

# **Community impact on liquor licensing decisions: Barriers and recommendations**

Report prepared for the Australian National Advisory Council on Alcohol  
and Other Drugs, 2016

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<b>Tasmania:</b>	Department of Treasury and Finance: Liquor and Gaming Branch
<b>ACT:</b>	Access Canberra: Liquor Licensing
<b>Northern Territory:</b>	Licensing NT

## **Glossary of Terms**

<b>The Act</b>	The relevant piece of primary legislation in a given jurisdiction.
<b>Appeal</b>	The process by which an affected party applies to the Supreme Court to re-examine a matter (based on a question of law or otherwise). The exception is in Tasmania, where appeals are made to the Commission – equivalent to the review process in other jurisdictions.
<b>DA</b>	Development application; planning permission that must be obtained in a separate process (usually from local council) prior to application for a liquor licence.
<b>Decision maker</b>	A body determining whether to grant/refuse, or impose conditions on, a liquor licence application.
<b>Delegate</b>	A person who makes a decision on an application on behalf of the official decision maker.
<b>Intervention</b>	A stronger form of objection available to certain stakeholders in some jurisdictions.
<b>Jurisdiction</b>	The relevant state or territory.
<b>Licensee</b>	The person/organisation holding a liquor licence.
<b>Liquor licence</b>	A licence to sell or supply alcohol.
<b>Objects</b>	The stated underlying aims or purposes of legislation.
<b>Regulation(s)</b>	Subsidiary legislation of an act providing for the specifics of the application of the act.
<b>Review</b>	The process carried out when an affected party to a licensing decision makes an application to have that decision re-examined by another body (called an appeal in Tasmania).
<b>Submission</b>	Has a specific meaning in NSW and Queensland (roughly equivalent to an objection), however also used generally in this report to refer to materials lodged by the public with decision makers.

NSW

**ILGA**

Independent Liquor and Gaming Authority; the primary decision maker in NSW.

**NCAT**

NSW Civil and Administrative Tribunal; the reviewer of ILGA decisions.

**OLGR**

Office of Liquor and Gaming; now defunct and replaced by Liquor and Gaming NSW in February 2016.

**Submission**

The avenue through which members of the public may express opposition to an application.

VIC

**VCGLR /**

**The Commission**

Victorian Commission for Gambling and Liquor Regulation; the primary decision maker and decision reviewer in Victoria.

**VCAT**

Victorian Civil and Administrative Tribunal; previously the licensing decision reviewer in Victoria but now limited to reviews of planning decisions.

**Kordister**

A key licensing case setting precedent in Victoria.

QLD

**The Commissioner**

The Commissioner for Liquor and Gaming; the primary decision maker in Queensland.

**OLGR**

Office of Liquor and Gaming Regulation; the administrative body in Queensland.

**QCAT**

Queensland Civil and Administrative Tribunal; the reviewer of Commissioner decisions.

**Submission**

An avenue through which members of the public may express opposition to an application; distinct from the opportunity to lodge an objection.

WA

**The Commission**

The Liquor Commission; the reviewer of the Director's decisions.

**The Director**

The Director of Liquor Licensing; the primary decision maker in Western Australia.

<b>DRGL</b>	Department of Racing, Gaming and Liquor.
<u>SA</u>	
<b>The Commissioner</b>	The Liquor and Gambling Commissioner; the primary decision maker in South Australia.
<b>The Licensing Court</b>	The Licensing Court of South Australia; the decision maker for unresolved contested licensing applications and the reviewer of Commissioner decisions.
<u>TAS</u>	
<b>The Commission</b>	Tasmanian Liquor and Gaming Commission; the hearer of appeals of Commissioner decisions.
<b>The Commissioner</b>	The Commissioner for Licensing; the primary decision maker in Tasmania.
<b>Representation</b>	The avenue through which members of the public may express opposition to an application.
<u>ACT</u>	
<b>ACAT</b>	ACT Civil and Administrative Tribunal; the reviewer of Commissioner decisions.
<b>The Commissioner</b>	ACT Commissioner for Fair Trading; the primary decision maker in the ACT.
<b>Planning and Land Authority</b>	The decision maker on development applications.
<b>Representation</b>	The avenue through which members of the public may express opposition to an application.
<u>NT</u>	
<b>Development Consent Authority</b>	The decision maker on development applications.
<b>Director-General</b>	The Director-General of Licensing; the primary decision maker in the Northern Territory.
<b>NTCAT</b>	Northern Territory Civil and Administrative Tribunal; the reviewer of Director-General decisions.

## Executive Summary

The following is a review of the liquor licensing legislation in Australia as at November 2016. The legislation pertaining to community involvement in licensing is given particular attention. This report was prepared by the National Drug and Alcohol Research Centre (NDARC) at the University of New South Wales.

Alcohol use is a serious public health concern and entails considerable burden of disease. Research also shows that increased alcohol outlet density is correlated with a range of increased alcohol-related harms (Chikritzhs et al. 2007). Key to minimising these harms, individuals and organisations within communities should have an opportunity to contribute to the liquor licensing decision-making process. However, involvement in this process has been identified as complicated, legalistic and financially prohibitive.

In each jurisdiction (i.e. state or territory), there are generally two stages for new premises to be licensed: first development/planning (DA) approval, and then liquor licensing itself. While case studies included in this report reveal that the planning stage is important, this review largely focuses on liquor licensing itself, with key planning-related issues and examples integrated. However, while there are some general similarities between jurisdictions such as the two separate stages for new premises to be licensed, on the whole, the licensing landscape varies significantly across jurisdictions. See Table 1 for the number of newly-issued and current liquor licences for each jurisdiction.

Table 1

*Number of newly-issued and current licences by jurisdiction*

<b>Jurisdiction</b>	<b>No. new liquor licences issued 2014-15</b>	<b>No. current licences/and permits (as at)</b>
New South Wales	2,475	17,492 (average 2014-15)
Victoria	1,367	21,142 (30 September 2016)
Queensland	505	7,432 (30 June 2015)
Western Australia	183	4,701 (30 June 2015)
South Australia	352	6,518 (31 May 2016)
Tasmania	146	1,603 (30 June 2016)
Australian Capital Territory	47	704 (7 October 2016)
Northern Territory	12	511 (14 October 2016)

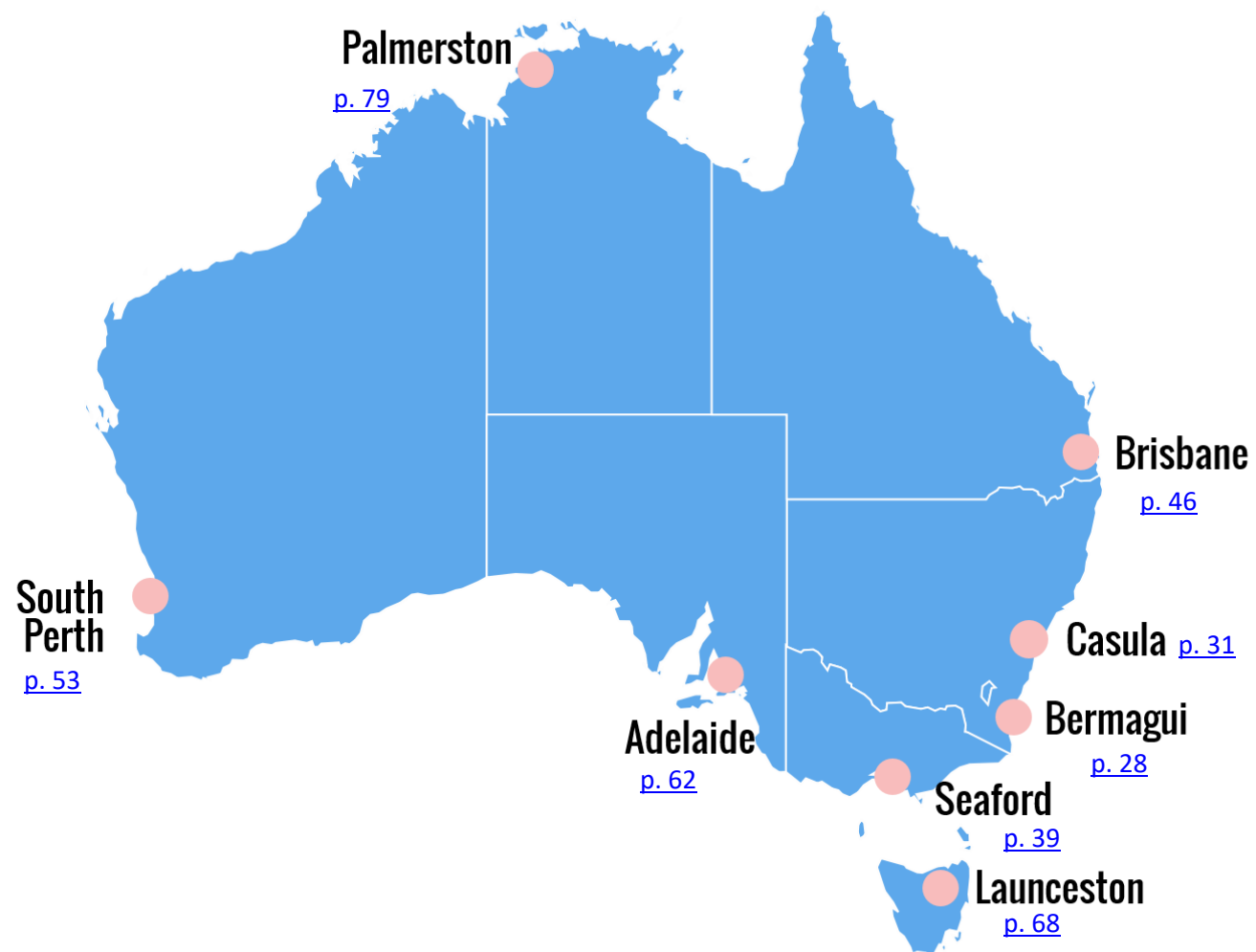


## **SUMMARY: STRUCTURE AND CONTENT**

There were two main aims of this report:

1. To provide current information on the licensing process and legislation in each jurisdiction relevant to community involvement, specifically:
  - The relevant liquor licensing legislation and how a community member can access this
  - The key regulatory and decision-making authorities, and the relationships between these bodies
  - The liquor licensing options, in terms of types of licences, available to the decision-making authorities
  - The key considerations taken into account by decision-making authorities
2. To review the existing opportunities for community involvement, specifically by:
  - Identifying the extent to which community members and groups are able to contribute to the liquor licensing decision-making process, and the boundaries around their ability to contribute
  - Identifying the barriers to effective community involvement in the liquor licensing decision-making process
  - Generating recommendations to overcome these barriers

For each jurisdiction, this report provides: the details of the relevant legislation and where community members can access it, a diagram illustrating the roles of, and relationships between, the relevant bodies, the types of licences (and permits) available, considerations taken by decision makers, the existing opportunities for community members to contribute, and finally, a case study involving a licence application that was opposed by the community (excluding the ACT). The geographic locations of the included case studies are displayed in Figure 1. Generating this material involved an analysis of the legislation, consultation with officials and experts, examination of past licensing decisions, and interviews with community members.



*Figure 1.* Geographic locations of case studies included in this report.

## **SUMMARY: IDENTIFYING LEGISLATION IN EACH JURISDICTION**

Most states and territories have one main piece of legislation relevant to liquor licensing, and one main subsidiary regulation. In each jurisdiction, the legislation can be accessed online. New South Wales, Western Australia and the Northern Territory have additional pieces of relevant legislation. While the primary legislation in some jurisdictions dates back to the 1980s and 1990s, most acts and regulations have been continually reviewed and revised over time. Of note, Tasmania made a number of important changes and additions as recently as September 2016, and South Australia is likely to make significant legislative changes in response to a comprehensive licensing review earlier in 2016.

## **SUMMARY: KEY LICENSING BODIES**

Each jurisdiction's licensing system is composed of a complex arrangement of regulatory and decision-making bodies. The overseeing government departments in each jurisdiction include justice (NSW, Queensland, South Australia, Northern Territory), treasury (Tasmania, ACT) or specific industry (Victoria, Western Australia).

Most jurisdictions have just one body that makes initial decisions on applications, while others (NSW, Tasmania, South Australia) have two bodies, with cases divided on the basis of whether the application is routine or contested. Almost all jurisdictions have a separate body that functions as a decision reviewer, and this role is filled by either a civil and administrative tribunal (NSW, Queensland, ACT, Northern Territory), a liquor commission (Western Australia, Tasmania) or a licensing court (South Australia). In Victoria, however, the same body that makes initial decisions is also responsible for internally reviewing those decisions upon application by an affected party.

All jurisdictions also allow for the involvement of the Supreme Court as the decision-making body at the highest level of appeal.

## **SUMMARY: LICENSING LEGISLATION AND OPPORTUNITIES FOR COMMUNITY INVOLVEMENT**

The licensing acts in each jurisdiction list the legislative objects that the laws intend to achieve (in Queensland they are called the 'main purposes'). These objects represent the underlying aims or purposes of the legislation. Many of these objects are shared between jurisdictions, especially harm minimisation and industry development objects, which are common to every state and territory. See Table 2 for a depiction of the key objects in each jurisdiction.

Table 2  
*Objects of Legislation Common to Jurisdictions*

	Minimise Harm	Minimise Intoxication/ Violence/ Anti-Social Behaviour	Develop Industry	Protect/ Improve Amenity	Promote Responsible Attitudes/ Practice	Protect Health + Safety	Encourage a Flexible/ Practical/ Informal System	Be Consistent with Community Needs/ Aspirations/ Expectations	Restrict Supply of Certain Products	Regulate Adult Entertainment	Encourage a Competitive Market
NSW	X	X	X	X	X		X	X			
VIC	X		X	X	X			X	X	X	
QLD ("main purposes")	X	X	X	X		X	X			X	
WA	X		X			X	X	X			
SA	X	X	X	X	X			X			X
TAS	X		X	X	X				X		
ACT (objects + principles)	X	X	X	X	X	X					
NT	X		X	X							

This review has identified that there are a number of opportunities in each jurisdiction for community members to be involved in the licensing process. These include:

- **Contributing to the planning/development stage**

This process was not the focus of this report. However, development approval is a prerequisite for liquor licence approval. As such, this preliminary stage is an important process in all jurisdictions. Additionally, there is often a separation of issues that can be appropriately considered by the planning decision maker (usually local council) or the licensing decision maker.

- **Participating in community consultation**

It was found that this opportunity – the first at the licensing stage itself – is much better afforded to community members in some jurisdictions than others.

In NSW for example, most new licence applications require consultation with neighbours (within 50/100 metres), and special interest stakeholders. In Queensland, for higher-risk licence types, there must be consultation with businesses and residents within a 200 metre radius of the premises, as well as a survey of local residents.

On the other hand, in Western Australia, there is no requirement for certain stakeholders to be given an opportunity to contribute, and it is up to the applicant to decide to undertake surveys or consultation of locals for inclusion in their Public Interest Assessment documents.

In the remaining jurisdictions, there is no apparent requirement for community consultation during the liquor licensing process.

- **Lodging an objection**

Every jurisdiction allows for community members and groups to lodge an objection to a licence application. While NSW only affords the ability to make a ‘submission’, and Tasmania and the ACT a ‘representation’, these are comparable to objections. See Appendix 5 for examples of community objections that have been submitted in different jurisdictions.

In some jurisdictions, there are restrictions – some specifically legislated (Northern Territory) and some discretionary (Victoria, Queensland) – on who is able to object. These criteria require the objector to have a genuine interest in the outcome of the application.

The legislation in each jurisdiction (except NSW and Tasmania) specifies a list of grounds on which members of the public may object. These grounds may vary from the grounds on which other stakeholders (e.g. police) may oppose an application on. Some states allow objections on only a few grounds (e.g. the ACT), while others

allow objectors to address an application more comprehensively (e.g. South Australia). The most common grounds across jurisdictions is that granting the application would detract from amenity (i.e. an area's quality of being pleasant and agreeable – includes considerations such as facilities, parking, traffic, noise, harmony, etc.). See Table 3 for a depiction of the key grounds for objection in each jurisdiction, as well as the overarching test applied by the decision maker in assessing applications.

Table 3

*Grounds for Public Objection by Jurisdiction (some jurisdictionally-specific minor grounds have not been included)*

										Test applied by decision maker
	That granting the application would:							Applicant/ Associate Unsuitable	Premises Unsuitable	
	Detract from Amenity	Encourage Alcohol Misuse/Abuse or Other Alcohol- Related Harm	Result in Offence/ Annoyance/ Disturbance	Detract from Health/Safety/ Welfare of the Public	Not be in the Public Interest	Be Inconsistent with the Legislation	Not Be Necessary to Cater to Public Need			
NSW	No restrictions on submissions specified									Overall social impact is not detrimental
VIC	X	X (packaged liquor application only)								Harm minimisation (confirmed in case law as the primary consideration <sup>1</sup> )
QLD	X	X	X	X						Ability to minimise impacts on amenity, health and safety (not explicit, precedential)
WA	X	X	X		X	X				Public interest
SA	X		X	X		X	X (hotel + retail liquor merchant's licences only)	X	X	Needs test (hotel + retail liquor merchant's licences only)
TAS	No restrictions on representations specified									Best interests of the community
ACT								X	X	N/A
NT	X			X						Public interest

<sup>1</sup> VicHealth 2014, *Unlocking liquor licensing. Resource 2: Liquor licensing laws. Information for the Victorian community about liquor licensing*, Victorian Health Promotion Foundation, Melbourne, p. 7.; *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325, para 188.

- **Requesting a review**  
Every jurisdiction allows for community members to request a review of an initial decision (in Tasmania this is called an ‘appeal’). NSW has additional eligibility requirements for this involvement: a person must have both made an initial submission, and also live within 50 or 100m of the premises (depending on licence type).
- **Appeal to the Supreme Court**  
All jurisdictions allow for affected parties to appeal a reviewed decision to the Supreme Court in that state/territory on a question of law. In South Australia, appeals may be made to the Supreme Court without being restricted to a question of law.

## **SUMMARY: BARRIERS TO EFFECTIVE COMMUNITY INVOLVEMENT**

This review identified a number of barriers preventing community members from having an impact on licensing decisions, ranging from macro-level impediments to micro-level obstacles. Explained in more detail in the body of this report, these were:

- **Potential preferencing of industry interests** (All jurisdictions)
- **Decision makers not obligated to advance legislative objects** (All jurisdictions excluding Northern territory and Tasmania)
- **Lack of decision-maker independence** (All jurisdictions, particularly NSW and Victoria)
- **Dual development/planning and licensing processes** (All jurisdictions)
- **Onus of proof on objectors** (All jurisdictions)
- **Legislative restrictions** (All jurisdictions)
- **Evidentiary requirements** (All jurisdictions)
- **Complex process and legislation inaccessible for lay people** (All jurisdictions)
- **Enforcement of venue compliance impacts licensing decisions** (All jurisdictions)
- **Paucity of information and advice offered by administrative bodies** (All jurisdictions)
- **Resource imbalance between community and applicant** (All jurisdictions)



## **SUMMARY: RECOMMENDATIONS TO OVERCOME BARRIERS**

Explained in more detail in the body of this report, this review made several recommendations designed to overcome the identified barriers.

- Recommendation: Establish a Community Defenders Office (CDO)**
- Recommendation: Licensing should become a matter for health authorities**
- Recommendation: Move towards greater standardisation of liquor licensing systems**
- Recommendation: Specify how decision makers are to balance public and industry interests**
- Recommendation: Allow for the consideration of all matters at both the development and licensing stages**
- Recommendation: Broaden the grounds on which the community can object**
- Recommendation: Ease the restrictions on who can participate in the process**
- Recommendation: Make locality-specific evidence more accessible, and/or allow locality-general research to be considered**

These changes are required if alcohol-related harm is to be minimised, and the licensing landscape is to truly reflect the needs and interests of the public.

## Introduction

The use of alcohol is a serious public health concern and entails considerable burden of disease. Data from the 2013 Australian National Household Drug Survey indicates that 78.2% of Australians aged over 14 years have used alcohol recently, with 18.2% of Australians drinking at levels that put them at risk for lifetime harms (Australian Institute of Health and Welfare 2014). Alcohol use contributes heavily to the burden of disease in the Australian population, with 5.1% of total disease burden attributable to alcohol use (Australian Institute of Health and Welfare 2016). In younger Australians (up to the age of 44 years), alcohol use is the number one risk factor contributing to total disease burden. In all other age groups, alcohol use ranks within the top 10 risk factors contributing to disease burden.

Harmful drinking, defined as alcohol use that is causing damage to one's health, is a major avoidable risk factor for many non-communicable diseases, including neuropsychiatric disorders, cardiovascular diseases, liver cirrhosis (World Health Organisation 2010) and cancers of the breast, rectum, stomach, colon, oesophagus, oral cavity and pharynx (Anderson, Chisholm, and Fuhr 2009). Harmful alcohol use is also associated with infectious diseases such as tuberculosis, pneumonia, HIV/AIDS and other sexually transmitted diseases (World Health Organisation 2010). Heavy alcohol use is neurotoxic to brain development, associated with structural changes in the prefrontal cortex and hippocampus in adolescence (Squeglia, Jacobus, and Tapert 2009) and reduced brain volume in middle age (Taki et al. 2006). Risky alcohol use is also associated with harms such as intentional and unintentional injury, violence, suicide, homicide, crime and road traffic accidents (Anderson, Chisholm, and Fuhr 2009). Ongoing alcohol use has also been associated with family deprivation, absenteeism and workplace performance, injuries and fatalities (Anderson, Chisholm, and Fuhr 2009).

To reduce alcohol-related harms, the World Health Organisation recommends regulating the sale and supply of alcohol, including limiting the number of premises selling alcohol as well as the hours during which alcohol can be sold (World Health Organisation 2010). Systematic reviews of all the available evidence have consistently indicated that alcohol outlet density is positively associated with alcohol use and alcohol-related harms, with little dissenting evidence (Popova et al. 2009; Bryden et al. 2012). Alcohol outlet density is robustly associated with assaults, as well as road crashes, drink-driving, homicide, child abuse and neglect, self-inflicted injury, and alcohol-related morbidity and mortality (Chikritzhs et al. 2007). Alcohol outlet trading hours also have clear and consistent effects on alcohol consumption and related harms (Hahn et al. 2010; Middleton et al. 2010; Popova et al. 2009). Increasing trading hours leads to rises in alcohol consumption and related harms, especially if the increase is greater than two hours (Hahn et al. 2010). Decreasing trading hours also appears to lead to reductions in alcohol-related harms, but the evidence base regarding reductions in trading hours is small (Middleton et al. 2010).

Within Australia, liquor licensing is developed independently within each of the eight states and territories, with each jurisdiction observing its own liquor or licensing act. Originally, these acts were primarily concerned with controlling the sale and supply of alcohol, as well as promoting the sustainability of the liquor and hospitality industries (Chikritzhs et al. 2007). However, more recent revisions of liquor and licensing acts have also included objectives related to harm minimisation. As a result, legislation within each jurisdiction generally considers the interests of the alcohol and hospitality industries whilst seeking to minimise alcohol-related harms within the community. How these interests are to be balanced is often unspecified, which has resulted in scope for the prioritisation of industry interests and consumer convenience over public welfare. As such, licences and licence conditions are often granted despite being incompatible with the well-established evidence base regarding alcohol-related harms (Chikritzhs et al. 2007).

Individuals and organisations within communities should have an opportunity to contribute to the liquor licensing decision-making process, particularly with respect to balancing harm minimisation goals. However, for individuals and community groups seeking to appropriately influence decision-making authorities, the procedures to follow have been identified as too complicated, legalistic and financially prohibitive for a broad cross section of the community to engage with.

## Aims and Methods

The first aim of this report is to provide up-to-date information on how interested community members can access the liquor licensing legislation relevant to their jurisdiction, as well as an outline of the key decision-making authorities within each jurisdiction. The second aim of this report is to review existing structures for community members to influence liquor licensing decisions within each jurisdiction. This review will focus on the barriers community members may face when seeking to influence the decision-making process, and the extent to which community members may be disenfranchised with respect to this process. These barriers will be identified through an analysis of legislative restrictions, consultation with experts and examination of past decisions. This will be supplemented with relevant case studies and interviews with involved community members and/or groups with respect to their experiences. Finally, this report will make recommendations designed to overcome the barriers identified.

While the licensing process cannot be viewed in isolation from the development or planning approval stage that often precedes it, the main focus of this review will be on liquor licensing itself. However, key development and planning-related issues will be integrated, and some case studies will be considered in light of both processes.

