



AHA | SA Response to Review of Liquor Licensing Act 1997 SA Government's Liquor Licensing Discussion Paper

NB: includes appendices A B & C

December 2015 / January 2016

1. Introduction

The Australian Hotels Association – South Australian Branch (AHA|SA) welcomes the opportunity to provide its submission to this review of the *Liquor Licensing Act 1997* (The Act).

The AHA|SA is the peak industry body in South Australia representing hotels and related licences including Independent Retail Liquor Merchants (free standing bottle shops) and has membership participation in excess of 84% of licensed operators.

Members include a diverse range of hospitality focussed businesses including traditional metropolitan and regional hotels, small bars and taverns, accommodation specialists (including National and International branded facilities), late night entertainment providers, functions centres, **and** independent bottle shops.

The AHA|SA canvasses its members' opinions on a regular basis via regional meetings, face-to-face discussions, electronic communication, surveys and through various sub-committee structures and forums.

It is an understatement to say that the AHA|SA had a high level of concern when hearing references to this Review by Government and bureaucrats as 'transforming liquor' and bringing 'sweeping changes' as these statements appeared to suggest outcomes had been predetermined and there was little interest in a genuinely consultative process.

This concern was reinforced by the superficial treatment in the "Liquor Licensing Discussion Paper" of the issues, challenges and complexities that surround the management and availability of liquor in South Australia.

The AHA|SA therefore welcomes both the appointment of The Hon. Tim Anderson, QC to lead this review and the formalising of Terms of Reference. His reputation, credentials and considerable experience in liquor licensing go a long way in guiding a collaborative, open and evidence-based review process which seeks the long term sustainable growth of these vital industries as well as the related food and wine sectors in South Australia.

In particular we welcome the commitment to 'consider any other relevant matter'.¹

Consequently the AHA|SA is pleased to, as a first step in this review process, provide its written submission in response to the Government's Liquor Licensing Discussion Paper and the specific questions raised within it.

The AHA|SA looks forward to additional future collaborative and productive dialogue with The Hon. Tim Anderson, QC as the review process unfolds.

¹ Letter from The Hon. T.R. Anderson, QC 18 December 2015, paragraph 2

2. General Comments on Review

2.1 “Our Vision” – Liquor Licensing Discussion Paper

The SA Government states that this review is about considering options to:

- *Encourage business activity and diversity in the liquor market*
- *Promote the live music industry*
- *Provide for a safe, vibrant and enjoyable South Australia²*

To quote the foreword of the Discussion Paper directly:

‘greater flexibility and simplicity will make it easier and more efficient for entrepreneurs to establish small licensed businesses such as small bars or food-focussed venues like tapas bars, strengthening the State’s economy and enabling SA to nurture its diverse food and wine industry’

and

‘The South Australian food and wine industry is worth over \$17 billion and accounts for 40% of South Australia’s total merchandise exports. South Australia must grow the recognition of our premium food and wine’

These are curious statements. Should the AHA|SA be led to believe the focus of the Review is just on the establishment of *new* businesses?

Is the focus the SA economy and food and wine industries? Or just new small venues? (which history shows so far are not necessarily food-focussed).

Or does ‘business activity’ mean aiming for increased growth also for larger and existing successful businesses and existing entrepreneurs?

Is the goal to have diversity or vibrancy or **sustainable** diversity and **sustainable** vibrancy? Business activity or **sustainable** business activity?

While the AHA|SA certainly agrees with the stated *intent* of the Review to ‘ensure it is still relevant and meeting the needs of the community’, it is troubling that while what would seem to be critical to SA’s longevity is **sustainable** business growth and yet there is no mention of it?

Sustainable businesses provide ongoing and longer term employment and development of staff, taxation revenue as well as the support and development of related live music and food and wine industries.

There is a continual focus and language from Government about ‘young entrepreneurs’. As good as they are (and indeed many are AHA|SA members) the ‘older entrepreneurs’ including those who continue to run award-winning hotels and venues such as The Lion, The Governor Hindmarsh and the new (and multi-million dollar) 2KW could well be forgiven for feeling that their long term investment in SA is overlooked or worse, taken for granted.

² SA Govt., ‘Liquor Licensing Discussion Paper, 2015, page 1

The AHA|SA cannot state strongly enough that all of its members, with their varied business models, have a strong and vested interest in the sustainable, long term business growth in South Australia. Simply put, NO ONE has invested more in SA, many of them for decades and generations.

As the Government is more than well aware hotels are the backbone of the live music industry hosting 80% of gigs in the metropolitan area alone (more when including regional areas). The Government also knows that SA's fine hotels and bottle shops *already* support SA's premium food and wine industries.

The existing hospitality and bottle shop businesses cannot be overlooked in any genuine review of The Act. The AHA|SA would therefore respectfully submit that the State Government needs to be careful not to 'throw the baby out with the bathwater'. The AHA|SA will not support any outcomes which ranks new entrants as more important, or provides them with unfair advantages, at the expense of the existing businesses.

The AHA|SA has recently commissioned independent research through the University of Adelaide's Centre for Economic Studies on the economic contribution of the hotel industry to South Australia.

Preliminary results of that survey demonstrate just how critical the ongoing viability of the hotel industry is to South Australia's overall economy. This is just a snapshot for the financial year ending June 2015.

- Total employment of 26,250 people – a huge 3.2% of the State's total employment
- Payments to staff of \$958 million in wages and allowances
- Payment of \$258 million in gaming tax
- \$1.3 billion in purchases - largely to local suppliers, \$963,000,000 for food and beverages.
- \$710 million in overheads (gas, water, elect, financial and insurances services, etc.)
- Capital expenditure of an estimated \$664 million over the past five years

** The full report will be forwarded on completion*

Any outcomes of this Review which detrimentally affect SA hotels and/or their viability will have a deleterious impact on the entire economy and on SA's iconic food and wine industries.

2.2 Why do we have a Liquor Licensing Act?

The Discussion Paper released on 3 October 2015 was a disappointment. It appeared to presume inadequacies in so many fundamental characteristics of The Act however it gave no background or historical context to current arrangements and made no effort to delve in any depth into the complexities of liquor administration in terms of the social, economic or health consequences of many of the statements and assumptions.

The AHA|SA respectfully suggests that the starting point of **any** review should be the questions **‘Why do we have a Liquor Licensing Act?’** or in other words, **‘Why do we regulate the sale and supply of alcohol?’**

The AHA|SA begins with the now universally accepted positions that:

- The risk of harm to individuals, families and communities from problem drinking provides a clear justification for regulation.³
- The consumption of alcohol, when undertaken in a safe and responsible way, can be a pleasurable social activity for many South Australians.
- The hospitality industry and tourism in general contribute much to the South Australian economy.
- Regulation relating to alcohol supply and consumption needs to be regularly reviewed to ensure it meets with contemporary standards.
- The challenge is to strike the proper balance between appropriate regulatory control, which allows the industry to continue to innovate to meet the community’s reasonable expectations, while at the same time remaining alert to risks and consequences of oversupply and potentially unregulated supply of alcohol.
- The risk of treating alcohol like any other commodity has the potential for significant increases in liquor outlets with a corresponding negative impact on the community and on the liquor industry.

In that context the AHA|SA takes a clear position that as alcohol is not by its nature a standard product some level of alcohol restrictions are necessary.

The next and most critical question is then ‘What then is a suitable form of regulation?’

This leads back to, as a first step, the absolute need to review and determine the most appropriate Objects of The Act in line with contemporary community expectations and the AHA|SA urges that consideration of the Objects of the *Liquor Licensing Act 1997* must form an integral part of this review.

In this regard South Australia has the benefit of observing what has occurred in other jurisdictions.

2.3 The Victorian experience with liquor licensing

In 1987 in Victoria their ‘*Liquor Control Act 1968*’ was described as ‘overly regulatory, difficult to interpret and not conducive to a vibrant and dynamic metropolitan lifestyle’.⁴ (Interestingly, this is not dissimilar to descriptions currently being used by some in relation to SA’s liquor licensing legislation).

This prompted the Victorian Government to commission Dr Nieuwenhuysen to review their 1968 Act. The subsequent “Nieuwenhuysen Report” (1986) heralded in a ‘shift of emphasis

³ Competition Policy Review Report, Treasury, Commonwealth of Australia. Canberra, 17 September 2014, page 109.

⁴ *Kordister Pty Ltd v Director of Liquor Licensing & Anor* (2012), VSCA 35 (19 December 2012), page 20 of 57, para 107.

away from regulation of the industry to other means of countering alcohol abuse' and was reflected in the updated objects of their *Liquor Control Act 1987*:

The objects of the Act is to respond to community interest by –

1. *promoting economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries; and*
2. *facilitating the development of a diversity of licensed facilities reflecting consumer demand; and*
3. *providing adequate controls over the sale, disposal and consumption of liquor; and*
4. *contributing to the effective co-ordination of efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse.* (Section 4)

The revised 1987 Victorian Act made liquor licences easier to obtain and resulted in the easing of regulatory burdens on licensees. The Act was intended to bring a 'European-style' food and drinking culture to Melbourne and Victoria and saw a relaxation of the regulation of trading hours, food services and limitations formerly applicable to ownership of liquor licences.

In the following years Melbourne and Victoria's liquor industry grew substantially and by 1998 there were over 9,000 licensed premises and over 2,050 BYO establishments. It became apparent to the community that this increase in the availability of liquor had brought unintended consequences. These included increases in the level of underage drinking, drink-driving and violent and criminal behaviour as a consequence of drunkenness, as well as an adverse effect on the amenity of communities in proximity to the licensed premises.⁵

In 1998 the legislation was amended to include '**minimisation of harm resulting from the sale and supply of liquor as the principal purpose of the Liquor Control Act.**'

The significance of harm minimisation was summarised by the Victorian Supreme Court in December 2012 as: '*Harm minimisation' as a concept is central to the National Drug Strategic Plan (1993-1997) which guided the development and implementation of alcohol and drug policies across Australia through the 1990's.*⁶

The Supreme Court also stated that:

"harm minimisation aims to reduce the adverse health, social and economic consequences of alcohol and drugs by minimising or limiting the harms and hazards of drug use for both the community and the individual without necessarily eliminating use. The approach includes preventing anticipating harm and reducing actual harm".⁷

Since that time there have been further amendments to the Victorian legislation, many of which have resulted from community concerns about the availability of liquor and the contribution of packaged liquor outlets to alcohol-related harm.

In Victoria more than three-quarters of alcohol sales are from packaged liquor outlets which many argue increases the harm relating to pre-loading, unsupervised and under-age alcohol consumption, domestic violence, drink driving and other anti-social behaviours.

⁵ Ibid, para 109

⁶ Kordister Pty Ltd v Director of Liquor Licensing & Anor (2012), VSCA 35 (19 December 2012), page 20 of 57, para 110.

⁷ "Minimising the Harm of Illicit Drug Use: Drug Policies in Australia, page 9, at <http://www.parliament.qld.gov.au/documents/explore/researchpublications/researchbriefs/2002/2002006.pdf>

The subsequent amendments to Victoria's *Liquor Control Reform Act 1998* made it clear that:

'every power, authority, discretion, jurisdiction and duty conferred or imposed by the Liquor Control Reform Act 1998 shall be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol'.⁸

This amendment was intended to **reinforce the priority of harm minimisation** in their legislation and to strengthen the way in which the Objects were applied. The current Victorian Objects of their Act are:⁹

Victorian Liquor Control Reform Act 1998

The Objectives of the Act are:

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—*
 - (i) providing adequate controls over the supply and consumption of liquor*
 - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life*
 - (iii) restricting the supply of certain other alcoholic products*
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community*
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations*
- (c) to contribute to the responsible development of the liquor and licensed hospitality industries*
- (d) to regulate licensed premises that provide sexually explicit entertainment.*

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

It is apparent from the examination of the Objects of the Victorian Act that a shift has occurred from the promotion of the liberalised, self-regulating system introduced following the Nieuwenhuysen report to an increasingly tightly controlled industry with a strong focus on harm minimisation and the protection of the community from alcohol-related violence and disorder, within the context of the responsible development of a diverse industry.

The AHA|SA would suggest that care needs to be taken in this Review to ensure that the focus on reducing red tape and promoting vibrancy does not result in the lessening of the harm minimisation purposes of liquor regulation and/or dismiss community expectations relating to the accessibility of liquor, which required the legislators in Victoria to step in and change the focus of their legislation.

This became a key recommendation of the Anderson Report following the previous review of the SA Liquor Licensing Act 1985 and included in the Liquor Licensing Act 1997.¹⁰

⁸ Liquor Control Reform Act 1998, Section 4

⁹ <http://www.vcglr.vic.gov.au/home/laws+and+regulations/legislation+and+regulations/liquor+legislation/>

¹⁰ The Hon. Tim Anderson, QC. - Review of the South Australian Liquor Licensing Act 1985, October 1985.

2.4 A South Australian Perspective

CURRENT OBJECTS OF THE SA LIQUOR LICENSING ACT 1997

The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—

- (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the **responsible service and consumption principles**) and minimise the harm associated with the consumption of liquor; and*
 - (b) to further the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls; and*
 - (c) to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and*
 - (d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and*
 - (e) to encourage a competitive market for the supply of liquor; and*
 - (f) to ensure that the sale and supply of liquor occurs in such a manner as to minimise the risk of intoxication and associated violent or anti-social behaviour including property damage and causing personal injury.*
- (2) In deciding any matter before it under this Act, the licensing authority must have regard to the objects set out in subsection (1).*

It is not clear if the contemporary standards expected from the community regarding how alcohol is provided are adequately addressed in the existing Objects of The Act. The AHA|SA believes that as a first step these Objects should be reviewed and prioritised.

It is the AHA|SA's view that matters to be included the Objects could be grouped under the following headings:

- Harm minimisation (this may be a key priority)
- Public safety
- Public health
- Public amenity (add to, not detract from)
- Development of the industry (liquor, hospitality tourism and live music industries)
- Public preference and convenience (Questions of 'needs of the public' verses 'reasonable demands' should these be considered?)
- Prevention of proliferation of licences (prevent monopolies rather than encourage competitive market)

Specific questions need to be asked, including:

- Does the current requirement to encourage a competitive market have an equal footing with harm minimisation? (AHA|SA would suggest not)
- Should concerns regarding "the risk of intoxication and associated violence or anti-social behaviour" be included as part of harm minimisation Object (a) rather than part of the 'responsible service and consumption principles (currently Object (f). The AHA|SA would say it should.

Once the Objects are determined then, and only then, should the secondary questions be considered and these should be based on determination of the appropriate structure and level of regulation necessary to administer the legislation and meet those Objects.

These questions would include:

(a) Does SA need a Commission and a Court?

The AHA|SA would contend that depending on how The Act is structured, and if there is a criteria for determining new licences, SA would likely continue to need a two tiered structure, namely the Commission for dealing with the administration of non-contested applications and a different tribunal for dealing with contested hearings.

(b) What should the structure of the regulatory model be?

Further questions would then necessarily arise, including:

- Should the public have a right to object to all or any licence category?
- How can the decisions to limit certain categories of licence from exposure to objections, or limit the geographical area be justified? If such decisions can be justified why should these same benefits not be extended to other categories of licence?
- Should alcohol facilities for on or off-premises be available at certain core hours?
- Is there a need to maintain facilities between certain hours on each day?
- Should there be obligation to provide meals? And if so, should these obligations apply to all licensees or only some classes/categories?
- If there are obligations to be open, or to provide meals, should those categories of licence (assuming that are needed) be given a level of protection from other categories which only open during peak times, or should this be left to supply and demand?

The answers to these questions should flow from a clear and up-to-date understanding of the Objects of The Act and all should make up the basis of any comprehensive review.

Getting the Objects right and in line with community expectations is essential. Secondly, requiring the decision makers to have regard to the Objects as a priority over any other considerations should be maintained. Thirdly The Act, Regulations and Codes of Practice should all be measured against the Objects of The Act and unless these statutory/administrative provisions satisfy the Objects they should not be enacted.

All of the discussion above illustrates both the complexity of the task at hand, a task that should not be rushed and that the best outcomes for both the community and those industries it most seriously affects, namely licensees, hospitality, tourism, live music, food and wine will only come from a comprehensive and independent review of The Act starting with determination of up to date Objects.

Anything else will be viewed as a cynical and opportunistic exercise with a particular outcome in mind.

3. Discussion Paper Issues/Questions

This section answers the issues/questions posed on pages 17-19 of the Liquor Licensing Discussion Paper grouped under the headings provided therein.

The AHA|SA acknowledges that subsequent to the Discussion Paper, Terms of Reference for the Review have been released and these have been taken into account when addressing questions below.

3.1 Is there too much red tape when applying for a liquor licence?

This submission has dealt with the AHA|SA's view on both the need to review the Objects of The Act and to use these Objects as the reference point and basis for any legislative and regulative requirements under The Act.

The general community view and that of the AHA|SA is that alcohol should not be treated the same way as any standard product. It therefore follows that there needs to be some level of regulation or 'red tape' to properly manage this different category of product and to meet the Objects of The Act.

The appropriate level of red tape is therefore one that effectively manages the potential ill effects while promoting the positive ones, such as SA's tourism, hospitality, vibrancy and wine offerings.

At a later and appropriate time the AHA|SA would seek a conversation about the specifics of current applications processes and the forms of regulation.

3.2 Do we need twelve liquor licence categories?

The AHA|SA would instead ask - How many categories is the 'right' number? Or, twelve as opposed to how many? One? Two? Twenty?

The point is that the actual number of licence categories is largely immaterial providing the categories are clear and meet the needs of the different business types that are engaged in the sale, supply and consumption of liquor.

The AHA|SA would not like to see a theoretical streamlining of categories which is simply 'window dressing' for a system of sub-categories. It would simply be an exercise in "smoke and mirrors" and would do nothing to improve the current system for licensees or the public.

In SA there are currently twelve categories (thirteen if the 'Limited Club' sub-category is included). These are:

1. Hotel licence (Sec 32)
2. Residential licence (Sec 33)
3. Restaurant licence (Sec 34)
4. Entertainment Venue licence (Sec 35)
5. Club licence and Limited Club licence (Sec 36)
6. Retail Liquor Merchant licence (Sec 37)
7. Wholesale liquor merchant's licence (Sec 38)
8. Producer's licence (Sec 39)
9. Direct Sales licence (Sec 39A)
10. Special Circumstances licence (Sec 40)
11. Small Venue licence (Sec 40A)
12. Limited licence (Sec 41)¹¹

When comparing with other States of Australia:

- Victoria has eight (8) categories but when the various distinct sub-categories are included the real number is 13.¹²
- NSW has seven (7) categories but include the sub-categories and the reality is 11.¹³
- Western Australia records nine (9) which expands to 15 when all sub-categories are included.¹⁴

The AHA|SA would not like to see the system simplified to such an extent that there would be only two licence categories, one for 'on-premise' and one for 'off-premise' as has been discussed in some circles. While this may be seen to be 'simplifying' in reality it would just result in a system of specific sub-categories. It is simply nonsensical to presume that two 'on-premise' - business models such as restaurants and limited clubs or two 'off-premise' businesses such as a bottle shop and a direct sales business would either want to, or be able to, trade under the same conditions.

