Senate Select Committee on Red Tape
PO Box 6100
Parliament House
Canberra ACT 2600

By email: redtape.sen@aph.gov.au

31 January 2017

Dear Ms Hannah Dunn,

Select Committee on Red Tape to inquire into the effect of restrictions and prohibitions on business (red tape) on the economy and community

Submission of the Small Bar Association, NSW

My name is Martin O'Sullivan, and I am the President of the Small Bar Association, NSW.

By way of background, I am the owner of Grasshopper Small Bar in the Sydney CBD (Temperance Lane). Grasshopper Bar was the winner of the first Small Bar of the Year award with Bartender Magazine in 2010, and has won both the Small Business of the Year Award & Small Bar of the Year Award at the City of Sydney Business Awards.

Not only have I lived in the Sydney CBD for over 17 years, but I have worked in various bars, pubs, restaurants, nightclubs and small bars that whole time. I love this industry, am completely invested in it and its success, and strongly believe in its future.

The Small Bar Association, NSW ("the Association", "we", "our") represents approximately 8~~6~~0 small businesses, including a number of renowned and award-winning venues.

Together, we share real optimism for the growth prospects of our sector; there is a real move by Australian consumers to 'drink better, not more'. We see in our venues an appetite for discovery and an appreciation for the creativity displayed by skilled bartenders normally reserved for chefs and ambience of the high-end culinary sphere, with which we have much in common. We are proud to serve premium drinks in attractive and welcoming settings, enabling our customers to enjoy special nights out.

Our optimism is, however, tempered by dismay and frustration at the extent to which legislative and regulatory interventions have overreached into our freedom to operate our businesses, limiting our ability to evolve and improve our service.

Adherence to the Terms of Reference

In the context of this Senate inquiry, we feel it is important to emphasise our adherence to your terms of reference.

The public debate concerning the appropriateness of late night 'lockout' and certain other alcohol service restrictions in NSW is widely acknowledged and continuing, and a number of core restrictions aimed at the reduction of anti-social behaviour have been considered most recently by the *Callinan Review*[1] in New South Wales.

We do *not*, therefore, seek to burden or confuse this inquiry by addressing those matters covered by either the *Callinan Review* or *The Small Bars Review*, although we warmly welcomed the NSW Government's recognition, in response to the Review's findings, of the contribution of our sector to a vibrant and safe nighttime economy, and its subsequent move to expansion of the small bar patron limit, in order to promote and enable the expansion of the small bar model.[2] We hope that this endorsement of our business model can be recognized as a useful precedent in the Committee's considerations.

Instead, in this submission we highlight that other regulations and licensing provisions which are (a) associated with alcohol service restrictions and (b) were not included for consideration under the *Callinan Review,* sit within the scope of this inquiry; in particular, sub paragraphs a., b. and f, as follows:[3]

a. the effects on compliance costs (in hours and money), economic output, employment and government revenue;
b. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
f. how different jurisdictions in Australia and internationally have attempted to reduce red tape.

First principles

In line with the abovethis submission distinguishes proportionate measures applicable to all alcohol retailers seeking to curtail overall consumption, from those which can properly be regarded as unintended and inhibiting, "red tape" overreach.

At its heart, regulation and enforcement of the responsible service of alcohol is simple. A responsible retailer of alcohol simply will not, and is not legally permitted to, serve an intoxicated person, or a person at risk of intoxication by further service.

In our view, enforcement of this core principle, which is universally supported and implemented among our membership, addresses the majority of public concerns around service of alcohol beverages.

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[1] Review of the Liquor Act 2007 (NSW), I.D.F. Callinan AC, 13 September 2016

[2] Raising the patron limit for small bars from 60 to 100, and extending automatic 2am trading for eligible small bars in the CBD and Kings Cross.

[3] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape/Alcohol

Regrettably, recent trends in regulation seek to 'gold-plate' this core principle by micro-regulation intended to restrain a determined consumer's ability to reach the point of intoxication. Such regulations apply additional controls around types of drinks, right down to the menu level.

This approach is misguided. A person's level of intoxication is determined by a range of variables, the one being the total amount of alcohol consumed by the person. Over-consumption, or over-service, is just as easily attained though beer or wine as cocktails, spirits or ready-to-drink serves, so it is wrong to apply controls by reference to the types of drinks served.

Since 2012, more than 30 additional (arguably, micro-) regulations have been placed on our members operating in Kings Cross, of which 21 apply under the CBD Plan of Management. In the process, the Sydney licensing system has been turned on its head; a prospective licensee/operator now faces the uphill task of demonstrating a hypothetical community impact in order to start and grow a business, rather than being judged on his/her actions and actual impact once operating.

The sheer number of additional regulations is a good indicator of the burden of red tape to which our members are subject. However, of these, the following regulations, which constrain not only the range of drinks our members can serve, but also the recipes for serves, and the style of their presentation, are of particular note.

Service: Restriction on Neat, or 'On Ice' Serves, and/or Doubles[4]

The Sydney CBD Plan of Management 2014 ("Sydney CBD Plan") prohibits our members from serving spirits or liqueurs without a mixer after midnight, or in measures exceeding 30ml.

This equates to a ban on enjoying a late-night Scotch Whisky (or its contemporary Australian, American, Irish or Japanese equivalents). This unduly interferes with a licensee's ability to offer a full and normal range of drinks, and to control for responsible service risks in other ways. It is also nonsensical as the addition of a mixer to such a drink does not reduce the amount of alcohol in the product.