The methods for addressing each of the review's aims are listed below:

- 1. The relevant liquor licensing legislation and how a community member can access this**

Using publicly available information, the key acts and regulations in each jurisdiction will be identified, and their purposes briefly explained. Directions for accessing this legislation and any available lay summaries will be included.

- 2. The key regulatory and decision-making authorities, and the relationships between these bodies**

Using publicly available information, government departments, administrative authorities, decision makers and decision reviewers will be identified for each jurisdiction. Figures illustrating the functions of and relationships between these bodies will be included.

- 3. The liquor licensing options, in terms of the types of licences, available to the decision-making authorities**

Using publicly available information, the types of liquor licences and permits that can be issued will be identified and listed for each jurisdiction.

- 4. The key considerations taken by decision-making authorities**

In explaining what decision makers in each jurisdiction take into account when assessing licensing applications, this review will identify the relevant legislative objects, criteria for the

grant or refusal of applications, key tests to be applied to applications, and the grounds on which objections may be made. This information will come from publicly available sources, whilst clarification and further details of the legislation and objection processes will be sought from contact with the relevant administrative bodies in each jurisdiction.

#### **5. The extent to which community members and groups are able to contribute to the liquor licensing decision-making process, and the boundaries around their ability to contribute**

For each jurisdiction, the stages of the licensing process at which community members can contribute will be identified. Limitations on these contributions, such as who is eligible to participate, and the grounds on which opposition to an application may be made, will also be identified. This information will be gained from publicly available sources, whilst clarification and further details of the legislation and objection processes will be sought from contact with the relevant administrative bodies in each jurisdiction.

Case studies will be generated to illustrate the course a contested licensing application may take, and what is involved for community members in practical terms. Case studies will be identified by searching for decisions published on the websites of the relevant administrative authorities, as well as reviewed decisions in the AustLII databases. Where possible, community members and/or organisations involved in these cases will be contacted and interviewed, especially with regard to the obstacles faced when attempting to contribute to liquor licensing decisions (see Appendix 1 for interview template).

#### **6. Barriers to effective community involvement in the liquor licensing decision-making process**

Common barriers to effective community involvement in liquor licensing decisions across jurisdictions will then be discussed. These will be identified through analysis of legislative restrictions, consultation with experts, examination of past cases, and issues encountered by community members revealed in their interviews.

#### **7. Recommendations to overcome these barriers**

Based on the barriers identified, recommendations designed to give communities more input into liquor licensing decisions will be made.



## New South Wales

In the [year 2014-15](#), there were a total of 2,475 new liquor licences granted: 0 club, 14 hotel, 1,732 limited, 504 on-premises, 110 packaged liquor, 95 producer/wholesaler, and 20 small bar licences. In the same period, 14 licence applications were refused<sup>2</sup>. During the year 2014-15, there were 17,492 liquor licences in force (on average)<sup>3</sup>.

### Relevant legislation

There are two main pieces of legislation covering liquor licensing in NSW: the Liquor Act 2007, and the Gaming and Liquor Administration Act 2007. Under each of these are regulations: the *Liquor Regulation 2008*, and the *Gaming and Liquor Administration Regulation 2016*.

The *Liquor Act 2007* regulates the sale, supply and consumption of alcohol<sup>4</sup>, whereas the *Gaming and Liquor Administration Act 2007* covers the function and composition of, and processes for engaging with, the decision-making bodies. The respective regulations provide for the specifics of the applications of these laws.

The legislation can be accessed directly through the NSW legislation website:

<http://www.legislation.nsw.gov.au>.

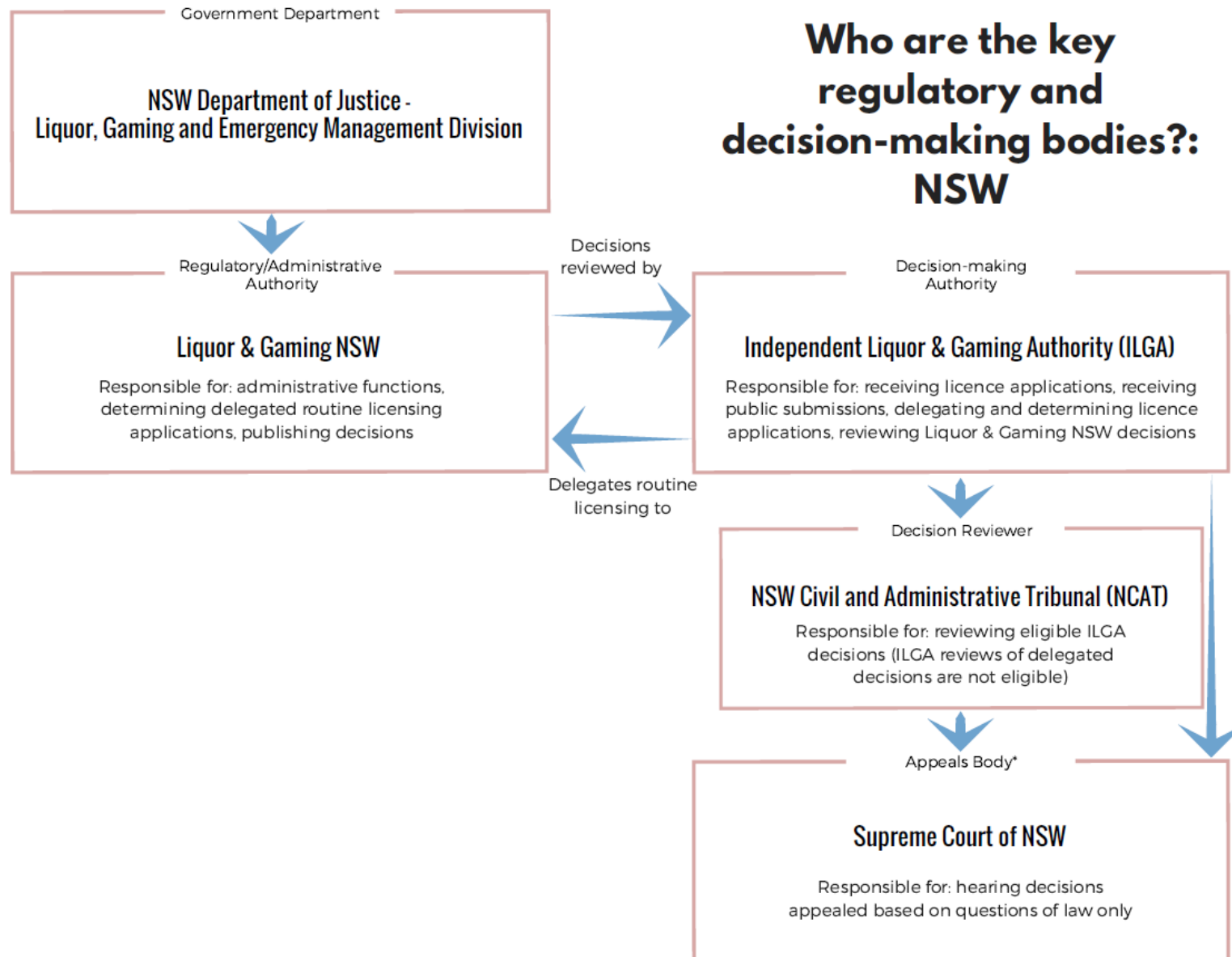
A more accessible summary of many of the key elements of the legislation can be found on the Liquor and Gaming NSW website: <https://www.liquorandgaming.justice.nsw.gov.au/>.

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<sup>2</sup> Independent Liquor and Gaming Authority 2015, *Annual Report 2014-15*, Appendix 5.

<sup>3</sup> Independent Liquor and Gaming Authority 2015, *Annual Report 2014-15*, p. 14.

<sup>4</sup> Section 3 *Liquor Act 2007* (LA) (New South Wales).





## Licences

There are seven types of licence that can be issued<sup>5</sup>:

- A hotel licence (including general bar licence)
- A club licence
- A small bar licence
- An on-premises licence
- A packaged liquor licence
- A producer/wholesaler licence
- A limited licence

## Key considerations in assessing applications

The objects<sup>6</sup> of the *Act* are to regulate the sale, supply and consumption of alcohol in line with the desires and needs of the community, to allow for the development of the liquor industry (in the public interest) through a flexible, informal system, and to promote the development of related industries. In order to fulfil these objects, the *Act* requires that decision makers take into account the need for harm minimisation, for promoting a responsible culture of alcohol promotion, sale, supply, service and consumption, and for safeguarding the amenity of community life.

More specifically, licences can only be granted if the applicant is a fit and proper person, responsible service practices will be in place at the premises, and if development consent has been obtained (if required)<sup>7</sup>.

The key test applied by the decision maker is whether the **overall social impact** of granting the application will not be detrimental to the well-being of the community<sup>8</sup>. In making this decision, the application, the Community Impact Statement (CIS, if required – see description below) and any submissions or reports are taken into account. ILGA has published a [guideline](#) (Guideline 6)<sup>9</sup> which details how it determines the social impact question. The guideline states that the burden is on the applicant to provide evidence that both the local (suburb) and broader (local government area) communities' well-being will not be negatively impacted<sup>10</sup>.

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<sup>5</sup> Section 10 LA.

<sup>6</sup> Section 3 LA.

<sup>7</sup> Section 45(3) LA.

<sup>8</sup> Section 48(5) LA.

<sup>9</sup> Independent Liquor and Gaming Authority 2015, *Authority Guideline 6 – Consideration of social impact under Section 48(5) of the Liquor Act 2007*.

<sup>10</sup> Independent Liquor and Gaming Authority 2015, *Authority Guideline 6 – Consideration of social impact under Section 48(5) of the Liquor Act 2007*, p. 2.





The guideline also states that ILGA may take into account relevant domestic or international public health data and research, both on demographic characteristics as well as on the relationship between outlet density and social outcomes. Crime statistics may also be considered, e.g. NSW Bureau of Crime Statistics and Research (BOCSAR), as well as data from the Australian Bureau of Statistics, SEIFA (socio economic index data), Roads and Maritime Services (alcohol-related road accidents), or the Department of Health (alcohol-related health data). The guideline explains that, unlike under the former *Liquor Act 1982*, arguing that a community does not need another licensed premises is not sufficient grounds for refusing an application. This kind of argument may only go towards the issue of social impact (e.g. increased outlet density leading to greater harms).

## **How community members can contribute to licensing decisions**

### *Involvement in the development application process*

Local council is the decision maker here.

### *Contribute to community consultation*

Applicants must engage in some kind of community consultation for all new licence applications<sup>11</sup>, with the exact requirements depending on the type of licence or application. Mandatory advertising of applications involves a visible notice of the application being affixed to the outside of the proposed premises<sup>12</sup>, and informing neighbouring premises<sup>13</sup> (which includes premises within 50 or 100 metres of the proposed venue - depending on licence type, or buildings on adjoining land/land that would adjoin if not for a road)<sup>14</sup>. Local police, the local council and any neighbouring local council within 500 metres, amongst others specific to the application/deemed by ILGA<sup>15</sup>, must also be informed. These notices must be given within two working days of the application being made<sup>16</sup>.

Almost all applications for new licences require a Community Impact Statement (CIS) to be prepared and submitted by the applicant<sup>17</sup>. This process involves obtaining contributions from relevant stakeholders to inform ILGA about the harms the new licence may pose to the community before they make their decision, and documents how applicants have responded to stakeholder concerns<sup>18</sup>. There are two kinds of CIS: a CIS A and a CIS B. A CIS A

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<sup>11</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/community-involvement/community-consultation.aspx>.

<sup>12</sup> Regulation 9 *Liquor Regulation 2008* (LR) (New South Wales).

<sup>13</sup> Regulation 7 LR.

<sup>14</sup> Regulation 6 LR.

<sup>15</sup> Regulation 8 LR.

<sup>16</sup> Regulations 7, 8 and 9 LR.

<sup>17</sup> Section 48 LA.

<sup>18</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/community-involvement/community-impact-statements.aspx>; <https://www.liquorandgaming.justice.nsw.gov.au/Documents/liquor/community-action/category-b-CIS-form.pdf>.



requires consultation with the local council, any neighbouring local council within 500 metres, local police and others determined by ILGA. A CIS B has those same consultative requirements, and additionally, applicants must consult certain government departments (Health, Community Services) and authorities (Roads and Traffic), any Aboriginal community leaders, neighbouring premises, and special interest groups or people<sup>19</sup>. A CIS B is required for all license types listed above except for packaged liquor sale made online, by mail or over the phone (CIS A required), or for limited licences (may not require a CIS).

Special interest stakeholders that may be identified by ILGA can include anyone that will be likely to be affected by the new licence (e.g., schools, different cultural/socio-economic groups, or facilities for homeless/hospitals/elderly). If a group or individual is identified as being of special interest in the case, they must be notified of the licence application and given the opportunity to be consulted<sup>20</sup>.

As ILGA can only approve the application if the impact of the licence will not be harmful to the community (overall social impact), applicants must respond to stakeholder feedback and resolve any issues that arise. This might take the form of holding further consultation such as face-to-face or public meetings<sup>21</sup>.

#### *Make a submission (object) in response to an application*

All licence applications are displayed on the [Liquor and Gaming NSW Application Noticeboard](#). Any member of the public can search for licence applications and their status, and make submissions in response to applications that are in an eligible stage of processing. There is a 30 day period from when the application was made for submissions to be lodged (sometimes less in certain cases)<sup>22</sup>. All submissions must be taken into consideration by ILGA when making their decision<sup>23</sup>.

Importantly, unlike in most other jurisdictions, there are no restrictions on the grounds on which submissions can be based.

#### *Request a review of a decision*

Initial decisions on applications are made by Liquor and Gaming NSW (when delegated by ILGA) or by ILGA themselves.

If the initial decision was made by Liquor and Gaming NSW, an application for review must be submitted to ILGA. If the initial decision was made by ILGA, then an application for review must be lodged with the NSW Civil and Administrative Tribunal (NCAT). If a member of the public wants to request a review, they need to reside within 50 or 100 metres of the proposed premises (depending on the type of license) and have made a submission

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<sup>19</sup> Regulation 11 LR.

<sup>20</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Documents/liquor/community-action/CIS%20how%20to%20Category%20B.pdf>.

<sup>21</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Documents/liquor/community-action/CIS%20how%20to%20Category%20B.pdf>.

<sup>22</sup> Regulation 12 LR.

<sup>23</sup> Section 44 LA.



prior to the initial decision in question<sup>24</sup>. Otherwise, no right to request a review exists. This geographic constraint is a recent change to the legislation, added in 2015. However, other stakeholders (such as local police) who were consulted as part of the CIS do not have the same geographic constraints. Applications must also be made within 28 days of the initial decision<sup>25</sup>.

#### *Appeal to the Supreme Court on a question of law*

Anyone party to review proceedings may appeal to the Supreme Court on a question of law.

#### *Community Access Teams*

It is important to note Liquor and Gaming NSW's recent establishment of a Community Access Team whose purpose is "... *to assist, inform and educate community members so that they can participate in liquor related decisions, policy development and government initiatives.*"<sup>26</sup> At the time of writing this report, no dedicated website for the Team was accessible. There are two very brief mentions of the Team on the Liquor and Gaming NSW website, with no contact details listed. However, once contacted, a representative said that the Team had already commenced holding meetings with stakeholders in the community, and that they could be reached through the email address: [community.access@olgr.nsw.edu.au](mailto:community.access@olgr.nsw.edu.au).

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<sup>24</sup> Section 36A(2A)(b) *Gaming and Liquor Administration Act 2007* (GLAA) (New South Wales).

<sup>25</sup> Regulation 5(a) *Gaming and Liquor Administration Regulation 2016* (GLAR) (New South Wales).

<sup>26</sup> Liquor and Gaming NSW 2016, *Community Access*.



## Case study: BWS, Bermagui

### OVERVIEW

**Where and what:** On the 23<sup>rd</sup> of October, 2014, an application for a packaged liquor licence was submitted proposing a new BWS (Woolworths) in Bermagui, on NSW's South Coast.

**Community response:** The application was met with strong community opposition from both individuals and community organisations. ILGA received approximately 85 submissions from residents, local groups, businesses and Council, as well as a petition against the application with 176 signatures<sup>27</sup>.

**Outcome:** ILGA [refused](#) the application on the 28<sup>th</sup> of October, 2015.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

This case reveals that the DA stage of the overall licensing process is particularly important. Fabcot Pty Ltd, a subsidiary of Woolworths, initially submitted a DA proposal for a Woolworths supermarket and a liquor store (among other retail and consumer facilities) to Bega Valley Shire Council. At its [meeting in March 2014](#)<sup>28</sup>, Council deferred its decision on the application, recommending, among other changes, the removal of the liquor store from the application. Fabcot then amended the application to remove mention of the liquor store, and this amended application was approved at Council's [meeting in April 2014](#)<sup>29</sup>.

Subsequently, Woolworths applied for a liquor licence for the premises. One community organisation's submission to OLGR<sup>30</sup> commented that the community felt "misled", and as such, that Fabcot Pty Ltd was not a suitable organisation to be granted a liquor licence. This sentiment was reflected in other community submissions received by ILGA.

The documented reasons for community opposition to the licence included<sup>31</sup>: the applicant's biased interpretation of community statistics, the applicant's neglect of the socio-economic status of the area, existing levels of alcohol-related crime and other issues in the community, that the applicant's CIS was wrong to assert that Council had already considered the social impacts of the premises, that the new premises would not significantly improve convenience (as claimed in the CIS), and that even if it did, it is contrary to the other claim in the CIS that at-risk groups would not be attracted to the liquor store.

<sup>27</sup> Independent Liquor and Gaming Authority 2016, *Decision on Application for Packaged Liquor Licence under Section 45 Liquor Act 2007 – BWS Bermagui – 14 January 2016* (Bermagui).

<sup>28</sup> Bega Valley Shire Council 26 March 2014, *Ordinary Meeting Minutes*.

<sup>29</sup> Bega Valley Shire Council 16 April 2014, *Ordinary Meeting Minutes*.

<sup>30</sup> This is the Office of Liquor, Gaming and Racing, now defunct and replaced by Liquor and Gaming NSW in February 2016.

<sup>31</sup> *Bermagui*, para 43.



## WHY THE APPLICATION WAS REFUSED

ILGA refused the application because its overall social impact was deemed likely to detract from the community's wellbeing<sup>32</sup>. ILGA claims to have given weight to its obligations under the *Liquor Act* to minimise harm and to safeguard community amenity. Unlike cases from other jurisdictions (see the IGA - Rosebery, Northern Territory case study), ILGA took into account community objections that were speculative in nature, particularly with regards to the likely social impact<sup>33</sup>.

Specifically, ILGA was not convinced of many of the positive benefits claimed by the applicant, concluding that any added convenience was offset by strong public opposition, and agreed with objectors that existing proximate licensed premises also mitigated convenience benefits. Additionally, given the applicant's claims that they would not impose downward pricing pressure, or offer new product lines to the area, it was deemed that granting the application would not contribute significantly to the industry.

In contrast to what has been seen in other jurisdictions, the decision notes that although some of the community submissions lacked specificity or evidence, they were still relevant<sup>34</sup>. The object of the *Liquor Act* providing for regulation of the industry in a way that is consistent with the needs and desires of the community was at the fore. Given the volume of community submissions, ILGA decided that this object would not be fulfilled if the application were granted<sup>35</sup>. ILGA also cited socio-economic, alcohol-related morbidity and crime data from the area (with particular reference to BOCSAR crime statistics), in reaching its decision.

It should be noted that while ILGA echoed many of the community's concerns, they did not give weight to opposition on competition grounds – noting that those issues are not within the scope of their consideration.<sup>36</sup>

## EXPERIENCES OF AN OBJECTOR

The following is based on an interview with and submissions made by a community member who acted with a local community organisation to lodge objections with both OLGR and ILGA (see Appendix 5 for full submission).

After viewing the application made by Woolworths, the objector felt that their group lacked the expertise and resources needed to address the breadth of included issues. The organisation focused their initial submission to OLGR on the applicant's suitability given their previous conduct, leaving residents to make their own submissions on social impact grounds. In a later submission to ILGA, the group also voiced concerns over failed attempts at convening a

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<sup>32</sup> *Bermagui*, paras 171 and 229.

<sup>33</sup> *Bermagui*, para 177.

<sup>34</sup> *Bermagui*, para 194.

<sup>35</sup> *Bermagui*, paras 195-196.

<sup>36</sup> *Bermagui*, para 192.



forum for community consultation (due to the unavailability of the applicant<sup>37</sup>), and were unhappy that, as an important stakeholder, they had learnt of both the plans and cancellation through community contacts and not ILGA itself.

In theorising about effective measures, the objector pointed to their efforts to publicise the issue and involve local media, also writing to the Premier and local state member. The objector believes that some feedback from ILGA would have been helpful, and said that learning how the decision maker considers issues would assist them with future cases. It should be noted that certain decisions, including the one on this application, *are* published online. However, they are generally lengthy and legalistic, rendering them effectively inaccessible for the average member of the public.

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<sup>37</sup> *Bermagui*, para 5.



## Case study - The DA Process: Proposed hotel in Casula

While this review focuses on the liquor licensing process itself, it is important to recognise that the development application (DA) process, and equivalent planning processes in other jurisdictions, play a key preliminary role. For this reason, the following case study – taking place solely at the DA stage – has been included for illustrative purposes.

### OVERVIEW

**Where + What:** A development application for a pub on the Hume Highway, Casula was lodged with Liverpool Council in 2013. The application proposed the demolition of an existing motel and construction of a large, late-trading hotel and pub.

**Community Response:** There was much community opposition – an incorporated community group body was formed in response to the application (the Casula Community Group for Responsible Planning - CCGRP), and members of the public voiced their opposition to council. The DA prompted approximately 2,000 objections from the community<sup>38</sup>.

**Decision:** The Council's Independent Hearing and Assessment Panel unanimously recommended refusing the proposal in September, 2014<sup>39</sup>, after which the application was withdrawn<sup>40</sup>.

On the 30<sup>th</sup> of October, 2015, a new application was lodged with Council<sup>41</sup> by the same developer.

**Further Community Action:** Opposition to this new DA was strong, and received roughly 1,500 objections<sup>42</sup>.

**Outcome:** As Council exceeded the time frame to make a decision, the application was deemed refused<sup>43</sup>, giving the applicants the opportunity to have the matter appealed to the NSW Land and Environment Court (LEC). The matter has been heard – with three parties involved: the applicant, Council and the CCGRP<sup>44</sup>. The case is yet to be decided.

<sup>38</sup> T. Brown, 'Casula community get their day in court', *Drink Tank*, 30 March 2016.

<sup>39</sup> Liverpool City Council 29 September 2014, *Recommendations of the Independent Hearing and Assessment Panel*.

<sup>40</sup> Liverpool City Council 29 October 2014, *Minutes of the Ordinary Meeting Held on 29 October 2014*.

<sup>41</sup> <https://eplanning.liverpool.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=309218>.

<sup>42</sup> T. Brown, 2016.

<sup>43</sup> <https://eplanning.liverpool.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=309218>.

<sup>44</sup> T. Brown, 2016.



## **WHY THE COMMUNITY OPPOSED THE APPLICATION**

The objection to the DA lodged by the CCGRP identified five key issues:

The first of these is the negative social impact of an additional liquor and gambling outlet in their area, which they described as particularly vulnerable and socioeconomically disadvantaged. The proposed premises are located near high-risk facilities including public housing for the elderly and disabled, a women's refuge, educational and child care facilities, medical centres, and family homes.

The second reason for opposition was the belief that the pub would lead to a loss of amenity for residents and businesses, caused by increased traffic, intoxicated patrons, noise, crime and potential for traffic hazards and driving under the influence.

The third reason cited evidence of high levels of domestic violence in the area, which they believed would be exacerbated by the new premises.

The fourth reason was that the applicant's claims that the pub would be "family friendly" were allegedly misleading.

The final reason was that approving the application was not in the public interest, with issues identified with other licensed venues owned by the applicant.

The CCGRP claimed that the fact that the premises would be monitored should not be taken into account during the decision-making process. In NSW, there is a "three strikes" scheme in place for venues that violate licence conditions<sup>45</sup>, but the CCGRP claimed that other existing venues in the area were poorly monitored under this scheme. In their involvement in opposing the DA, the Casula community obtained data on recent incidents involving an existing local premises' failure to comply with licence conditions or responsible service requirements. While 10 separate incidents were registered in the space of 17 months, including allowing intoxication on the premises, no strikes had been issued to the licensee of this existing premises.

As such, the community argued that the existence of compliance or enforcement measures such as the "three strikes" scheme should not be considered when assessing a risky application.

## **EXPERIENCES OF AN OBJECTOR**

The following is based on an interview with and submissions made by a community member who acted with the CCGRP in opposing the DA (see Appendix 5 for full submission).