3.3 Is there confusion as to the role of the liquor licensing framework and other legislative frameworks imposed by bodies such as planning, noise and health?

The current system of approvals both across state government departments and between state and local governments can be complex and confusing for some business owners.

This confusion could be avoided by delineating the roles of the licensing authority and Councils. Councils should continue to have a role in determining the appropriate use of land,

¹¹ SA *Liquor Licensing Act 1997*, Division 2 – Licences

¹² <http://www.vcglr.vic.gov.au/home/liquor/new+applicants/select+the+right+liquor+licence/>

¹³ http://www.olgr.nsw.gov.au/liquor_licence_apps.asp#pll

¹⁴ <http://www.rgl.wa.gov.au/liquor/liquor-applications/application-kits>

including the administration of building rules. The land use against which councils assess any application should be discernible from the Development Plan for the location (which would include guidelines as to what development is appropriate including the type of liquor licence).

A person seeking a liquor licence would firstly seek Development Approval in accordance with the Development Plan. Conditions relating to trading hours, entertainment, noise attenuation or other building or planning considerations would be determined at this stage of the application process.

Having obtained the appropriate Development Approval, an application would then be made to the liquor licensing authority who would consider its approval against issues of probity, harm minimisation and eligibility without any further intervention by Council.

This process would require Councils to be transparent and ensure that their Development Plan and any precinct rules are clearly articulated in order that applicants for liquor licences can discern the success of their application, or at least any trading conditions likely to be imposed, before embarking on an application.

The AHA|SA does not support the current process where Councils may grant a Development Approval and then intervene in the proceedings before the licensing authority.

Respectfully, the AHA|SA believes the role of Council should be to deal with issues surrounding land use and then 'get out of the way' leaving the licensing authority to deal with the specifics of the liquor licence conditions which included any Development Approvals.

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

For reasons set out above provided Council is aware that a liquor licence is to be sought they should address any land use issues consistent with their Development Plan and indicate the development conditions without intervening in the licensing authority hearing.

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

Also as set out above councils should have a role in matters relating to land use at the initial application stage with one streamlined process that deals with development approvals on the basis that a liquor licence, if granted, will include the development conditions.

It is incongruous and inconsistent that an applicant be granted development approval on the basis of a business model approved during the development application only to have this thwarted at the licensing authority because council has changed its mind, or wants to correct an oversight.

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

It is entirely reasonable that members of the public should have an opportunity to voice their views and concerns regarding liquor licence and/or development applications.

This process should be streamlined with any members of the public who might be impacted by an application having a right to object. However that right should not extend to members of the public being able to canvass the same objections at both the development process and then again before the licensing authority.

Once a licence has been granted, members of the public, councils, police or any other person adversely impacted should continue to have recourse to procedures similar to the current Section 106 of The Act —*Complaint about noise etc emanating from licensed premises*.

3.7 Should standard liquor licence conditions be developed and implemented where disagreements arise? If so, what should these conditions be based on? For example, should it be based on the licence class, zone or capacity of the venue?

The current Act prescribes the trading rights of the various categories/classes of licences. AHA|SA suggests that these conditions continue to be appropriate without the need to prescribe further standard conditions. They are, in the AHA|SA's view sufficient for councils to determine any development approvals and therefore grant any necessary land use approvals.

The current broad discretion given to the licensing authority to condition particular licences to cater for specific issues and or to address local circumstances should not be hindered or hampered by rigid 'standard conditions'.

One only needs to look at the myriad Special Circumstances licences in existence to appreciate the difficulty in crafting standard conditions. For example, the unique circumstances in remote communities where specific trading conditions have been imposed pursuant to Section 43 would not be conducive to a set of standard conditions.

3.8 Should appeals against decisions where there are both elements of liquor and planning be heard together?

For the reasons set out above the AHA|SA supports the concept of development and licensing applications relating to land use being heard together. Any appeal from that process should address the development decision, which may include the approval of an application for a liquor licence. However, once the Development Approval has been granted and the decision relating to licensing application is made by the licensing authority the AHA|SA does not support a review of the Development Approval on appeal of the decision of the licensing authority.

3.9 Should crowd controllers be approved under two Acts?

3.10 Would the removal of the requirement for the Commissioner to approve the responsible person reduce administrative burden?

3.11 Should other mechanisms be introduced to ensure appropriate responsible persons are in the industry?

For simplicity the three questions above will be addressed together.

3.11.1 Responsible Person

AHA|SA recognises the importance of ensuring that people who perform in positions of authority in licensed premises must be 'fit and proper' as per the meaning in Section 53 of the current Act and they must have the appropriate knowledge, skills and experience for the purpose. Accordingly it is accepted that it is appropriate to have a system in place which considers the 'reputation, honesty and integrity' of such people and that they are appropriately trained.

The AHA|SA notes that the changes to The Act which allowed a Responsible Person, once approved, to work in any licensed premises without the need to be approved for specific premises has reduced 'red tape' without any apparent adverse impact.

Furthermore, the Government recently removed the requirement for licensees to have Gaming Managers approved. Notwithstanding that removal there remains an obligation on licensees to appoint persons to the role and a corresponding ability for the regulators (Liquor and Gambling Commissioner and the Police Commissioner) to intervene and have a person removed from such a role. Again this change has occurred without any apparent adverse impact on the public or on licensees.

The AHA|SA commends this change and considers that a similar approach should be taken in respect of Responsible Persons. This would result in further red tape reduction. Responsible Persons would still be required to be trained and regulators would still be able to monitor integrity and appropriateness of employment.

Licensees would retain the responsibility of ensuring that the persons they appoint to the role are suitable and have the requisite knowledge and experience.

AHA|SA suggests that the current system for notification of Gaming Managers, with some slight changes, should be capable of managing the notification process and may restore the current inability of Consumer and Business Services to track the location of Responsible Persons.

3.11.2 Crowd Controllers

AHA|SA urges a review of the current definition of Crowd Controllers in the *Security and Investigation Industry Act 1995*.

The *Security and Investigation Industry Act 1995* defines the role of controlling crowds:

*“The function of controlling crowds including screening persons seeking to enter a place and managing persons who behave in a disorderly manner or create a nuisance”.*¹⁵

Advice published by the Liquor and Gambling Commissioner suggests that:

“An approved crowd controller would generally be involved in managing crowds over a period of a shift and his or her powers are not limited to removal of persons or prevention of entry.

A responsible person may from time to time be involved in the removal or prevention of entry of a person. However, if the responsible person’s role extends to general crowd control functions over a significant period of a shift that person would need to be approved as a crowd controller.

A responsible person working as a crowd controller without a crowd controller licence may be subject to disciplinary action.

*A responsible person’s main role is to supervise and manage the business. If a regular part of their duties involves the management of crowds (including eviction) they are participating in a regulated activity and must be licensed under the Security and Investigation Agents Act.”*¹⁶

Most venues have multiple Responsible Persons on duty during busy times. Generally one of the Responsible Persons (usually designated as a duty or shift manager) will have overall responsibility, but the other Responsible Persons still have the right to exercise their powers to exclude, remove and supervise crowd controllers.

Most of those Responsible Persons will as part of their duties be called upon to assist even if they are not the designated Responsible Person. In addition all on-duty staff have a responsibility to monitor crowd behaviour, levels of intoxication and be alert to any potential for disorderly behaviour and to manage persons who may create a nuisance.

While it may be said that all staff are performing the role *ancillary* to their primary role all Responsible Persons on duty are liable to have disciplinary action taken if the premises are not managed properly and therefore all have a responsibility to properly monitor patron behaviour.

The AHA|SA suggests that all staff at all times are, and should be, monitoring patrons as part of their general duties. Therefore, any employee who is monitoring patrons and/or any employee who is an ‘authorised person’ as defined in Section 4 (a) and (b) of The Act should also be exempt from holding a licence pursuant to the *Security and investigation Industry Act 1995* while performing the role of a responsible person.

The AHA|SA’s real concern is the definition of controlling crowds in Section 3 of the *Security and Investigation Industry Act*. Leaving aside the Late Night Trading Code of Practice and the

¹⁵ SA Security and Investigations Agents Act, Section 3

¹⁶ Licensee Update March 2007

persons performing the role of a 'drink marshal' as section 11A(7) of The Act already provides the exemption.

The concern centres on general staff who might be inadvertently caught performing 'crowd controlling' duties when they move around the venue and specifically when the venue is busy and they are looking out for patrons who may be showing signs of intoxication, drug taking or generally getting louder etc.

The Hotel Management Plans, required by the Code of Practice suggest that all staff should be monitoring behaviour particularly while serving tables, including outdoor areas, during functions and while entertainment is being provided. These staff are probably not performing a 'prescribed function under the code' and therefore do not have the exemption provided in section 11A(7). However, while it is acknowledged that most of the staff will be performing other duties as well, clearly at busy times this 'crowd controlling' would likely be a reasonable portion of their time.

It is also acknowledged that many of the staff performing these roles may be required to report the behaviour to a Responsible Person etc., but that does not necessarily mean that they are not managing persons within the meaning of Section 3 of the *Security and Investigations Industry Act 1995*.

An alternative position the AHA|SA would advocate would be to allow Responsible Persons who have the appropriate skills to be permitted to perform 'crowd controlling' duties by endorsement and subject to limited additional skills training, without the need for full compliance with the training obligations pursuant to the *Security and Investigations Industry Act 1995*, given that Responsible Persons have the authority to remove persons, by force if necessary and they are required to supervise approved crowd controllers.

3.11.3 Approval under two Acts

The AHA|SA does not support the need to have a Crowd Controllers approved under two Acts. The preferred position is for a licensed 'security agent' who is permitted to perform 'crowd controlling' duties to have an endorsement on their approval by the Commissioner for Consumer Affairs which would also permit them to work in licensed premises.

Following the recent changes which obviated the need to have Responsible Persons approved for individual premises there is a trend for licensed security agents to gain approval as a Responsible Person.

3.12 Should responsible persons be tested for being under the influence of drugs and alcohol while on duty?

The AHA|SA considers that licensees have adequate obligations to manage their staff including an obligation to properly manage their businesses. Any licensee that allows an employee to perform work while under the influence of alcohol or drugs runs the risk of disciplinary action¹⁷ and or sanction pursuant to the *Work Health and Safety Act 2012*.

There are already sufficient measures in place to require licensees to prevent people who are under the influence of alcohol or drugs from working.

The question that has not be asked in the Discussion Paper, although may be implied here, is whether regulators should have the ability to test licensees and/or employees for drugs and alcohol, or more precisely to breath test staff. There is a tendency to equate any level of alcohol to being under the influence and therefore if a licensee or employee has anything other than a zero reading there would be breach of some kind.

The AHA|SA does not support regulators being given the authority to randomly test licensees or employees. Like many other employers licensees must ensure their employees are not 'under the influence' and are not putting themselves or their patrons at risk. That does not imply that they should be subject to random testing by regulators, or that they should have a zero reading. To authorise regulators to randomly breath test licensees and staff, which by implication will mean that that must have a zero reading is unnecessary. If there is a suspicion that any person is under the influence, then regulators need to prove the impairment of facility rather than simply rely on arbitrary reading which might be appropriate for driving offences but not necessarily appropriate for other conduct.

Beyond current state workplace legislation the responsibility to implement and enforce individual businesses' policies and practices regarding alcohol and drugs is the responsibility of the licensee. It is the licensee's responsibility to set its own rules and policies within their workplaces and AHA|SA is opposed to extending regulators authority to randomly test employees.

3.13 Should councils have the power to declare short-term dry areas?

This question is not directly relevant to the issues of AHA|SA members providing that the current status reflecting in the Liquor Licensing (Dry Areas) Notice 2015 remains.

3.14 Should other enforcement strategies in dry areas be considered?

As above

¹⁷ Liquor Licensing Act 1997, Section 119, "Failure to properly manage premises"

3.15 How can we improve the harm minimisation provisions in our legislation?

Harm minimisation and the promotion of a safer drinking culture should be considered as a part of every application for every liquor licence and, as has been discussed at the outset, should be embedded in the Objects of The Act.

Providing the Objects of The Act are appropriate harm minimisation would then be best met through the assessment of all applications against those Objects. Subsequent individual breaches, if and when they occur, including appropriate sanctions against people who create the harm would then be dealt with at the time of the breach.

The Act, regulations and the codes of practice relating to the sale and supply of alcohol are however only part of the solution. Consideration must also be given to community education and awareness as harm minimisation is not an issue restricted to on-premises consumption.

The AHA|SA supports measures which set appropriate standards and community expectations. The AHA|SA draws attention to the General Code of Practice and the Late Night Trading Code of Practice as the appropriate vehicles to address licensee obligations and supports the continued collaborative development of these instruments to assist licensees to meet community expectation relating to harm minimisation, rather than the relying on the parliamentary process to adapt to changing trends.

In addition the AHA|SA considers that appropriate enforcement of these existing provisions is critical in ensuring a safe drinking culture and minimising alcohol related violence including the issuing of expiation notices for disorderly or intoxicated behaviour of patrons in and around licensed premises, as well as alcohol related issues in the general community where alcohol is consumed in unsupervised environments away from licensed premises.

3.16 What role should SAPOL play in the application process?

SAPOL's primary role in the application process should be to determine probity, i.e. whether the applicant is a fit and proper person to hold a licence or to be a responsible person.

Beyond that the Commissioner of Police should have no greater status in the application process than any other person or organisation.

3.17 Should the number and hours of trading of licences venues in an area be a relevant consideration?

This is not a simple question as considerations, and how they are applied, will be different depending upon the type and location of the liquor licence. Licences for on and off-premise liquor sales simply cannot be treated the same way.

What is clear is that if the Objects of The Act are right and licence applications are assessed against them and then trading hours become less important. This issue is further discussed in the AHA|SA's response at 3.20 of this Submission.

3.18 Should a retail liquor merchant's licence be limited or categorised by size?

Our response to this question is included in section 3.20 below.

3.19 Should closing times, lock-out times or last drinks be set for particular areas?

Considering these three matters in isolation of the Objects of The Act is not helpful. A preferred model would require the licensing authority to apply its discretion for individual venues or a precinct based on the Objects of The Act and based on clear evidence of the benefits of imposing such restrictions. AHA|SA does not support blanket restrictions.

While the recent review of the Late Night Trading Code of Practice after one year of operation showed largely inconclusive evidence of a drop in antisocial behaviour linked to the Code's application in the CBD, the anecdotal evidence has been that its introduction has been positive as a package of measures and not just related to the lock-out time.

Overall the AHA|SA accepts that the package of restrictions in the Late Night Precincts have had positive effect and welcomes a reduction in antisocial behaviours. More time needs to pass with the newly revised code and more evidence collected to determine the overall benefit and no further impositions, 'such as last drinks' should be applied to licenced venues in the interim.

Please see Appendix B for a copy of the AHA|SA's submission to The Late Night Trading Code Review.

3.20 Is there a need to regulate competition? If so, what regulation is appropriate and in what circumstances?

3.20.1 Community Expectations

There is regular debate on licensing deregulation in the context of the National Competition Policy and often this debate centres around new entrants and existing premises. However, these discussions often overlook the considerable research that has demonstrated a significant relationship between higher concentrations of liquor outlets and a range of alcohol-related problems.¹⁸

Therefore AHA|SA advocates careful consideration before deregulating and placing competition above or even equal to the issue of harm minimisation.

There can be no argument that the community as a whole has an expectation that alcohol will be regulated and that as a consequence so will those entities and operators who sell, serve

¹⁸ Liquor outlet concentration and alcohol-related neighbour problems, Donnelly N, Poynton S, Weatherburn D, Bamford E, & Nottage J. NSW BOSCAR 2006

and/or supply alcohol. The following are examples of some of the organisations and or reports which have been developed in response to this community expectation.

South Australian Alcohol and Other Drug Strategy 2011-2016

The State Government's South Australian Alcohol and Other Drug Strategy 2011-2016 has as its second objective to reduce the rate of alcohol-related harm. It says:



'Alcohol misuse can result in a range of social harms, including impacts on community safety and the resources of service providers, including police, health and emergency services. A range of regulatory and service responses are required to address this issue in our community, particularly by providing regulatory and environmental initiatives that encourage attitude and behaviour change around public intoxication'.

The ambition of the policy is to have a reduction in the proportion of the population drinking at risky levels, to reduce alcohol related crime in or about licensed premises, amongst other reduction measures including hospitalisations, ambulance attendances, drink driving detections and presentations at emergency departments.¹⁹

Inquiry into the Sale and Consumption of Alcohol – Thirty Sixth Report of the Social Development Committee – 5th August 2014

The Social Development Committee of the South Australian Parliament has recently concluded a comprehensive review of Liquor Licensing in South Australia. The Committee concluded that:

*"the issue for governments in setting alcohol policy through regulation and public policy mechanisms is to balance the available evidence, the interests and aspirations of people who consume alcohol responsibly with those who misuse alcohol, as well as supporting the commercial interests of the alcohol industry and recognising the benefits to the community in terms of tourism, employment and revenue."*²⁰

The Committee made twenty three recommendations which related to a range of issues including availability, licence density, responsible service etc.

The Minister for Business Services and Consumers responded to the report on behalf of Government on 2 December 2014. Within the comprehensive and detailed response was the Minister's reassurance that:

¹⁹ South Australian Alcohol and Other Drug Strategy 2011-2016, page 16

²⁰ Inquiry into the Sale and Consumption of Alcohol – Thirty Sixth Report of the Social Development Committee – 5th August 2014, page 4

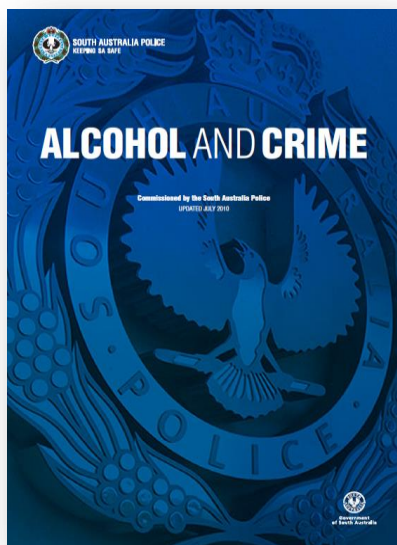
'The South Australian Government recognises that alcohol is a unique product and has the potential to cause harm. It is therefore important that appropriate regulation is in place to ensure that the Industry is held to a high standard of responsibility'.²¹

'Alcohol and Crime'

The SA Police (SAPOL) published a report 'Alcohol and Crime' in July 2010 as part of the community discussion about alcohol, violence and crime particularly in the late night

economy. The report details concerns about alcohol, its availability, venue density, venue trading hours, violence, crime and the late night precincts of Adelaide.

They advocated much tougher parameter to reflect what SAPOL see as necessary regulation and legislation.



Harper Review Panel

Most recently the Harper Review Panel when considering Australia Competition Policy acknowledged the need for alcohol to be regulated in Australia due to the harm it causes, the importance of harm minimisation as an objective of liquor licensing legislation in Australia, and the need for state and territory governments to be able to set trading hours and planning and zoning controls respective to their needs.

