special conditions will be considered by the Director-General on a case by case basis. This means it is not possible to generalise as to the alternative conditions that might be acceptable in all cases.

The key issue is whether, having regard to all of the circumstances, the proposed alternative conditions will be more effective in reducing the risk of alcohol-related violence in or about the declared premises concerned.

How should a request for exemption be made?

Any request to the Director-General, Communities NSW for an exemption should be made in writing to: Safe Premises Team, Office of Liquor, Gaming and Racing, GPO Box 7060, Sydney NSW 2001 or safe.premises@communities.nsw.gov.au

The application may be made by way of a letter or through submission of the "Exemption Application from a Schedule 4 Condition" form.

A sample is attached to provide guidance on completion of the form.

Communities NSW
24 November 2009

EXEMPTION APPLICATION FROM A SCHEDULE 4 CONDITION

Use this form if you are a licensee of a Declared Premises under Schedule 4 of the Liquor Act 2007 and you seek an exemption from the Director-General Communities NSW as provided by Clause 8.

PART 1: PREMISE DETAIL

Premise name		Licence No.	
Address		Declared Premises Level	
Licensee name		Phone	
Signed		Date	

PART 2: EXEMPTION DETAIL *Review your Venue Safety Plan to ensure the proposed alternate condition addresses the risk of alcohol-related violence.*

Condition subject to exemption application	Clause 3 "Lock outs" for declared premises.
If this is a request for partial exemption specify the area and detail to which the exemption applies.	Request for partial exemption to apply to the whole of venue with exception of Sports Bar. The location of the Sports Bar is set out on the attached plan properly drawn to scale. Attachment 1.
Why are you seeking this exemption?	<p>Analysis of assaults attributed to the venue over the last 3 years and the venue's incident register indicates that all incidents have occurred in the Sports Bar. 90% of incidents occurred between 12am and 3am on Thursday, Friday and Saturday nights. None have occurred in the parts of the venue for which exemption is sought. Refer to the summaries evidencing this and appended as Attachment 2.</p> <p>A lockout of the entire venue is not needed given the high volume trading area is the Sports Bar and other bars are boutique, low volume and low impact and have not been sites of alcohol related violence.</p>
What alternate condition do you propose the Director-General impose on your licence?	The lockout will only apply to the Sports Bar from midnight. We will post a security guard at each of the two entrances to the Sports Bar and ensure no patron movement into that area during the lockout period. We will have a RSA Marshal on duty in each of the other 3 parts of the premises (ie XX Bar, XX Bar and XX) from midnight on Thursday, Friday and Saturday nights. We will introduce a high visibility security patrol along the main patron migration path to the venue (ie XX street, between XX and XX streets and XX road between XX and XX streets).
Why will the alternate condition be more effective in reducing the risk of alcohol-related violence?	The proposed conditions are stricter and more targeted for the part of the venue that has the greatest risk of alcohol related violence. Additional conditions are proposed to reduce the risk of violence migrating to other areas of the venue. The Sports Bar is the high risk area having been the specific location of all incidents recorded and of concern as identified in our business and venue safety plan. Introducing a lock-out from 12am (2 hours earlier than the special condition) will decrease the risk of alcohol related violence in the Sports Bar by stopping entry of additional patrons after this time. The introduction of security patrols will increase the safety of patrons entering and leaving the area around the venue. Posting security at the entrances to the Sports Bar will ensure there is no patron migration to this part of the venue during the lockout period. The introduction of RSA Marshals in the exempt parts of the venue is a new initiative which will decrease the risk of alcohol related violence migrating from the Sports Bar to other parts of the venue.
Further detail, notes or comment.	To ensure other areas of our hotel are not frequented by the younger more problematic patrons, we will ensure the ambience, entertainment, design and furnishing will ensure continuation of low impact trade.

PART 3: IMPORTANT NOTES

- Lodgement of this application does not discharge the responsibility of the licensee to maintain conditions as required by Schedule 4.
- The Director-General will notify you in writing of the outcome of the exemption request.
- You may attach any material or evidence in support of this exemption application but you should reference it in this document.

EXEMPTION APPLICATION FROM A SCHEDULE 4 CONDITION

Use this form if you are a licensee of a Declared Premises under Schedule 4 of the Liquor Act 2007 and you seek an exemption from the Director-General Communities NSW as provided by Clause 8.

PART 1: PREMISE DETAIL

Premise name		Licence No.	
Address		Declared Premises Level	
Licensee name		Phone	
Signed		Date	

PART 2: EXEMPTION DETAIL *Review your Venue Safety Plan to ensure the proposed alternate condition addresses the risk of alcohol-related violence.*

Condition subject to exemption application	
If this is a request for partial exemption specify the area and detail to which the exemption applies.	
Why are you seeking this exemption?	
What alternate condition do you propose the Director-General impose on your licence?	
Why will the alternate condition be more effective in reducing the risk of alcohol-related violence?	
Further detail, notes or comment.	

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