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<sup>45</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/law-and-policy/three-strikes.aspx>.





The community member found the process confusing and difficult, especially given their group had no relevant knowledge or experience. This community member believed that this was exacerbated by the low socio-economic status of the community – at the first community meeting called to discuss the issue, only five of the 75 attendees owned a computer. Particular areas of the process that the community member found difficult to navigate included how to make an objection, understanding the Council’s responsibilities, how to find relevant supporting research, and finding funds for process.

Without pro bono assistance from experts and lawyers, the community member does not believe their opposition would have made it as far as it has. In an estimation of fees that the community would have been liable for (had pro bono and reduced-fee assistance not been obtained), they put the costs at over \$300,000 (see Appendix 4 for details).

The community member believes that these resources should be made easily available to those wishing to oppose a new liquor outlet. They were in favour of a community defender service with experience in assisting low socio-economic communities. They also believe there should be legislated restrictions on how close licensed premises can be built to schools.



## Victoria

As at 30<sup>th</sup> of September, 2016, there were 21,142 permits and licences in [Victoria](#)<sup>46</sup>. In the year 2014-15, of all finalised applications, 96% (1,367) were granted, 3% were withdrawn by the applicant, and 1% were [refused](#)<sup>47</sup>. Of contested applications (drawing continuing opposition from community/council/police), 75% were granted<sup>48</sup>.

### Relevant legislation

There is one main piece of legislation covering liquor licensing in Victoria: the *Liquor Control Reform Act 1998*. Under this legislation is the *Liquor Control Reform Regulations 2009*.

The *Act* covers the laws relating to the supply and consumption of alcohol<sup>49</sup>, while the *Regulations* prescribe the specific details for the application of the *Act*.

The legislation can be accessed directly through the Victorian Commission for Gambling and Liquor Regulation (VCGLR) website:

<http://www.vcglr.vic.gov.au/home/laws+and+regulations/legislation+and+regulations/liquor+legislation/>.

A more accessible summary of some of the key elements of the legislation can also be found on the website.

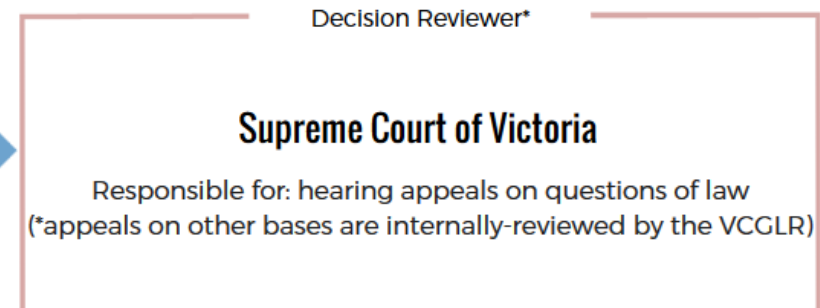
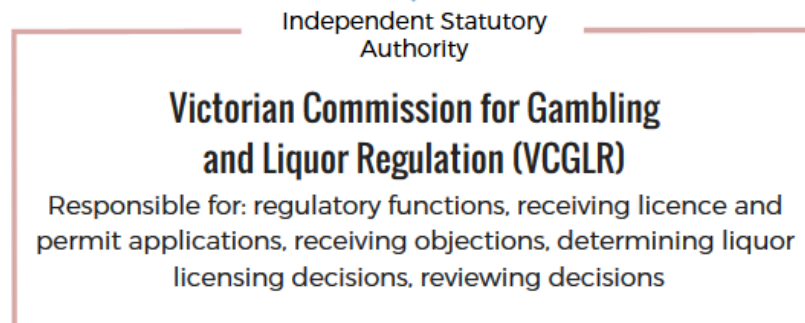
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<sup>46</sup> Victorian Commission for Gambling and Liquor Regulation 2016, *Victorian Liquor Licences as at 30 Sep 2016*.

<sup>47</sup> State of Victoria (The Victorian Commission for Gambling and Liquor Regulation) 2015, *Victorian Commission for Gambling and Liquor Regulation Annual Report 2014-15*, p. 48.

<sup>48</sup> State of Victoria (The Victorian Commission for Gambling and Liquor Regulation), 2015, p. 48.

<sup>49</sup> Section 1 *Liquor Control Reform Act 1998* (LCRA) (Victoria).



## Who are the key regulatory and decision-making bodies?: Victoria

## Licences and permits

There are 10 types of licence that can be issued<sup>50</sup>:

- A general licence
- An on-premises licence
- A restaurant and café licence
- A club licence
- A packaged liquor licence
- A late night licence
- A pre-retail licence
- A wine and beer producer's licence
- A limited licence
- A major event licence

Additionally, a BYO permit (for premises only wishing to allow people to bring their own alcohol for on-premises consumption) may be issued.

## Key considerations in assessing applications

The objects of the *Act* are minimising harm (via the provision of controls over supply and consumption, improving community amenity, restricting supply of certain drinks, and facilitating a responsible consumption culture), promoting the development of a diversity of licensed premises, assisting in the responsible development of industry, and regulating licensed venues that provide sexually explicit entertainment<sup>51</sup>. Harm minimisation is singled out as the object which decision-makers must have regard to when exercising their powers, as well as having regard to alcohol abuse and misuse-related risks.

The Commission may refuse to grant an application if the applicant is not suitable, if granting the application would detract from the amenity of an area, if granting the application would encourage alcohol misuse/abuse, if the application has not been properly displayed, or if (for a club licence application) a club does not meet certain criteria<sup>52</sup>. If the application is a contested one, the Commission must give the applicant and any objectors a “reasonable opportunity to be heard”<sup>53</sup>. Confirmed by precedent<sup>54</sup>, **harm minimisation** is the primary consideration of the decision maker.

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<sup>50</sup> Section 7 LCRA.

<sup>51</sup> Section 4 LCRA.

<sup>52</sup> Sections 44 and 47 LCRA.

<sup>53</sup> Section 47(3)(c) LCRA.

<sup>54</sup> VicHealth 2014, *Unlocking liquor licensing. Resource 2: Liquor licensing laws. Information for the Victorian community about liquor licensing*, Victorian Health Promotion Foundation, Melbourne, p. 7.; *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325, para 188

The grounds for community objection are that the grant of an application would result in a loss of amenity for the area<sup>55</sup>. Amenity is defined as the quality a locality has of being pleasant and agreeable, and factors that come into this consideration include parking facilities, traffic, noise, potential for nuisance/vandalism, and the harmony and coherence of the area<sup>56</sup>. Additionally, for packaged liquor licence applications only, community objections can be made on the grounds that the grant of the application would encourage alcohol misuse or abuse<sup>57</sup>.

## **How community members can contribute to licensing decisions**

### *Involvement in the planning permission stage*

Local council is the decision maker here.

### *Object to a liquor licence application*

Once an applicant has advertised the details of their application on the proposed premises<sup>58</sup>, objections may be received for consideration by VCGLR. Applications are also listed on the VCGLR website. Apart from objections that can be made by the Chief Commissioner of Police<sup>59</sup>, local councils<sup>60</sup>, or licensing inspectors<sup>61</sup>, any person may object to a licensing application (including application for grant, variation or relocation of licence) based on the aforementioned grounds.

However, while Section 38 states that any person may object, Section 42 of the *Act* says that the objection can be refused if the objector “is not affected by the application”. There are no more specifics about what “affected” means, this is at the discretion of the Commissioner, so factors like where the objector resides may be taken into consideration<sup>62</sup>.

Community objections must be made to the VCGLR in writing within 30 days of the applicant giving notice of the application. The *Act* notes lack of success of the proposed business, the adverse effects on other existing businesses or the lack of demand to warrant the licence are not considered valid reasons for objections<sup>63</sup>.

Many recent licensing decisions cite the precedent set in *Kordister Pty Ltd v Director of Liquor Licensing & Anor [2012] VSCA 325*. This is commonly referred to simply as *Kordister*. While the case set the precedent for many different areas of licensing (e.g. what is

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<sup>55</sup> Section 38 LCRA.

<sup>56</sup> Section 3A LCRA.

<sup>57</sup> Section 38 LCRA.

<sup>58</sup> Section 34 LCRA.

<sup>59</sup> Section 39 LCRA.

<sup>60</sup> Section 40 LCRA.

<sup>61</sup> Section 41 LCRA.

<sup>62</sup> Personal correspondence with VCGLR, 6 September 2016.

<sup>63</sup> Section 38(3) LCRA.

considered the primary consideration of decision makers), it also importantly set an evidentiary burden for objections. A Victorian Health Promotion Foundation (VicHealth) [fact sheet](#) on community objections to liquor licensing provides a summary of how *Kordister* applies<sup>64</sup>. The basic determination from the case is that evidence of a specific link between granting a licence and alcohol-related issues in the community must be shown in order to successfully oppose an application.

If an application is contested (i.e. an objection has been made), the VCGLR has three options for how to proceed: gather written submissions, hold a preliminary conference, or refer the matter to an inquiry<sup>65</sup>. These processes are not clearly defined in the *Act*, but are explained on the VCGLR [website](#)<sup>66</sup>. A decision on the application is then made.

#### *Request a review of a decision*

Objectors to the original application may apply for a review of the VCGLR decision<sup>67</sup>, and must do so within 28 days of the initial decision<sup>68</sup>. VCGLR decisions are reviewed internally; however the review group must not include the person who made the initial decision<sup>69</sup>.

#### *Appeal a decision to the Supreme Court on a question of law*

If an objector is still unsatisfied with the outcome of the review, they can further appeal to the Supreme Court (within 28 days of the review decision), but only on a question of law.<sup>70</sup>

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<sup>64</sup> VicHealth 2014, *Unlocking liquor licensing. Resource 2: Liquor licensing laws. Information for the Victorian community about liquor licensing*, Victorian Health Promotion Foundation, Melbourne, pp. 6-8, 11.

<sup>65</sup> Victorian Commission for Gambling and Liquor Regulation, *VCGLR Liquor Contested Application Process*.

<sup>66</sup> Victorian Commission for Gambling and Liquor Regulation, *VCGLR Liquor Contested Application Process*.

<sup>67</sup> Section 152 LCRA.

<sup>68</sup> Section 152 LCRA.

<sup>69</sup> Section 155 LCRA.

<sup>70</sup> Section 172A LCRA.



## Case study: Nepean Cellars, Seaford

### OVERVIEW

**Where + What:** On the 6<sup>th</sup> of February, 2014, a Packaged Liquor Licence application was submitted by Hunter Bros Investments Pty Ltd for a premises on the Nepean Highway in Seaford, Melbourne.

**Community Response:** The application attracted five objections from community members.

**Outcome:** On the 11<sup>th</sup> of June, 2015, a delegate of the VCGLR *granted* the application.<sup>71</sup>

### WHY THE COMMUNITY OPPOSED THE APPLICATION

Objectors were concerned about existing alcohol-related problems in the area, and believed that a new takeaway liquor store would add to these issues. Specifically, objectors argued that granting the application would be detrimental to the area's amenity, and would contribute to risky drinking and anti-social behaviour. There were concerns about increased competition leading to lower prices, increased drinking and littering on the beach. The fact that the nearby beach and kindergarten were places attracting children and families was raised. It was also claimed that granting the application would be inconsistent with the *Act's* harm minimisation objective and that there were already a sufficient number of licensed premises in close proximity.

### WHY THE APPLICATION WAS GRANTED

The delegate stated that they were not convinced that granting the application would add to existing problems in the area, citing that there was no specific evidence about the applicant and premises in question. Hence it was determined that there was not enough evidence to conclude that the licence would detract from amenity. In terms of the anti-social behaviour and littering concerns specifically, the delegate stated that a licensee could not be held responsible for what happened outside of their premises. Finally, on the question of amenity, the delegate considered the premises to be far enough away from areas that attract young people and families.

In terms of the assertion that the area did not need more licensed premises, the delegate noted that insufficient need/demand is not a valid basis for objection. Regardless, the delegate did not believe that the area was saturated with licensed premises, citing only one existing takeaway liquor store within 500 metres.

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<sup>71</sup> This decision is not publicly available, and was obtained from the VCGLR upon request.

The decision also notes the absence of an objection from Victoria police, and gives weight to VCAT's earlier decision to grant a planning permit for the premises to be used as a packaged alcohol store.

## **EXPERIENCES OF AN OBJECTOR**

The following is based on an interview with and submissions made by a community objector (see Appendix 5 for full submission).

Through their submission, the objector argued that another liquor outlet would add to the problems in Seaford associated with excessive drinking and anti-social behaviour, as well as dangerous rubbish (such as glass) on the beach. The objector referenced locality-specific evidence about alcohol-related issues in the area. The objector also noted that Frankston Council area (which contains Seaford) had the fourth highest rate of alcohol-related hospital attendances in metro Melbourne.

The objector explained that they were able to locate the evidence supporting their submission because they worked in public health themselves, and had some knowledge about the type of research to include. The objector believed that this information would be difficult to find otherwise, and that this material should be made more accessible, in particular for relevant alcohol statistics.

Additionally, the objector indicated that the provision of information about what kinds of arguments and evidence are considered effective (including information about precedent and past decisions), as well as an objections template, would aid community members in forming submissions. They believed that the establishment of an online register of opposition would help community members identify fellow objectors so that they could work together and organise petitions online.





## Queensland

As at 30 June, 2015, there were 7,432 liquor licences in Queensland<sup>72</sup>, a 10% increase from five years beforehand. In the financial [year 2014-15](#), 505 new liquor licences were issued<sup>73</sup>, and over 20 million dollars in revenue was generated from liquor licence fees<sup>74</sup>.

### Relevant legislation

There is one main piece of legislation covering liquor licensing in Queensland: The *Liquor Act 1992*. Under the *Act* is the *Liquor Regulation 2002*

The *Act* details the laws regulating the liquor industry, while the *Regulations* provide for the specifics of the application of these laws.

The legislation can be accessed directly through here:

<https://www.legislation.qld.gov.au/OQPChome.htm>.

Summaries of some of the key points of the legislation can also be found on the Queensland Government's Business and Industry portal website:

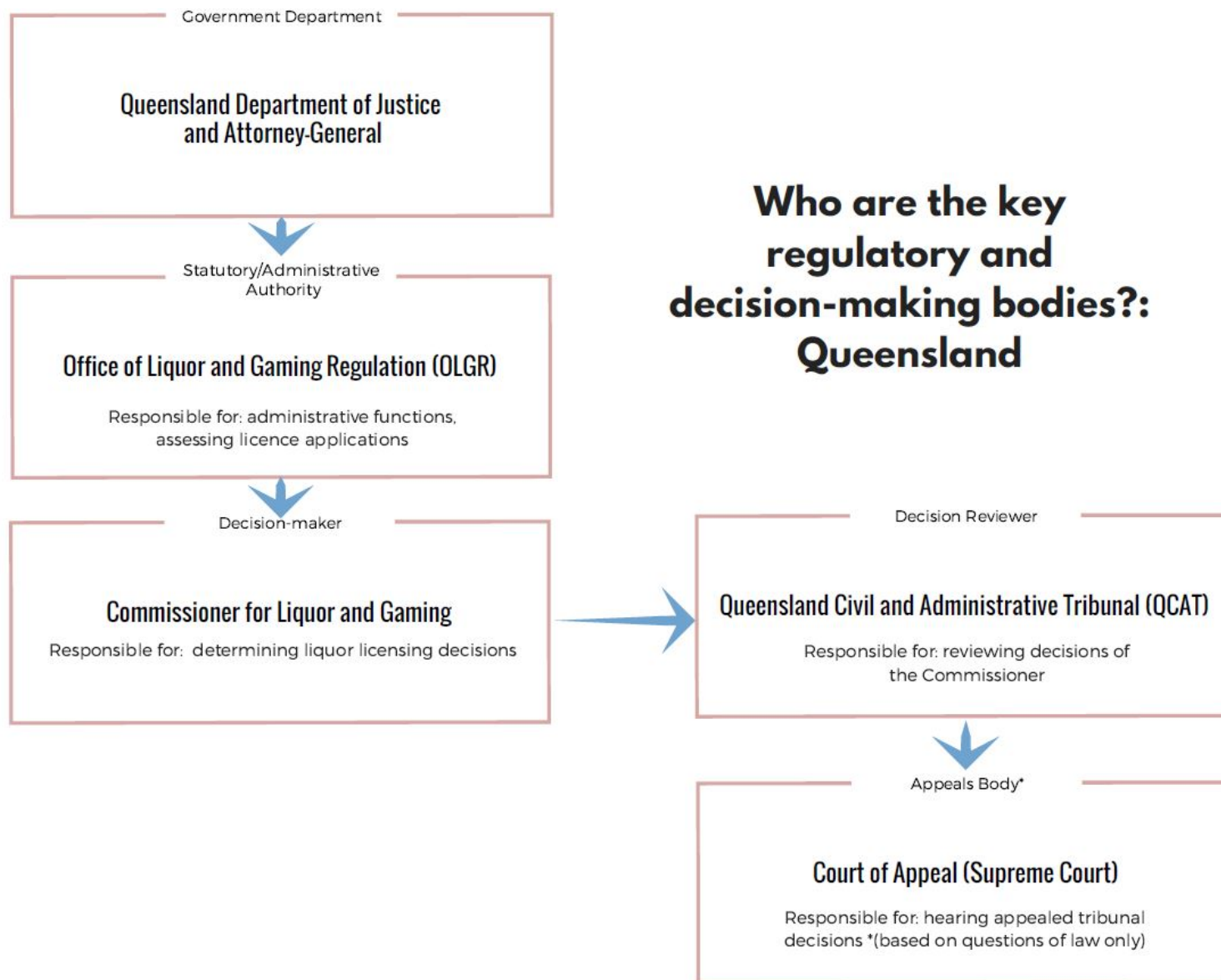
<https://www.business.qld.gov.au/industry/liquor-gaming/liquor>.

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<sup>72</sup> Department of Justice and Attorney-General Office of Liquor and Gaming Regulation 2016, *Liquor and Gaming Annual Report 2014-15*, p. 28.

<sup>73</sup> Department of Justice and Attorney-General Office of Liquor and Gaming Regulation 2016, *Liquor and Gaming Annual Report 2014-15*, Table 9.

<sup>74</sup> Department of Justice and Attorney-General Office of Liquor and Gaming Regulation 2016, *Liquor and Gaming Annual Report 2014-15*, Table 14.





## Licences and permits

There are six types of licence that can be issued<sup>75</sup>:

- A commercial hotel licence
- A commercial special facility licence
- A commercial other licence
- A community club licence
- A community other licence
- A nightclub licence

Additionally, there are seven types of permit that can be issued<sup>76</sup>:

- A commercial public event permit
- A community liquor permit
- An extended hours permit
- A restricted liquor permit
- An adult entertainment permit
- A restricted area permit
- A craft beer producer permit

## Key considerations in assessing applications

In Queensland, the equivalents of the legislative objects in the other jurisdictions are the “main purposes of the Act”<sup>77</sup>. These main purposes are to regulate the liquor industry in a way that minimises: 1) harm arising from alcohol misuse, 2) health and safety risks to the public, and 3) threats to the amenity of community life, to promote industry development, to provide a flexible, practical licensing system, and to regulate adult entertainment.

Currently, the legislation does not require that decision makers have regard to these main purposes. Instead, it states that the *Act* must be administered in accordance with “the underlying principle”<sup>78</sup> which is that liquor can only be supplied on licensed premises within the scope of the premises running as a business.

When assessing applications, the decision maker must have regard to the Community Impact Statement (CIS) and public interest (if CIS is required), any objections, any comments from local council, any comments from the police district officer (if applicable), comments from the community justice group (if applicable), impact on community amenity, suitability of

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<sup>75</sup> Section 58 *Liquor Act 1992* (LA) (Queensland).

<sup>76</sup> Section 100 LA.

<sup>77</sup> Section 3 LA.

<sup>78</sup> Section 3A LA.



applicant and premises (for extended trading hours applications), and any conditions imposed on the development approval by local council<sup>79</sup>.

The overarching test applied by the decision maker in assessing a licence is whether any **impacts on amenity, health and safety are able to be minimised**. This is borne out of various sections of the *Act*<sup>80</sup>, in combination with precedent set by QCAT decisions<sup>81</sup>. In assessing effects on amenity and health and safety, the Commissioner may take into account such factors as the disbursement of people exiting premises, public transport availability, noise levels, and the potential for violence, disorder or anti-social behaviour<sup>82</sup>.

## How community members can contribute to licensing decisions

### *Involvement in the development application process*

Local council is the decision maker here.

### *Contribute to a Community Impact Statement (CIS)*

Applications for most new licences, as well as for certain condition variations, must be accompanied by a CIS. The CIS is intended to assist the Commissioner in determining the impact on amenity and health and safety<sup>83</sup>. A full [CIS](#) (for higher-risk licence types) must contain evidence of consultation with businesses and residents within 200 metres of the proposed premises, as well as a survey of local residents<sup>84</sup>.

### *Object to a licensing application*

Most applications must be publicly advertised, and are required to be displayed on the proposed premises for 28 days<sup>85</sup>, with notice of the application published on the website of the Queensland Department of Justice.

Members of the public may either write a submission to the Commissioner (for applications where a CIS is required)<sup>86</sup>, or else lodge an objection as an individual or via petition<sup>87</sup>. The legislated list of grounds for public objections include that granting the application will lead to undue offence or disturbance to those in the area, alcohol-related harm, risks to public health and safety, or threats to community amenity<sup>88</sup>. Objections made by petition must fulfil

<sup>79</sup> Section 121 LA.

<sup>80</sup> Sections 3, 121 and 128 LA.

<sup>81</sup> Personal correspondence with OLGR, 13 October 2016.

<sup>82</sup> Sections 128A and B LA.

<sup>83</sup> Section 116 LA.

<sup>84</sup> <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/liquor-wine-licensing/community-impact-statement>.

<sup>85</sup> Section 118 LA.

<sup>86</sup> Section 118A LA.

<sup>87</sup> Section 119 LA.

<sup>88</sup> Section 119 LA.



certain criteria, including that each person who signs must add details of their connection to the area<sup>89</sup>. Importantly, in order to object, a person must have a genuine interest in the area and be likely to be personally affected by the application, and this is determined by the Commissioner<sup>90</sup>.

If an application attracts objections, OLGR may convene a conference where the applicant and objectors can discuss concerns. The outcomes of any discussion here are conveyed to the Commissioner before they make their decision<sup>91</sup>.

*Apply for a review of the Commissioner's decision*

If an objector is unhappy with the decision of the Commissioner, they may apply for a review of the decision to the Queensland Civil and Administrative Tribunal (QCAT)<sup>92</sup>. In most cases, QCAT will make a fresh decision based only on the same evidence that was before the Commissioner<sup>93</sup>.

*Appeal QCAT's decision on a question of law*

A party to the QCAT proceedings may appeal QCAT's decision to the Court of Appeal (Supreme Court), but only on a question of law<sup>94</sup>.

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<sup>89</sup> Section 120 LA.

<sup>90</sup> Section 119 LA.

<sup>91</sup> <https://www.business.qld.gov.au/industry/liquor-gaming/liquor/liquor-wine-licensing/public-objections/processed>.

<sup>92</sup> Section 30 LA.

<sup>93</sup> Sections 33 and 34 LA.

<sup>94</sup> Section 35 LA.



## Case study: Blackbird Bar & Restaurant, Brisbane

### OVERVIEW

**Where + What:** On the 17<sup>th</sup> of September, 2013, applications were received by OLGR in relation to premises in central Brisbane. These included applications for transfer of licence, premises name change, extension of trading hours, and alterations to the premises and licensed area.

**Community Response:** The application drew objections from five couples living in close proximity to the premises. The objections received by the Commissioner were in relation to the proposal for extended hours of trade. An objections conference was held on the 17<sup>th</sup> of December, 2013.

**Decision:** The Commissioner *granted* each of the applications<sup>95</sup>.

**Further Community Action:** The objectors then sought a review from QCAT of the decision of the Commissioner in respect to the extended trading hours and the noise conditions of the licence.

**Outcome:** On the 3<sup>rd</sup> of May, 2015, after completion of their review, [QCAT affirmed](#) the Commissioner's decision<sup>96</sup>. That is, the original decisions to *grant* the applications stood, with some additional noise conditions added to the licence.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

Living in apartments very close to the premises in question, residents were opposed to the application because they believed that the extended trading hours would detract from the amenity of the area. Specifically, they were concerned about excessive noise disturbance and risks to their health and safety. They contended that the acoustic report submitted by the applicant was inaccurate.

Additionally, they claimed that enforcement of noise compliance had been poor in the past. The objectors also argued that there were already sufficient existing late-night premises in the area, and that this new application was therefore unnecessary<sup>97</sup>.