3.20.2 A Brief History of South Australian Liquor Legislation

The liquor industry in South Australia has long been regulated by statute. The first Licensing Act which took effect in 1932 repealed the former Innkeepers Act. The Licensing Act was amended repeatedly during the 1940's, 50's and 60's, and was finally replaced by the Licensing Act 1967-75. That in its turn was repealed by the Liquor Licensing Act 1985, which preceded the present Act.

²¹ SA Govt's response to the Social Development Committee Inquiry into the Sale and Consumption of Alcohol, page 4

3.20.3 Review of the South Australian Liquor Licensing Act 1985 - The Hon. T. Anderson QC.²²

The Anderson Liquor Licensing Review of the 1985 Act recommended significant amendments, including the removal of a number of provisions identified as anti-competitive. For example, it recommended abolition of the 'need' test in respect of:

- Wholesale licences
- Entertainment Venue licences
- General Facility licences (which became the present 'special circumstances' licences).

The Hon. Tim Anderson, QC also discussed the 'need' test in respect of other licence types. At the time he identified it as *'probably the major restriction which, on the face of it, may offend the National Competition Policy'* (p. 18).

However Anderson considered that there were several reasons why the 'need' test should remain for hotel and retail liquor merchant's licences, at least in the short term. These were:

'First, there is some truth in the proposition that a total deregulation could literally result in a bottle shop on every street corner and that would, in my view, be inconsistent with the minimisation of harm principles which I have recommended'.

'Secondly, there have been submissions both for and against the proposition that sales of liquor should be allowed in supermarkets. Up to now the Licensing Court has interpreted S.38(3) to mean that supermarkets cannot sell liquor in South Australia'.

'On the face of it, it seems to me an anomaly that someone can purchase liquor from a bottle shop which is immediately adjacent to, but separate from, a supermarket, but not within the same four walls'.

'However, once again, having regard to the principles of the minimisation of harm, I am of the view, but very marginally, that this situation should prevail at least in the short term, but that it should be subject to a very thorough review in three or four years' time. By then there should be information available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales of liquor in supermarkets.'

*'I am convinced from my own inspections and discussions within the industry throughout Australia that the standard of hotels and bottle shops in South Australia is the highest in Australia. I am concerned that an immediate total deregulation by removing the 'need' concept and allowing the sale of liquor in supermarkets and elsewhere, may not be in the best interests of the government's economic development strategy and tourism development and the wider needs and interests of the South Australian community'.*²³

The report therefore recommended that such a test remain for hotel and retail liquor merchant's licences only, and that this situation should be reviewed after three or four years.

²² The Hon. Tim Anderson, QC. - Review of the South Australian Liquor Licensing Act 1985, October 1985

²³ *ibid*, page 19

3.20.4 The Needs Test and Packaged Liquor

For the purpose of this submission the term ‘packaged/takeaway’ liquor referred to in this section refers to liquor sold for consumption ‘off-premise’.

The ‘Needs Test’ only applies to the Hotel licence and the Retail Liquor Merchant licence. **It applies to no other licence classes/categories.**

It is these two licence categories that have the capacity to sell liquor for consumption off licenced premises.

The remaining categories, Producers licence and Wholesale licences, Direct Sales licences and to a lesser extent Special Circumstances licences, with some exceptions, do not have the ability to sell a full range of liquor for off-premises consumption.

While it was not a recommendation of the Anderson Review, The Act allows for the sale of liquor for off-premises consumption by the holder of a Special Circumstances licence, but these generally fall into two categories:

- 1 Former ‘Hotels’ (held a general facility licence under the previous Act and therefore retained the right to sell liquor for off-premises consumption).
- 2 Specialised facilities that did not require (nor ever sought to sell) a wide range of packaged liquor products. They include various specialist grocers who sell exclusively imported product.

3.20.5 The Needs test

The Hon. Mr T. Anderson, QC also said in his report:

‘I am concerned that an immediate total deregulation by removing the ‘need’ concept and allowing the sale of liquor in supermarkets and elsewhere, may not be in the best interests of the government’s economic development strategy and tourism development and the wider needs and interests of the South Australian community’

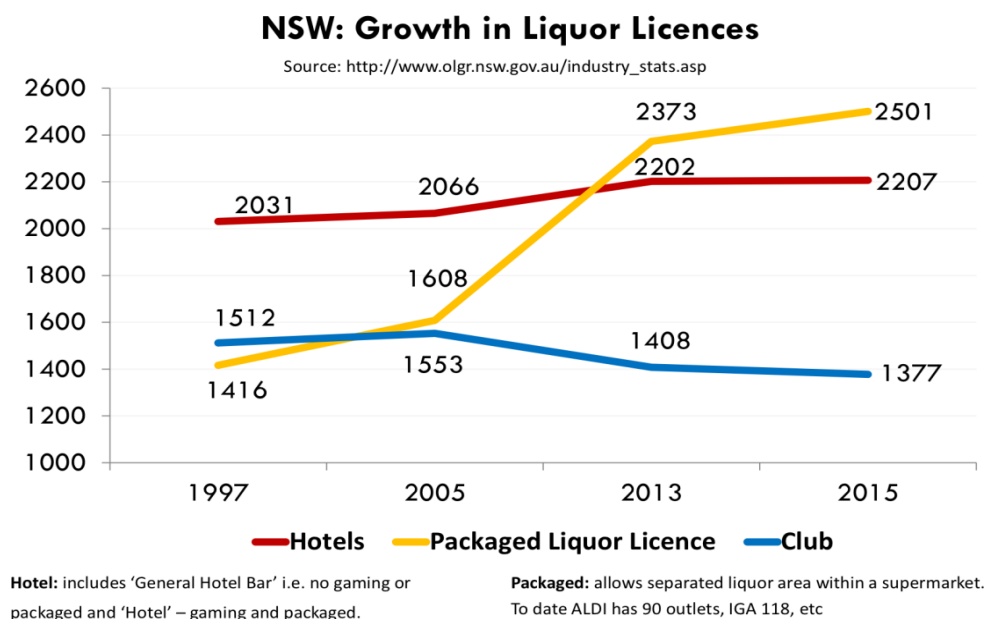
and suggested that in time;

*‘there should be information available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales of liquor in supermarkets’.*²⁴

To put it bluntly, the information is in.

Supermarket operators now dominate the retailing of packaged liquor in all States including SA even with the existing ‘needs test’. The removal of checks such as the ‘needs test’ in other jurisdictions has delivered a windfall of gigantic proportions to the national and multinational grocers. Nowhere is this better illustrated than the following graph.

²⁴ Ibid



In 2004 NSW removed the 'need test' as part of a National Competition Review and it was replaced by a social impact assessment process.

Over the subsequent seven years an additional 765 Packaged Liquor Licences were granted in New South Wales – a 47.6% increase and all were granted to the major supermarket chains and grocer banner groups.

As will be noted in the AHA|SA's response to the next question in this Discussion Paper, 'should alcohol be available in supermarkets' there is now overwhelming evidence that the removal of a 'needs test' arrangement in NSW (and similar outcomes in Victoria) has led to a massive proliferation of supermarket package outlets.



3.20.6 The "need" for a competitive environment

South Australia is a no less competitive market than the larger States. Proof of this lies in the degree of competition that can be seen in various markets for both packaged and dispensed liquor and the AHA|SA would in fact maintain that the key requirements for a competitive market are being met.

A recent example of South Australia packaged liquor price competitiveness is this Dan Murphy January 2016 catalogue (pricing effective 14 to 24 January 2016).

Dan Murphy is a Woolworths Liquor banner brand. Distributed nationally the catalogue promotes a multitude of beer, wine and spirits.

While it could be expected that the price structure for certain drinks (beer, RTDs and ciders) would be more expensive in South Australia due to SA's 10c per container deposit built into the price structure, there is no such distinction. Ninety eight percent of promoted products share the same national price irrespective of State location.

South Australians already get the 'benefit' of east coast pricing because of national chain pricing policies and strategies.

A further lessening of the needs test will not be in the interest of the community or existing small and medium enterprises, the family based hotels or the existing retail liquor merchants and will not provide more competition than that already available. It will simply further empower national and multi-national grocers.

3.20.7 Mandatory hours for a Hotel Licence

It is worth noting that the hotel licence which is subject to the 'needs test' has the widest trading rights, including the sale and supply of liquor for consumption on and off the premises, the sale and supply of liquor with or without a meal to members of the public and to those seeking accommodation (although the obligation to provide accommodation no longer exists). In addition a hotel licence authorises the sale and supply by direct sales. The hotel licence also contains mandatory obligations including:

- Minimum hours of opening: 11am - 8pm Monday to Saturday. No obligations on Sunday.
- Minimum hours for the availability of meals: 12pm – 2pm and 6pm – 8am Monday to Saturday (and Sunday if open to the public.)

Although not a requirement of The Act it is also generally accepted that hotels will be open for the sale of liquor for consumption off the licenced premises during the mandatory hours.

The protection of the licensees from competition on the basis that the public should expect a level of service came with an obligation to be open for standard hours and provide meals (and accommodation) irrespective of demand. This arrangement allowed Governments to create supply of vital infrastructure and services at no cost to the tax payer.

The vast majority of South Australian Hotels still operate those standard hours as a minimum and this in turn guarantees reliable and guaranteed access to services by the public as well as sustaining significant employment across the State.

The hotel licence's mandatory obligations reflect a system that served the State well and acted to stimulate the development of vital infrastructure and the maintenance of services including meals and beverages.

Hotel licences were given the commercial right and benefits of operating with a range of facilities for the public (although the facilities that they are now obliged to provide are significantly reduced compared to earlier times). It was that obligation to provide certain facilities to the public which in part supported the conclusion by Parliament that a new hotel licence should be granted only if there is a proved need.

Historically the element of protection that the current needs test provides to existing licensees was intended to encourage them to provide facilities that the public want, by providing an element of protection against competition.

It also reflects the conclusion that there should not be undue or unnecessary proliferation of hotel licences (and retail liquor merchant licences) but only so many as are required to meet the needs of the public. A further reason for the needs test is that the consumption of liquor is associated with certain social problems and for that reason the number of premises which the public may consume liquor (other than with meals) or purchase liquor for consumption off the premises should be limited.²⁵

If the needs test is abolished then it is difficult to justify a hotel licence retaining any obligations, especially in country areas. How will this impact the public expectation that hotels will be open and will provide meals at standard times?

The Hon. Tim Anderson, QC's observed in 1997 'that the standard of hotels and bottle shops in South Australia is the highest in Australia'.²⁶ This is, in the AHA|SA's opinion, largely true although increasingly difficult trading conditions, the number of retail liquor merchants (predominately the major retailers) now in the market and the disproportionately high operating costs of South Australian businesses in South Australia have blunted the vigorous renovation and refurbishment cycle in the last five years. Nevertheless the SA Centre for Economic Studies research on the economic contribution of hotels to the South Australian economy suggests that some \$664m has been spent on capital expenditure in the last 5 years.

3.20.8 Conclusion

There are increasing examples where the pursuit of competition policy has simply been a catalyst for the transfer of the small/medium businesses market share to national and multi-national corporations and grocers.

The most glaring examples are found in petroleum licensing. It is worth noting that the petroleum licensing system was deregulated in South Australia and now in 2016 petroleum retailing is almost exclusively in the hands of Coles (Shell), Woolworths (Caltex) and 'On the Run' which is supported by BP and Mobil.

Independent retailers and individual franchisees who were the backbone of petrol retailing and created diversity, choice and genuine competition are now mostly eliminated in the

²⁵ Liquorland (Australia) Pty Ltd & Ors v Lindsey Cove Pty Ltd (2002) SASC 17 para 31.

²⁶ The Hon. Tim Anderson, QC. - Review of the South Australian Liquor Licensing Act 1985, October 1985, para 3.5

majority of suburbs and regional centres. Petrol retailing is dominated by grocers who also cross-subsidise via shopper dockets/vouchers.

There can be no doubt however that the South Australian Liquor Licensing arrangements have served the State well. While having the highest number of Liquor Licences per adult head of population the State can at the moment boast a diverse and expanding range of licenced premises.

3.21 Should alcohol be able to be sold in supermarkets?

Supermarkets operators are not currently precluded from selling alcohol. There is no reason and great harm to be done to existing independent bottle shops and the existing iconic SA wine industry by giving even more power to supermarkets to control the wine supply chain.

Supermarket operators already have a significant presence in South Australia through the major grocers. They currently operate Retail Liquor Merchants and Hotel facilities and can sell 'packaged' liquor. These supermarket operators from time to time make application for additional licences.

The major grocers operate the brands below. Similarly a number of Foodland grocers also operate Retail Liquor Merchants often under marketing banners such as Cellarbrations.

| THE DUOPOLY BRANDS | |
|---|---|
| Woolworths | Coles |
| Dan Murphy Mac's Liquor B.W.S. Cellarmasters (Australia's largest on-line wine seller) | First Choice Liquor Land Vintage Cellars |

3.21.1 Recent Background

The issue of wine sales inside supermarkets was the subject of substantial community debate in 2013. The proposal advocated by the then Minister at that time was to allow the sale of packaged wine by supermarkets with a retail floor space of 400m² or greater. Had this model been successfully implemented then only the larger supermarket operators would have been eligible to sell wine.



The definition of a supermarket in that draft Bill went further than the perception of a traditional ‘grocer’ and included all the usual larger supermarkets (Coles, Woolworths, Foodland, only larger IGA, and soon to be ALDI) and would have also included the larger ‘**On the Run**’ 24 hour service stations, Big W, K Mart and South Australia’s 21 ‘**Cheap as Chips**’ stores.

While the “Wine in Supermarkets’ proposal was ‘promoted’ as encouraging SA based grocers to support boutique South Australia product the draft legislation permitted the opposite with smaller grocers deliberately excluded based on the minimum floor area criteria.

Similarly the ambition to assist boutique and regional South Australian winemakers was never achievable or nor, we suspect, intended.

The Minister subsequently clarified the intent of the draft legislation in his media release of 27 January 2013 –

“the proposed liquor licence cannot be restricted to the sale of South Australian wines, nor can it be restricted for any particular supermarket chains or owner.”²⁷

Much of the public debate was in fact about the implications of the proposal on the wine industry and its ability to access the retail supply chain. The draft legislation was never introduced into SA Parliament and the Minister said on 26 August 2013,

“I am now of the view that we cannot achieve the desired outcome without hurting independent bottle-shops, our local wine industry and helping Coles and Woolworths.”²⁸

The debate did however serve the purpose of focusing the Hotel, Independent Liquor Retailers, hospitality and wine industry sectors attention on the destructive nature of Supermarket operations relative to maintaining a sustainable, diverse and competitive retail liquor offering. Needless to say, the AHA|SA did not support the proposal. A copy of the AHA|SA submission can be found in Appendix C.

3.21.2 Contextualising the South Australian market place.

The following three issues are important in putting in context the challenges of liquor retailing and the realities of the market place in South Australia.

a) Consumption Patterns in Australia²⁹

Australians are drinking less alcohol now than at any time in the past 50 years, according to figures in the *Apparent Consumption of Alcohol* released by the Australian Bureau of Statistics (ABS).

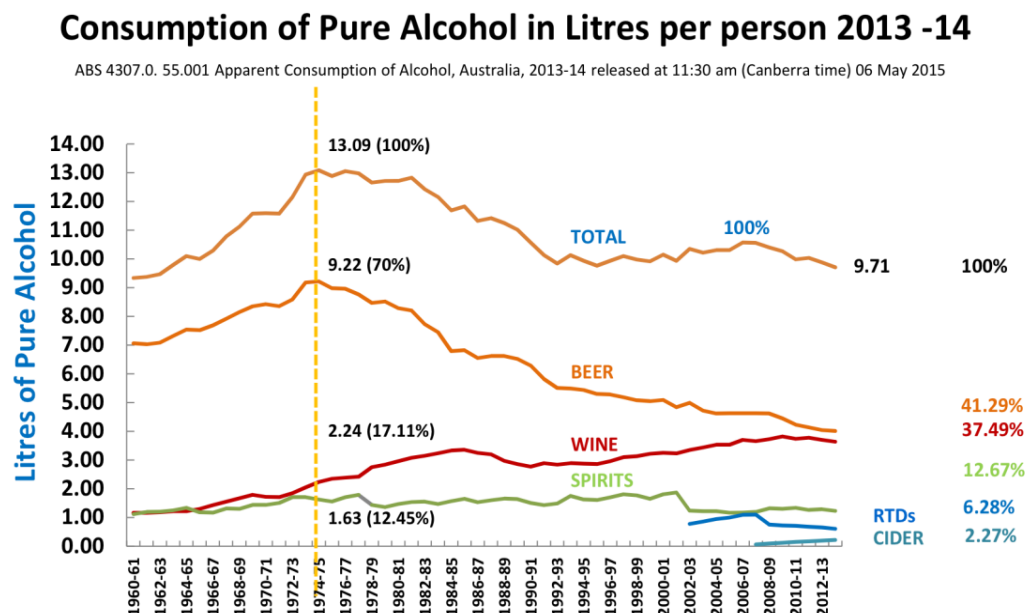
²⁷“Consultation shows wine in Supermarkets would benefit duopoly”, News Release, Monday 26 August 2013, at www.premier.sa.gov.au

²⁸ *ibid*

²⁹ ABS 4307.0. 55.001 Apparent Consumption of Alcohol, Australia, 2013-14 released at 11:30 am

These estimates of 'apparent consumption' are based on information related to supply, such as excise data on alcohol produced for domestic consumption, and data on imports.

The ABS figures show that patterns of alcohol consumption had changed significantly over the past half century.



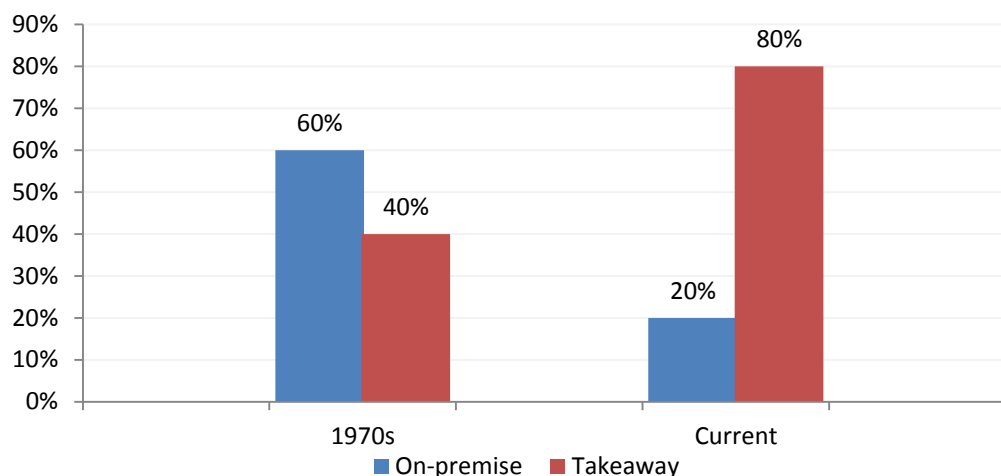
The ABS found that in 2013-14 there were 9.7 litres of pure alcohol available for consumption for every Australian aged over 15 years and over. This is the equivalent of 2.1 standard drinks per person per day and is the lowest level of alcohol consumption since the early 1960's.