Service: Restriction on Serves containing over 50% spirits, the definition of a "Cocktail"[5]

The Sydney CBD Plan defines "cocktail" in an inexplicably narrow way, as an "alcoholic drink… *that contains spirits or liqueur (or both) mixed with other ingredients* and that is not designed to be consumed rapidly".

While the plan's intent is to permit cocktail service, the combination of the definition with the separate prohibition against drinks containing over 50% spirits or liqueurs does not.

These regulations, taken together, equate to a post-midnight ban on the traditional Martini, Manhattan, Old Fashioned, Negroni or Whisky Sour. This is undue interference with a licensee's ability to offer a full and normal range of drinks, and to control for responsible service risks in other ways.

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[4] Clause 53ZB (1b and 1d), Liquor Amendment (Sydney CBD Entertainment Precinct Plan of Management) Regulation 2014 [NSW] Schedule 1 Amendment of Liquor Regulation 2008

[5] Clauses 53ZB (2 and 3), Liquor Amendment (Sydney CBD Entertainment Precinct Plan of Management) Regulation 2014 [NSW] Schedule 1 Amendment of Liquor Regulation 2008

Service & Consumer Information: Cocktail Menu Restrictions[6]

The Sydney CBD Plan prohibits the sale of any cocktail not listed on a cocktail menu. This means that, a venue is prohibited from selling any of the standard, internationally recognized cocktails listed above (e.g. Martini, Manhattan, Old Fashioned, Negroni or Whisky Sour) unless they are listed on the menu at a fixed price.

This goes against the idea that a venue may choose to present itself, including via its menu, as it likes, perhaps theming its menu differently, but reliant on its bartenders' skill and repertoire to be able to 'mix a classic', and on its managers to price accordingly. The current regulatory approach also calls into question the appropriate response to bar customers who request listed items, but with a personally-favoured variation.

This regulation cuts through the essence of a cocktail bar offer.

Licensing: High Cost and Administrative Threshold to Obtain Exemption from the so-called "Special Licence Conditions"

In stakeholder discussions concerning the Sydney CBD Plan, our members have been advised that licensees in the CBD precinct may apply for exemptions to those restrictions.

Our 'first principles' objection to this approach is that it is the wrong way around, akin to licensees being guilty before proven innocent.
The better approach would be to impose sanctions on those unable to comply, rather than burden all, save for those exempted.

The procedure and criteria for exemption from the service restrictions is unduly burdensome and expensive, and potentially arbitrary.

The relevant form[7] and notes:

1. require that the applicant licensee:
    a. complete a separate form for each special condition (of which there are 15) applied to be exempted; and
    b. pay $500 in respect of each such condition.

2. state that an exemption will only be granted if the licensee can persuade the regulator that:
    a. it "is unlikely to result in an increase in the level of alcohol-related violence, anti-social behaviour or other alcohol-related harm in the precinct"; and
    b. other measures are in place on the premises which will be effective against the same.

The regulator has expressed surprise at the low uptake of this exemption system. As an association, we are unsurprised that our members are wary of filling in reams of paperwork, and making an outlay of

[6] Clause 53F (2A and 2B), Liquor Amendment (Sydney CBD Entertainment Precinct Plan of Management) Regulation 2014 [NSW] Schedule 1 Amendment of Liquor Regulation 2008
[7] NSW Dept. of Justice Form AM0655

perhaps thousands of dollars, against the prospect of convincing a responsible authority supportive of the regulations to set aside a number of them.

Licensing: No 'Mutual Recognition' of RSA Certification in NSW

Responsible Service of Alcohol ("RSA") Accreditation is a bedrock of our industry nationwide, and wholeheartedly supported by our members. However, in NSW, it is apparent that our regulator regards the requirements of responsible service in NSW to be different to other parts of the country.

Several of the other States apply reasonable conditions to mutual recognition, such as currency (Queensland and Victoria will recognize certificates issued within the last 3 years) and refresher training (ACT, Tasmania, Victoria); while SA, WA and the Northern Territory simply accept existing valid interstate accreditations.

NSW is the only State which does not recognize RSA accreditation obtained interstate, meaning that our members are put to additional and needless hiring and training costs.

International and Intra-Australian Examples

We're not aware of any other country which pursues the balance of restriction represented by the service restrictions in NSW highlighted in this submission.

Even within Australia, examples such as South Australia's Late Night Code[8] demonstrate a more focused approach; addressing specifically the question of 'shots' and 'shooters'[9], while allowing licensees scope to serve traditional spirits serves, e.g. sipping drinks served on ice and cocktails.

Conclusion: Disproportionate, Restrictive and 'Knock-on' Effects

Appreciation and connossieurship of premium spirits, whether it be a Tasmanian whisky or a Victorian gin, demand freedom for consumers to enjoy neat, unmixed serves and a full range of traditional cocktails. In 2017, cocktail culture is just that: a creative enterprise, for discerning consumers' entertainment.

It may be that the Committee has been surprised to learn that the business inhibition associated with "red tape" extends not only to traditionally bureaucratic enterprises and disciplines, but also interferes with how Australians might enjoy their favoured tipple.

The service restrictions highlighted in this submission deprive consumers of choice, and deprive the highly-respected, Australian domestic craft distilling industry of what should be the primary showcase for their premium products.

NSW licensees are hindered in their capacity to develop their businesses, to distinguish themselves among their peers and compete, and to premiumise consumption and the atmosphere in their premises.

[8] SA Liquor Licensing Act 1997, Late Night Trading Code of Practice, effective October 2013
[9] Part 6, Clause 16(a)

We thank the Committee for its consideration of these issues, and look forward to its findings.

Respectfully submitted,

Martin O'Sullivan
For and on behalf of the Small Bar Association, NSW