### WHY THE REVIEW AFFIRMED THE DECISION TO GRANT EXTENDED TRADING HOURS

QCAT affirmed the decision to grant the extended trading hours because: there is no legislative requirement for the applicant to demonstrate need<sup>98</sup>, they were convinced threats

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<sup>95</sup> These decisions cannot be examined as Commissioner decisions are not publicly available in Queensland.

<sup>96</sup> *Cooper & Ors v Commissioner for Liquor and Gaming & Anor* [2016] QCAT 67 (Cooper).

<sup>97</sup> Cooper, para 76.

<sup>98</sup> Cooper, para 78.



to amenity could be minimised<sup>99</sup>, and they were not convinced that an additional extended trading hours venue would contribute substantially to the cumulative harms of drunkenness and anti-social behaviour<sup>100</sup> (and noted the lack of police objection received on this matter<sup>101</sup>). While accepting that noise issues have the ability to contribute to health problems<sup>102</sup>, QCAT did not see this as a great enough harm in this case to overturn the Commissioner's decision.

## **EXPERIENCES OF AN OBJECTOR**

The following is based on an interview with and submission made by a primary objector in this case.

A major obstacle identified by the objector was that they could not afford to hire their own acoustic consultant to provide an alternative report on the premises. They believe technical expertise should be made available to community members, or else independent experts acting on behalf of OLGR should review any reports submitted by applicants. Additionally, the objector thought that legal support should be offered to objectors. Finally, the objector believed that decisions on trading hours and noise limits should consider the potential health consequences of being exposed to noise at excessive volumes for extensive periods of time.

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<sup>99</sup> Cooper, para 89.

<sup>100</sup> Cooper, para 107.

<sup>101</sup> Cooper, para 108.

<sup>102</sup> Cooper, para 195.



## Western Australia

As at June 30<sup>th</sup>, 2015, there were 4,701 licensed premises in Western Australia. During [2014-15](#), 183 licence applications were granted by the Department of Racing, Gaming and Liquor, and eight were refused.<sup>103</sup>

### Relevant legislation

There is one main piece of legislation covering liquor licensing in Western Australia: The *Liquor Control Act 1988*. Under the *Act* are the *Liquor Control Regulations 1989*.

The *Act* regulates “the sale, supply and consumption of liquor”<sup>104</sup>, while the *Regulations* provide for the specifics of the application of these laws.

There are also the *Liquor Commission Rules 2007*, which are regulations that provide for the decision review process under the Liquor Commission.

The legislation can be accessed through the Department of Racing, Liquor and Gaming’s website: <http://www.rgl.wa.gov.au/legislation/liquor-legislation/liquor-control-act-1988>.

Some of the pertinent legislation relating to the practicalities of licence applications is outlined in a more accessible format on the Department’s website, e.g. [an objection fact sheet](#)<sup>105</sup>.

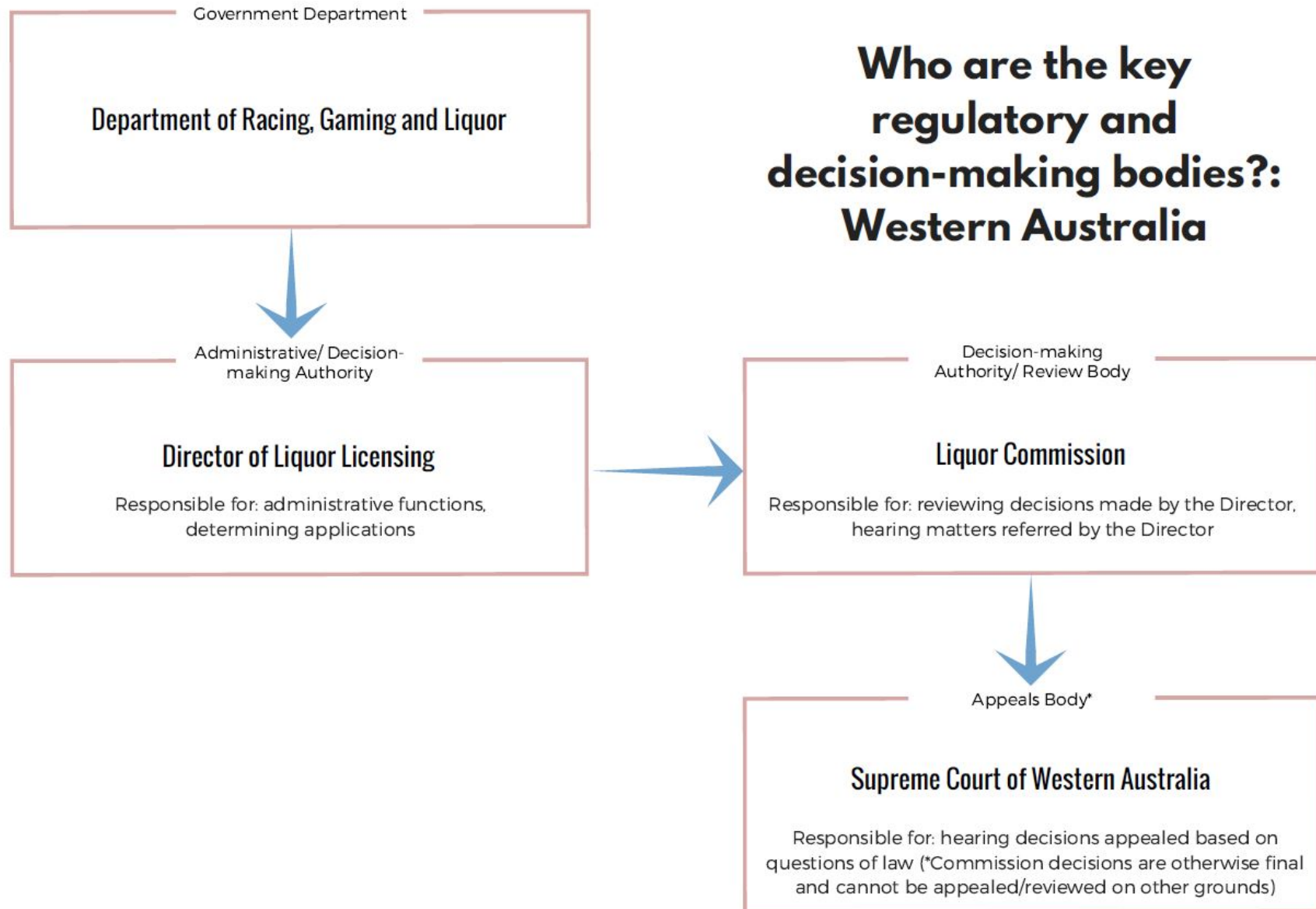
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<sup>103</sup> Department of Racing, Gaming and Liquor 2015, *Department of Racing, Gaming and Liquor 2014/15 Annual Report*, pp. 18-19.

<sup>104</sup> Section 5 *Liquor Control Act 1988* (LCA) (Western Australia).

<sup>105</sup> <http://www.rgl.wa.gov.au/docs/default-source/rgl/objections8830f8a6e2326d0fa9d2ff0000b27513.pdf?sfvrsn=2>.







## Licences and permits

There are 10 types of licence that can be issued:

- A hotel licence (including small bar, tavern, hotel restricted, tavern restricted)
- A nightclub licence
- A casino liquor licence
- A special facility licence
- A liquor store licence
- A club licence (including club restricted)
- A restaurant licence
- A producer's licence
- A wholesaler's licence
- An occasional licence

Additionally, extended trading permits can be issued in relation to an existing licence.

## Key considerations in assessing applications

The *Act* requires that the licensing authority have regard to the objects of the *Act* when making decisions<sup>106</sup>. The primary objects are to: regulate alcohol sale, supply and consumption, minimise alcohol-related harm, provide for the needs of alcohol consumers, and the liquor, tourism and hospitality industries. The secondary objects are to: enable the use and development of licensed premises, establish controls on the people selling and drinking alcohol, and provide as flexible and informal a system as possible for administering the *Act*. If conflict between primary and secondary objects occurs, primary objects take precedence<sup>107</sup>.

More specifically, applications for a liquor licence are not to be granted unless the applicant has satisfied the licensing authority that granting the application is in the **public interest**<sup>108</sup>. In determining whether the application is in the public interest, the licensing authority may consider its impact on physical harm and health, on the amenity of the area, and its contribution to annoyance or disturbance<sup>109</sup>. Other prerequisites for granting a licence include that the applicant (and anyone interested in the application or business) must be a fit and

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<sup>106</sup> Section 5(2) LCA.

<sup>107</sup> Section 5(3) LCA.

<sup>108</sup> Section 38(2) LCA.

<sup>109</sup> Section 38(4) LCA.



proper person<sup>110</sup>, that planning approval has been obtained<sup>111</sup>, and that undue offence, annoyance, disturbance or inconvenience would not be likely to result<sup>112</sup>.

Also see the ability for certain bodies to intervene, as well as the grounds for community objection, in the following section for further matters the licensing authority must consider.

## How community members can contribute to licensing decisions

### *Involvement in town planning approval for new liquor licence applications*

Local council is the decision maker here.

Contribute to a [Public Interest Assessment \(PIA\)](#)<sup>113</sup>

In order to fulfil the requirements for demonstrating that granting the application will be in the public interest, most applications (including those for granting a licence) must supply a PIA. While there is no requirement for certain stakeholders to be given a chance to contribute (unlike for NSW and Queensland CISs), the applicant may undertake market research, surveys or consultation of locals and stakeholders as evidence for the PIA.

### *Object to a liquor licence application*

In addition to notice being served on residents within a 200 metre radius and on certain educational or health facilities<sup>114</sup>, licence applications are publicly advertised. Anyone may inspect the application documents at the office of the Director<sup>115</sup>. While three bodies (the Commissioner for Police, the Executive Director of Public Health, or the local government) may intervene<sup>116</sup>, members of the public may only object. In contrast to an intervener<sup>117</sup>, the burden of proof lies with the objector when they raise an objection<sup>118</sup>. Any person may object by lodging a notice with the Director and also serving a copy of the objection to the applicant within the set time period<sup>119</sup>.

Grounds on which objections may be made are: on the basis that granting the application would not be in the public interest, or would cause alcohol-related harms or ill-health, or would cause undue offence, annoyance, disturbance or inconvenience, or would detract from

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<sup>110</sup> Section 37(1) LCA.

<sup>111</sup> Section 37(2) LCA.

<sup>112</sup> Section 37(3) LCA.

<sup>113</sup> Department of Racing, Gaming and Liquor 2016, *Public Interest Assessment Pursuant to section 38 of the Liquor Control Act 1988*.

<sup>114</sup> Department of Racing, Gaming and Liquor 2016, p. 7.

<sup>115</sup> Section 68(3) LCA.

<sup>116</sup> Section 69 LCA.

<sup>117</sup> Precedent set in *Re Gull Liquor* (1999) 20 SR (WA) 321.

<sup>118</sup> Section 73(10) LCA.

<sup>119</sup> Section 73 LCA.



the amenity of the area, or would be inconsistent with the *Act*.<sup>120</sup> If objecting on public interest grounds, there are special criteria that the objection must meet<sup>121</sup>.

There is then a period in which further submissions may be made and exchanged between applicant and objectors.

*Request a review of the Director's decision*

Anyone party to proceedings before the Director may apply to the Liquor Commission for a review of the Director's decision within a month of receiving notice of the decision<sup>122</sup>. The Commission may only consider the material that was before the Director when conducting their review of the Director's decision.

*Appeal to the Supreme Court on a question of law*

Anyone party to proceedings before the Commission may appeal to the Supreme Court, but only on a question of law.<sup>123</sup>

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<sup>120</sup> Section 74(1) LCA.

<sup>121</sup> Section 74(3) LCA.

<sup>122</sup> Section 25 LCA.

<sup>123</sup> Section 28 LCA.



## Case study: Angelo Street Bar, South Perth

### OVERVIEW

**Where + What:** On the 1<sup>st</sup> of May, 2014, a small bar licence application was submitted by Wolfberry Holdings Pty Ltd for a premises in South Perth, to be known as Angelo Street Bar.

**Community Response:** The application drew 11 resident objections, an objection from the McCusker Centre for Action on Alcohol and Youth (MCAAY), as well as interventions on the part of the Executive Director Public Health (EDPH) and the Commissioner of Police. The residents also submitted a petition signed by people opposed to the application.

**Decision:** The Director of Liquor Licensing [granted](#) the application on the 10<sup>th</sup> of March, 2015<sup>124</sup>.

**Further Community Action:** Together, 10 of the residents applied for a review of the Director's decision.

**Outcome:** The application for review was [refused](#) on the 31<sup>st</sup> of August, 2015 by the Liquor Commission. This meant that the decision to grant the licence was *upheld*<sup>125</sup>.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

Residents opposed the application on many grounds, including that granting the application would not be in the public interest, would cause alcohol-related harms, would cause undue offence, annoyance, disturbance or inconvenience, and would detract from the amenity of the area.

Many residents were concerned about the proposed premises' proximity to three schools, including one very nearby with sporting grounds which were used by students out of school hours. This concern also formed the basis of the EDPH's intervention. Other arguments included that there were enough licensed venues in the area, that there would be increased anti-social behaviour, that the new bar would exacerbate inadequate parking issues, and that there would be disturbance caused by venue and patron noise.

Professor Mike Daube, Director of the MCAAY, also argued that granting the application would not be in the public interest, citing research linking exposure to alcohol advertising with increased likelihood and volume of adolescent drinking. He also referenced the results of MCAAY research showing there was widespread concern amongst Western Australians about youth alcohol use. See Appendix 2 for a statement from MCAAY on the difficulties

<sup>124</sup> Director of Liquor Licensing 2015, *Decision of Director of Liquor Licensing A226223* (A226223).

<sup>125</sup> Liquor Commission of Western Australia 2015, *Residential Objectors and others v Wolfberry Holdings Pty Ltd – 31 August 2015 – LC 22/2015* (LC 22/2015).



facing a community member seeking to have an impact on liquor licensing decisions in Western Australia.

## **WHY THE APPLICATION WAS GRANTED**

In determining whether granting the application would be in the public interest, the arguments about the proximity of a nearby school were not considered strong enough by the Director to refuse the licence. Given that objections were not received from principals or parent associations and that there were only 12 objections in total, the Director concluded that the objections could not be considered to be representative of the majority of the school community. Additionally, the applicant agreed to a condition suggested by the EDPH restricting alcohol advertising, to minimise exposure to schoolchildren.

Here, as in many cases across different jurisdictions, evidence presented by objectors in the form of research on the general harms of alcohol was not highlighted in the decision process. References to Western Australian research on alcohol harms seem to not have been taken into consideration. Citing legal precedent, the Director stated that harms can only be *“...considered in the context of the locality itself and the risks assessed with due regard to the circumstances of the particular area in which the premises are to be located”*<sup>126</sup>. This meant that the applicant’s submitted evidence — suggesting the area was experiencing a decrease in crime and did not experience atypical levels of alcohol-related harm — prevailed.

The Director also believed the premises would be compliant with noise regulations, was not persuaded that the premises would significantly contribute to parking issues, and was unable to take into consideration issues raised in regard to the planning approval stage as this was beyond the Director’s scope<sup>127</sup>.

The Director balanced the received objections with the input of those who responded to the applicant’s survey, concluding that there were at least some in the community who supported the small bar application and would benefit from the new premises<sup>128</sup>.

While the application was granted, the Director did impose a number of conditions on the licence in response to concerns e.g. no one in school uniform to be allowed on the premises.

## **WHY THE APPLICATION FOR REVIEW WAS REFUSED**

The Commission’s process involves reviewing the materials presented to the Director and making its own decision<sup>129</sup>. The Commission was also not of the opinion that granting the application put schoolchildren at risk, or that it would detract from amenity, or significantly increase alcohol-related harm, noise or parking issues.

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<sup>126</sup> A226223, para 51.

<sup>127</sup> A226223, para 56.

<sup>128</sup> A226223, para 59.

<sup>129</sup> LC 22/2015, para 81.



## EXPERIENCES OF OBJECTORS

**Objector 1:** The following is based on an interview with and submissions made by an objector who put forward a representation on the grounds of social harm (see Appendix 5 for full submission).

The objector reported that they believed that pertinent information is often left out of official written decisions. For example, while the Director noted that some objectors were frustrated with what occurred during the planning approval process, the problems that occurred at that stage were not outlined in detail. The objector only became aware of the application a few days before the council meeting, and a petition requesting to defer the meeting to enable community consultation to occur was not heeded. Additionally, of the small amount of community consultation the council did engage in, there were more submissions against than in favour of the proposal<sup>130</sup> – which was also seemingly disregarded. The objector felt that the licensing decision maker relied on the fact that council had already granted planning approval, with no consideration for their concerns during the process.

Additionally, the objector felt that there was no opportunity to introduce important evidence about the character of the applicant (this person was not officially recorded as the applicant on licensing documents). The objector discovered that less than one year before the licence application was submitted, this person had been deemed not fit and proper for holding or benefiting from a licence by the Director of Liquor Licensing (a decision upheld by the Liquor Commission) due to a number of previous convictions. However, the residents were unable to submit this information themselves – with character not being among the technical grounds for objection. The Director's decision on the Angelo Street Bar application specifically cited Western Australian precedent where it was concluded that objectors cannot object on this basis (i.e., probity)<sup>131</sup>. The objector says that they went to the Police Licensing Division with this concern, as the *Act* allows the Commissioner for Police to conduct probity investigations and intervene on the basis of whether somebody with an interest in the application is a fit and proper person<sup>132</sup>. This was not pursued by the Commissioner for Police.

Other significant obstacles noted by the objector included that in order to inspect the application documents, community members had to physically travel to the office of the Director. In contrast, documents submitted by objectors were forwarded to the applicant by the Department.

The objector had a number of suggestions for changes to the licensing process, among them:

- That licensing decision makers should not rely on the decisions of local councils.

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<sup>130</sup> [City of South Perth Council 25 February 2014, Ordinary Council Meeting Minutes, p. 46.](#)

<sup>131</sup> A226223, para 66.

<sup>132</sup> Sections 69(6)(a) and 69(6)(c)(i) LCA.



- That objectors should be allowed to know the details of other objectors. This was initially hidden on the basis of privacy, but the Liquor Commission's review decision ultimately published each objector's full name.
- That licence exclusion zones should be established around schools. Some of the objectors later formed a group with this goal, and were successful in having a petition read aloud in state parliament.

**Objector 2:** A second objector was interviewed about their experience opposing the same application. While much of the feedback of this objector overlapped with the first, there were some additional points made that deserve mention.

The objector claims that there was some documentation that only became available during the appeals process. However, due to the constraint that the Commission can only consider what was before the Director when the initial decision was made, the community could not raise any newly-identified issues.

The objector also argues that the objection system is better suited to existing licensees who may oppose new applications in order to avoid competition, than it is to community objectors, who lack the same legal and financial resources.

The objector also had a number of suggestions for changes to the licensing process, among them:

- That there should be an independent adviser specifically provided for objectors, especially given the imbalance in DRGL support in favour of applicants.
- That intervention capabilities should be replaced with requirements for health and police department approval as a prerequisite for granting applications.
- That the licensing authority should serve as an intermediary for the exchange of documents between applicant and objectors, as well as keeping objector names and details hidden from the applicant.
- That the *Act* be changed to allow for objectors to raise the issue of probity.





## South Australia

As at the 31<sup>st</sup> of May, 2016, there were 6,518 liquor licences in South Australia. This represents an increase of roughly 80% from 1996<sup>133</sup>. In the financial year 2014-15, 352 new liquor licences were issued<sup>134</sup>.

### Relevant legislation

There is one main piece of legislation covering liquor licensing in South Australia: The *Liquor Licensing Act 1997*. Under the *Act* are the *Liquor Licensing (General) Regulations 2012*.

The *Act* regulates the sale, supply and consumption of alcohol in South Australia<sup>135</sup>, while the *Regulations* provide for the specifics of the application of these laws.

The legislation can be accessed through the South Australia Attorney-General's Department website:

<https://www.legislation.sa.gov.au/LZ/C/A/LIQUOR%20LICENSING%20ACT%201997.asp>  
[x](#).

A more accessible summary of some of the key elements of the legislation can be found on the South Australia Consumer and Business Services website:

<http://www.cbs.sa.gov.au/licensing-and-registration/liquor/>.

\*It is important to note that South Australia has very recently undertaken a [review](#)<sup>136</sup> of its liquor licensing laws. It is likely that there will soon be significant reforms and changes to the legislation based on the recommendations of the review. Relevant aspects of his review are covered in more detail in Appendix 3.

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<sup>133</sup> T. Anderson (Government of South Australia) 2016, *Review of the South Australian Liquor Licensing Act 1997*, para 4.1.1.

<sup>134</sup> Personal correspondence with Consumer and Business Services, 22 November 2016.

<sup>135</sup> Section 3(1) *Liquor Licensing Act 1997* (LLA) (South Australia).

<sup>136</sup> Anderson 2016.



## Who are the key regulatory and decision-making bodies?: South Australia





## Licences

There are 12 types of licence which can be granted<sup>137</sup>:

- A hotel licence
- A residential licence
- A restaurant licence
- An entertainment venue licence
- A club licence (full or limited)
- A retail liquor merchant's licence
- A wholesale liquor merchant's licence
- A producer's licence
- A direct sales licence
- A special circumstance licence
- A limited licence
- A small venue licence

### Key considerations in assessing applications

The *Liquor Licensing Act 1997* states<sup>138</sup> that the licensing authority (i.e. the Commissioner or the Licensing Court) must have regard to the following objects when deciding on any licensing matters: to promote responsible attitudes and practices towards alcohol promotion, supply and consumption, to minimise harms, to appropriately assist the interests of the liquor industry and other associated industries, to ensure the liquor industry operates in ways appropriate for the needs of the community, to ensure that the sale of liquor has a positive impact on the amenity of community life, to promote a competitive alcohol supply market, and to minimise the risk of intoxication, violence and anti-social behaviour.

Those applying for the grant<sup>139</sup> or removal (i.e., transfer)<sup>140</sup> of a hotel licence or retail liquor merchant's licence must demonstrate that there **exists a need** for that licence and service in the area of the proposed premises – known commonly as the 'needs test'. Other criteria for an application for a new licence include that the applicant must be a fit and proper person<sup>141</sup> and that the premises be suitable<sup>142</sup>.

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<sup>137</sup> Section 31 LLA.

<sup>138</sup> Section 3 LLA.

<sup>139</sup> Section 58 LLA.

<sup>140</sup> Section 61 LLA.

<sup>141</sup> Section 56 LLA.

<sup>142</sup> Section 57 LLA.



Considerations taken by the decision-making authorities can also be inferred from the list of grounds for objections to applications set out in the *Act*<sup>143</sup>. These include: that granting the application would be contradictory to the objects or some part of the *Act*, that the new licence is not necessary for catering to the needs of the public (hotel licence and retail liquor merchant's licence only), that the applicant or other person in a position of authority (when applicant is an entity) is not fit to be licensed, that the proposed premises are unsuitable because of position, nature or quality, that granting the application would likely cause undue disturbance to others in the vicinity, that granting the application would likely impact on the welfare of children in schools in the vicinity, or that granting the application would be detrimental to the amenity of the local area.

## **How community members can contribute to licensing decisions**

### *Involvement in the development application process*

Local council is the decision maker here.

### *Object to a liquor licence application*

Most applications (including those for the grant of a licence) must be advertised<sup>144</sup> and currently advertised applications can be found here: <http://www.cbs.sa.gov.au/licensing-and-registration/notices-under-the-liquor-licensing-act-1997-and-gaming-machines-act-1992/>.

While the Commissioner of Police, the local council or any person/body specifically nominated by the licensing authority may intervene in the application<sup>145</sup>, community members may only make objections. This is done by completing an [objection form](#) (found on the CBS website) and submitting it to the licensing authority at least seven days before the date set for the hearing of the application, as well as serving a copy of the objection to the applicant at least seven days before the hearing date<sup>146</sup>. While small bar applications are an exception, as they do not have hearing dates, submissions may still be made by completing another form found on the CBS website. The grounds for objection are listed above. In 2014-15, roughly 600 objections or interventions were submitted to the Commissioner<sup>147</sup>.

Parties involved in all contested applications first go to the Commissioner for attempted conciliation. In 2014-15 there were 80 conciliation conferences<sup>148</sup>. If conciliation is successful, the Commissioner then makes a decision based on what was reached in the conciliation. This is usually in the form of an order which imposes conditions on the

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<sup>143</sup> Section 77 LLA.

<sup>144</sup> Section 52 LLA.

<sup>145</sup> Sections 75A and 76, LLA.