The historic data series shows that at consumption peak in 1974-75 beer accounted for 70% of all alcohol consumed but now makes up 41%. Over the same period wine's share has increased to 38%."

Over the last 50 years spirits including pre-mixed drinks have grown as a share of alcohol consumption from 13 per cent in 1963-64 to 19 per cent in 2013-14. However, with the exception of cider, all categories of alcohol continue to decline.

b) On-premise consumption versus packaged/takeaway

Industry experience and producer/manufacture data suggests that the share of on-premise consumption (consumed at a licenced premises) versus packaged/takeaway (consumed at some place other than a licenced venue) is now in the vicinity of less than 20% on-premise to more than 80% off. This compares to the 1970's to early 1980's of more than 60% on-premises compared to packaged/takeaway at less than 40%.



The reasons for this shift are many and varied, including social and cultural influences such as the progressive banning of smoking in and around licensed premises.

The introduction of Random Breath Testing (RBT) in October 1981 is seen by most as the major influence over changes to on-premise alcohol consumption and premise drinking behaviour over the following decades. This was tightened further when the legal blood alcohol concentration (BAC) for drivers in South Australia was lowered from 0.08 to 0.05 g/100mL on 1 July 1991.

Other significant developments in the RBT program included significantly increased enforcement from 1997, the introduction of mobile RBT units on a limited basis (i.e. long weekends, school holidays) in September 2003 and the further enabling of mobile breath testing to be conducted on a full-time basis from July 2005.³⁰

c) Population Characteristics of South Australia³¹

Over the decade to 2014 the strongest population growth occurred in Sydney (+656,000), Melbourne (+798,000), Brisbane (+451,000) and Perth (+501,000). Sydney now appears to be set to take up the mantle from Melbourne as the leading city for population growth through FY2015 and beyond.

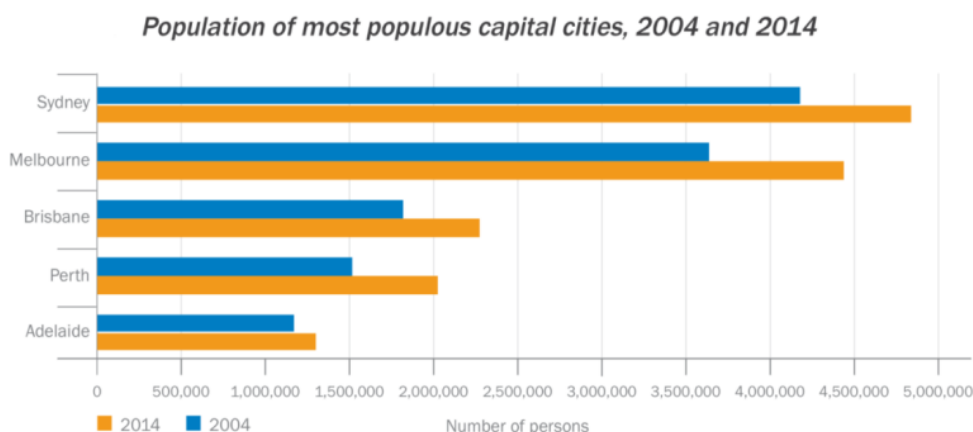
The capital cities of Perth, Brisbane and Darwin, as well as the regional major cities of Cairns, Gold Coast– Tweed Heads, Townsville and the Sunshine Coast, grew more rapidly than Melbourne and Sydney over this period. Each of these seven cities grew by at least 20% over the decade and in the case of Perth and Cairns, more than 30%.

Five of the six cities with the highest rates of population growth were in coastal Queensland, underscoring the ongoing peri-urban trend in Australia.

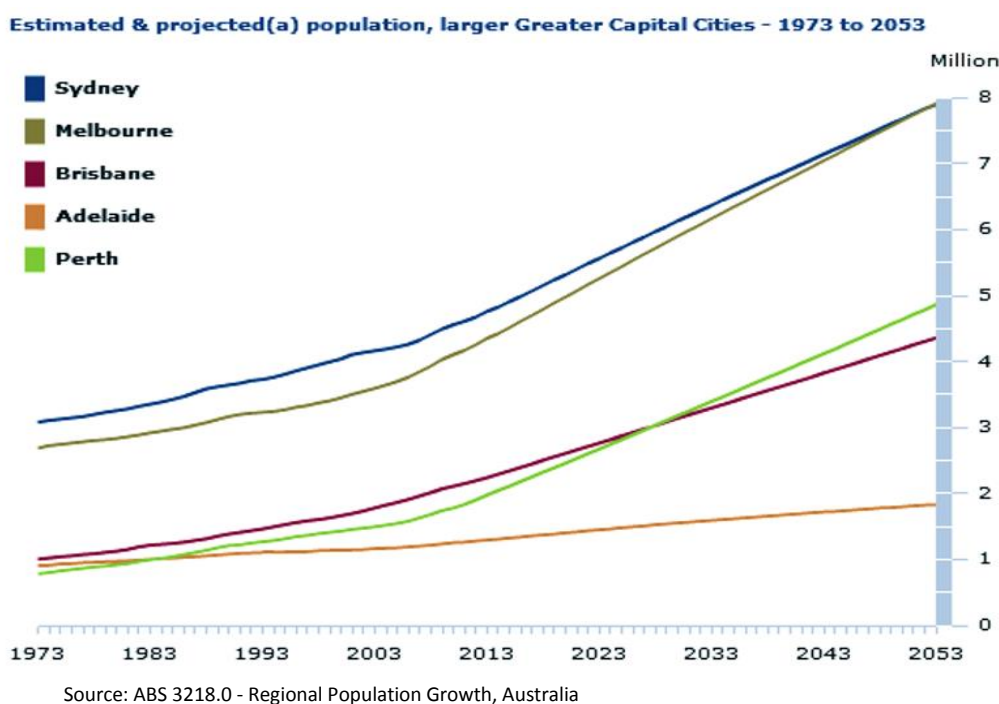
In contrast, the six slowest-growing major cities of Launceston, Hobart, Wollongong, Adelaide, Newcastle and Toowoomba experienced growth of below 1% per year from 2010-14.

³⁰ RBT: Introduction and current enforcement practices, Foundation for Alcohol Research and Education (FARE), pages 41,42.

³¹ https://infrastructure.gov.au/infrastructure/pab/soac/files/2015_SoAC



Future projections of Australian population growth see Adelaide (and South Australia) to grow significantly slower than all other mainland State capital cities – see below



3.21.3 SA Retail Liquor Licences

As at 30 June 2015 South Australia had 6,337 liquor licences an increase of 25% over the previous decade.³²

Wine producers make up 19.9% of all South Australian Liquor licences and there are 1,261 South Australian based wine producers out of a total nationally of approximately 2,362.³³

³² <http://www.cbs.sa.gov.au/assets/files/Liquorstats.pdf>

³³ Wine Industry Report on the Profitability & Dynamics of the Australian Wine Industry – August 2013

There are 196 free standing retail liquor merchants (bottle shops) in South Australia. In addition every hotel (629) has the capacity to sell packaged liquor including direct (on-line) sales. All 1,261 SA wine producers can also sell their own product via their cellar door or online. South Australia has another 483 'direct sales' licences – i.e. web based sales and this represents a 316% increase in 'on-line' direct licences in the past decade. In addition, a number of special circumstances licences are also authorised to sell takeaway liquor.

3.21.4 Supermarkets and the domination of the major grocers

Based on statistics available from company web sites, yellow pages and annual reports there are at least 442 'supermarkets' (including Aldi's promised 50) in South Australia.

| | | | |
|-----------------------|------------|------------------|-----------|
| IGA / Foodland | 225 | Aldi | 50 |
| Coles | 57 | Costco | 1 |
| Woolworths | 69 | FoodWorks | 19 |
| Cheap as Chips | 21 | | |

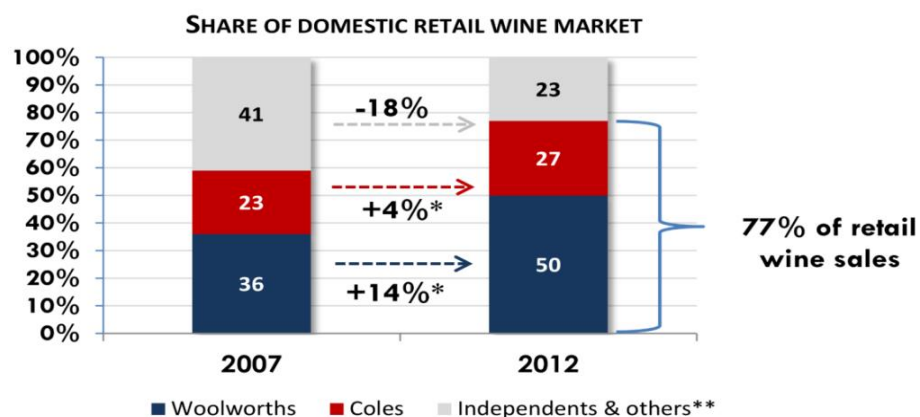
The total number increases dramatically if the 104 'On the Run' stores and the dozens of independent and franchisees like Mini Mart, Timesavers, Quix etc. and then of course K-Mart, Big W, Target are also included.

Despite the relative smaller numbers of outlets Coles and Woolworths are by far the largest in sheer retail market share and the Wine Federation of Australia (WFA) estimated that by 2012 the two major grocers (Coles & Woolworths) accounted for more than 77% of all sales of Australian bottled wine - up from 60% in 2007.³⁴ This is without the ability to also sell alcohol *inside* their existing supermarkets.

The WFA also found that the Independent Liquor Retailers market share reduced from approximately 41% of packaged Australian wine sales in 2007 to 23% by 2012.³⁵

³⁴ *Wine Industry Report on the Profitability & Dynamics of the Australian Wine Industry – August 2013 page 26*
<http://www.wfa.org.au/assets/noticeboard/Expert-Review-Report.pdf>

³⁵ *ibid* page 27



**the growth in Coles/Woolworths market share would reflect both the acquisition of existing 'independent' retail liquor merchants and 'independent' Hotels in various states and additional market gain through price, promotion and marketing influence.*

***The category 'Independents and others' would include ALDI.*

As well, the major grocers, Coles & Woolworths private labels/home brands now account for between 20% and 25% of sales compared to just 5% a decade ago.³⁶ An updated list of home brand wines can be viewed at Huon Hooke's blog site (<http://blog.huonhooke.com/who-makes-my-wine/>).

The other player ALDI, in those jurisdictions where they are licenced, also sell a limited range (around 95 product lines) of unrefrigerated predominantly 'own brands' that 'mimic' popular private labels and regional varieties.

When also including the growing on line liquor market, Cellarmasters is Australia's largest on-line liquor retailer with an estimated market share of on-line liquor sales of more than 30% of all on-line sales of wine. Cellarmasters is a wholly owned subsidiary of Woolworths.³⁷

The national and even domestic local supermarkets promote unsustainable prices and in the process devalue brands and origins i.e. commoditise wine generally.

Potentially at least 442 additional packaged liquor outlets integrated into the supermarket structure would generate more of the types of promotions shown here.

³⁶ Australian grape and wine industry Senate Submission 21 – Wines of Western Australia

³⁷ www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/supermarket-wines

This local Independent grocer treated wine as a commodity. Purchase \$100 of groceries at the Brighton Foodland and purchase a 750ml bottle of New Zealand wine for \$5! That's approximately 0.65cents per standard drink. This particular product was retailing at a competitor from \$14.95.



NB: this Foodland and Cellarbrations store are owned by the same entity.

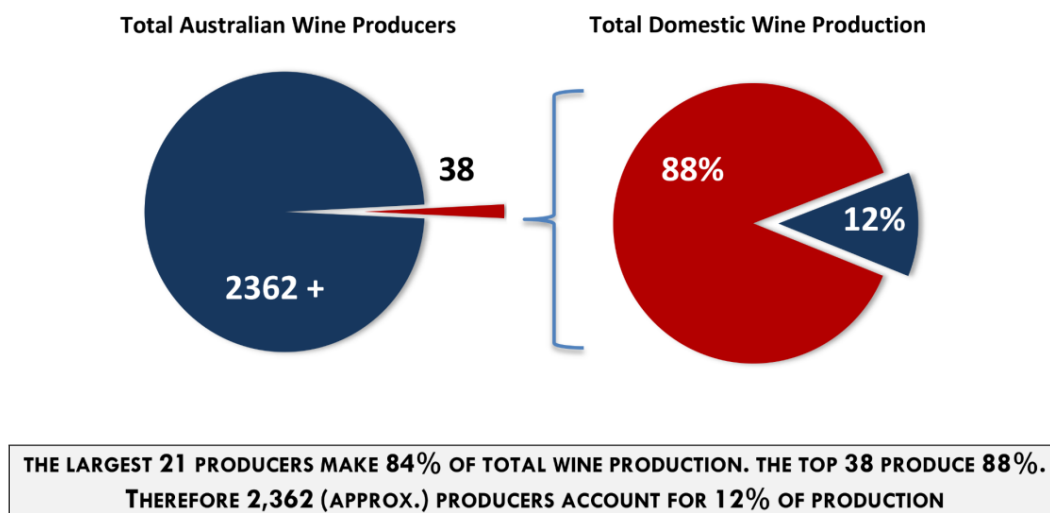
3.21.5 Impact of supermarkets sales on the Wine Industry

The WFA's Wine Industry Report - found that of the approximate 2,362+ wine producers in Australia, 38 or 1.6% of all wine producers made 88% of Australian wine (in fact the largest 21 wine producers made 84%).³⁸

That means the remaining 2,324 wine producers collectively account for only 12% of total production.³⁹ More than 50% of those SME wineries are located in South Australia.

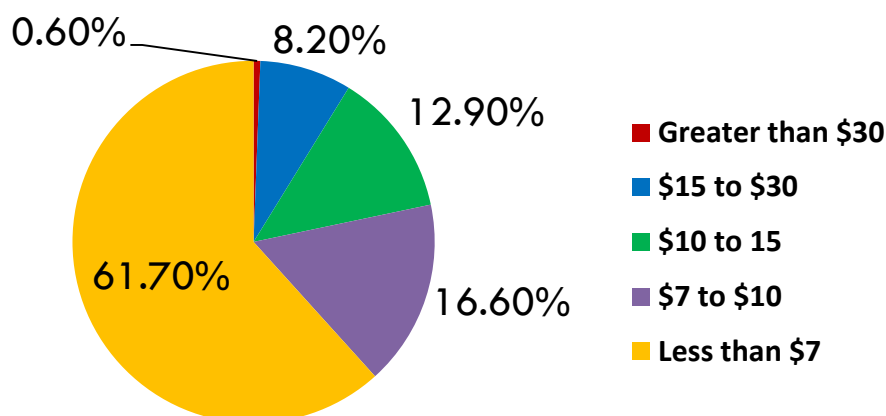
³⁸ Wine Industry Report on the Profitability & Dynamics of the Australian Wine Industry – August 2013

³⁹ Ibid page 28



The same report showed consumption of Australian wine is overwhelmingly weighted toward the lowest price. In fact the WFA research below showed **that 91.2% of Australian wine consumed in Australia retailed at less than \$15 per equivalent 750 ml container** and 78.3% was less than \$10.

Domestic Consumption (volume) of Domestic Wine Production by Retail Price Category



The vast majority of South Australian small and medium enterprise boutique wine products retail in the greater than \$15 category i.e. in the 8.8% of Australian wine that retails for greater than \$15.

These SME wineries are largely excluded from the mainstream supermarket chains and rely on cellar door, on-line and independent bottle shops and independent hotel bottle shops as their channel to market. As detailed before, the Independent Liquor Retailers market share has reduced from approximately 41% of packaged Australian wine sales in 2007 to 23% by 2012.⁴⁰ There can be no doubt that the 'independents' market share will further deteriorate as the major grocers continue to expand their already dominant market share.

⁴⁰ ibid page 27

The WFA Wine Industry report also documents how the major supermarket chains impact on wine producers volume and sales and brand strength through control of five key marketing strategies.⁴¹

1. Access to shelf space
2. Promotional activity
3. Pricing
4. Volume for exclusivity
5. Delisting of products

The WFA Review also said that the major grocery retailers expect retail margins of between 30 and 45%.

It found that winemakers may fund between 75-100% of any discount applied by these retailers.

From 2007 to 2012 the major grocery retailers captured a significant portion of these winemakers profit margin (*the review suggests retailers have achieved this via increased discounts, additional rebates based on volume sold, winery funded retailer promotions and favourable payment terms*). The review also suggests the majority of this margin was not transferred to consumers.

3.21.6 Social impacts of off-premise sales

There are several studies into the social impacts of off-premise alcohol sales.

The 36th Report Inquiry into the Sale and Consumption of Alcohol

During 2012 and 2013 the Social Development Committee of the Parliament of South Australia undertook an Inquiry into the Sale and Consumption of Alcohol. The final report is known as “The 36th Report Inquiry into the Sale and Consumption of Alcohol”.⁴² It was tabled in Parliament on 5 August 2014.

The report made some very valuable observations and recommendations in relation to off-licenced premises based on the significant amount of evidence collected and heard. Specific to package liquor are the following recommendations:

a) Availability and Density of Liquor Outlets (page 7) - Recommendation 6

“The Committee is aware of evidence that indicates a correlation between alcohol outlet density and assaults, domestic violence, chronic harms and high risk drinking amongst young people. The Committee acknowledges that the Liquor Licensing Act 1997 provides for a public interest test when considering an additional liquor licence in an area, but clearly there remain concerns about the adequacy of these provisions given the evidence put to the Committee. As such the Committee recommends that the Minister for Business Services and Consumers review the public interest test in the Liquor Licensing Act 1997, to ensure groups with an interest in preventing alcohol abuse are given due consideration when an application for a new liquor licence is considered”

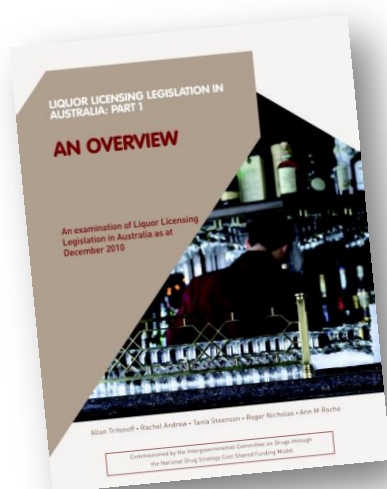
⁴¹ Ibid page 28

⁴² <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CId=302>

b) Domestic Violence (page 12) - Recommendation 21

“Given that evidence based research consistently indicates a relationship between the density of licenced liquor outlets, particularly off-licenced premises where alcohol is sold for consumption off the premises, and the incidence of domestic violence, the Committee recommends the South Australian Government, through the Minister for Business Services and Consumers, examine the issue in greater detail and consider the impact of limiting off-licenced premises to reduce domestic violence incidents.”