<sup>146</sup> Section 77 LLA.

<sup>147</sup> Government of South Australia, Attorney-General's Department, Consumer and Business Services 2015, *Liquor Licensing Discussion Paper*, p. 12.

<sup>148</sup> Government of South Australia, Attorney-General's Department, Consumer and Business Services, p. 12.



licence<sup>149</sup>. If unsuccessful, the Commissioner only decides the matter if it is for a limited licence or if the parties want the Commissioner to make the decision<sup>150</sup>. All other unresolved contested matters go before the Licensing Court.

*Apply for a review of a decision of the Commissioner*

A party unhappy with a decision made by the Commissioner may apply for a review by the Licensing Court<sup>151</sup>.

*Appeal a decision of the Licensing Court*

A party to the proceedings in the Licensing Court may appeal the decision of the Licensing Court to the Supreme Court (unless the decision was a review of the Commissioner's decision)<sup>152</sup>.

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<sup>149</sup> Government of South Australia, Attorney-General's Department, Consumer and Business Services, p. 12.

<sup>150</sup> Section 17 LLA.

<sup>151</sup> Section 22 LLA.

<sup>152</sup> Section 27 LLA.



## Case study: Silk Restaurant, Adelaide

### OVERVIEW

**Where + What:** An application for the removal (i.e., transfer) of a special circumstances licence to new premises in central Adelaide was submitted by the Rundle East Company Pty Ltd.

**Community Response:** The only objection to the application was from the residents of an apartment directly across from the proposed new premises, lodged on the 24<sup>th</sup> of August, 2015. Conciliation between the parties was unsuccessful.

**Outcome:** On the 2<sup>nd</sup> of November, 2015, the Liquor and Gambling Commissioner [\*granted\*](#) the application for the removal of the licence<sup>153</sup>. However, conditions intended to address the concerns of the objectors were imposed.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

The objectors were opposed to the application because their first floor apartment was directly opposite the first floor windows of the proposed new premises, arguing that granting the application would detract from their privacy, and lead to noise and disturbance.

Acknowledging that their central location meant they should accept some level of disturbance, the objectors contended that this particular application would be beyond what was expected. They were unsatisfied with the new tenants' offers to install window curtains in their premises, as they considered the task of calling the venue every time they wanted the curtains closed to be unreasonable.

Their objection was made on the grounds that were the application to be granted, “undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises to which the application relates would be likely to result; ...”<sup>154</sup>.

### WHY THE APPLICATION WAS GRANTED

In terms of noise concerns, the Commissioner determined that noise could be kept to an acceptable level by imposing certain conditions, e.g. upper floor windows to be closed at night.

In terms of privacy concerns, the Commissioner was not convinced by the applicant's claims that the privacy issue was a matter only for the planning stage, or that the objectors could solve the issue by keeping their only windows covered with curtains. However, the Commissioner relied on precedent set in a previous case to conclude that privacy issues

<sup>153</sup> Liquor and Gambling Commissioner 2015, *Order of the Liquor and Gambling Commissioner 196199* (196199).

<sup>154</sup> Section 77(5)(g)(i) LLA.



would likely occur anyway even if the premises had some alternative use. The Commissioner determined that the privacy impact of the proposed premises could be kept to an acceptable level by imposing certain conditions, i.e. the first floor windows must have curtains or blinds which must remain closed between 6pm and 9am.

The objectors could not be contacted as their details were redacted in the Commissioner's decision.



## Tasmania

As at June 30<sup>th</sup>, 2016, there were 1,603 liquor licences active in Tasmania<sup>155</sup>. In the year 2014-15, 146 new liquor licences were issued<sup>156</sup>.

### Relevant legislation

There is one main piece of legislation covering liquor licensing in Tasmania: the *Liquor Licensing Act 1990*. The most relevant regulations under the *Act* are the *Liquor Licensing Regulations 2016*. Both the *Act* and the *Regulations* were updated in September, 2016, involving a number of important [changes and additions](#)<sup>157</sup>.

The *Act* regulates “the sale, supply, promotion and consumption of liquor”<sup>158</sup>, while the *Regulations* provide for the specifics of the application of these laws.

The legislation can be accessed directly through The Liquor and Gaming (Treasury) website: <http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/v-liq-and-gaming/EEA0B500016DDCD4CA257D8200177208>.

The Liquor and Gaming website also provides [factsheets](#) intended as an accessible guide to some of the laws.

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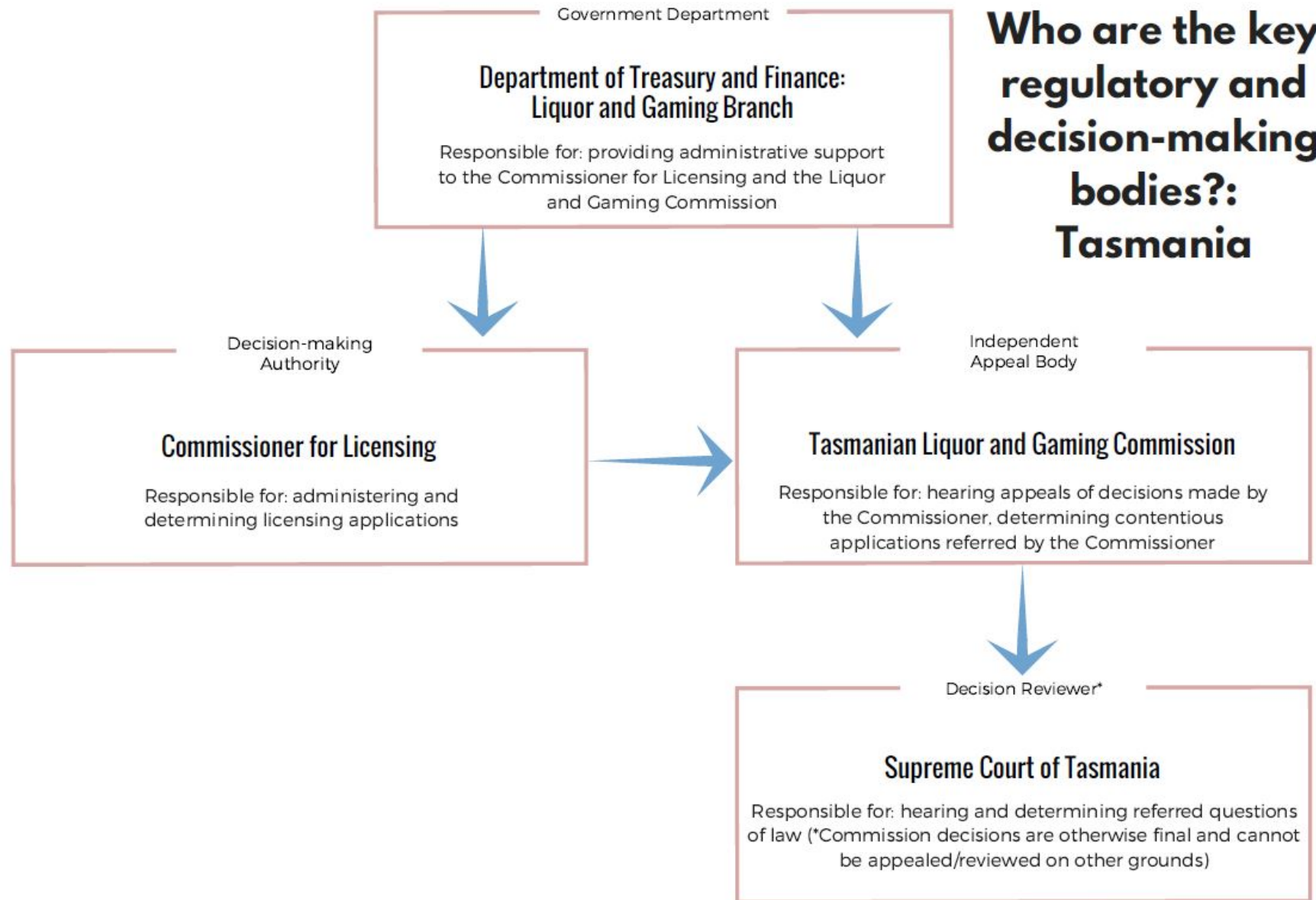
<sup>155</sup> <http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/v-liq-and-gaming/E1E056468959C8E7CA257D8200177211>.

<sup>156</sup> Personal correspondence with the Department of Treasury and Finance: Liquor and Gaming Branch, 14 November 2016.

<sup>157</sup> See [http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/OverviewofchangesV2.pdf/\\$file/OverviewofchangesV2.pdf](http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/OverviewofchangesV2.pdf/$file/OverviewofchangesV2.pdf).

<sup>158</sup> Section 2A *Liquor Licensing Act 1990* (LLA) (Tasmania).







## Licences and permits

There are five types of licences that can be issued<sup>159</sup>:

- a general licence
- an on-licence
- an off-licence
- a club licence
- a special licence

In addition, there are five types of permits that can be issued:

- an out-of-hours permit
- an on-permit
- an off-permit
- a special permit
- a small producer's permit

## Key considerations in assessing applications

The objects<sup>160</sup> of the *Act* are to minimise the harms associated with alcohol misuse by ensuring liquor supply is in the best interests of the community and is not detrimental to public amenity, limiting undesirable alcohol advertising, promoting a culture of responsible alcohol consumption, as well as to enable the development of the hospitality and liquor industries in line with the best interests of the community. Those who make decisions under the *Act* are obliged to do so in a way that furthers the objects<sup>161</sup>.

The requirements for a licence<sup>162</sup> and permit<sup>163</sup> state that the Commissioner or Commission must make a decision in line with what is in the “**best interests of the community**”. What this means is clarified in the *Regulations*<sup>164</sup>, and includes costs and benefits to the community, considerations of undue offence, annoyance, disturbance or inconvenience to those who live, work, attend school, worship or attend facilities for alcohol dependence in the area, as well as potential harms to the health and safety of the public due to alcohol supply.

Additionally, the applicant must be a “fit and proper person”<sup>165</sup>.

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<sup>159</sup> Section 6 LLA.

<sup>160</sup> Section 2A LLA.

<sup>161</sup> Section 2A(2) LLA.

<sup>162</sup> Section 24A LLA.

<sup>163</sup> Section 34 LLA.

<sup>164</sup> Regulation 4 *Liquor Licensing Regulations 2016* (LLR) (Tasmania).

<sup>165</sup> Regulations 22 and 31 LLR.



## How community members can contribute to licensing decisions

### *Get involved in the development application phase*

Local council is the decision maker here.

### *Make a representation (object) in response to a liquor licence application*

Anyone may submit a written representation to the Commissioner for Licensing within 14 days of a public notice being placed on the premises or in a daily newspaper circulating in the area<sup>166</sup>.

The Commissioner for Licensing published a two-page [fact sheet](#) with information about how to make a representation, available on the Department's website<sup>167</sup>. This sheet states that the best way for a community member to understand what the Commissioner takes into account when deciding what is in the best interest of the community is to read previous decisions.

Importantly, unlike in most other jurisdictions, there are no restrictions on the grounds submissions can be based on.

### *Appeal a decision of the Commissioner\**

A person may appeal to the Tasmanian Liquor and Gaming Commission if they are dissatisfied with the Commissioner's decision. An appeal must be lodged in writing with the Commissioner within 14 days of receipt of the decision (or within an extended period determined by the Commission)<sup>168</sup>. The Commission then holds a hearing on the matter of the appeal.

(\*Some contentious applications are referred directly to the Commission for determination<sup>169</sup>.)

### *Apply for a question of law to be heard by the Supreme Court*

While decisions by the Commission are final and cannot be appealed, an applicant or appellant to the case before the Commission may apply for the Commission to refer a question of law for the Supreme Court's determination. A judge in chambers decides whether the application for referral to the Supreme Court will proceed.<sup>170</sup>

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<sup>166</sup> Section 23A LLA.

<sup>167</sup> Commissioner for Licensing (Tasmania) 2016, *Information for People Making a Representation About a Liquor Licence Application*.

<sup>168</sup> Section 212 LLA.

<sup>169</sup> Section 24(2)(b) LLA.

<sup>170</sup> Section 215 LLA.



## Case study: Dan Murphy's Launceston

### OVERVIEW

**Where + What:** An off-licence application was submitted for a Dan Murphy's in central Launceston.

**Community Response:** The application was met with strong opposition, with 67 representations being submitted by community members and groups, sporting clubs, existing licensees and employees of licensed venues.

**Outcome:** The Licensing Commissioner [\*granted\*](#) the application on the 16<sup>th</sup> of May, 2016<sup>171</sup>.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

There was a lack of uniformity in the reasons why different groups were opposed to the application, with received representations seeking to protect a diverse range of interests.

There were four main cases for financial harm:

- that a concentration of ownership would result, allowing control of range and price
- that there would be loss of existing business and jobs
- that the local economy would suffer as Dan Murphy's is mainland-owned
- that the community would lose small-business sponsorship

There were also two main cases for social harm:

- that Launceston already experienced problems arising from alcohol abuse, and that additional (low-priced) supply would exacerbate this
- that an off-licence application for nearby Ravenswood was recently refused due to the impact it would have had on vulnerable residents, and so the Commissioner must be consistent with this decision

### WHY THE APPLICATION WAS GRANTED

The key consideration in this decision was whether granting the application would be in the best interests of the community. The Commissioner judged the community opposition as “not strong”<sup>172</sup>, and was persuaded by the applicant's claims that the new bottle shop would serve the best interests of the community by creating employment, occupying and improving what

<sup>171</sup> Commissioner for Licensing 2016, *Application by Anthony Charles Leybourne Smith for an Off-Licence for the premises at corner of York and Bathurst Streets Launceston, to be known as Dan Murphy's Launceston (DML)*.

<sup>172</sup> DML, p. 28.



was a vacant store, engaging in community sponsorship, providing high quality goods (including promoted Tasmanian products), and fulfilling RSA and other legal obligations<sup>173</sup>.

The Commissioner was not persuaded by any arguments claiming that the application would not be in the best interests of the community. In regards to the financial arguments, the Commissioner's reasons ranged from lack of evidence provided by objectors, to arguments not being within the scope of the *Act's* considerations.

In regards to the argument that social harms would result from increased supply, it seems that the lack of consistency between general community objections and existing licensee objections was damaging. The Commissioner notes: "... *I am told both that there is an over-supply of liquor in Launceston and also that the granting of this licence would cause other stores to close*"<sup>174</sup>.

Additionally, the argument was considered too general, with the Commissioner citing a previous case from 2010 in which it was determined that without specific issues, just the potential for alcohol misuse resulting from increased supply is not a sufficient reason to refuse an application<sup>175</sup>.

The Commissioner also decided that the Ravenswood case was not relevant to the current application, given that Ravenswood makes up only a small portion of the area that the proposed Dan Murphy's would be servicing<sup>176</sup>.

## EXPERIENCES OF AN OBJECTOR

The following is based on an interview with and submissions made by an objector who put forward a representation on the grounds of social harm (see Appendix 5 for full submission).

Having objected to previous applications, the objector was guided by some idea of what would be effective. The objector included three academic articles in their representation which were specific to the harms faced by communities with access to cheap liquor. However, the objector still struggled with evidentiary requirements, e.g. the evidence wasn't specific to the local area or even the state of Tasmania.

The objector felt that the Commissioner had no obligation to take community outcomes into account unless the evidence presented fit a set of criteria that was too specific. The objector believed that there should be a metric that includes social impact over and above the existing 'best interests of the community' requirements. They also suggested the government might develop a "*cheat sheet*" to explain what a valid objection was, and how to best present these objections<sup>177</sup>.

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<sup>173</sup> DML, p. 28.

<sup>174</sup> DML, P. 29.

<sup>175</sup> DML, pp. 29-30; citing precedent set in *Hill St Cellars (2010)*.

<sup>176</sup> DML, p. 30.

<sup>177</sup> Such a document (Commissioner for Licensing 2016, *Information for People Making a Representation About a Liquor Licence Application*) was made available in April 2016. However, it is fairly general and provides limited information, being only two pages long.



An additional obstacle noted by the objector was that it was hard to find out that a licence application had even been lodged. They only became aware in this instance after a community member approached them for help in opposing it. The objector suggested the creation of a register that interested parties could sign up to, so that they would receive automatic notification when applications in their area had been lodged.



## Australian Capital Territory

As at 7<sup>th</sup> October, 2016, there were 52 club licences, 21 general licences, 200 off licences, 413 on licences and 18 special licences current in the ACT's [public register](#)<sup>178</sup>. In the year 2014-15, 47 new liquor licences were issued<sup>179</sup>.

### Relevant legislation

There is one main piece of legislation covering liquor licensing in the ACT: The *Liquor Act 2010*. Under the *Act* is the *Liquor Regulation 2010*.

The *Act* regulates “the sale, supply, promotion and consumption of liquor”<sup>180</sup>, while the *Regulation* provides for the specifics of the application of these laws.

The legislation can be accessed through the ACT legislation register:  
<http://www.legislation.act.gov.au/a/2010-35/default.asp>.

A more accessible guide to the legislation can be found on the Access Canberra website:  
<https://www.accesscanberra.act.gov.au/ci/fattach/get/47246/1435552281/redirect/1/filename/Guide%20to%20the%20Liquor%20Act%202010.pdf>.

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<sup>178</sup> [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/1654/kw/liquor#!tabs-10](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1654/kw/liquor#!tabs-10).

<sup>179</sup> Personal correspondence with Access Canberra, 14 November 2016.

<sup>180</sup> Section 9 *Liquor Act 2010* (LA) (Australian Capital Territory).



## Who are the key regulatory and decision-making bodies?: **ACT**







## Licences and permits

There are five types of licence which can be issued<sup>181</sup>:

- A general licence
- An on licence – sub-classes: bar licence, nightclub licence, restaurant and café licence
- An off licence
- A club licence
- A special licence

In addition, there are two types of permit which can be issued<sup>182</sup>:

- A commercial permit – for sale of liquor at an event
- A non-commercial permit – for sale of liquor by not-for-profits

## Key considerations in assessing applications

The objects of the *Act* are to regulate the sale, supply, promotion and consumption of liquor in such a way as to ensure harm minimisation, facilitate the responsible development of industry, and to encourage consumers to take responsibility for their alcohol consumption and behaviour<sup>183</sup>. The *Act* also contains 10 harm minimisation and community safety principles to which the decision-maker must have regard when making decisions. These include: encouraging responsible attitudes and practices, upholding community safety, minimising the harms (health, injury, property damage, violent/anti-social behaviour) caused by alcohol abuse, contributing to the responsible development of industry, upholding community amenity and wellbeing, protecting the welfare of those using licensed premises, limiting noise from premises, limiting undue disturbance or offence, and restricting the issuance of licences to people and premises that comply with the law.<sup>184</sup>

Additionally, an application may only be granted if the Commissioner is satisfied that the premises and the licensee or permit-holder and associates/influential people/managers are suitable<sup>185</sup>. The Commissioner must also consider community representations (objections) in regard to these criteria.

Finally, the Commissioner must consider the cumulative impact of granting the application<sup>186</sup>. That is, they must assess how the new licenced premises would add to the impact of existing licensed premises in the area.

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<sup>181</sup> Section 16 LA.

<sup>182</sup> Section 47 LA.

<sup>183</sup> Section 9 LA.

<sup>184</sup> Section 10 LA.

<sup>185</sup> Sections 27 and 51 LA.

<sup>186</sup> Regulation 15 *Liquor Regulation 2010* (LR) (Australian Capital Territory).



## How community members can contribute to the licensing decision-making process

### *Involvement in the development approval stage*

Development applications open for public comment can be found here:

[http://www.planning.act.gov.au/development\\_applications/pubnote](http://www.planning.act.gov.au/development_applications/pubnote). The Planning and Land Authority is the decision maker here.

### *Submit a representation*

Licence applicants must advertise applications by displaying a sign at the proposed premises and by giving public notice on the ACT Open Government website or a daily newspaper.<sup>187</sup> There is then a 30 day<sup>188</sup> public consultation period in which community members can make written submissions ('representations') to the Commissioner for Fair Trading challenging the suitability of either the applicant, close associate of the applicant, influential person on the applicant (if applicant is a corporation), anyone who will have day-to-day control of the premises, or the premises itself<sup>189</sup>.

### *Request a review of the Commissioner's decision*

For eligible decisions<sup>190</sup>, the legislation states that any person whose interests are affected by the decision<sup>191</sup> may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the decision. ACAT may confirm, vary or set aside the decision<sup>192</sup>.

### *Appeal to the Supreme Court on a question of fact or law<sup>193</sup>*

Anyone party to proceedings before ACAT may appeal to the Supreme Court, but only on a question of fact or law.

### *No case studies available*

The ACT receives relatively few licence applications each year, and of those, only a couple attract objections. Additionally, Commissioner decisions are not themselves published, with only ACAT reviews of Commissioner decisions being publicly available. ACAT decisions between 2012 and 2016 were searched, and no cases could be found involving community opposition to a liquor licence application. As such, it was not possible to compile a case study for this jurisdiction.

## Northern Territory

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<sup>187</sup> Section 34 LA.

<sup>188</sup> Regulation 10 (LR).

<sup>189</sup> Section 35 LA.

<sup>190</sup> Schedule 1 LA.

<sup>191</sup> Section 222 LA.

<sup>192</sup> Section 68(3) *ACT Civil and Administrative Tribunal Act 2008* (ACTCATA) (Australian Capital Territory).

<sup>193</sup> Section 86 ACTCATA.



As at October 14<sup>th</sup> 2016, there were a total of 511 current liquor licences in the Northern Territory<sup>194</sup>. In the year [2014-15](#), 12 new full liquor licences were issued, up from four in the year 2013-2014<sup>195</sup>.

## Relevant legislation

There is one main piece of legislation covering liquor licensing in Northern Territory: the *Liquor Act*. Under the *Act* are the *Liquor Regulations*.

The *Act* regulates “the sale, provision, promotion and consumption of liquor”<sup>196</sup> in the Northern Territory, while the *Regulations* provide for the specifics of the application of these laws.

The *Licensing (Director-General) Act 2014* is also relevant. It establishes the role of the Director-General of Licensing and their powers and functions.

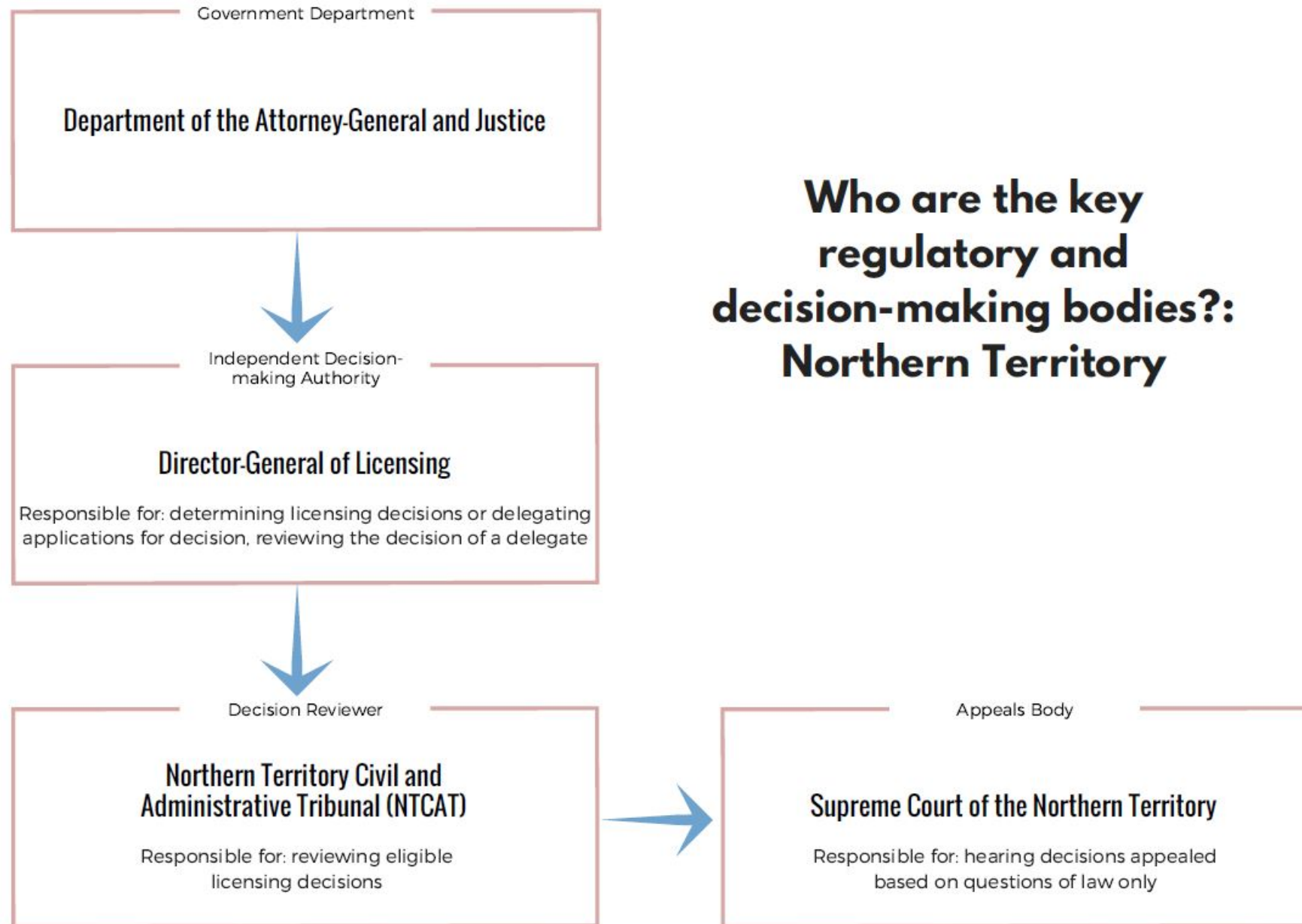
The legislation can be accessed through the website of the Department of the Chief Minister: <https://dcm.nt.gov.au/nt-legislation-and-publications/current-nt-legislation-database>.