National Centre for Education and Training on Addiction (NCETA)⁴³



Researchers at the National Centre for Education and Training on Addiction (NCETA) at Flinders University undertook a national review liquor of licensing legislation based on liquor licensing statistics and legislation as at December 2010. The project was supported by the SA Police and the South Australian Government. The Report was released in 2012.

The review involved a detailed examination of legislation from each of Australia’s states and territories as at 30 December 2010. The project also involved interviewing police from around Australia to gain their perspectives on the effectiveness of the legislation. The authors say

that this is the first time that such an examination has been undertaken in Australia.

The following were observations made in that publication in relation to packaged/takeaway alcohol and supermarkets (their references).

- Packaged liquor stores also need to be considered when examining alcohol-related harms, as they make a substantial contribution to the overall availability of alcohol in Australia.
- It has been suggested that regions that have a high availability of packaged liquor (via high outlet density and extended trading hours) have associated alcohol-related harm even if the premises are well managed and comply with liquor licensing legislation (Nicholas, 2010; Livingston, 2011).
- An explanation for this is that off-premise liquor stores have much less control over alcohol-related harms that occur as a result of consumption of liquor they sell, compared to licenced premises where liquor is consumed on-site.
- The assaults that occur in and around on-site licenced premises are of major concern to police, however, more assaults occur on private premises than on licenced premises (Nicholas, 2010).

⁴³ NCETA Liquor Licensing Legislation in Australia Part 1 – an Overview, page 35

- Chikritzhs et al. (2007) reported that the amount of regular strength beer purchased by liquor stores for sale to the public in the Metropolitan Health Region of Western Australia, predicted 75% of the variance of assaults on private premises.
- Increased sales from liquor stores were also associated with a moderate increase in assaults in licenced venues (Chikritzhs et al., 2007), which may reflect the trend of “pre-drinking”.

3.21.7 At odds – competition policy objectives, community expectations and market place reality?

National Competition Policy was first introduced in the 1990’s and was responsible for much of the relaxation in the regulation of alcohol’s availability, impacting on trading hours and outlet numbers in Australia.

The Harper Competition Policy Review was announced in 2014 with a draft report published in September 2014 and a final report in March 2015.

According to the Harper Competition Policy Review Issues Paper competition is explained as:

*The process by which rival businesses strive to maximise their profits by developing and offering desirable goods and services to consumers on the most favourable terms.*⁴⁴

The Review then provided examples of what competition can lead to, including:

- *Lower resource costs and overall prices*
- *Better services and more choice for consumer and businesses*

The Review document then explained that competitive markets are characterised by various forms of price competition and non-price competition. The review described price competition as businesses selling the same or very similar goods to increase sales by offering lower prices.

Non-price competition is described as businesses seeking to gain an advantage over rivals by differentiating the goods, services and terms they offer to make them more attractive to buyers—a key mechanism for small and medium-sized businesses to compete with large businesses. (Grocers wreck that)

But, critically, in the report the Panel also recognised that alcohol is no ordinary commodity.

The Harper Review Panel acknowledged the need for alcohol to be regulated in Australia due to the harm it causes, the importance of harm minimisation as an objective of liquor licensing legislation in Australia, and the need for state and territory governments to be able to set trading hours and planning and zoning controls respective to their needs.

In particular, given the Panel’s view that the risk of harm from liquor provides a clear justification for liquor regulation, any review of liquor licensing regulations against

⁴⁴ Competition Policy Review – Issues Paper (14 April 2014) page 8

competition principles must take proper account of the public interest in minimising this potential harm.

“The Panel agreed with the many submitters who note that ‘Alcohol, because of its potential to cause harms, is not like other products. It is not the same as cornflakes, nor is it similar to washing powder or orange juice.’”⁴⁵

“The Panel has neither the expertise nor the resources to assess this evidence, nor to analyse the costs of harm compared to the costs of reduced competition. Such an investigation is beyond the scope of this Review.”⁴⁶

3.21.8 The non-competitive power of the major grocers

The power and market influence of the major grocers has expanded exponentially:

- the two major grocers account for more than 60% or 60 cents of every retail alcohol sale in Australia.⁴⁷
- that according to the Wine Federation Australia, the duopoly accounts for 77% of all packaged Australian wine sales which equates to 70% of all Australian wine sales when on-premise is included.
- as a result of their now overwhelming market power they control:
 - What product can access shelf space in their network
 - Promotional activity and who fund the same – usually the producer
 - Pricing – wholesale and retail – market power means they determine their purchase price
 - Volume for exclusivity – only stock if other competitor retailers are excluded
 - Delisting of products across their networks
- They are strategically, deliberately and rapidly expanding their ‘own’ brand range at the expense of private labels so as to maximise their margins at the expense of the producer.

Not surprisingly the wine sector is also extremely concerned about this domination of the wine industry by the large grocers and the impacts of giving them further power on the SA wine industry.

Following are just a snapshot of those views

⁴⁵ (Foundation for Alcohol Research and Education, DR sub, page 6).

⁴⁶ Competition Policy Review, Final Report, March 2015, PART 3, page 150

⁴⁷ IBIS Liquor Retailing in Australia: Market Research Report, at <http://www.ibisworld.com.au/industry/default.aspx?indid=398>

**PRECIOUS EARTH (ALDI)
Shiraz Merlot \$2.49**



**PRECIOUS EARTH (ALDI)
Semillon Sauvignon Blanc \$2.49**



They are strategically, deliberately and rapidly expanding their 'own' brand range

Precious Earth is one of ALDI's many 'own' brands. ALDI creates labels or 'mimics' independent brands to maximize margin. The source of grapes, the grape growers brand value is irrelevant. It's a

Wine Makers Federation of Australia

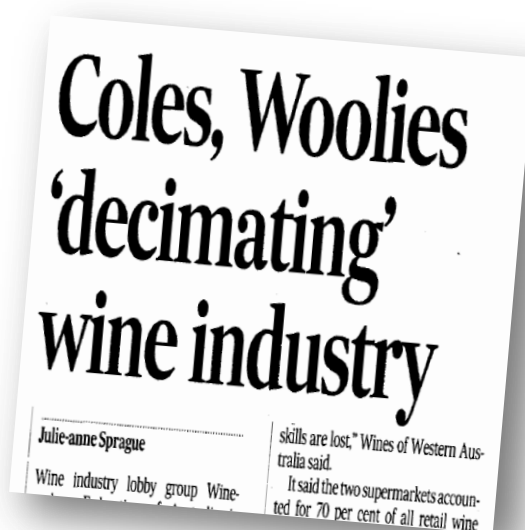
*'Coles and Woolworths can both bring their scale and vertical integration to bear so they can achieve price points some 20 to 30% lower than the comparable product produced by a (branded) winemaker.'*⁴⁸

*'...big retailers such as Dan Murphy's, owned by Woolworths, was occasionally selling home brands and cleanskins for little more than the price of bottled water or milk that a motorist might pick up from a petrol station.'*⁴⁹

Paul Evans, CEO Wine Makers Federation

Wines of Western Australia

In its submission in May 2015 to the Rural and Regional Affairs and Transport References Committee, Wines of Western Australia, the West Australian Wine Industry Association said the market dominance by the large supermarkets was "decimating" the industry.



Australian Financial Review
28 October 2015 page 12

⁴⁸ As interviewed on Today Tonight, Tuesday 22 December 2015, <http://todaytonightadelaide.com.au/stories/wine-labelling> Paul Evans, CEO Wine Federation of Australia

⁴⁹ Paul Evans speaking at a rural industry business lunch in Adelaide, October 2015.

WWA Chief Executive Larry Jorgensen said the supermarket chains were distorting the market.

"The distortion is that an entire industry is decimated. Many small businesses are precluded from a reasonable opportunity to trade, the public are misled as to the true source and nature of the products offered and legitimate traditional businesses and skills are lost,"

"In pure economic theory terms, market monopoly through the Coles/Woolworths duopoly is the key market failure affecting the Australian grape and wine industry."⁵⁰

Their submission said that other brands were displaced from the shelf in favour of 'own brands' and it was killing off wholesale operators, which could often link smaller wineries to a variety of retail opportunities (other retail opportunities means Independent hotel and retail liquor stores who use 'wide range' wholesalers as their predominant source of supply).

South Australian Wine Industry Association Inc. (SAWIA)

The South Australian Wine Industry Association Inc made similar comments in their submission to the Rural and Regional Affairs and Transport References Committee on 15 June 2015 when expressing concern over the power and influence of retailers of Australian wine in domestic and export markets;

"This is a significant issue for SAWIA members particularly the concentration of market influence by the two major retailers in the domestic market.

Given the concentration, many small to medium producers do not even consider this as a viable route to market for their wine which has the impact of seeking alternative routes which is not as extensive and more competitive.

While it is difficult to understand what government can do to assist the industry deal with this issue, it can ensure that the situation does not further deteriorate."⁵¹

Joint submission by the Clare Region Winegrape Growers Association and Clare Valley Winemakers Inc. (May 2015)

Similar comments were made by the Clare Regional Winemakers in their submission to the Rural and Regional Affairs and Transport References Committee:

"While an environment of supply-demand imbalance continues to exist and low cost imports are available as alternatives to local products, it is unlikely that retailer power will diminish."

"The small producers that make up the majority of the industry in Clare have very little ability to negotiate with the large retailers compared with the large corporate wine companies (who themselves have little bargaining power)."⁵²

⁵⁰ Wines of Western Australia submission to the Senate Inquiry into the Australian Grape and Wine Industry, page 2

⁵¹ SA Wine Industry Association, Submission to the Senate Inquiry into the Australian Grape and Wine Industry, page 7.

⁵² Hathaway, S, Joint submission by the Clare Region Winegrape Growers Association and Clare Valley Winemakers Inc, May 2015, page 6.

3.21.9 Conclusion

Since the last SA Liquor Review much has changed in the retail market place and in the community expectations and understanding of issues surrounding alcohol and its availability, including the wine industry, the domination of the grocers and their impacts on SA's wine industry as well as the social impacts of the misuse of alcohol.

With the passage of time it is now clear that with the implementation of National Competition Policy and deregulation, the retail liquor market is now **irreversibly distorted** in favour of a handful of national and multi-national corporations at the expense of thousands Independent small, medium and state and regionally based independent Hotels and bottle-shops.

As a result of this process of 'liquor reform' there is now greatly reduced choice of both retailer and of product as the major retailer's control what gets sold and in their rapid transition to 'own brand' product exclude independent brands.

The increasing dominance of supermarket brands into the wine industry is ALREADY having a major negative impact on the industry, on independent retailers and there are concerns on the harm of the increased density and availability of packaged liquor. This is even without allowing supermarkets to further increase their share.

There is no good reason to hand supermarkets even more power to sell alcohol. The only impacts will be:

- Greater market share and increased pressure on South Australian wine makers, as has been encountered by other suppliers and industries, such as milk and bread.
- Increased power of the national grocers (and soon multi-nationals such as ALDI) and an increasing flood of international cheaper wines in cleanskins and own brand, partly due to the continuing relative strength of the \$AU. It will be sold at even cheap prices and will further hurt and 'dumb down' the wine Industry.
- **Acceleration of the exit of specialist pro-local wine and bottle shops be they Independent and/or Hotel based.** These very operators already support SA wines and winemakers, provide specialised selection and advice and support the wine industry through the employment of wine making students.
- Creation of potentially at **least 442** additional packaged liquor outlets and the proliferation of packaged liquor outlets which would simply enhance and expand the current dominant position of the major grocers and Aldi.
- In a commercial environment that has record low alcohol consumption per head of population and declining and in a State that has population growth at the very lowest end of the national scale this proliferation would be a recipe for closures and the elimination of many small and medium enterprises and regional independents retailers including the more than 1,000 SA wine producers whose product will have even less channels to market and who will be in competition against price structures that are beyond their capacities.

- Any argument that suggests that such a strategy would, as per National Competition Policy ambitions, improve diversity of retailers or broaden the range of product (other than 'own brand') would be unbelievable when faced with the evidence of a decade and the reality of the market place.
- Such a proposal to expand alcohol availability would be at total odds with harm minimisation objects of the *Liquor Licensing Act* and at odds with the SA Governments own alcohol and drug strategy.

The critical questions that the AHA|SA believes need to be answered when considering any proposal to expand the sale of alcohol in supermarkets are these:

Q: Why? Why would a Government choose do this?

Q: Are the continuing lower prices for alcohol (because of brand obliteration and commoditisation) a desirable objective which is in the public interest?

Q: How is the trashing of independent wine brands and the commoditisation of wine in the interests of South Australia's food and wine strategy?

Q: Will this concept support and enhance existing employment and job opportunities across the State or rationalise those current jobs as major national & multi-national grocers take more and more market share and achieve economies of scale that cements their market domination?

Q: Will such an ambition actually encourage new entrants into the market and simulate a diversity of retailers that stimulates regional and SME investment?

Q: Will such a strategy just further concentrate market power by a few at the expense of many therefore contradicting the 'ambitions' of competition policy as has been the case in many other sectors?

Q: How will increased competition with the resulting cheaper alcohol prices satisfy a safer drinking culture and the harm minimisation principles?

3.22 Should other mechanisms be introduced to detect breaches of liquor licence laws?

The AHA|SA does not see any need for additional mechanisms (and resultant red tape) beyond the currently existing enforcement regime, which includes:

- SAPOL
- Specialist police units (LEB)
- Licensing Inspectors

The AHA|SA does not support the imposition of additional obligations, and/or lessening of the fundamental rights of self-incrimination and continues to oppose measures which unfortunately still occur including entrapment and coercion by police.

3.23 Should other penalties be introduced to assist with enforcement? (for ex. Expiation notices?)

The Act already contains extra-ordinary powers of authorised officers to require questions to be answered, documents and other records to be produced, including production of CCTV footage, even where the licensee has voluntarily installed such equipment.

There is a reduced burden of proof in disciplinary action which lessens the burden on regulators to investigate and prosecute there is no need to change or strengthen the powers.

3.24 Should we regulate the consumption or possession of alcohol by minors at private parties? If so, how?

The AHA|SA supports the concept of regulation of alcohol to minors at private parties generally along the lines of the legislation regarding 'supplying juveniles with alcohol on unlicensed premises' which was recently passed in Western Australia.⁵³

3.25 Should the State Government be working together with the Commonwealth Government to reduce alcohol access and abuse?

The AHA|SA encourages both State and Commonwealth jurisdictions to deal with issues of alcohol (and drug) access and abuse and this currently occurs through the national and state strategies. Issues such as alcohol pricing are also relevant and this has been discussed under previous responses.

3.26 Are the objects of The Act outdated?

Please refer to the AHA|SA's initial comments on this Discussion Paper and the Review of The Act. See earlier comments.

3.27 Do annual liquor licence fees need to be reviewed?

Liquor licensing fees are seen by hospitality industry as an easy revenue raiser. Treasury and SAPOL often advocate the merits of 'user pay' systems and venue contributing to the cost of

⁵³ WA Liquor Control Act 1988

its own regulation and policing for obvious reasons. The problem for operators is that the rhetoric rarely matches the reality.

Interstate experiences with licensing fees has seen great inequity, huge increases in the cost of doing business, increased red tape and compliance which in turn creates yet another 'trigger' for further infringements for failure to comply.

Interstate experience with 'risk-based' licensing fees assume greater risk simply because of the type of liquor licence held, the authorised maximum capacity (regardless of actual patron use) and trading hours, irrespective of the venues record in terms of managing patrons, management plans implemented etc.

Risk based fees as seen interstate are clumsy, unfair, ineffective and difficult to justify based on evidence.

Examples of the potential inequity can be seen in South Australia's iconic and historic hotels. These often have a high authorised capacity based on physical size and historic obligations of dining, accommodation etc., not because of current market forces. That approved capacity does not correlate with levels of business and patron activity or risk.

From experience with Government, reviewing liquor licensing fees can only be interpreted as increasing such fees. However no case is made in the Discussion Paper as to why increased fees would be required, what contribution the increased fees make to better outcomes and is there a capacity to pay?

Is there any evidence as to what better outcomes for patrons, licensees and the community could expect? The answer must be no to increased fees.

3.28 Should small venue licences currently restricted to the CBD be made available in other locations?

This question comes back to the adequacy, or otherwise, of existing licence categories as well as the intention of the creation of the small venue licence. The AHA|SA would suggest that there appears at this point to be no need to extend the category beyond the CBD and in fact to do so may be detrimental to existing small venue licensees as well as for community amenity.

The introduction of the small venue licence category specifically and solely in the CBD has been a part of The Premier's specific city-based strategy to enhance the night-time economy, draw higher attendance into the CBD, 'activate spaces' through the increased density of small venues and to create vibrancy, including live music. The resultant sixty two, or thereabouts, new venues (interestingly some operate under different licence types) at this early stage, provided a different and complimentary hospitality experience and have gone some way to enliven certain areas of the CBD.

In the Premier's own words, the State Government is aiming for a 'vibrant city and family friendly suburbs', and this together with the State's low population and economic growth

would appear at this point to be reason enough to concentrate this vibrancy and the small venue licences to the CBD.

As well, given many existing businesses outside of the CBD currently operate under essentially the same format as a small venue but with a different licence category, e.g. a restaurant or special circumstances licence, this lack of licence does not appear to have been particularly restrictive.

With regard to areas beyond the metropolitan area, hotels in regional areas play a critical role in their communities, communities which continue to economically struggle. It is no exaggeration to state plainly that any move which makes it easy for a new entrant that can operate with limited trading obligations and may simply be open for several hours on the Friday and Saturday nights would be disastrous for the existing hotels and ultimately the wider local community.

Call it restrictive if you like but if a business comes into a country town and takes the cream of patronage then it will not be long before the existing hotel with its obligations will close and with it will go accommodation and the massive support for live music and local sports teams.

While one could argue that a competitive market should mean the best venue 'wins', in reality the playing field is not level. One business has significant obligations regarding opening hours and provision of meals etc., with associated costs and one does not.

3.29 Is there a better way to regulate a producer's licence to meet the Government's strategic food and wine policy?

At present the holder of a Producers Licence can sell their own products with the capacity to expand this via a collective arrangement with other producers.

3.30 Are the statutory liquor licence conditions outdated?

The reasons for this question is not clear and the AHA|SA again contents that the Objects of The Act should be the basis for the assessment and determination of licence approvals and subsequent conditions depending on each individual business model.

3.31 Is the requirement to apply separately for an extension of trading hours or entertainment consent unnecessary red tape that impacts vibrancy?

It would appear to be a sensible approach to include all the trading conditions for a licence into one application. This would include the licence, extended trading, entertainment consent and any exemptions sought as part of the one process. This would remove any unnecessary duplication for both the applicant and the regulator to obvious detriment.

3.32 Should statutory liquor licensing conditions be captured within a code rather than legislated?

The AHA|SA cannot state more strongly that Industry simply cannot operate under the continued uncertainty that trading conditions may be unilaterally changed at the whim of one Minister or the agenda of a particular government department. Changes in statutory conditions MUST be introduced only as a result of a thorough, consultative and democratic legislative process. To do anything else risks undermining the confidence of the hospitality and makes a mockery of the legislative process.

That does not mean that codes of practice should not be used to respond to the matters that are appropriate to a code, however the code should never replace the need for proper legislative debate on the overarching policy position fundamental to good governance of an industry which make a valuable contribution to community life.

4. Miscellaneous amendments

The AHA|SA welcomes the opportunity of addressing specific procedural issues relating to the application process and provide some other suggestions which may assist both the community and the industry. These include,

- Advertising of application – simplifying the process and use of on-line options
- Awarding of costs in the licensing jurisdiction
- Mandatory conditions and obligations on certain types of licences
- Applications for alterations and redefinition
- Taking liquor from and bringing liquor on to licensed premises
- Management of noise complaints and first occupancy rights
- Record keeping and Returns
- Signage
- Disciplinary action
- Special powers and enforcement
- Barring orders, (licensee and police)

5. Conclusion

The AHA|SA is pleased to provide its initial written submission to the Review of the *Liquor Licensing Act*– a submission limited in scope to essentially the direct issues raised in the State Government’s Discussion Paper.

The AHA|SA views this submission as only a first step in a much longer consultative process on this important wider review of the entire *Liquor Licensing Act 1997* and looks forward to further discussions with The Hon Tim Anderson, QC. in this regard.

6. Appendices

Please find following:

- | | |
|------------|--|
| Appendix A | Lewis, Warren, "Liquor in supermarkets? Be careful what you wish for", Indaily, 29 Jan 2016, as at http://indaily.com.au/opinion/2016/01/29/liquor-in-supermarkets-be-careful-what-you-wish-for/ |
| Appendix B | Copy of AHA SA Submission to the Review The Late Night Trading Code of Practice and The General Code of Practice. March 2015 |
| Appendix C | Copy of AHA SA Submission to the Proposal to sell Wine in Supermarkets, March 2013. |

Friday January 29, 2016

Liquor in supermarkets? Be careful what you wish for

Opinion

Loosening restrictions on liquor licensing may throw out the checks and balances we need to protect health and safety, argues former South Australian senior liquor licensing official Warren Lewis.

[Warren Lewis](#)

Friday January 29, 2016



With over 40 years' experience in liquor and gambling, including many years as Deputy Commissioner, I read with interest the Government's recently released Liquor Licensing Discussion Paper, which closes for submissions today.

It may well be a "discussion paper" by name, but in my view it's really a proposal for change.

The liquor industry is a necessarily highly regulated industry which has served the interests of this state for almost 180 years, but if the most recent paper is to be taken at face value then I despair for the future of what could become a deregulated industry.

Advertisement

Since the '60s there have been three major reviews of liquor licensing in South Australia, in addition to many lesser reviews in between. Those reviews have recognised the need to minimise the harm associated with excessive alcohol consumption through codes of practice and other public order initiatives, while also delivering enhancements to liquor and associated industries, including outdoor dining, wine production and wine tourism.

Laws cannot remain static, otherwise they become a burden on the industries they regulate and the communities they protect. A robust statutory review program ensures that regulation keeps abreast of community and industry needs and aspirations.

However, in moving forward, we also need to reflect back on why laws have been fashioned in a particular way – to avoid throwing the baby out with the bathwater.

What on the face of it may appear anti-competitive may simply be a well-defined and responsible set of checks and balances.

I am on record as saying a previous proposal to allow supermarkets to sell bottled wine would merely create a back door through the regulatory process, in favour of new and specialised entrants, to the detriment of the state's 800 odd existing packaged liquor outlets.

I note this issue is once again up for consideration as part of the new discussion paper, the scope now seemingly broadened to include all types of alcohol, not just wine.

Also on the agenda is the question of whether the 'needs' test should remain in assessing an application for a liquor licence for a packaged liquor outlet. The current 'needs' test embraces a regulatory process which enables unsatisfied public demand in a defined locality to be met, but provides a check against proliferation of packaged liquor outlets.

Relaxing the law to allow supermarkets to sell liquor, without maintaining the 'needs' test could mirror the results of a similar 'initiative' in Victoria where the number of bottle shops have doubled over the past 20 years.

Research by Victorian health authorities has shown that eight or more packaged liquor outlets within one kilometre has led to a doubling of binge drinking in that community. Further, a 21% increase in the number of licensed premises in Victoria over a nine-year period contributed to a 28% increase in medical treatment for alcohol-related incidents and a doubling of ambulance attendances.

How does this accord with the harm minimisation objectives under the liquor licensing laws? And, how does increasing availability of cheap packaged liquor contribute to the state's reputation for producing premium bottled wine?

There is no doubt that discretion is required to maintain a balance between community and industry interests to ensure the liquor industry continues to contribute to, and not detract from, community life. That is the duty of experienced regulators given the necessary legislative tools with which to work.

What on the face of it may appear anti-competitive may simply be a well-defined and responsible set of checks and balances.

Deregulation? Let's be careful what we wish for.

Warren Lewis is a former Deputy Liquor and Gambling Commissioner for South Australia.

Review of:

**The Late Night Trading Code of
Practice**

The General Code of Practice

**Submission by the Australian Hotels
Association (SA Branch)**

10 March 2015

Introduction

The Australian Hotels Association – South Australian Branch (AHA|SA) welcomes the opportunity to provide its submission to the review of the two Codes of Practice under the *Liquor Licensing Act 1997*:

1. Late Night Trading Code of Practice
2. General Code of Practice

The comments in the submission complement those provided in person at the meeting between the AHA|SA and the Internal Consultancy Services Group of the SA State Government on Friday 27 February 2015.

Background

The AHA|SA represents a diverse range of hospitality focussed businesses that include traditional metropolitan and regional hotels, smaller bars and taverns, accommodation specialists, late night entertainment providers, functions centres, dining specialists and tourism destinations.

The Late Night Trading Code of Practice impacts AHA|SA members whose venues operate beyond 3am as well as those which only operate a gaming room only beyond 3am. The General Code of Practice impacts all licensees.

At the time of the development and introduction of the Late Night Trading Code of Practice in late 2012 the AHA|SA provided a full submission to the State Government. The AHA|SA was pleased to see a number of its concerns addressed in subsequent amendments and also welcomed the amendment requiring this review of this Code after twelve months.

General Comments

The AHA|SA and its members recognise that liquor is a specialised product which by its nature requires more regulation than other basic goods and the AHA|SA supports the General Code of Practice and the Late Night Trading Code of Practice as introduced.

The AHA|SA and its members have responded constructively to the introduction of both Codes, have adjusted their business practices to meet the requirements and the AHA|SA continues to work with its members to ensure that requirements under both Codes are met. A number of other measures to address anti-social behaviour were implemented at the time the Late Night Trading Code of Practice was introduced. These included:

- an increased visible police presence in late night economy precincts
- increased information and public transport services by Government
- changes to taxi ranks

As well, amendments to the *Liquor Licensing Act 1997* (The Act) dealing with patron behaviour were made in the middle of 2013. The Commissioner's powers were strengthened and the expiation fee for those who behave in an offensive or disorderly manner in (or in the vicinity of) licensed premises was increased from \$160 to \$500. The definition of intoxicated was also expanded to include both liquor and other illicit substances and the objects of The Act were modified to focus on minimising risk.

This range of common sense measures and amendments to The Act were supported by the AHA|SA. As a consequence however it is now almost impossible to disentangle one measure from another and to singularly evaluate which, if any, has been more or less effective than another.

In conducting this independent review the AHA|SA urges the Internal Consultancy Group to ensure that all recommendations and in particular any consideration of tightening conditions on licensees is firmly evidence based. The AHA|SA and its members will not accept further restrictions on trade based on anything else.

It is also disappointing to see from time to time what can only be described as 'pedantic policing' by Licensing Enforcement Branch staff and a lack of common sense application of the intention of The Codes. More detail will be provided when discussing each Code, suffice to say the hotel industry will quickly lose its goodwill should a common sense and reasonable approach not be taken to the application and enforcement of both Codes of Practice.

Review of the Late Night Trading Code of Practice

The Late Night Trading Code of Practice (LNC) does not impact the majority of AHA|SA members. Most however are supportive in principle with the purpose of the LNC and those directly affected have accepted the majority of the requirements as being reasonable. AHA|SA and its members have cooperated with the Government, SAPOL and others in ensuring a smooth transition to the LNC's provisions.

Some, including the huge and popular HQ (Newmarket Hotel) had already made a commercial decision to introduce a number of the security and safety provisions set out in the LNC such as polycarbonate glassware, CCTV and ID scanners prior to the LNC's introduction.

The AHA|SA acknowledges the co-operation of the Liquor and Gambling Commissioner in providing common sense exemptions to those venues who only wanted to operate their gaming rooms after the 3.00am Late Night Restricted Entry provisions (Part 4 Para 12) and who did not want to open any other part of their venue.

The AHA|SA also acknowledges the work undertaken to provide case-by-case exemptions for those venues that operate as specialty 'sports venues' to allow entry after 3.00am in

order to host events such as the soccer World Cup. This kind of common sense approach assists in promoting a good working relationship between venues and government.

The AHA|SA provides the following specific comments on the Late Night Trading Code of Practice.

1. The Adelaide Casino

The single most contentious element of the LNC continues to be the exemption of the biggest bar in town, The Adelaide Casino from the 3.00am Late Night Restricted Entry provision. It remains unreasonable and illogical that the Casino, in the heart of the late night precinct, is not included and as a part of this review the AHA|SA urges the Internal Consultancy Group to recommend its inclusion. Licensees firmly object to having to meet the LNC while the Casino does not and there is simply no evidence-based reason to leave it out.

2. Evidence Based Review

Based on media reports it would appear that the LNC has achieved some success in reducing anti-social behaviour and violence and of course the AHA|SA welcomes this.

This success has variously been reported in articles about decreased crime in the late night precinct around Hindley Street as well as reductions/changes in times and numbers of hospital admissions (sometimes contradictory).

Anecdotal evidence has also been heard by AHA|SA at various precinct meetings about the positive and negative impacts of the introduction of the LNC on daytime and night time traders and on the precinct in general. AHA|SA members have reported reductions in patronage, changes to the times people come to venues, reductions in revenue as well as increased pre-loading.

As discussed at our 27 February meeting the AHA|SA assumes that examination of evidence based data will be included in this review. The AHA|SA contends this should include police and hospital data and contain the location of incidents and times and types of hospital admissions as well as source of alcohol. If the introduction of the LNC has simply shifted the times of admissions to hospital for example (as one media report indicated) then any further onerous restrictions on trade would be both unwarranted and ineffective.

Reports by AHA|SA members also suggest that there has been an increase in pre-loading as a result of the introduction of the LNC. If this is the case it does nothing for safety and penalises licensed premises and not the source of alcohol or patrons.

The AHA also urges examination of locations of incidents. It is common knowledge that a number of tragic “coward’s punch” crimes have occurred well away from licensed premises by people who have not been into licensed premises. It is important when aiming to reduce

these awful incidents in an effective way that the real causes of the problems are determined and acted upon. This should include pre-loading and the effect of illicit drugs.

The AHA|SA strongest recommendation is that without strong evidence, with the exception of the inclusion of the Adelaide Casino into the 3.00am 'lockout' no changes should be made to the Late Night Code of Practice. Licensees have accepted it and there is simply no reason to place further restrictions on them and their businesses.

3. Part 6 of the Late Night Trading Code of Practice

Provisions of Part 6 of the LNC currently apply only to those venues that trade between 4.01-7.00am (or to close). These include:

- Clause 15 Restrictions on liquor supplied free of charge
- Clause 16 Restrictions on the sale and supply of beverages promoting rapid or excessive consumption
- Clause 17 Restrictions on the use of Glassware

The AHA|SA is aware that at the time of developing the LNC this commencement time of 4.00am was due to then existing provisions of The Act (Section 11A) which allowed the Commissioner to publish Codes of Practice:

- (fa) to impose special requirements for the sale of liquor for consumption on licensed premises between 4 am and 7 am on any day for the purpose of reducing alcohol-related crime and anti-social behaviour;

This time-based clause of The Act has since been amended and The Commissioner consequently has much broader powers with regards to Codes of Practice and their provisions.

As a result of the changes to The Act and this review, the AHA|SA expects one consideration of the State Government will be the winding back of those provisions which currently commence at 4.01am to, it is assumed, line up with the Late Night Restricted Entry commencement time of 3.01am.

If a change is contemplated the AHA|SA could accept that 3.01am would be consistent with other provisions of the LNC, however would strongly oppose any wind back prior to 3.01am.

4. Use of Closed Circuit TV (CCTV)

Part 5 Section 14 of the LNC details the use of CCTV. Paragraph (8) refers to the powers of an authorised officer to request the CCTV footage.

- (8) The licensee must ensure that the visual recordings and any information relating to the visual recordings is made available as soon as practicable upon the request of an authorised officer acting in the acting in the course of his or her official duties (noting that the authorised officer must identify the date, time and location of the premises to which the request relates as well as the reason for the request).

The *Liquor Licensing Act 1997* in Part 9 sets out the Special Powers and Enforcement. Division 1, Section 122 sets out the Powers of authorised officers.

- (1) An authorised officer may, at any reasonable time, do 1 or more of the following:
- (a) enter, remain on and inspect licensed premises (and, if entry is refused, may employ such force as is reasonably necessary to gain entry);
 - (b) require any person (whether on licensed premises or otherwise) who has possession of books of account, records required to be kept under this Act or any other records relevant to a business conducted under a licence, or to transactions involving the sale or purchase of liquor, to produce those books of account or records for inspection;
 - (c) examine, copy or take extracts from such books of account or records;
 - (d) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
 - (e) require any person who is in a position to provide information relating to the sale, purchase or supply of liquor to answer any question put by the authorised officer on that subject;
 - (f) require any such person to state his or her full name and address and date of birth.

The AHAISA has been advised of a number of instances where authorised officers have seized CCTV footage without a specific incident in mind and then used that footage to take disciplinary action about sometimes minor issues.

The AHAISA is also aware of instances of venues being told to install CCTV systems citing the LNC even though there is not a legal requirement under The Act to do so.

While not in any way condoning breaches of either the LNC or The General Code of Practice it is simply unreasonable to use CCTV footage to conduct what is really a fishing expedition and engenders no confidence or goodwill between venues and those officers. We are aware of some venues, that currently have CCTV for safety reasons but have no legal requirement to do so, considering turning it off. This is obviously not in the best interests of safety.

The AHAISA recommends that the opportunity is taken now to amend The Act and to include a provision similar to that in the LNC, stating that authorised officer must identify the date, time and location of the premises to which the request relates as well as the reason for the request).

5. Drink Marshals

Part 3 Section 10 of the LNC sets out requirements for Drink Marshals at premises which trade between 3.00am and 7.00am and have a capacity of more than 200.

10 Drink Marshal

- (1) Between 12.01 am and 7.00 am or closing time (whichever is earlier), the licensee must ensure that at any given time, at least one person who is approved as a Responsible Person under the *Liquor Licensing Act 1997* is performing the duties of a drink marshal.
- (2) The duties of a drink marshal are to monitor compliance with section 108 of the *Liquor Licensing Act 1997* and the Liquor Licensing General Code of Practice and, in particular, to monitor the behaviour and alcohol consumption of customers to reduce the likelihood of incidents of intoxication and/or disorderly, offensive, abusive or violent behaviour on licensed premises.
- (3) The drink marshal must patrol the whole of the licensed premises accessible to and occupied by customers, and must alert bar and serving staff to any concerning behaviour that is taking place by customers on the licensed premises.
- (4) If the drink marshal suspects that a person is intoxicated or observes someone behaving in a disorderly, offensive, abusive or violent manner, he/she may exercise the powers that they have under the *Liquor Licensing Act 1997* as a Responsible Person or they must immediately report this to the licensee or manager/supervisor on duty for appropriate action to be taken.

Section 11A (7) of The Act provides an exemption for a Responsible Person who is performing a 'prescribed function' under the LNC from the operation of the Security and Investigation Industry Act 1995 and the requirement to be licensed as a Crowd Controller.

- (7) A person is, in relation to the performance of a prescribed function under a code of practice, exempt from the operation of the *Security and Investigation Industry Act 1995*.

This 'prescribed function' is generally interpreted as performing the duties of Drink Marshal under the LNC. The AHA|SA submits all staff at all times are, and should be, monitoring patrons as part of their general duties. Therefore the AHA|SA submits that any employee who is monitoring patrons and/or any employee who is an 'authorised person' as defined in Section 4 (a) and (b) should also be exempt and would support an amendment in this regard.

The General Code of Practice

The AHAISA and its members support The General Code of Practice (GC). As with the LNC members have embraced the Code and the AHAISA continues to work with them to ensure compliance, including assistance with the development of Management Plans.

The AHAISA does not recommend any major changes to the GC but provides a comment on general application and 'housekeeping'.

1. General Code - Part 2 – Required Training and practices

The AHAISA supports the requirements for Responsible Service of alcohol training. However, as reported at our meeting, it is disappointing from time to time to see what can only be described as ‘pedantic’ policing of this requirement.

In the case in point, a receptionist at a venue with accommodation was asked if she had had Responsible Service of Alcohol training as she was, in effect, responsible for the minibars! This is a patently ridiculous application of the GC. Quite apart from the fact that this staff member dealt with customers only at check in and check out, it is unreasonable that she would be responsible for the consumption of alcohol from private guests while in their rooms.

Following this logic, one could expect that a night security guard might need such training, or perhaps each and every one of the 100’s of staff working in housekeeping in large accommodation hotels.

The AHAISA recommends that as well as suggesting to police in Licensing Enforcement Branch (LEB) that a common sense approach be taken that an amendment is made to the GC to include an exemption from Responsible Service of Alcohol Training for those staff who have no areas of responsibility which involve the direct service of alcohol.

Conclusion

The AHA|SA and its members have adjusted their business practices to meet the requirements of both the Late Night Trading Code of Practice and The General Code of Practice.

Apart from removing the exemption from the Restricted Late Night Entry provisions for The Casino and some housekeeping matters the AHAISA does not recommend any major changes to either Code as part of this Review.