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<sup>194</sup> <http://notes.nt.gov.au/nt/dibrglllr.nsf/WebByLicenceStatus?OpenView>.

<sup>195</sup> Northern Territory Director-General of Licensing 2015, *Director-General of Licensing Annual Report 2014-2015*, Table 1.

<sup>196</sup> Section 3 *Liquor Act* (LA) (Northern Territory).





## Licences and permits

There are three types of licence that can be issued:

- A full liquor licence (including hotel, tavern, restaurant, off licence, etc.<sup>197</sup>)
- A special liquor licence<sup>198</sup> – for a specific period of time (one-off or continuing<sup>199</sup>)
- A liquor wholesaler licence (registration)<sup>200</sup>

Additionally, permits may be issued allowing for the consumption of alcohol in communities or public areas where drinking is banned or restricted (e.g. Indigenous dry communities)<sup>201</sup>.

## Key considerations in assessing applications

The *Act* requires that decision makers have regard for the objects of the *Act* when making decisions<sup>202</sup>. The primary object is to regulate the provision and consumption of alcohol in a way that minimises alcohol-related harm and considers the public interest. The further objects are to improve community amenity and wellbeing, to encourage the responsible growth of the Northern Territory liquor and related industries, and to ensure a variety of licensed premises and services are available for the public.

The applicant must demonstrate that the grant of the application would be in the **public interest**<sup>203</sup>. The *Act* specifies<sup>204</sup> a lengthy list of criteria taken into consideration by a decision maker when assessing public interest, including factors such as harm minimisation, responsible supply, and public welfare.

Additionally, the Director-General must assess the suitability of the premises and the suitability of the applicant (be it an individual, body corporate or federation of clubs) or applicant's associates or managers. The Director-General must also have consideration for objections and the applicant's responses to objections.<sup>205</sup>

Also see the grounds for public objection in the following section for further matters the Director-General must consider.

<sup>197</sup> Northern Territory Director-General of Licensing 2015, Table 1.

<sup>198</sup> <https://nt.gov.au/industry/hospitality/licence-to-sell-alcohol-at-functions>.

<sup>199</sup> <https://nt.gov.au/industry/hospitality/licence-to-sell-alcohol-at-functions>.

<sup>200</sup> <https://nt.gov.au/industry/hospitality/wholesaler-liquor-registration/register-as-liquor-wholesaler>.

<sup>201</sup> Northern Territory Director-General of Licensing 2015, pp. 10-11; <https://nt.gov.au/law/alcohol/apply-for-an-individual-liquor-permit/how-to-apply-for-an-individual-liquor-permit>; <https://nt.gov.au/law/alcohol/about-dry-areas>.

<sup>202</sup> Section 3(3) LA.

<sup>203</sup> Section 26(3) LA.

<sup>204</sup> Section 6 LA.

<sup>205</sup> Section 28 LA.



## How community members can contribute to licensing decisions

### *Involvement in the development application stage*

The Development Consent Authority is the decision maker here.

### *Object to a liquor licence application*

Applicants must give notice of a liquor licence application within 28 days of lodging their application, and this notice must be published in the way specified by the Director-General<sup>206</sup>. For new licence, condition variation, premises substitution and material alteration applications, a person, organisation or group may make an objection<sup>207</sup>. However, this is limited to people who work, live or own land in the neighbourhood, members of the police or fire and rescue service, bodies that work in relation to public amenities, and community-based organisations<sup>208</sup>.

The only grounds on which objections can be made are on the basis that the grant of the application would detract from the amenity of the area, or from the community's health, education, safety or social conditions<sup>209</sup>. The objection must be submitted to the Director-General within 30 days of the publication of the notice of application.<sup>210</sup>

The applicant is then given an opportunity to reply to the objection<sup>211</sup>. A decision on the application is then made by the Director-General, or by a delegate of the Director-General<sup>212</sup>.

### *Request a review of the delegate's decision*

If the decision was made by the delegate, an affected person may apply to the Director-General for a review within 28 days of the decision<sup>213</sup>.

### *Request a review of the Director-General's decision*

A person affected by the Director-General's decision<sup>214</sup> (i.e. applicant/objector) may apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for a review of the decision<sup>215</sup>.

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<sup>206</sup> Section 27 LA.

<sup>207</sup> Section 47F(1) LA.

<sup>208</sup> Section 47F(3) LA.

<sup>209</sup> Section 47F(2) LA.

<sup>210</sup> Section 47F(4)(d) LA.

<sup>211</sup> Section 47G LA.

<sup>212</sup> Section 7 *Licensing (Director-General) Act 2014 (No 43 of 2014)* (LDGA) (Northern Territory).

<sup>213</sup> Section 11 LDGA.

<sup>214</sup> See Section 120ZB LA.

<sup>215</sup> Section 120ZC LA.



*Appeal to the Supreme Court on a question of law*

Anyone party to proceedings before NTCAT may appeal to the Supreme Court, but only on a question of law<sup>216</sup>.

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<sup>216</sup> Section 141 *Northern Territory Civil and Administrative Tribunal Act 2014 (No 28 of 2014)* (Northern Territory).



## Case study: Rosebery IGA, Palmerston

### OVERVIEW

**Where + What:** An application was submitted for a Store Liquor Licence (takeaway liquor) for Rosebery IGA, Palmerston, and advertised in late January 2015.<sup>217</sup>

**Community Response:** 28 objections were lodged. After some were excluded for not meeting the criteria for valid objections, and others withdrawn after discussion with the applicant, 22 objections remained. Objectors included community members, the City of Palmerston (objecting to the proposed trading hours), and Rosebery Primary School.

**Decision:** The Director-General of Licensing [granted](#) the application on the 16<sup>th</sup> of October, 2015.

**Further Community Action:** One of the original objectors sought a [review](#) of the decision in December 2015<sup>218</sup>.

**Outcome:** No outcome was available under NTCAT's selected decisions listed on the AustLII website at the time of writing this report.

### WHY THE COMMUNITY OPPOSED THE APPLICATION

The Director-General's decision identified the main reasons for objection as: the proximity of the premises to schools and childcare facilities, that there would be increased anti-social behaviour, that the apartments where many of the objectors live would become a place where people would drink inappropriately, that Rosebery is a residential, family-oriented suburb, and that the granting the application would detract from the value of residents' properties<sup>219</sup>. Additional arguments included that there were sufficient existing takeaway liquor outlets within the Palmerston area<sup>220</sup>, and that the application did not meet the objects of the *Act* nor the former Licensing Commission's guidelines<sup>221</sup>.

### WHY THE APPLICATION WAS GRANTED

The Director-General dismissed much of the content of the objections (e.g. concerns about amenity and anti-social behaviour, decreasing property prices) as speculative and lacking evidence. As with many decisions in other jurisdictions, a lack of area-specific evidence demonstrating existing alcohol-related problems hindered the objectors' case. Research

<sup>217</sup> Director-General of Licensing 2015, *Rosebery IGA Application for Grant of Store Liquor Licence* (Rosebery).

<sup>218</sup> *Cutler v The Director-General of Licensing & Ors* [2015] NTCAT 176 (Cutler).

<sup>219</sup> *Rosebery*, para 17.

<sup>220</sup> *Rosebery*, para 18.

<sup>221</sup> *Rosebery*, para 19.





referenced in a submission by the Department of Health was also not given much standing, as it lacked a “...*demonstration of a clear link between the harms identified in the various reports to the specific application for a store take away licence in the suburb of Rosebery...*”<sup>222</sup>.

The Director-General also noted that less than 1% of the adult population of Rosebery submitted objections, and therefore it should be assumed that of the remaining 99% there would be some people in favour of the proposal<sup>223</sup>.

In terms of the potential for anti-social behaviour, given the lack of community-specific evidence, the Director-General could not refuse the application on this basis. Otherwise, they noted, they would have to deny all new licences, meaning they would be unable to fulfil their obligations under the objects of the *Act* to ensure a variety of licensed premises and services are available for the public<sup>224</sup>. Additionally, the Director-General was not persuaded that Palmerston was saturated with liquor outlets given the actual ratio of licenced premises to population<sup>225</sup>.

Citing the 2014 Licensing Commission guidelines in relation to granting takeaway liquor licences, the Director-General found Rosebery to meet the criteria of being located in an area that has experienced recent population growth<sup>226</sup>.

## THE APPLICATION FOR REVIEW

In December 2015, one of the objectors – noted in the Director-General’s decision as having provided “an expansive submission” citing local and national research and statistics<sup>227</sup> – lodged an application with NTCAT for a review of the decision to grant the application. The licence applicants sought to dismiss the proceeding on the basis that the objector had not signed their original objection, and therefore their objection was invalid, meaning they could now not apply for a review as they were not an ‘affected person’ in relation to the original decision. This application to dismiss was itself dismissed. However, no further progress on the review is available online.

## OBJECTOR EXPERIENCES

While contacted objectors did not respond to requests to comment on their experiences, some of their feedback and perspectives can be gathered from articles and letters in local newspapers.

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<sup>222</sup> *Rosebery*, para 53.

<sup>223</sup> *Rosebery*, para 61.

<sup>224</sup> *Rosebery*, para 68.

<sup>225</sup> *Rosebery*, para 69.

<sup>226</sup> *Rosebery*, para 76.

<sup>227</sup> *Rosebery*, para 19.



In an [article](#) from February, 2015, an objector (the one who later went on to lodge an application for review) is quoted as expressing concern with the lack of community consultation<sup>228</sup>.

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<sup>228</sup> [J. Aisthorpe, 'Anger over liquor store', Northern Territory News, 18 February 2015, p. 4.](#)

## **Barriers to effective community involvement in Australia**

### **Potential preferencing of industry interests**

Where: All jurisdictions

The discretion afforded to decision makers allows for the risk of undue influence and potential preferencing of industry interests. Among the jurisdictions where these data was available, the proportion of granted licence applications to those refused was heavily skewed (e.g. in Western Australia 2014-15, 183 granted to eight refused).

As noted by one of the objectors from the Western Australian case study, the objections system is an artefact from a time when most objections came from existing licensees trying to control competition (e.g., see the South Australian ‘needs test’ in Appendix 3). Systems in all jurisdictions have not adapted to reflect the fact that community members and groups are increasingly raising objections, and that their range of reasons for opposing an application differ markedly from existing licensees’ reasons for opposing an application.

Several other challenges which disproportionately affect community members include: difficulty in accessing application documents, jurisdictional websites providing much more information and guidance to applicants than objectors, and the privacy of applicants being protected while objectors details are shared (e.g., Western Australian case study).

### **Decision makers not obligated to advance legislative objects**

Where: All jurisdictions excluding Northern Territory and Tasmania

Currently, the legislation only requires that decision makers have regard to some or all of the relevant objects. Exceptions include Tasmania in requiring decisions further the interests of the objects, and the Northern Territory where decisions must be explicitly consistent with the objects.

### **Lack of decision-maker independence**

Where: All jurisdictions, particularly NSW and Victoria

Although many decision-making bodies are considered ‘independent’, their relationships (even if just administrative) with government departments potentially hinder this independence.

In NSW for example, while there is an independent decision maker (ILGA), it does not determine all applications. Liquor and Gaming NSW, sitting within the NSW Department of Justice and therefore lacking independence, makes initial decisions on applications upon ILGA’s delegation. As mentioned, NSW has also recently established a Community Access Team specifically for informing and assisting community members. While it is too early to see what this body’s function and efficacy will be, being part of Liquor and Gaming NSW already precludes it from being a truly independent advisory service.

In Victoria, there exists a different but equally important lack of independence: the roles of initial decision maker and review body are both filled by the VCGLR. While the legislation requires that the composition of the review body differ to that of the initial decision maker, the interests, opinions and objectives of members are likely to be too similar to allow for a genuine reconsideration of the issues.

### **Dual development/planning and licensing processes**

Where: All jurisdictions

While the opportunity to oppose a licence application at two different stages may initially appear to be beneficial to community members, the confusing relationship between the two processes is potentially an obstacle. The division of responsibilities and considerations between local council and licensing decision maker is often ambiguous and partly duplicated, and communities are often ineffective when they present evidence that is more relevant to the other process. Additionally, development approval is often interpreted as council support for the liquor licence (so long as council does not explicitly object to the latter), even though this may not necessarily be the case. If a community is unaware of the application at the planning stage, or for some other reason fails to get involved with the process, then the licensing decision is already skewed in the applicant's favour. See the Victorian case study for an example where planning permission was given weight in a licensing decision.

It appears that some jurisdictions are moving to entrench these problems, with the Review of the South Australian Liquor Licensing Act (see Appendix 3) recommending that the right of councils to object to liquor licence applications be removed (claiming any concerns should have been addressed at the development approval stage).

### **Onus of proof on objectors**

Where: All jurisdictions

While some jurisdictions allow interventions in applications from certain stakeholders, community members may only make submissions/representations/objections. As opposed to an intervention, an objector *does* carry an onus of proof when submitting their claims or concerns. This puts a great evidentiary burden on objectors. In practice, this also often means that the requirement to prove that an application meets the overarching test for a given jurisdiction (e.g. that the application will not be detrimental overall in terms of social impact) often shifts to the objector, who now needs to prove that the application does not meet this test.

### **Legislative restrictions**

Where: All jurisdictions

Complex legal frameworks severely restrict the extent to which community members can influence licensing decisions. The legislation limits who can participate in community consultations, objections and applications for review. There are also various limits on the

time allowed for objectors to initiate processes, the form of objections, and the grounds for objections. In the ACT, for example, the legislation does not allow for community members to make representations based on their concerns about the impact of alcohol in their area. Meanwhile, in Western Australia, community members are not able to object on the grounds that the applicant is unsuitable or unfit to hold a licence. In NSW, only those living within 100 metres of a premises can apply to have a decision reviewed, and this is reduced to a 50 metre limit in some cases. Similarly, in Victoria, discretionary geographic constraints may also apply. In Queensland, the Commissioner must be of the opinion that the objector has a genuine interest in the area and is likely to be affected by the application.

There is also ambiguity as to what arguments can validly be presented by a community member or group. For example, in [a recent ILGA decision](#) to grant a new packaged liquor licence to an IGA in Castlecrag, NSW, substantial community opposition was ineffective due to its focus on arguments that ILGA claimed it was unable to consider. Roughly 70 submissions and two petitions were received by ILGA from community members and groups. However, a large number of these specifically opposed the threat to the existing small business bottle shop. According to ILGA: “...*planning concerns (that do not also involve an alcohol related impact) are the responsibility of the local consent authority and the potential abuse of market power are matters for the Australian Competition and Consumer Commission*”<sup>229</sup>.

These legislative restrictions are often prohibitive for community members, and allow decision makers and well-resourced applicants to exclude community input based on technicalities.

## **Evidentiary requirements**

Where: All jurisdictions

A consistent theme in decisions across jurisdictions is that community objections are often disregarded or given little weight because they lack the right kind of evidence. Evidentiary requirements, as the MCAAY emphasise (see Appendix 2), are inflexible. This is evident in an ILGA [decision](#) from earlier this year to grant a new packaged liquor licence to a premises in Mosman in NSW. Community and police submissions focusing on public drunkenness were not given weight because they lacked supporting evidence<sup>230</sup>. Given no official legislative requirements for evidence, there seems to be confusion on the issue which results in inconsistencies in the application of evidentiary requirements. In the Bermagui decision in NSW, for example, ILGA decided to give consideration to community submissions despite their lack of supportive material. In the Mosman case, the same concept was not applied.

Often, community members may provide good-quality supporting material, but the research or data is not locality-specific, and therefore discounted. However, sometimes speculative

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<sup>229</sup> Independent Liquor and Gaming Authority 2016, *Decision under Section 45 Liquor Act 2007 on Application for Packaged Liquor Licence – Bray’s IGA Castlecrag – 4 April 2016*, para 224.

<sup>230</sup> Independent Liquor and Gaming Authority 2016, *Decision under Section 45 Liquor Act 2007 on Application for Packaged Liquor Licence – Camperdown Cellars, Mosman – 24 May 2016*, paras 361 and 365.

arguments based on broader trends are the only ones a community can make. Communities that have no or low levels of existing alcohol-related problems are left without arguments to make, as there is no community-specific evidence they can put forward. The laws in most jurisdictions mean that, in effect, a community must wait until their area begins to suffer from alcohol-related issues before they are able to have an impact on licensing decisions.

Even if there are existing alcohol-related problems in the locality, academic research is rarely available on such geographically-specific levels, and sometimes local health and crime data is hard to access (especially for lay people), or simply unavailable (especially in the smaller jurisdictions). For example, the Casula community in NSW had to submit a GIPAA (Freedom of Information) request in order to get specialised data on the premises where those involved in alcohol-related incidents last drank.

It should also be noted that while the evidentiary burden on objectors is onerous, and any arguments must be substantiated with evidence otherwise risk being dismissed, it seems that decision makers often engage in speculation themselves when determining applications. For example, in both the Western Australia and Northern Territory case studies, the decision makers made inferences based on the members of the public who did not object. They assumed that because there were so many in the community who did not make submissions, then there must have been people in favour of the application. This not only makes the error of mistaking an absence of opposition to a licence for evidence that there is no opposition, but neglects the systemic issues which prevent people from making submissions in the first place. It should not be assumed that those who have not made an objection are in fact in favour of the application, especially in cases where no community members have gone out of their way to submit a vote of support in any form.

### **Complex process and legislation inaccessible for lay people**

Where: All jurisdictions

The complex and legalistic nature of the licensing process, as well as the difficulties for a lay person in accessing formal legislation, are significant obstacles to community involvement in licensing decisions. These issues both prohibit would-be objectors from being involved, and thwart the efforts of those who do object but fail to grasp complicated legislative and evidentiary requirements.

### **Enforcement of venue compliance impacts licensing decisions**

Where: All jurisdictions

Often, when initial decisions on licence applications are made, the existence of ‘safeguards’ that enforce venue compliance with licence conditions is taken into consideration. This might result in the approval of riskier applications with reliance on this safeguard to monitor compliance. However, these safeguards don’t always appear to be effectively applied (see Casula case study).

## **Paucity of information and advice offered by administrative bodies**

Where: All jurisdictions

The complexity of the licensing process and legislation is exacerbated by a widespread absence of clear information and practical guidelines for community members, and a lack of dedicated advisory services for those seeking to object. The relevant authorities in many jurisdictions provide only basic information on their website (e.g. ACT, Northern Territory), much of which is often outdated. In the Northern Territory, for example, the information on the website does not include important updates enacted since state elections earlier in 2016. Many states also only provide resources (such as fact sheets and guidelines) that are designed explicitly for applicants and not the general public. Some jurisdictions do provide quite detailed information for objectors (e.g. NSW) however these resources struggle to keep up with constantly changing legislation (e.g. some of the ILGA guidelines currently included on the website are now outdated).

Furthermore, in some jurisdictions (e.g., Victoria, Queensland, ACT) liquor licensing decisions are published only if they are reviewed cases. This means that for community members seeking to oppose a liquor licence, there is very little guidance available in the way of published past decisions. Given that this is one of the best ways to understand what arguments and evidence are valid and effective (as acknowledged by other jurisdictions<sup>231</sup>), this is a real barrier to community involvement in licensing decisions.

Finally, as has been mentioned, it is often very difficult for lay community members to meet the requirements for submitting locality-specific evidence with regards to alcohol harms.

## **Resource imbalance between community and applicant**

Where: All jurisdictions

Another common frustration noted by interviewed objectors was the imbalance between community members and applicants in terms of financial and legal resources. The legalistic, complex and drawn-out licensing processes in all jurisdictions allow for resource imbalances to have a significant impact on the outcomes of cases.

For example, in an estimation of fees that the community would have been liable for (had pro bono and reduced-fee assistance not been obtained), an objector from Casula put the costs for the development application process alone at over \$300,000 (see Appendix 4 for details). Most communities, especially those with a low socio-economic status and therefore most vulnerable to alcohol-related problems, cannot afford to engage the same quality and volume of legal services that the applicant does. This is also evidenced in the Queensland case study where objectors did not have the financial resources to hire their own acoustic consultant to challenge what was submitted by the applicant. The lack of good-quality, free advice provided by the relevant authorities in each jurisdiction exacerbates this resource imbalance.

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<sup>231</sup> Commissioner for Licensing (Tasmania) 2016, *Information for People Making a Representation About a Liquor Licence Application*.

# Barriers to community involvement

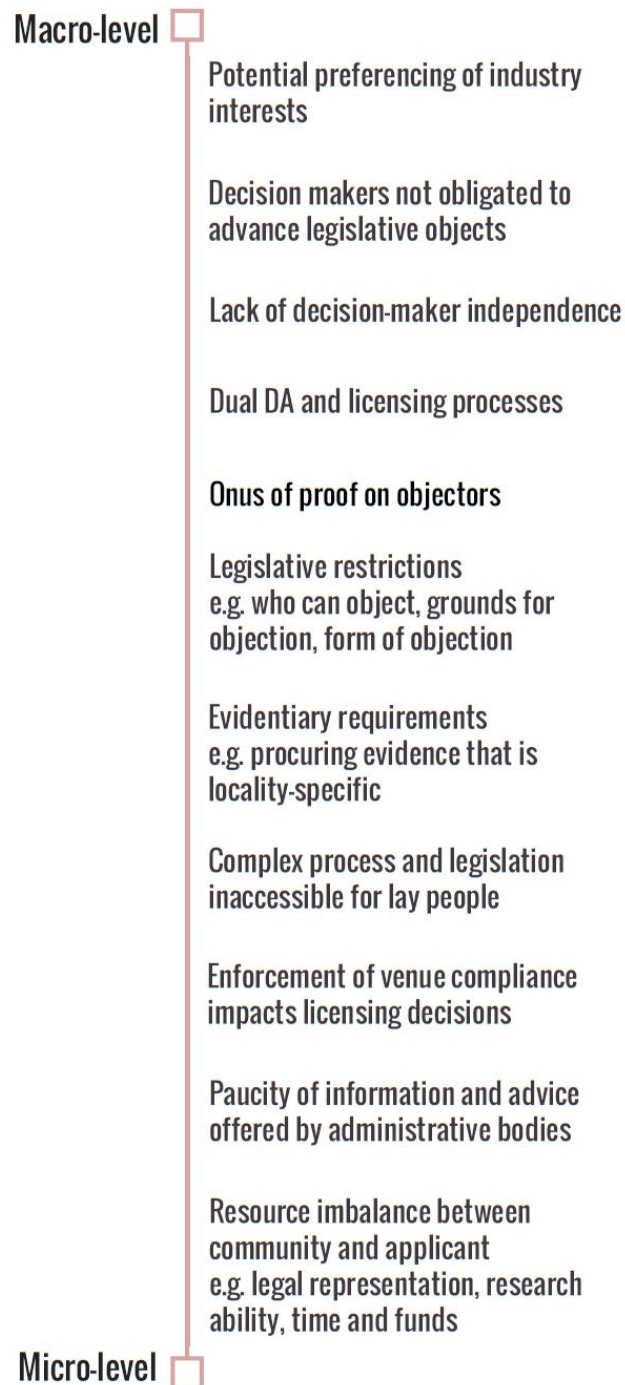


Figure 2. Barriers to effective community involvement.