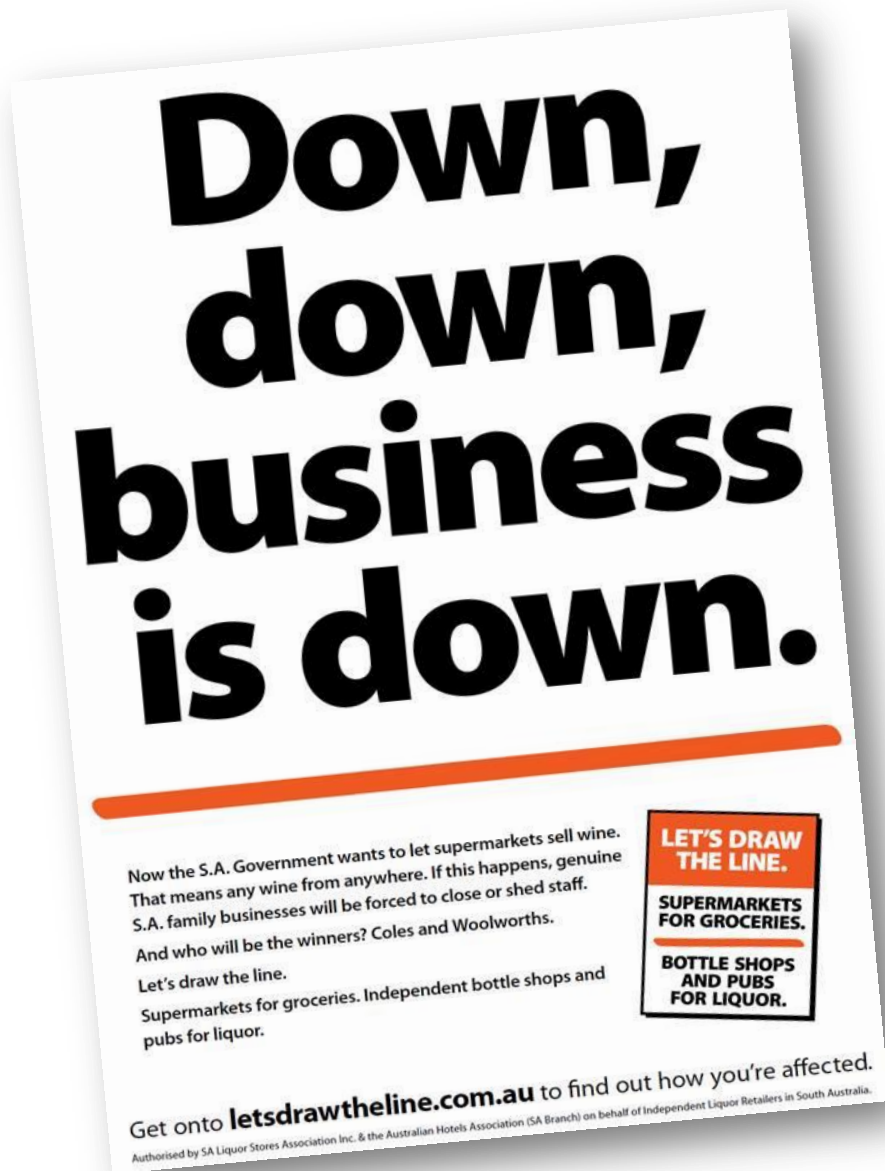
While welcoming any reductions in anti-social behaviour since the introduction of the LNC, the AHAISA would not accept any further tightening of licence conditions through The Codes unless these are strongly evidence based. In this regard the AHAISA recommends thorough examination of all available data.

The AHA|SA thanks the Internal Consultancy Group for the opportunity to meet to discuss the review and provide its written submission.

Should you wish to discuss any aspect further please contact Ian Horne or Wendy Bevan on 08 8232 4525.

Australian Hotels Association (SA Branch)

Wine in Supermarkets



**Down,
down,
business
is down.**

Now the S.A. Government wants to let supermarkets sell wine. That means any wine from anywhere. If this happens, genuine S.A. family businesses will be forced to close or shed staff. And who will be the winners? Coles and Woolworths.

Let's draw the line.
Supermarkets for groceries. Independent bottle shops and pubs for liquor.

**LET'S DRAW
THE LINE.**

**SUPERMARKETS
FOR GROCERIES.**

**BOTTLE SHOPS
AND PUBS
FOR LIQUOR.**

Get onto **letsdrawtheline.com.au** to find out how you're affected.

Authorised by SA Liquor Stores Association Inc. & the Australian Hotels Association (SA Branch) on behalf of Independent Liquor Retailers in South Australia.

AHA Submission re: Wine in Supermarkets

The Government published its 'Wine in Supermarkets' discussion paper on Sunday 27 January 2013 and seeks views on a proposal to amend the Liquor Licensing Act to create a new class of liquor licence that will allow supermarkets to sell bottled wine.

The Government seeks comments on the:

- features of the proposed new class of liquor licence;
- difficulties faced by local South Australian wine producers in accessing the retail liquor market;
- potential impacts on existing retail liquor outlets and supermarkets resulting from the proposal; and
- potential impacts on society and the community resulting from the proposal.

1. The Discussion Paper

Purpose or intent

Our preliminary comment is to say that we are left somewhat perplexed as to what is the purpose of this proposed change because of what Minister Rau said in the Ministerial media release of 27 January 2013 and subsequent media comments and what is in the draft legislation.

Below is an extract of the Minister's comments from that media release. The highlights are the authors:

*"This proposal is **primarily designed to benefit South Australian wine producers, regions and locally owned and operated supermarkets**," Mr Rau said.*

"Many of our local wineries are unable to compete or meet with the demands placed upon them by some liquor retailers.

*"**This new category of liquor licence would open up new opportunities in the market for these wine makers.***

*"**Creating the opportunity for South Australian owned and operated supermarkets to sell bottled wine produced by local wineries is a win for both industries.**"*

The Ministerial media release only later in the document says;

*"**The proposed liquor licence cannot be restricted to sale of South Australian wines, nor can it be restricted for particular supermarket chains or owners.**"*

Inconsistencies

Inconsistency in what the draft Bill says and what the Ministerial press release suggests could not be starker.

This has in our opinion led to confusion in the community reflected in many inaccurate social media responses, mistaken interpretations of the issue in media comments and general misunderstanding amongst the public and stakeholders.

As we see the draft Bill proposes;

- A new licence called a Supermarket Licence.
- To sell wine in bottles only and no larger than 750mls.
- Available to any 'supermarket' that is at least 400 square metres floor space or larger.
- That the designated area for alcohol sales must not exceed 50 square metres regardless of how much larger than 400 square metres the supermarket is.
- The area to sell wine must be designated by the Liquor Licensing Authority for that purpose.
- The floor area of 400 square metres is the area in which the public has access and goods are displayed for inspection.
- That trading hours for liquor sales will be between;
 - 8am and 9pm Monday to Friday;
 - 8am and 5pm Saturdays; and
 - 11am and 5pm Sundays.
- A Supermarket is defined as a store whose primary business is the sale of a range of food, beverages, groceries and other domestic goods.
- The definition of wine places no restriction on origin of the grapes, location of production or ownership of the brand or production facilities.

Therefore contrary to what the Ministerial statement of 27 January 2013 implied, there is no restriction as to which supermarkets can benefit from this licence i.e. **any supermarket** over 400 square metres is automatically eligible.

Further there is no restriction on the origin of the wine or the grapes used to produce the wine.

So this proposal is clearly to allow any supermarket of 400 square metres or larger to sell wine from within its store and that wine can be sourced from any region, state or country.

Consultation Process Flawed

We would make the point at the beginning of our response to this discussion paper, that the consultation process is flawed.

As this proposal has such potentially dire consequences for many established small and medium independent liquor retailers (and the entire wine producing sector) it is incredible that despite the Minister acknowledging discussions with grocers for about a year, the review was first announced a little over a week before Christmas/New Year without any prior consultation with existing Independent Retail Liquor operators (or the wine industry).

Despite emphatic denials from the Minister, we nevertheless believe this proposal to be the second part of a totally inappropriate political deal, the first part, of course, being the support by the local large South Australian grocery corporations of the Shop Distributive and Allied Employees Union (SDA) campaign for part public holidays and Rundle Mall trading on public holidays.

Extraordinarily Coles and Woolworth's supermarkets (the major beneficiaries of this Wine in Supermarkets proposal) that were never part of that campaign, will receive a massive windfall that they didn't even seek!

In fact the record would show that this Association wrote to the Minister on Monday 10 December 2012 indicating our concern that based on various rumours and suggestions that the Minister was contemplating allowing Supermarkets to access alcohol sales rights.

By some coincidence the Advertiser published within 72 hours of that letter, a story confirming that fear and recording that the Minister thought the concept worthy, detailed some aspects of a new cut down licence which appear to be largely reflected in the draft Bill and announced the release of a discussion paper early in the new year.

The 'Discussion Paper' was then released in the middle of a national public holiday (27 January 2013) when attention in South Australia was focused on an international sporting event.

Based on this series of events we can only surmise that its timing appears to be designed to discourage meaningful discussion.

Further reinforcing this, is a consultation period set at not even 5 weeks (or just 24 working days), reinforcing the perception that this is a shamefully cynical and blatant 'railroading' to get a pre-determined outcome.

Is this a genuinely objective review?

The 'Discussion Paper' is devoid of any objective assessment of the many and challenging issues surrounding availability of alcohol in any form. It offers no evidence-based research at all to validate the proposition or justify the draft Bill. It doesn't even seek input or comment from the health concern sector.

As a Government 'Discussion Paper' it includes no reference to any contribution from the South Australian Police, The Office of the Liquor & Gambling Commissioner or the Government's own Drug and Alcohol Services South Australia (DASSA). DASSA advises the Minister for Mental Health and Substance Abuse on policy relating to tobacco, alcohol and other drugs

The inclusion of draft legislation makes the intent obvious despite denials of backroom deals.

2. Industry Overview – a snap shot of the retail liquor industry

There can be no question that the packaged liquor business in South Australia is enormously competitive, driven by the major grocers and their marketing brands of:

| Woolworths | Coles |
|--|------------------------|
| Dan Murphy | First Choice |
| Mac's Liquor | Liquor Land |
| B.W.S. | Vintage Cellars |
| Cellarmasters (Australia's largest on-line wine seller) | |

But they are countered aggressively in the marketplace by co-operative groups made up of predominantly South Australian small and medium business in South Australia such as Sip & Save, Thirsty Camel and others.

However these two National operators (Coles & Woolworths) already control in excess of 59% of all packaged liquor sales in Australia and their market share is growing (in 2003 their share was around 25%). According to the Office of Liquor and Gambling Commissioner's website, they operate approx. 96 freestanding retail liquor merchants and 39 hotels. That is approximately 17% of available hotels and freestanding retail liquor merchants.

Below are the current retail liquor outlets in SA that can sell packaged liquor;

| | |
|---|--------------|
| Hotels | 611 |
| Retail Liquor Merchants | 192 |
| Wholesale Liquor Merchants (<i>can sell 10% retail</i>) | 364 |
| Direct Sales (<i>on-line</i>) | 325 |
| Total | 1,492 |

With the exception of these 2 majors, the majority of these licences are small, medium and family based.

To allow additional grocers like IGA and Foodland (a sector itself with **very high levels of ownership concentration**) to effectively automatically become Retail Liquor Merchants would therefore be tantamount to simply handing over more of small and medium liquor retailers market share to national interests because Coles and Woolworths would seek and will be entitled to exactly the same retail rights!

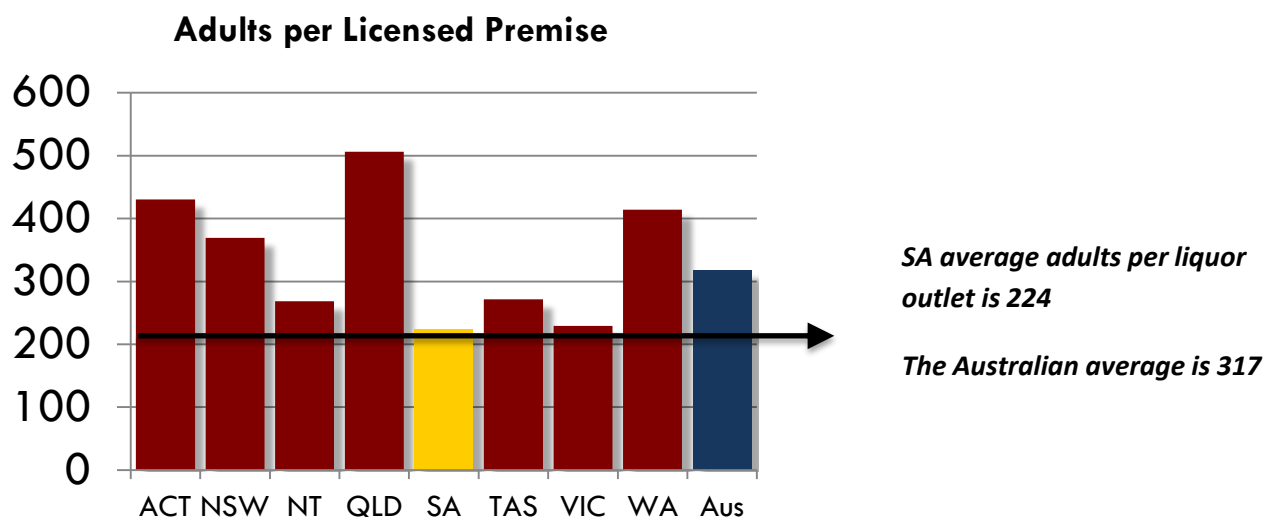
The consequences would be a drastic reduction in business capacity of many if not the majority of current licensed liquor retailers with a subsequent impact on their investment and employment capacity. Make no mistake, this proposal would ultimately hurt the very small family type businesses that the proposal purports to be assisting.

Market Saturation

In total there are more than 5752 liquor licences in South Australia and as a result this State already has the highest number of liquor licences per adult population, at 1 per 224.

| Jurisdiction | Adult population per licensed premise |
|----------------|---------------------------------------|
| ACT | 430 |
| NSW | 369 |
| NT | 268 |
| QLD | 506 |
| SA | 224 |
| TAS | 271 |
| VIC | 229 |
| WA | 414 |
| Average | 317 |

*Source: *Liquor Licensing Legislation in Australia – NCETA (launched in SA in November 2012).*



Allowing alcohol in an additional 350 eligible supermarkets would reduce the number of adults per licensed premises to 211 – this is 106 less than the Australian average.

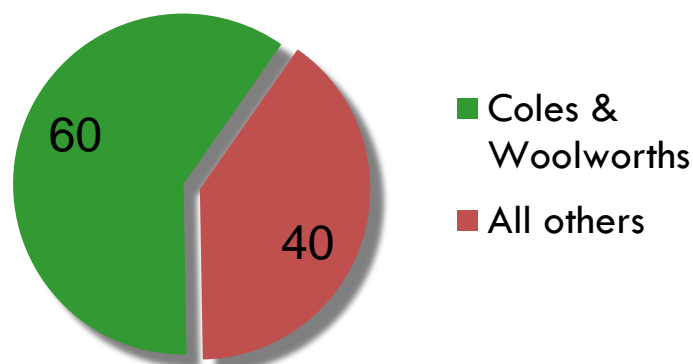
An additional 350 eligible supermarkets would also increase current non-hotel bottle shops by more than 182%.

Duopoly dominance

The retail liquor industry over the last five years has seen the growing market dominance of Woolworths and Coles at the expense of independent liquor retailers.

During the past decade, the supermarket duopoly increased their combined market share to over 59% of industry revenue¹. There has been a major shift away from bottle shops and high-street liquor retailers to big-box liquor stores. Over the five years through 2012-13, the supermarkets have taken advantage of this to strike favourable agreements with alcohol producers, discounting some

Packaged Liquor Sales as a % as at 2012



¹ Liquor Retailing in Australia September 2012 WWW.IBISWORLD.COM.AU

liquor products to levels independent retailers have struggled to compete with.

The supermarkets have also exploited their market position to reduce shelf space dedicated to branded products and push their own, higher-margin private and control-label beer and wine.²

While some analysts such as IBIS World expect the Industry as a whole to record solid revenue growth over the next five years, underpinned by a strengthening retail environment, further growth in premium categories and rising consumption of wine, spirits and premium beer in the home (at the expense of on premise), they expect Woolworths and Coles **to continue to increase their market dominance over the period**, with more big-box retail outlets expected to open around Australia.

As a result, Independent liquor retailers will continue to feel the squeeze and some will be forced to exit the industry.

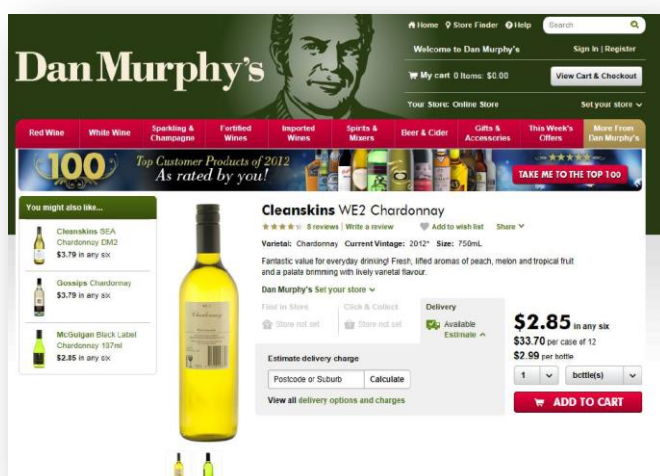
Further analysts³ suggest that in the short term intense competition across the liquor retailing industry will also weigh on revenue growth over the year, with the two supermarket giants engaging in aggressive discounting of beer and wine. The continued glut of wine in the country will also put downward pressure on wine prices, weighing on sales revenue. However, weaker consumer conditions and poor weather should also benefit the package liquor retailers as consumers cut back on eating and drinking at establishments in the on-licence market, lifting liquor sales of liquor for off-licence consumption at the expense of on-premise.

On-line liquor

Online liquor sales will continue to surge as Woolworths and Coles invest in the online channel and specialist online wine retailers benefit from consumer demand for variety and quality.

Woolworths owned Cellarmasters operates an online and direct wine sales business, but does not have a so-called “bricks and mortar” retail presence. Significantly, Cellarmasters also operates a winemaking business known as “Dorrien Estate” and is involved in businesses that provide bottling and logistics services to other winemakers.⁴ Cellarmasters is Australia’s largest on-line liquor outlet

that already accounts for 33% of all on-line sales.



There is no doubt that the acquisition of Cellarmasters was designed to both protect Woolworths’ position in the liquor market and to further extend the Woolworths tentacles throughout the wine supply chain.⁵ Online liquor retailing and direct sales operations by companies such as Cellarmasters will obviously be a growing threat to

² ibid

³ ibid

⁴ <http://www.thepunch.com.au/articles/Woolworths-the-fresh-booze-people/>

⁵ ibid

the bricks and mortar liquor stores including Woolworths and Coles.

With consumers increasingly going online to buy products, it's inevitable that consumers will buy more and more liquor online. Put simply, consumers will increasingly shift their buying preferences from retail outlets (or bricks and mortar operations) to online retailing websites.

What about the existing Independent Liquor Retailers in SA?

The Minister John Rau referred to Independent Liquor Retailers on 5AA's Leon Byner Show (Tuesday, 29 January) as the "few boutique so called wine shops".

The 'few' in fact are many hundreds of independent retail liquor stores, wholesale liquor merchants, plus 325 direct liquor sellers (i.e. on-line – many specialising exclusively in South Australian boutique products), in addition to some 600 hotels and 634 cellar doors i.e. producers.

The retailers trade under various cooperative marketing banners such as Sip & Save, Thirsty Camel, Cellarbrations, Bargains etc. They use cooperative buying and marketing arrangements to compete against the massive market clout of Coles and Woolworths but they are in fact predominantly small, medium and family based. A significant number are regionally based. They employ locals and invest in South Australia.