## Recommendations for all jurisdictions

### → Recommendation: Establish a Community Defenders Office (CDO)

While a public call for a CDO has already been made, this report reiterates the need for a free or minimal-cost independent advisory service to help guide community members through the complex and resource-intensive licensing process, as well as to provide legal assistance and representation. The CDO would be based on the model of the Environmental Defenders Office, and would have the ability to apply knowledge of precedents in other areas of the country to new cases. This system would meet the gap identified by interviewed objectors, and seems to have the support of community members who are familiar with the CDO concept, with one individual commenting:

*I firmly believe the most helpful and effective action to assist communities would be to establish a well-informed independent community defenders office who is expert on the alcohol and gaming industry and on negative social impact harms to communities with the experience and connections to truly assist the community in an efficient and effective manner.*

### → Recommendation: Licensing should become a matter for health authorities

Currently, licensing is dealt with from an industrial or legal perspective, coming under the banners of departments of justice, treasury or specific industry in each state or territory. If liquor licensing fell within the jurisdiction of health departments, the primary concern would likely shift to the impact of alcohol on health and community welfare.

### → Recommendation: Move towards greater standardisation of liquor licensing systems

The liquor licensing system and legislation should be made consistent across jurisdictions. The fractured nature of the existing system is costly and inefficient, particularly for smaller jurisdictions that must support licensing departments and decision makers when they are receiving relatively few applications each year. Decision makers often reference precedent from other states in their decisions, but the application of this case law is unclear given the differing objects, tests and grounds for objections between states and territories. Additionally, in conducting this present review, a largely shared set of community concerns about licensed premises, as well as issues with licensing systems, were identified.

### → Recommendation: Specify how decision makers are to balance public and industry interests

Jurisdictional objects relating to the development of the liquor industry are tempered by mention of “responsible”/“balanced” development, or development in line with the needs or interests of the community. While this balancing process acknowledges that there are a number of diverse stakeholders involved in the regulation of alcohol, including the community, property owners, the liquor industry, the music/entertainment industry, and alcohol consumers, how this balance is to be achieved remains unspecified. This affords the

decision maker a considerable amount of discretion, and leads to uncertainty for all parties involved.

As such, the nature of this balance should be clarified to make the system a more predictable and certain one. In the same way that, for example, the legislation in Victoria specifies what factors and evidence should be considered when assessing an application's impact on amenity, licensing legislation should explicitly specify what should be considered in ensuring a balance of interests. Openness and transparency around the decision making process here is also key, so that it is clear exactly how conflicting interests have been weighted.

Importantly, the legislation should explicitly prescribe that certain public interests and needs (i.e. acute and chronic harm prevention) should always be prioritised over industry interests, as well as over other public interests such as convenience or affordability of alcohol. Additionally, when in doubt as to the likely harms of granting a licence, decision makers should apply the precautionary principle. That is, if the applicant cannot prove that granting the licence will not result in harms, or that such harms can be effectively mitigated, decision makers should err on the side of caution and refuse the application.

**→ Recommendation: Allow for the consideration of all matters at both the development and licensing stages**

While eliminating the dual processes would require a significant structural overhaul, the problems arising from the current system can be mitigated. Issues that councils consider when assessing development plans (e.g. competition, community amenity) often require re-examination, and should not be excluded from the licensing decision maker's consideration. Additionally, the process of the planning stage should also be scrutinised, as problems may also arise here (see Western Australia case study).

**→ Recommendation: Broaden the grounds on which the community can object**

The grounds for community objection (or submission or representation) should align better with legislative objects and decision-maker criteria for assessing applications. The scope of the grounds for objections should not be less than the scope of the objects or decision-maker criteria, as is currently the case.

**→ Recommendation: Ease the restrictions on who can participate in the process**

Community consultation, objection, and application for review should not be limited to those residing within a very limited radius of the proposed premises, or only those with a 'recognised' interest in the licence application. Opportunities for community involvement should reflect the fact that the harms of a liquor licence extend past both the physical premises and the person consuming the alcohol.

**→ Recommendation: Make locality-specific evidence more accessible, and/or allow locality-general research to be considered**

Nationwide, decision makers are moving towards giving more weight to locality-specific evidence, and less weight to locality-general evidence, in assessing licensing applications. As such, relevant administrative authorities should provide alcohol-related, locality-specific data and research to the community, so that objectors can access supporting material more easily. Formal Freedom of Information requests should not be required (within reason). The websites of administrative authorities should list what sources of evidence are frequently used by objectors and can be taken into consideration by the decision maker (as NSW's Guideline 6 does). Additionally, there should be no/minimal fees associated with accessing relevant data or research.

However, locality-specific data does not always exist, and as such, data on state- or nation-wide trends, or general research establishing relationships between outlet density and harm, should also be given genuine consideration when submitted in such cases. Again, when there is a lack of locality-specific evidence on alcohol-related harms, this should *not* be considered grounds for the approval of the application – the precautionary principle (as described above) should also be applied in such cases.

## Conclusion

Individuals and organisations within communities should have an opportunity to contribute to the liquor licensing decision-making process, particularly with respect to balancing harm minimisation goals. However, for individuals and community groups seeking to appropriately influence decision-making authorities, the procedures to follow have been identified as too complicated, legalistic and financially prohibitive for a broad cross section of the community to engage with. Reviewing the legislative and practical considerations in each jurisdiction has revealed that, while there are opportunities for communities to be involved in the licensing process, a range of barriers often prevent this involvement from having any meaningful impact. These barriers range from systemic and legislative restrictions, including the potential preferencing of industry interests, and constraints on who can object and on what grounds, to more practical issues such as processes being prohibitively complex, legalistic, and resource-intensive. Changes must be made to address these obstacles if alcohol-related harm is to be minimised, and the licensing landscape is to truly reflect the needs and interests of the public.

## Appendix 1

### *Community Member Interview Template*

Please be advised that your comments will form the basis of a report commissioned by the Australian National Advisory Council on Alcohol and Drugs (ANACAD). This report will be used to inform ministers and other government officials about community members' experiences when trying to influence liquor licensing decisions. We will provide the details of the case you were involved in, as well as a summary of your experience. We will not include your name in the report. However, you may still be readily identifiable from the case details. If this is an issue for you, please let Ms Rachel Visontay ([r.visontay@unsw.edu.au](mailto:r.visontay@unsw.edu.au)) or Dr Louise Mewton ([louise@unsw.edu.au](mailto:louise@unsw.edu.au)) know.

Were you involved as an individual, or part of a community organisation?

Why were you (or your organisation) opposed to the licence application?

Did you think there was uniformity in the reasons the community was opposed to the application?

How were you (or your organisation) involved in the licensing process? E.g. community consultation, objections to the application, requesting an appeal/review of a decision etc

On what technical grounds did you (or your organisation) contest the application? E.g. amenity, public interest, harm minimisation etc

What evidence or arguments did you (or your organisation) put forward?

Were there any aspects of the licensing process and legislation that were confusing or hard to find information about? If so, what were they? How did you get more information/advice?

Were there any other obstacles that the community faced during the process?

Do you think that all of your concerns were genuinely listened to and responded to?

Why do you think the community was successful/unsuccessful here?

What were the most effective steps you or other community members took?

What insights have you gained/advice for other community members trying to have a say on liquor licensing decisions?

Are there any additional resources you would like to see available that would help communities have more of an impact on liquor licensing decisions?

Are there any changes to the licensing legislation and process you would like to see made that would help communities have more of an impact on liquor licensing decisions?

## Appendix 2

### *Submission made by the McCusker Centre for Action on Alcohol and Youth*

Brief statement by Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth. This statement is adapted from our submission to the 2013 review of WA's *Liquor Control Act 1988*.

The McCusker Centre for Action on Alcohol and Youth has been involved in liquor licensing processes in WA on numerous occasions since the Centre launched in late 2010. We have experienced the complexities and challenges of engaging in liquor licensing processes first hand as objectors, and are regularly contacted by community members who are concerned about proposed liquor outlets but are unsure what they can do or how to communicate their concerns to the relevant authorities.

Liquor licensing processes should provide for meaningful community access and participation. The Act and the way it is administered should enable and support effective community engagement in liquor licensing processes. Unfortunately, the current liquor licensing processes are not easily accessible to community members wanting to communicate their concerns about a liquor licence application. Regard for community engagement is largely absent from current liquor licensing processes in WA.

Community access, participation and representation in liquor licensing processes are restricted by a range of factors. These include:

- There are limited requirements for applicants to inform communities of applications. It is unlikely that the current advertising methods are sufficient to ensure appropriate awareness of applications, in sufficient time to consider and respond as required.
- Liquor licensing processes are not well understood by the public.
- Very limited, if any, support is provided to community objectors by the authorities.
- The resources available to applicants and objectors are far from equal. Applicants often engage legal expertise. Community objectors may have no additional resources available to them, no experience in lodging objections, little understanding of the process and little time, yet they have the burden of establishing the validity of their objection.
- Processes can entail an unreasonable mass of lengthy documents which may be overwhelming.
- The onus of proof is placed on community objectors to establish the validity of their objection. It is enormously difficult for community objectors to access the required localised level of evidence to support an objection, if such information exists at all. Objections often get struck off for failing to establish the validity of the objection, for example, the objection may be considered too general and not specific enough to the application.
- The requirements for a valid objection are inflexible. Concerned community members have no way of demonstrating their concern about a licence application unless they

have the resources (e.g. time, literacy level) to navigate the unfamiliar and complex formal objection process.

- The complexity of lodging objections and participating in a legalistic process. Community objectors may be required to understand and respond to documentation prepared by legal experts. A high level of literacy is required to engage in formal government processes.
- The protracted nature of the processes.

Considering the level of difficulty involved with submitting an objection, it is expected that many applications pass through without objections, even if the proposed licence is of concern to community members. As a consequence, community interests are not adequately represented in liquor licensing processes, while those applying for liquor licences are generally vastly better resourced to have their interests represented.

There should be a clear and greatly simplified process through which members of the public can participate and make their views and concerns known.

## Appendix 3

### *Review of the South Australian Liquor Licensing Act 1997 (2016)*

A review<sup>232</sup> was completed in mid-2016, and the South Australian government was considering the reviewer's recommendations at the time of writing this report. The review process began with the release of a [discussion paper](#)<sup>233</sup> inviting submissions from the public, councils, business and other interest groups. The review aimed to identify measures that could result in "red tape reduction", "a safer drinking culture", and "vibrancy".

#### **Issues raised in this paper that were relevant to community involvement in licensing were:**

"Should consultation on planning and liquor licence applications occur at the same time?"

"Should local councils have the right to intervene in a liquor licence application having already approved the development application?"

"At what point in the process should a member of the public be able to voice their concerns? How?"

Already, some of these aims and questions appear problematic. This is well captured within the submission made to the review by the Royal Australasian College of Surgeons: "*RACS has significant concerns with the content and questions put forward in this section of the discussion paper. The terminology 'reducing red tape' appears to reflect a pre-determined conclusion that an overly burdensome regulatory structure currently exists. It implies that regulation is inherently undesirable...*".

#### **Recommendations of the review relevant to community involvement in licensing included:**

That the objects of the act be updated and clarified<sup>234</sup>, with a more explicit description of what constitutes 'harm'. Additionally, the Licensing Authority should not be able to grant a licence if doing so would be inconsistent with the objects, as opposed to the existing requirement of merely having regard for the objects.

That the division of responsibilities between planning and licensing authorities should be clearer<sup>235</sup>. Also, all new licence applications should go through council first.<sup>236</sup>

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<sup>232</sup> T. Anderson (Government of South Australia) 2016, *Review of the South Australian Liquor Licensing Act 1997*.

<sup>233</sup> Government of South Australia, Attorney-General's Department, Consumer and Business Services 2015, *Liquor Licensing Discussion Paper*.

<sup>234</sup> Anderson 2016, Recommendation 1, p. 42.

<sup>235</sup> Anderson 2016, Recommendation 66, p. 152.

<sup>236</sup> Anderson 2016, para 8.4.2, p. 153.



Local councils should no longer be able to object or intervene in the licensing authority's proceedings<sup>237</sup>, given that all of their concerns should be dealt with at the earlier development approval stages.

The only advertising of applications that should be required is publishing notice of the application on the CBS website.<sup>238</sup>

That the 'needs test' should be replaced by a "Community Impact and Public Interest Test"<sup>239</sup>, with the view that the needs test has become a way for objectors to limit competition in an area<sup>240</sup>. This test is more akin to the public interest tests in other jurisdictions, where the applicant needs to demonstrate that granting the licence will not be detrimental to the safety and well-being of the public, and that benefits to the community will outweigh harms. This new test would only apply to certain high-risk licence types. The review also recommends that the Commissioner issue guidelines about this new test to inform the public and applicants.<sup>241</sup>

That objections should be replaced by written submissions<sup>242</sup> to remove the delays caused by the objection process (i.e. conciliation process and/or resolution at the Licensing Court). The Commissioner would therefore decide on the application based on all of the materials submitted.

The removal of certain existing grounds for objection (or submission) on the basis that these would already be considered in earlier development approval stages. The grounds are those based on the position, nature or quality of the premises, as well as the grounds that granting the application would cause undue disturbance, impact on the welfare of local schoolchildren, or impact on the amenity of the area<sup>243</sup>. Additionally, grounds should not include competition or economic considerations.

Only the applicants or the Commissioner of Police may apply to the Licensing Court for a review, unless the application is for a general liquor, on-premises, packaged liquor sales or club licence<sup>244</sup>. This would remove the ability of community members to challenge a decision of the Liquor and Gambling Commissioner. However, if the Commissioner holds a hearing, any person who made a submission objecting to the application should be able to apply for a review. Applications for review should only be made on the grounds that earlier submissions were based on.

While it is unclear what the government will ultimately adopt, many of the above recommendations appear problematic. In terms of the separation between planning and licensing stages, removing certain grounds for objection, and removing abilities of councils to

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<sup>237</sup> Anderson 2016, Recommendation 69, p. 156.

<sup>238</sup> Anderson 2016, Recommendation 50, p. 124.

<sup>239</sup> Anderson 2016, para 2.7.1, p. 30.

<sup>240</sup> Anderson 2016, para 9.5.1, p. 169.

<sup>241</sup> Anderson 2016, Recommendation 73, p. 173.

<sup>242</sup> Anderson 2016, para 7.3.5, p. 125.

<sup>243</sup> Anderson 2016, para 7.3.8., p. 126.

<sup>244</sup> Anderson 2016, para 7.3.15, p. 127.

in essence change their mind about the proposal, restricts the council's input. Removing the ability of the licensing authority to re-examine any considerations that *should* have been adequately dealt with at the planning stage will remove an important avenue for remedy and lead to issues already experienced in other jurisdictions.

Restricting abilities to object and apply for review appear to be intended as measures targeting fellow licensees – almost all of the cases that reach the Licensing Court are brought by industry applicants with financial interests in the area of the proposed premises. However, these restrictions will only further detract from the ability for community members to have an impact.

Finally, the suggestion that applications should no longer be published in newspapers, and potentially not even advertised on the proposed premises themselves<sup>245</sup>, may have a detrimental effect on the ability of community members to be involved in decisions. By only advertising the applications online, their visibility amongst the general public will be greatly reduced.

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<sup>245</sup> Anderson 2016, para 2.5.3.4, p. 27.

## Appendix 4

### *Full-Fee and Actual Costs to the Casula Community in Opposing a Pub's DA – Estimates Provided by Community Member*

Items	Estimated	Unit cost	Cost	Actual payment
Solicitor/advocate (Pro Bono)	350 Hrs	\$400	140000	4 nights accommodation
Solicitor (Pro Bono)	100 Hrs	\$600	60000	2 nights accommodation
Barrister Acting on severely reduced costs	20 Hrs	\$1200	24000	2500
Barrister Acting on severely reduced costs	20 Hrs	\$1200	24000	2500
Barrister (Pro-Bono)	20 Hrs	\$1200	24000	0
Social Impact planner (Pro-Bono)	60 Hrs.	\$200+GST	12120	0
Health Expert (Pro Bono)	80 Hrs	\$250	20000	0
Road and Traffic Expert (Pro Bono)	10 hrs	\$200 +GST	2200	0
Expert 1 - International Professorial Expert on mitigation measures (Pro-Bono) Travelling Reading SIA, dealing with joint report, travel, appearance in court	21 Hrs	\$200 + GST	4941 (includes travel costs)	0
Expert 2 International expert in Violence prevention (Pro-Bono) Traveling from Melbourne, Reading SIA, dealing with joint report, travel, appearance in court	21 Hrs	\$200 + GST	5940 (Includes \$1000 travel, hotel and taxes )	0
<b>Legal Team Costs</b>			<b>\$317201</b>	<b>\$5000</b>
Casula Community Spokes- person to attend meetings, court days etc. (unpaid). Numerous Community Members have also taken one or two days off work to attend court days (these days have NOT been included regards to actual financial loss)_	10 days off work without pay		4500 (includes parking costs)	\$4500
Court Costs	5	\$401	2005	\$2005
Subpoenas	3		832.36	\$832.36
Legal Team (Barristers)	1		5000	\$5000
GIPPAs			2000	\$2000
LCC Hall hire			240	\$240
Advertising meetings Photocopying etc.	10		800	\$800
Bus hire	1		150	\$150
Accommodation	6	139	834	\$834
<b>Total cost/paid by community</b>			<b>\$16361</b>	<b>\$16361</b>
<b>Cost to the Casula Community GRP Inc had persons charged the community full rates</b>			<b>\$333562 Pro Bono and Actual</b>	
<b>Actual Cost to Community</b>				<b>\$21361</b>

## Appendix 5

### *Example objections/submissions for different jurisdictions*

**PLEASE NOTE:** The following are not intended as templates or ideal exemplars. There is no one-size-fits-all approach or format that can be followed. Instead, these submissions (read in the context of their relevant case studies), demonstrate some of the possible ways that a community member may set out their objection, address grounds, make arguments, and use evidence. These elements must all be appropriated to suit the specific licence application and community in question. All identifying information has been redacted.

### Included Submissions

- p. 101-103: New South Wales, Bermagui – Community group submission
- p. 104-111: New South Wales, Casula (this is a DA objection) – Community group submission
- p. 112-113: Victoria, Seaford – Individual submission
- p. 114-116: Western Australia, South Perth – Individual submission
- p. 117-118: Tasmania, Launceston – Individual submission on behalf of an organisation

## BEGA VALLEY SHIRE RESIDENTS & RATEPAYERS ASSOCIATION Inc

Registration No. INC989777

The Director-General,  
Office of Liquor Gaming & Racing,  
GPO Box 7060,  
**SYDNEY. NSW. 2550.**

Correspondence to:

[REDACTED]  
[REDACTED]  
[REDACTED]

By Email: [liquorapplication@olgr.nsw.gov.au](mailto:liquorapplication@olgr.nsw.gov.au)

November 10<sup>th</sup>, 2014.

Dear Sir,

**Re: Submission in relation to an Application for a 'Packaged Liquor Licence – New' by BWS Beer Wine & Spirits - Application Number 1-2668814336**

The Bega Valley Shire Residents & Ratepayers Association (BVSRRRA) is a voluntary community-based organisation of around 150 resident/ratepayer members, including businesses, located in the Bega Valley Shire, concerned with, amongst other things, the performance of local government, in particular with a view to ensuring that the best interests of residents & ratepayers are always placed at the forefront of all local government decisions.

The BVSRRRA objects to the granting of a 'Packaged Liquor Licence – New' sought by BWS Beer Wine and Spirits via Application Number 1-2668814336, dated October 28th, 2014.

The BVSRRRA understands from its reading of the Guideline – [Consideration of social impact under Section 48\(5\) of the Liquor Act 2007](#), published by the NSW Independent Liquor & Gaming Authority, that:

- the Authority must not grant a licence, authorisation or approval unless it is satisfied, having regard to the Community Impact Statement and any other matter it is made aware of, that the overall social impact of granting the licence, authorisation or approval will not be detrimental to the well-being of the local or broader community; &
- ..... members of the local and broader communities may express their observations or opinions regarding the social impact of a proposed licence premises without providing expert or statistical evidence in support of those submissions. The Authority encourages members of the local or broader communities to address the particular application before the Authority, in light of the statutory objects and considerations provided by section 3 of the Act, reproduced in paragraph 22 of this Guideline.

The BVSRRRA's objection is made in response to the above provisions.

Whilst the BVSRRRA is content to leave it to the residents/ratepayers of the Bermagui community to speak to the social impact of the Licence on its community, should it be granted, the BVSRRRA's opposition is based on its belief that, by dint of the behaviour of its owner, Woolworths Limited, or its representatives, the applicant is not worthy of being granted such a licence.

## 2.

The basis of the BVSRRRA'S contention is that in pursuing its supermarket development in Bermagui, incorporating a licenced retail packaged liquor outlet, Woolworths or its representatives acted in a way that resulted in the community being misled as to its intentions & that on that basis, the community is entitled to believe that it is an organisation that is not deserving of its confidence & support & is therefore not an appropriate organisation to be granted a packaged liquor licence in Bermagui or anywhere-else in the Bega Valley Shire.

### Supporting Details

- At its Ordinary Meeting on March 26<sup>th</sup>, 2014, Bega Valley Shire Council (BVSC) dealt with a development application from Fabcot Pty Ltd, a wholly-owned subsidiary of Woolworths Limited, for the proposed construction of a Woolworths supermarket & two speciality retail tenancies (including liquor store), carparking, landscaping & associated advertising signage at Lots 11-15 Section 8 DP 758095, 1-9 Young Street, Montague Street and Unnamed Laneway, Bermagui.
- At the above Ordinary Meeting, BVSC deferred a decision on the Fabcot Pty Ltd development application, resolving unanimously, amongst other things, *"That consideration be given to the Liquor Store being removed from the Development Application."*
- Subsequent to the above Ordinary Meeting held by BVSC, Fabcot Pty Ltd submitted an amended development application which, unlike its original application, included no reference to the proposed development including a retail packaged liquor outlet.
- At a subsequent Ordinary Meeting on April 16<sup>th</sup>, 2014, BVSC approved the revised development application submitted by Fabcot Pty Ltd for the construction of a Woolworths supermarket in Bermagui.
- Then, in a surprise move in mid-July, residents close to the proposed development site in Bermagui received formal notification from BWS Beer Wine Spirits that an application for a retail packaged liquor license was going to be made to the OLGR.
- BVSC Subsequently confirmed that the matter was out of their hands, whilst the Bega District News of July 28<sup>th</sup>, 2014 opined that ['Bermagui Woolworths liquor store enters back door'](#)
- The BVSRRRA shares the view of many residents/ratepayers in Bermagui that the behaviour of Fabcot Pty Ltd in its management of its development application for a Woolworths supermarket was intended to bypass the legitimate planning concerns of BVSC by removing reference to a retail packaged liquor outlet from its development application.
- Moreover, the BVSRRRA shares the view of many residents/ratepayers of the Bega Valley Shire that, whilst its actions were entirely legal, the behaviour of Fabcot Pty Ltd in this matter effectively caused BVSC & the community to be misled as to its intentions.

3.

- As such, the BVSRRRA strongly believes that the behaviour of Fabcot Pty Ltd was inappropriate & on that basis, the community is entitled to believe that it & the organisation it represents is not worthy of its confidence & support & therefore is not an appropriate organisation to be granted a packaged liquor licence in Bermagui or anywhere-else in the Bega Valley community.

The BVSRRRA thanks the Office of Liquor Gaming & Racing for considering its submission in this matter.

Sincerely,

[REDACTED]

[REDACTED]

**Bega Valley Shire Residents & Ratepayers Association**

Tel:

[REDACTED]

Email:

[REDACTED]

Internet:

[REDACTED]

**CASULA COMMUNITY GROUP FOR RESPONSIBLE PLANNING INC.**

11 December 2015

Chief Executive Officer  
Liverpool City Council  
Locked Bag 7064  
Liverpool BC NSW 1871

Dear Sir

**DA 1060/2015: Proposed Hotel 467 Hume Hwy Casula – Objection**

**About us**

We are an incorporated local community group with the key goals of building a more cohesive, sustainable and diverse community where our safety, amenity and welfare remains paramount.

We also strive to ensure that we achieve a fair and informed say in all planning, liquor and gambling related decisions that may adversely impact on our above primary objectives.

Our membership consists mainly of families and some small businesses situated in the suburb of Casula. Our family members come from a broad range of religious, culturally and linguistically diverse backgrounds.

Our group that mobilised in part as a response to the original DA 1454/2013 for this above proposed hotel, remains a key galvanising agent for enhanced local community cohesion and constructive integration.

As evidence of our group's success in critically important grass-root community building, we attained around 2000 local objections to the above original DA including those of local school students. We understand this amount of objections to a DA was unprecedented for Liverpool City Council.

We welcome socially responsible and sustainable development in our local area that adds to and not detract from our above goals.

It is our considered view based on all the material provided by the proponent, objections including that from the Collingwood Hotel that we support, our own research including the capacity of the proponent to safely and responsibly manage its equally large Macarthur Tavern on a safe and sustained basis, and overwhelming feedback from our membership and others in Casula and surrounding suburbs, that **the DA must be rejected** based on the following five points.



**1. Negative Social impact of another local Liquor and Gambling Outlet in our local area**

We note that the negative social impact of gaming machines cannot unfortunately be considered in this social impact assessment by the NSW Planning system.

The development will likely cause a net negative social impact given the very large, extended trading hotel is proposed to be located in a primarily residential setting immediately adjacent or close to high risk and vulnerable places including

- Abuts public housing for elderly and disabled clients
- A women's refuge protecting women and children fleeing and seeking protection from serious and immediate harm including alcohol related domestic violence Emergency public accommodation
- Large public primary school (135m from boundary)
- Medical centres
- Child care facilities
- Family residences
- Places of worship

Further, the proposed hotel will be on the Hume Hwy and close to other major arterial roads. These roads will provide a ready transmission mechanism for harms emanating from the licensed venue to surrounding very disadvantaged communities and other innocent drivers/passengers.

We rely in part on the following extract of the Land & Environment Court decision of Acting Senior Commissioner Brown in *Motto Farm Pty Limited v Port Stephens Council [2011] NSWLEC 1293*

<https://www.caselaw.nsw.gov.au/decision/54a635ce3004de94513d8f18> . The proposed hotel in this case was proposed to be located on the Pacific Hwy.

"Para 84

I note that the submission from the Port Stephens Licensing Unit states that from June 2009 police have focused a major portion of the commands resources to the task of reducing alcohol-related crime in the Tomaree and Raymond Terrace areas on Friday and Saturday nights and Sunday afternoons. These resources have some times been supplemented by police officers from other commands. The police acknowledge that the Heatherbrae area, although having a number of premises nearby with late trading liquor licences, has minimal hotels that exercise these hours. The police state that if the application is to be granted, the migration of hotel patrons from other premises, within a 1.5 km radius, will be of major concern. The police cite a distinct lack of public transport in the area and unreliable taxis service as a further reason for their concern. The police submission concludes by stating that if approval were granted, it would almost certainly have an adverse effect on the

amenity of the neighbourhood, would affect local police resources, increase alcohol-related crime and affect the amenity of neighbouring businesses.

**85 I accept that density of hotels is an indicator of increased consumption of alcohol and consequent alcohol-related crime, however the proposed hotel will not add significantly to the numerical density of hotels in the wider locality. However, the question of potential alcohol-related crime is not only a question of density.** The evidence suggests that significant improvements have been made to the alcohol-related crime in the Raymond Terrace area through specific initiatives of the police. These initiatives have been successful, in part, because of the clustering of the hotels in Raymond Terrace commercial area and the ability to concentrate police resources to a defined area. **There is considerable merit in the submission from the police that the establishment of a hotel in Heatherbrae, where no other hotels exist, has the potential to initiate alcohol-related crime to an area where it currently does not exist because of the absence of any hotels.** While there are licensed premises around the hotel site, I do not accept Mr Smith conclusion that premises used as restaurants with an on-premises licence can be reasonably compared to a hotel, in terms of likely social impact” (emphasis added).

We note that the risks and potential harms associated with our above dot points cannot be adequately mitigated and the “mitigation” measures proposed are

- an admission of the likely harm and its wider transmission (eg “courtesy bus”)
- ineffective and not supported by any independent scientific evidence (eg membership of liquor accords in reducing alcohol and gambling related harms)
- a simple regurgitation of existing legal obligations relating to the responsible service of alcohol (that is, these are requirements – not mitigations or optional extras)
- ineffective and reactive. For example the proposed establishment of a neighbourhood committee to deal with likely problems after they arise is disingenuous since such a committee will have no powers to effect any changes in the management of the premises. Note also that the proponent has not engaged in any genuine community consultation regarding this proposal and thus his track record does not support this proposition.

We also question the proponent’s capacity to engage in constructive consultation leading to improved safety measures following the reported incident

<http://www.smh.com.au/nsw/intimidation-claims-after-anti-poker-machine-meeting-20151105-gkry2d.html>

We **rely upon** as one ground of objection, the reasons and associated evidence contained with the NSW Independent Liquor and Gaming Authority’s decision of 30 November 2015 to reject the proposed **BWS Casula outlet** liquor license because of net detriment impact and public interest. We are concerned that the Casula community’s socio-economic profile makes it vulnerable to a wide range of alcohol-related harms.

We also rely upon the socio-economic data and existing indicators of harm for the local area accepted by ILGA in this decision.

See [http://www.ilga.nsw.gov.au/about-us/media/documents/decisions-of-interest/liquordecisions/liquor licence decisions/2015/Decision with-Reasons on-PLL-BWS Casula-301115.pdf](http://www.ilga.nsw.gov.au/about-us/media/documents/decisions-of-interest/liquordecisions/liquor%20licence%20decisions/2015/Decision%20with%20Reasons%20on%20PLL-BWS%20Casula-301115.pdf)



See the above article <http://www.dailytelegraph.com.au/newslocal/macarthur/bradbury-runner-james-connor-pleads-think-about-your-actions-after-experiencing-vicious-attack/story-fngr8h70-1226769274623> . Our community wishes to prevent similar alcohol related incidents in our local community that reportedly occurred at the De Angelis's Macarthur Tavern.

## 2. Loss of amenity

There is likely to be a serious loss of amenity for surrounding residents and small businesses of having a large scale high risk hotel with gambling facilities within their near vicinity. This includes:-

- The impact of the overflow of an estimated 230 patron's cars in the surrounding residential and business neighbourhood including alcohol related disturbances and crime, noise, and increased traffic hazards – greater risk of DUI



#### Driving under the influence 2014/15

LGA	Rate/100,000
Fairfield	190.5
Liverpool	202.1
Camden	260.9
Campbelltown	483.5
<b>Greater Sydney</b>	<b>234.7</b>

- The conduct of intoxicated patrons leaving the hotel and walking to their cars outside of the carpark and small minority who may walk home



- The inadequacy of existing local traffic exits and roads to accommodate the traffic flows
- The main pedestrian entrance/exit is an approximate 3 metre uninterrupted distance from the **six lane** Hume Hwy and site of many serious motor accidents



### 3. High levels of reported Domestic Violence

One reason why this DA must be rejected is its failure to adequately address the surrounding catchment area's high levels of reported domestic violence and the serious

adverse impact that the additional very large liquor outlet will have on this crime and associated devastating harms. See appended BOCSAR crime maps.

We note that between 50 -90% of domestic violence remains unreported. The above table illustrates that the rate of domestic violence in our area is well above the state average. It is our belief that an additional large extended trading hotel very close to vulnerable women and families will only exacerbate this problem.

#### **Trends in Domestic Violence last 5 years**

Location	Rate/100,000
Liverpool	7.8%
Liverpool LGA	4.9%
NSW Average	1.6%

Source: BOCSAR

#### **4. Large “Family friendly” Liquor and Gambling venue allegation**

It is our community groups’ view that the above proponent’s description of their proposed large hotel is misleading. It provides no substantive basis for favourable consideration. This view is based upon:-

- The estimated cost of the alcohol and gambling venue of \$4.233m by the applicant would obviously require a substantial volume of alcohol sold (likely at a future date to late into the night) and high levels of poker machine revenue. High levels of alcohol consumption are independently proven to be detrimental to both the individual consumers and the surrounding local communities. See for example <http://www.bocsar.nsw.gov.au/Documents/BB/ab08.pdf>
- The return on the provision of food is understood to be substantially less than from the revenue attracted from alcohol and gambling
- The majority of the “public” floor space of the liquor outlet is devoted to drinking and gambling where persons under the age of 18 are excluded
- There appears to be only one reference to a presumable child’s “playground”
- Independent research establishes the harmful effects of normalising the consumption of alcohol and gambling in children from an early age
- It is understood the proponent may be seeking a liquor license from 7am that is outside the standard starting time of 10am for pubs. Converting the hotel to an “early opener” has no positive social benefits. Western Australian studies indicate that such hotels attract patrons with drinking problems. It is also inconsistent with the promotion of a “family friendly” hotel with young school children walking past the venue on their way to and from school



## 5. Public Interest

It is our submission based on the above points, the attached record of compliance and recorded alcohol related incidents at the Macarthur Tavern in Campbelltown and the New Commercial Hotel in Liverpool that the above DA is not in the overriding public interest.

The attached Police COPS linking data viewed at the aggregate level raises substantial ongoing concerns about the capacity of the applicant to ensure all its existing and proposed licensed venues remain consistently safe and cause no adverse impact and infiltration within the surrounding communities.

**Alcohol restrictions for violent venues - Macarthur Tavern**

Round	Year ended	Assaults	Level	Ranking
13	Dec 14	12	2	
12	June 14	21	1	= 2nd
11	Dec 13	24	1	= 1st
10	June 13	13	2	
9	Dec 12	-		
8	June 12	13	2	
7	Dec 11	30	1	= 2nd

Source: [http://www.olgr.nsw.gov.au/alcohol\\_restrictions\\_for\\_violent\\_venues.asp](http://www.olgr.nsw.gov.au/alcohol_restrictions_for_violent_venues.asp)

We rely upon the attached Police COPS linking data for the Macarthur Tavern, New Commercial Hotel and the Meadowbank Hotel controlled by the proponent as broadly illustrative of a range of alcohol incidents occurring away from the premises that can be linked back to these hotels were the victim or offender reportedly last consumed alcohol.

It is also used by the Police as one aggregate indicator for the levels of Responsible Service of Alcohol (RSA) compliance with licensed premises – particularly where those coming to the attention of Police are reported as “well affected” by alcohol.

The proponent's Macarthur Tavern has a concerning number of COPS linking data entries excluding "business walkthroughs" and inspections by Police. The same venue has been listed five times since the year ended 2011 in the NSW government's "Violent venues" scheme and once as the equal first most violent premise in NSW and twice as the equal second most violent premise in NSW (see above table). This record is of great concern to our local community given the rough comparison in size between the Macarthur Tavern and that proposed for our neighbourhood.

We note that ILGA has advised that only around 25% of non-domestic alcohol related assaults are reported to the Police.

We note the qualifications applied by ILGA with respect the accuracy and reliability of the use of individual reported COPS incidents and the fact that also many alcohol related incidents involving patrons subsequent to them leaving the premises may not be reported in the Police COPS linking data.

We refer the Council to the following *Bada Bing* ILGA decision where the appropriate application of Police COPS linking data was considered [http://www.ilga.nsw.gov.au/data/assets/pdf\\_file/0004/47812/Final-Decision-s51-Application-Bada-Bing-corrected-111213.pdf](http://www.ilga.nsw.gov.au/data/assets/pdf_file/0004/47812/Final-Decision-s51-Application-Bada-Bing-corrected-111213.pdf).

We also note that the DA does not comply with a number **DCP setback requirements**.

### **Conclusion**

Our local community's mobilisation to preserve and enhance the safety, welfare and amenity of the local area against the likely non mitigatable harms associated with this latest large hotel DA has been unprecedented and supported by both Houses of NSW Parliament.

We encourage Liverpool City Council and any possible subsequent Tribunal to continue to support our local community's authentic remarkable achievements, wishes and evidence provided above to unanimously reject this DA because of its overwhelming negative social impact, loss of amenity and inconsistency with the overall public interest.

  
Casula Community Group for Responsible Planning Inc.  


[REDACTED]  
[REDACTED]  
Victorian Commission for Gambling and Liquor Regulation

GPO Box 1988

MELBOURNE VIC 3001

December 29, 2014

**Re: Objection to liquor licence 57642A01 HUNTER BROS INVESTMENTS PTY LTD, SEAFORD 3198**

To whom it may concern

I would like to object to the liquor licence application 57642A01 in the main Seaford Shopping strip. The proposed package liquor outlet would be across the road from the main Seaford beach which already has a problem with people drinking alcohol and related antisocial behaviour.

I have been a resident of Seaford for over 12 years and find that the presence of alcohol affected people on the Seaford beach makes the area unpleasant and unsafe for me and my young family.

**Existing excessive alcohol consumption problem in the area**

There is already a problem with excessive drinking in the Frankston City Council catchment. The area currently has the 4<sup>th</sup> highest rate of alcohol-related hospital attendances by local government area in metro Melbourne<sup>1</sup>.

**Dangerous and unsightly rubbish**

We already have to deal with broken glass and cans on the beach from the existing packaged liquor outlet (approx. 100m from proposed the outlet). Doubling the number of packaged local outlets is likely to increase the amount of dangerous rubbish. The Social Harms of Packaged Liquor report<sup>2</sup> found that the presence of packaged liquor significantly increased the amount of alcohol - related detritus in the area.

**Antisocial behaviour**

We regularly experience antisocial behaviour when using the beach including yelling, fights and threats and this has also been documented by Frankston City Council. In the Social Harms of Packaged Liquor report<sup>2</sup>, officers from Frankston City Council identified that the amenity and antisocial behaviour impacts related to packaged liquor were quite pronounced. In particular, a public drinking culture had developed in the area, with daytime drinking a visible presence. Issues



related to this were public displays of violence, alcohol and other drug issues and drunk and disorderly behaviour.

According to Council officers, packaged liquor was present in 90% of altercations between people in public space.

I strongly recommend that The Commission rejects this application.

Yours sincerely



#### References

1. Trends In Alcohol And Drug Related Ambulance Attendances In Victoria 2012/13. Turning Point. Available at: <http://www.turningpoint.org.au/site/DefaultSite/filesystem/documents/TP.ambocallout.fullreport.080514.pdf>
2. The social harms associated with the sale and supply of packaged liquor in Victoria (2013). VicHealth. Available at: <http://www.vichealth.vic.gov.au/media-and-resources/publications/social-harms-of-packaged-liquor>

## **Grounds of objection to liquor license application at 79-79a Angelo Street**

### **Section 74 (1)(b)**

Wesley College which caters to primary and high school students is directly opposite the location of the proposed small bar. Any decision to place a small bar in such close proximity to, and such high visibility from, the school's grounds would not be in the best interests of the children.

██████████, I do not share the Principal's passive stand. Whilst entitled to his personal opinion, Mr Gee does not speak for the school's parent community. It is not just a question of whether students are able to access alcohol from the bar – although we know it will be legally possible for them to do so – but we simply don't need any more businesses that peddle liquor in our community reinforcing children's belief that alcohol consumption is an everyday activity, nothing more than harmless fun.

Many children believe that drinking alcohol is the primary ritual into adulthood in our society. Environmental and societal influences help shape these beliefs and it is our responsibility as a community, as parents and as teachers to dispel them. We must take a stand *against* a culture that centres on alcohol, not promote it.

Alcohol contributes to the leading causes of teenage death – suicides and accidents. Teenage boys in particular are more likely to engage in risky behaviour. To some, the challenge of accessing the bar will prove irresistible.

Beginning this year (2014), children in year 12 are turning 18 while still in high school. This means that they will legally be able to access alcohol after school, and perhaps even during school hours if they are resourceful enough. Also for the first time this year, students are old enough to have provisional driving licenses in years 11 and 12 and could potentially drive home afterwards.

If the school makes a policy of forbidding entry, for some this will make the attraction even greater. But the school cannot legally prevent school-age 18 year olds from drinking there.

Boarders will be exposed to the bar throughout their time in residence. It will prove a tempting lure. The self-serve style of dispensing alcoholic beverages with a swipe card means that it will be even easier for school age students to access it – and younger children will be able to tag along with their 18 year old counterparts provided someone has obtained a swipe card. It is a nonsense to suggest that they won't be able to afford it.

Due to its elite status, many attending students travel from suburbs well away from South Perth. A considerable number of parents, not just those of boarders, will not have been made aware of the proposal to establish a small bar opposite. The Principal does not speak for them. From a community leader, we should demand better protection of our children's well-being.

There are clear links between children's exposure to alcohol advertising and the development of attitudes about alcohol and drinking habits. There is strong evidence for the argument against advertising alcohol to children at sporting grounds. Yet, here in full view of the Wesley sporting grounds, it is proposed that we establish a bar.

## **Grounds of objection to liquor license application at 79-79a Angelo Street**

### **Section 74 (1)(g)(i)**

Despite the applicant's claim that this is an upmarket 'small bar', its capacity for 120 patrons makes it anything but a small bar – and I cannot accept that the potential impact of such a large number of alcohol-affected patrons on the local community will be minimal.

Regardless of how sophisticated the target patron might be, the effects of alcohol on them will have an adverse affect on our quiet locality.

Groups of patrons affected to varying degrees by alcohol, laughing, talking loudly, arguing, wandering around nearby streets and getting in and out of cars and taxis, banging car doors will create new alcohol-related adverse amenity impacts on nearby residents.

Despite the best efforts of staff to control the behaviour of intoxicated patrons, they cannot realistically control the behaviour of patrons who have moved away from the vicinity.

The applicants claim that they intend to discourage loitering outside the bar, however, noise will be generated by groups of patrons standing outside the venue to smoke, or possibly wandering off round the corner and down our street to do so. Even if the bi-fold doors are kept closed, which seems unlikely in summer, their opening and closing means that noise will inevitably emanate from the premises on a constant basis.

### **Section 74 (1)(g)(i)**

Besides Wesley College, there are two other primary schools within close proximity (South Perth Primary School & St. Columba's) with students walking to & from school passing directly in front of the bar's entrance. This will provide young children with daily modelling that alcohol consumption is the norm.

Our community has invested much time & effort in convincing parents that it is safe to allow primary school age children to walk and cycle to & from school. Observing groups of children out of cars and taking ownership of the footpaths on their 'Walking School Bus' is a pleasing sight. And one that will disappear.

To appease objections concerning noise at the rear, the applicants state that they plan to take delivery of their supplies through the front access on Angelo Street during these busy times. There is nowhere for these delivery vans to park safely and there are already buses stopping nearby and many commuters queuing in cars to get out of the area. Pedestrians will have to compete for space with delivery drivers crossing their path to offload crates of alcohol. Some of these delivery trucks will bear large scale advertisements for alcohol and will be highly visible from the Wesley College grounds.

The bar drawings show bi-fold doors along the entire street frontage. Presumably bi-fold doors have been selected in order to open up the entire bar to the footpath. Children & teenagers walking home from school will observe adults consuming alcohol on a daily basis as well as be subjected to any off-hand, lewd or detrimental comments that alcohol-consuming adults might hurl at them. They may be confronted with drunks staggering out across their path or observe a raft of inappropriate behaviours and language.

## **Grounds of objection to liquor license application at 79-79a Angelo Street**

### **Section 74 (1)(g)(ii)**

[REDACTED] We have known this neighbourhood well for 25 years. Ours is not a transient street; several of our neighbours have lived here since the 1950s, many for over 20 years.

One of the enduring attractions of life on Waverley Street is that it remains a very quiet residential street enjoying minimal vehicular through-traffic. Parking at the north end, adjacent to Angelo Street, swells during the day as Wesley College student 'P platers', shoppers and staff from the Angelo Street shopping precinct spill into our street for parking. After hours, the street returns to its quiet state.

In its alarming haste to approve the small bar, the City of South Perth refused to engage with the residents of Waverley Street ignoring a 38-signature petition and denying us our request for consultation to protect our amenity.

One major concern of the local community is the inadequate number of parking spaces (three) for a 120 person capacity bar. The City of South Perth accepted a minimal 'payment in lieu' as their solution to this shortcoming. Residents fail to comprehend how this addresses our concerns.

With such a considerable parking shortfall, it is inevitable that patrons will use Waverley Street for parking. The applicants know this and the City acknowledges it. We believe this will lead to an adverse affect on our amenity.

### **Section 74 (1)(g)(ii)**

Leading from the small bar's rear access and adjacent to Waverley Street is an alley. At its north end, near the shopping precinct, the alley can attract loiterers and undesirables, as evidenced by occasional graffiti and litter.

The applicants claim that over half their patrons will be walking to the bar. This can only be speculation but, if accurate, some of these patrons will be walking down the alley which leads to an intersection halfway down Waverley Street – right opposite my house. Even if these 'upmarket' patrons don't have a propensity for crime and anti-social activities when affected by alcohol, I anticipate loud voices & merriment, as alcohol-fueled patrons talk loudly to each other passing our bedroom window late at night – every single night of the week. Some patrons will not be so merry, exhibiting the arguments and fighting that we must endure every Australia Day as 'tanked-up' revellers walk home after the fireworks. If granted, there will never be a reprieve and the decision never reversed.

### **Section 74 (1)(g)(ii)**

With the quiet of the street inevitably being lessened, groups of neighbourhood children will no longer be able to play ball games in the road during the day while parents gather to socialise.

The negative impacts of this establishment outweigh any social benefits and we don't want or need such an establishment in this unique and sensitive area.

Residents of Waverley Street have not chosen to live next to a small bar, yet one is being foisted upon us. Our exceptional lifestyle of living in a quiet, peaceful, community-minded street while being located close to the city is threatened. No-one wants to live next to a bar. Please don't approve the liquor license.

17 December 2015

REPRESENTATION TO THE LICENSING BOARD OF TASMANIA IN THE MATTER OF A LIQUOR LICENSE APPLICATION BY ANTHONY CHARLES LEYBOURNE SMITH FOR THE PREMISES OF DAN MURPHY'S (LAUNCESTON) CNR OF YORK STREET AND BATHURST STREET LAUNCESTON.

I OBJECT to the granting of this liquor licence on the following grounds;

1. [REDACTED] a community organisation that provides emergency relief, family support and social justice advocacy.
2. A significant proportion of the people [REDACTED] have social issues either caused or contributed to by alcohol use and abuse. Australian research shows conclusively that alcohol abuse is directly related to the availability of alcohol, particularly the off license sale of alcohol. (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3547008/> - attached)
3. The Dan Murphy's business is a bulk warehouse styled bottle shop retailer. The focus of marketing by Dan Murphy's is deep discounted alcohol, and very low priced home branded alcohol products. Research shows conclusively that price is a large factor in the determining the quantity of alcohol people with alcohol problems consume. The Australian paper 'Alcohol in Australia: Issues and Strategies' states "The price of alcohol products has an impact on the rates of alcohol consumption in a community. The literature demonstrates that, when all other factors remain unchanged, an increase in the price of alcohol generally leads to a drop in consumption and, similarly, a reduction in the price of alcohol leads to a rise in consumption". ([http://www.health.gov.au/internet/drugstrategy/publishing.nsf/content/alc-strategy/\\$file/alcohol\\_strategy\\_back.pdf](http://www.health.gov.au/internet/drugstrategy/publishing.nsf/content/alc-strategy/$file/alcohol_strategy_back.pdf) page 35 - Attached)
4. [REDACTED] deals daily with the fallout from alcohol abuse. The greatest victims from alcohol abuse are the family members. Whilst it would be easy to say that the issue is mainly found in lower socio economic communities, alcohol abuse occurs throughout every social strata. The cost to the community from alcohol abuse is enormous financially as it stretches all forms of health services, but even greater is the physical and psychological damage done to (mainly) women and children through actual domestic violence or even the trauma associated with witnessing domestic violence. Not only that but we see children who have foetal alcohol syndrome, being born to mothers who have misused alcohol whilst pregnant.

- [REDACTED]
5. [REDACTED] I can say that Launceston does not need another enormous liquor store. This new store will be larger than any other liquor store in Launceston. It is positioned in the centre of town and easily accessible to all the residents of the greater Launceston area. Based on the evidence I have attached I believe its likely that the damage to the Launceston community from alcohol abuse will increase if this new liquor license is granted. That damage will be significant because of the scale and accessibility of this new proposed warehouse liquor store. It is not in the Launceston community's best interest for another warehouse styled liquor store to open.

6. Ravenswood is one of the most disadvantaged communities in Tasmania.

A Liquor application for a new liquor store in Ravenswood was refused 2 years ago because the social impact on this suburbs residents was considered to be too great. This application for a Dan Murphy's in Launceston impacts the residents of Ravenswood in exactly the same way because it is a 10 minute drive from Ravenswood to Launceston. They do not need nor want more cheap liquor.

[REDACTED] provides many services and to the residents of Ravenswood who are working hard to create new futures for themselves and their children. Alcohol abuse remains a consistent problem for many of the families with whom we work. It is not in the Ravenswood community's best interests for liquor to be made even more available than it is already.

7. I have enclosed 3 Australian papers providing evidence for what I have said and additionally more compelling evidence around the causal links to mental health, road trauma and death, etc.

Please refuse this liquor application.

DATE: 17/12/15

[REDACTED]

[REDACTED]

[REDACTED]

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