The Independent bottle shop sector will be the big loser as up to 300 additional outlets come into the market because these new additional outlets will be dominated by Coles and Woolworths.

What about Coles and Woolworths and their current liquor sales?

Coles and Woolworths already control over 60% of the liquor sales in Australia. In South Australia they sell alcohol from licensed liquor stores they have purchased from other operators or applied for new sites in their own right. A number of SA based grocers also own and operate licensed liquor stores. This proposal will give Coles and Woolworths the opportunity to sell wine in their supermarket aisles as well, giving them even greater market share and market power to extract even better prices from wineries. And we know if a winery (like a dairy) doesn't play ball on achieving 'efficiencies' then their product may be excluded.

3. Industry Overview – a snap shot of wine manufacturing

Importance of the retail liquor sector

The liquor retailing industry is one of the most important markets for wine makers because the wine industry is highly reliant upon orders from retailers. Retail Bottle shops (Retail Liquor Merchants and Licensed Hotels) are the crucial access point to consumers.

Hotels, pubs, taverns and bars are also key links to final consumption of wine, so manufacturers need to establish and maintain good relationships with owners of these establishments.

However, many analysts identify the major concern for wine producers as the increasing dominance of Coles and Woolworths in liquor retailing. Woolworths and Coles have aggressively increased their presence in the liquor retailing market in recent years, expanding the number of Dan Murphy's, Woolworths Liquor, BWS, Liquorland and First Choice outlets in Australia.

During the past five years, the supermarket giants' share of the Australian alcohol retailing market increased to over 60%. This figure will only increase with plans to open another 270 stores between them in the next two years.⁶ This dominance in liquor retailing has given Woolworths and Coles significantly more bargaining power over wine producers. The market-wide discounting of these two operators has contributed to limited wholesale price growth over the past five years.

Private Label Liquor (own brands)

Increasingly, the supermarket duopoly has also exploited its market power to reduce shelf space for branded products and push their own label and control label wines. Woolworths recently reported that own-brand wine sales were the biggest growth area in its liquor retailing business over the first half of 2009-10, with brands like Baily & Baily, Crittendon and Vivant growing strongly.⁷

Supermarkets drive sales of own label wine by undercutting branded products, depressing prices and undermining producers' profitability. IBIS World suggests shelf space dedicated to private-label beer, wine and spirits will increase over 2012-13, as Woolworths and Coles flex their muscle across the supply chain.

This will benefit the supermarkets because they derive much stronger margins from private-label products at the expense of the branded products.

Major Domestic Markets

The following is an analysis of the nature of domestic markets for wine manufacturers. It is based on the IBIS World Industry Report C2183 – Wine Manufacturing in Australia September 2012.

The largest market segment, **domestic wholesale wine merchants**, account for 61.6% of the wine industry revenue. Wholesalers (of which there are 634 in South Australia) distribute wine at liquor retailers, pubs, restaurants and other hospitality venues and to supermarkets. Wholesalers however, are accounting for a declining proportion of sales from the industry as the liquor retail segment consolidates i.e. Coles and Woolworths increasing duopoly power.

Direct domestic sales account for an estimated 21.6% of annual sales. Some major players have their own direct sales distribution capacity (e.g. mail order and wine clubs), thereby bypassing wholesalers.

Downstream liquor retailing is becoming more consolidated, leading to an increasing proportion of sales direct to retailers. Coles Group and Woolworths purchasing power has grown significantly, and their rising share of the retail liquor market explains the increasing sales direct to retailers rather than through wholesalers.

While a small proportion of sales are made direct to the public through **cellar door sales** (around 8.9% of domestic sales) **and winery tours** (In South Australia, more than 900,000 people visit winery cellar doors each year, spending about \$340 million) **cellar door sales** are a particularly important market segment for smaller producers and premium wine manufacturers because they control

⁶ IBIS World – Wine Manufacturing September 2012, page 9

⁷ *ibid*

distribution and margin. Larger manufacturers make proportionally fewer sales at the cellar door, however many large wineries maintain a presence in this segment.

Mail orders and online purchases of wine are increasing, a method of delivery which bypasses retailers. These are undertaken both by wineries as part of their direct-to-public sales and by wholesalers.

It's of importance to note that IBIS World comment that at the niche end of the industry, small premium wineries can compete successfully with just a cellar door and small selection of specialty retailer distributors.⁸

What are the consequences for the wine industry?

Increased power of the Nationals (and soon multi-nationals) will mean a continued and increasing flood of New Zealand, South African and Chilean product in cleanskins and own brand because of the continuing strength of the \$AU. It will be retailed at between \$6 and \$12 and will further dumb down the wine industry.

This new 'competition' will see the exit of specialist pro-local wine shops, the very operators who support SA wines with selection, range and advice. Add in the added power of a petrol/docket reward and it's hard to see any benefit to wine. As many experienced wine industry marketers concede, it will just get much harder for wine.

But Foodland saying they will pledge to only sell SA wine?

Such a pledge is unenforceable and not binding on any banner member of Foodland. It is certainly not a commitment given by Metcash who own the IGA brand. The legislation can't and won't enforce such a 'pledge' and of course such undertakings have no impact on Coles, Woolworths or other multi-nationals marketing plans.



The Foodland and IGA groups are dominated by two big players (Drakes and Romeos). Yet the actual IGA brand is owned by South African multi-national Metcash (capital value of \$3.44B). Metcash just happens to own South Australia's only remaining wide range liquor wholesaler ALM. Australian Liquor Marketers share the same warehouse complex on Findon Road with sister organisation IGA Food, Foodland and Drakes. IGA operators and Foodland have exclusive supply arrangements with Metcash. Metcash also owns and controls the Cellarbration liquor brand Australia wide

⁸ ibid page 27

and IGA Liquor interstate.

IGA Liquor stores (free standing) interstate are as aggressive in their marketing as Coles and Woolworths because they have to compete to get the customers interest. They don't sell exclusively state or regional wines but are driven by price. SA will be no different.

Senior Drake Executive Phil Shayler told Channel 9 news on Sunday 27 January 2013 when responding to the potential opportunity of selling wine;

'We've gotta keep those two big guys honest and another player in the market can only help that'.

That sounds like a price war.

4. Potential Impacts on Society

It is ironic that at the same time as the Minister raised this proposal in the media, a substantial report on liquor licensing in Australia was published by the National Centre for Education and Training on Addiction (NCETA) based at Flinders University. The report was supported by SAPOL. One of its key findings was:

"Many licensed premises are not problematic, most are well run and operate within the law. However, the increased availability of alcohol in general (especially where associated with cheaper prices and easier access to take-away products) can exacerbate alcohol-related problems in the community, further highlighting the importance of both the role of liquor licensing legislation and its effective and appropriate enforcement."

At the very same time, a Deakin University Report found:

"Drinking levels are clearly increasing, pre-loading is a bigger issue, venues are open later than they used to be, an issue for all of us to look at is off-premise and the sale of pre-packaged liquor".

**See Sydney Morning Herald front page story, Tuesday, 11 December 2012.*

This proposal seems to run counter to these two reports.

The control of liquor via licensing regulation is the accepted method in developed societies because of concerns over the impact of alcohol on the community and the issue of availability versus harm. As a result, quite severe controls are exercised to manage and oversee the sale and distribution of the product.

Having said that, it is not an area of expertise that the Association is well credentialed. The Association has been a strong advocate against more or increasing restrictions on the conduct of licensed premises and the types of promotions that are part of a legitimate and responsible business model, however the AHA does believe that unfettered access to alcohol products can and does undermine initiatives to promote the responsible service of alcohol.

We have always advocated an effective licensing regime that controls access to, and places effective responsibility on, sellers of alcohol products. While we are often accused of self interest in this area it is clear that the controls around venues that sell for 'on premise' consumption are increasingly

stringent yet no such effort or energy is applied to the area that supplies some 80% of all alcohol i.e. packaged liquor.

Current Industry statistics say that between 20% and 25% of alcohol is consumed in a licensed premise i.e. a restaurant, hotel, licensed club, nightclub etc. and 75% to 80% is purchased in packaged form from licensed bottle shops and hotels, cellar doors, wholesalers and increasingly on-line to be consumed somewhere else. That somewhere else may be in the home (whether supervised or not), the park, street, on public or in private transport, at flats, the beach, other houses, parties, gatherings, at sporting fields etc. It is this proposal that will increase sales in the favour of off-premise. It is this proposal, which will contribute to the phenomena of pre-loading.

A Health Industry Perspective

The following is a range of views from various researchers and Alcohol and Drug research organisations that are emphatic in their objection to increasing availability of alcohol.

"Putting alcohol on supermarket shelves, filling aisles with cheap booze, is going to make things worse,"

INCREASING alcohol availability through supermarket sales is "dangerous and it's going to kill people", says one of Queensland's leading alcohol researchers.

Professor Jacob Najman said the number of people who died from alcohol use exceeded the number who died from cocaine, heroin, ecstasy, amphetamine and all other illicit drugs combined, by five to 10 times.

Mr. Najman, from the University of Queensland's Queensland Alcohol and Drug Research and Education Centre, said alcohol was now the third biggest contributor to death around the world.

He said research showed a clear connection between alcohol availability and the harm it caused.⁹

Source: Professor Jake Najman, Director of the University of Queensland's Alcohol and Drug Research and Education Centre, 23 Feb 2013

In Michael Livingston's study, he found that between 1996 and 2005, the number of on-premise licences in the postcodes analysed increased by 1,942, while the number of general licences increased by 77 and the number of packaged licences increased by 359. Based on the estimates from this study, such an increase is related to an extra 690 alcohol-related assaults per year¹⁰

Source: Michael Livingston, Research Fellow, Turning Point Alcohol and Drug Centre, University of Melbourne

"The last twenty years have seen the proliferation of alcohol retail outlets due to the liberalisation of alcohol laws and an increase in the types of liquor licences available. This means that alcohol has become increasingly available from a wide range of retailers, during extended trading hours, and for

⁹ <http://www.sunshinecoastdaily.com.au/news/selling-booze-supermarkets-kill-people-researchers/1766779/>
23 Feb 2013

¹⁰ M Livingston, 'A Longitudinal Analysis of Alcohol Outlet Density and Assault', *Alcoholism: Clinical and Experimental Research*, Vol. 32, No.6, June 2008, p. 5

cheaper prices. This deregulation of the sale of alcohol has been largely driven by National Competition Policy.

It is only in more recent years that legislation has started to shift towards a harm minimisation focus. Much more still needs to be done to restrict the sale of alcohol in order to minimise harm.”¹¹

Source: Policy statement by FARE – Foundation for Alcohol Research and Education.

“Some have suggested that more open availability of alcohol may foster a moderate, European-style drinking culture. A better understanding of so-called ‘European drinking’ might provide cause for some hesitation about this suggestion. Nevertheless, whether a culture consistent with moderate drinking would be achieved simply by making alcohol more available without other measures to change Australia’s drinking cultures is highly questionable, particularly in light of evidence showing the continuing level of alcohol-related harm in communities where the physical availability has increased. Furthermore, there is now recognition that at the local level, such as individual suburbs, the level of outlet density is highly predictive of levels of alcohol-related harm”

Source: Loxley et al 2004; Stockwell. & Gruenewald 2001.¹²

5. Regulation of Liquor Licences

Is the SA Liquor Industry difficult to participate in? In total there are now well over 5752 liquor licences in South Australia and as a result this State already has the highest number of liquor licences per adult population at 1 per 224. *Source: *Liquor Licensing Legislation in Australia – NCETA*

Allowing alcohol in an additional 350 eligible supermarkets would reduce the number of adults per licensed premises to 211, that’s 106 persons below the Australian average.

If successful this proposal would drastically increase the availability of alcohol. Such a decision by Government i.e. changing the rules as such would immediately lower the value of existing retail liquor businesses and hurt the entire independent bottle shop sector (overwhelmingly small/medium operators), to not only the advantage of big grocer groups like Drakes, Romeos and Chapleys but the biggest winners would be the national chains such as Coles and Woolworths (and Aldi’s of course).

But why are other Grocers prevented from selling alcohol?

They are not. A perception has been created that only Coles and Woolworths can access liquor sales thanks in part to these comments in the Advertiser on 13 December 2012.

“I cannot see why Coles and Woolworths should be able to have next door or even in part of their building, a full blown wine shop with everything from beer to Scotch and these smaller, independent competitors of theirs are not entitled to have anything”. - Deputy Premier John Rau.

The Deputy Premier must have received poor advice or was badly misquoted because those statements are factually wrong. It is clear that neither Coles nor Woolworths receive any special treatment. They have purchased or successfully applied for a retail liquor merchant’s licence under

¹¹ <http://www.fare.org.au/policy-advocacy/alcohol-availability/>

¹² National Alcohol Strategy 2006 – 2011 - p29

the requirements of the Liquor Licensing Act as have many 'independently' owned grocers and others over the years.

Nothing has prevented local grocers applying for similar liquor licences. In fact one example is Parade Cellars, a licence operated by the Chapley family and the recently opened Cellarbrations store at Brighton is operated by the local IGA proprietor. The Drake Corporation operate bottle shops at Wallaroo and Robe, even Metcash through its ALM arm operates a bottle shop at Frewville.

The following was published in the Advertiser as an opinion piece on 12 February , 2013. It is the independent views of the former Deputy Liquor Licensing Commissioner of some 25 years standing. It puts into perspective the issue of 'need' and its relevance to alcohol availability.

"The debate over the proposal to allow the sale of bottled wine in supermarkets has largely been shaped by self-interest. As a former South Australian Deputy Liquor and Gambling Commissioner, I have had more than a passing interest in the issue.

According to a discussion paper recently released by the State Government, a separate category of liquor licence is to be established, skirting the "need" requirement - a fundamental eligibility criterion which guards against proliferation of packaged liquor outlets, but does not rule out competition.

This proposal must be concerning to the state's roughly 800 hotels and retail liquor merchants and any new entrant required to prove an unsatisfied public demand for liquor in the locality. In my view, it has the potential to result in the proliferation of packaged liquor outlets in this state while creating an imbalance between packaged liquor licence categories. The State Government has given industry groups and members of the public until March 1 to give their views through a process of public consultation, but I wonder just how informed South Australians are on the effect of this proposal. I suspect it's not widely known that one of the primary objectives of the Liquor Licensing Act 1997 (the Act) is "to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community".

Indeed, in a review of the Act by T.R. Anderson QC, released in 1996, he warned that "allowing the sale of liquor in supermarkets and elsewhere, may not be in the best interests of the Government's economic development strategy and tourism development and the wider needs and interests of the South Australian community". In my view, the proposal is contrary to the review's findings, and may be contrary to the objects of the current Act.

Is this proposal driven by the independent supermarket chains or by "the needs and aspirations of the community"?

*We already have the highest number of licensed premises per head of population in Australia. This proposal could potentially result in another 200 liquor outlets, which would significantly increase in the availability of takeaway liquor. This is surely concerning news for the authors of a recently released report (Liquor Licensing **Legislation** in Australia published by the National Centre for Education and Training on Addiction). They warned that "the increased availability of alcohol in general, especially where associated with cheaper prices and easier access to takeaway products, can exacerbate alcohol-related problems in the community."*

Alcohol is a regulated product. The current regulatory regime quite deliberately ensured this regulated product is sold through outlets dedicated to that purpose, to emphasise the special status of liquor within the marketplace, and to control access by minors.

The current regulatory system with its inbuilt checks and balances is working. This proposal neither addresses the aspirations or needs of the community, nor promotes the development of the liquor industry, which serves the South Australian community so well. These supermarkets seek a back door entry to a necessarily highly regulated industry - yet the front door remains open to genuine entrants."

Warren Lewis is the former South Australian Deputy Liquor and Gambling Commissioner.

At least a public interest test should be required

This supermarket licence proposes no 'needs test'. Nor, which is applicable in all other jurisdictions, does it seek to have an applicant address the broader social, community and health implications of an application. One would have thought that based on the increasing evidence of social harm associated with the broad availability of alcohol, that such an extension of that availability in the form of an Supermarket licence should require some social or community test.

At the very least there should be a strong argument that some form of 'public interest test' be required to demonstrate that their application 'is in the interests of the public, having regard to the likely health and social impacts on the community'.

6. Conclusion

There is a contradiction between what the Minister proposes in the discussion paper and what the draft Bill delivers.

The community and stakeholders have been given an incomplete picture of what this draft legislation proposes. This draft bill;

- Creates a new licence category that will be readily available and almost automatic for every 'supermarket' larger than 400 square metres. This would include every Coles and Woolworths in the State. We estimate that up to 350 shops may qualify.
- The draft Bill specifically prevents 'supermarkets' of less than 400 square metres in retail area.
- The definition of 'supermarket' will allow a range of business including 'On The Run' service Stations and 'Cheap as Chips' Stores to participate. This seems incredibly incongruous and is not made clear in the preamble that supports the draft Bill or in the Minister's commentary.
- The Bill will allow the sale of any wine from anywhere, any region, any state, any country.
- While the draft Bill prevents casks it does not prevent clean-skins.
- The draft Bill is silent on any public interest test.

The proposal in the Discussion Paper and reflected in the draft Bill will ensure most existing independent retail liquor stores and many regional hotels in South Australia become unviable. This will occur in a very short time, most likely in a few months, not in a year. For many of these outlets local wine sales amounts to over 50% of their business and in many cases up to 80%.

These South Australian businesses have made investments based on the current Legislative requirements of establishing 'need' and being open to community comment and objection. The Discussion Paper proposes to do away with these requirements for supermarkets, removing the level playing field and providing an obvious commercial advantage to the "winners".

The "winners" will be the National grocers who already control more than 60% of package liquor sales. This win will further empower the Grocery giants (including the Drake Corporation) by amassing even more purchasing power **to the further detriment of the wine Industry.**

We have already commented on the fact that the initial proposal was purported to support local wineries but even this veneer of what could have been seen as benefitting the local wine industry seems to have been tossed out in the draft Bill. Now the proposal is any wine from anywhere, any region, any country.

Extraordinarily Coles and Woolworths supermarkets will receive a massive windfall that they didn't even seek!

The Independent hotel and retail liquor stores sectors, the vast majority of which are small, medium and family based, and of course the many thousands of South Australians employed directly in the sale of packaged liquor products, have been treated with contempt by the manner of this review.

Recommendation

That the Government:

- Withdraw the Minister for Business Services and Consumers' "Wine in Supermarkets Discussion Paper".
- Commission a more thoroughly researched discussion paper by suitably qualified experts to enable a genuine community consultation. This discussion paper should consider the community, health, and business implications of this proposed concept. It should undertake the critical analysis that is clearly lacking in the current document.
- Identifying in advance any anticipated review and assessment process of submissions to that review.
- Identifying in advance who will undertake that assessment and the manner in which any evidence submitted will be tested. This should be a person or people of independence and with a breadth of knowledge of issues surrounding alcohol, retail and community.

Such a process we believe is essential to preserve and enhance your Government's commitment to those who have invested in small businesses in this State. The urgency of this cannot be over emphasized.



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