

Review of the Liquor Licensing Act

Submission of the Independent Gambling Authority

1 February 2016

1. Scope

This submission is made in response to an invitation from the Hon. T R Anderson QC, who has been appointed by the Government to review all aspects of the *Liquor Licensing Act 1997*, on various topics set out in a discussion paper issued by the Attorney-General's Department in late 2015 and any other relevant matters.

This submission relates to the interrelationships between the licensing regimes for liquor and gaming. While the suggested changes address the red tape reduction topic in the discussion paper, they also provide for substantive improvement in the capacity of both licensing regimes to deliver their social policy objectives.

2. Institutional interrelationships—licensing of liquor and gaming

The *Gaming Machines Act 1992* sets out a licensing and regulatory regime for the operation of gaming machines outside the Adelaide Casino.

At present, in order for a person and premises to be licensed for the operation of gaming machines—

- (a) a hotel, club or special circumstances liquor licence must have been granted in respect of the premises, by the licensing authority under the Liquor Licensing Act applying a range of tests;
- (b) a social effect certificate must have been granted by the Liquor and Gambling Commissioner, taking into account prescribed social effect principles and following a social effect inquiry undertaken by the person;
- (c) development approval must have been granted;
- (d) a premises certificate must have been granted by the Liquor and Gambling Commissioner;
- (e) a gaming machine licence must have been granted, for which preconditions include the person being suitable and the premises having been built or modified to conform with the requirements of the liquor licence, the social effect certificate and the premises certificate;
- (f) the licensee must have acquired a gaming machine entitlement for each gaming machine to be operated.

The licensing authority under the Liquor Licensing Act can be constituted by the Licensing Court or the Liquor and Gambling Commissioner.

Decisions made by the Liquor and Gambling Commissioner under the Gaming Machines Act are subject to merit review by the Licensing Court.

Key stages in the development of these arrangements have included—

1994–2000: any hotel, club or special circumstances licensee could be licensed for up to 40 gaming machines, subject to the licensee and the premises being suitable;

2000–2005: gaming machine freeze—no new premises could be licensed for gaming, except in very limited circumstances where existing licences were removed from one place to another within the same locality;

2005–2011: new premises could be licensed subject to the Liquor and Gambling Commissioner being satisfied as to the likely social effect on the local community, particularly concerning problem gambling;

2011 onwards: present arrangements apply.

The Authority's direct role in gaming machine licensing has been (in 2005–2011) to guide licensing guidelines and (2011 onwards) to prescribe the social effect inquiry process and principles.

3. Commentary

These key stages in the development of the licensing regime for gaming reflect an initial period in which the regime did not address social effect, followed by a moratorium to consider how social effect could be addressed, followed by the introduction of social effect as a licensing criterion and then refinement of the way in which the licensing regime did so.

The changes to the licensing regime from 2005 onwards assumed that reductions in both the number of gaming machines and the proportion of licensed premises offering gaming would be achieved through trading activity in gaming machine entitlements arising from consolidation and from new developments.

The effect of the structural changes operative from 2011 (which were legislated in 2010) was to place at the start of the licensing process the assessment which experience suggested was the hardest—social effect.

The Authority's approach to its role has been to encourage applicants to work with communities to propose venues which are licensable having regard to social effect. Its position has been that it should mainly be possible, with the benefit of all that has been learned over 20 years about problem gambling, to come to an accommodation with the local community about a range of design, operation and other issues (such as contribution to local sporting and other causes) about a proposal which would be acceptable.

However, to the Authority's knowledge, there has been very little activity in the grant of new licences and, since 2011, there has yet to be a social effect certificate either granted or refused. (The Authority is aware of one proposed club premises which is presently the subject of an application for a social effect certificate, upon which the Authority is not in a position to comment.)

However, the level of activity is lower than the Authority anticipated when, following the 2010 legislation, it formulated the social effect inquiry process and principles.

While there are many factors which could have contributed to this, an examination of the interrelationship of the regimes reveals structural impediments to timely progress of applications. There is sufficient overlap between the liquor licensing criteria (especially if these were to be reformed as a general community benefit test) and the social effect criteria for the same objections to be taken twice. Indeed, a party seriously opposed to a proposed gaming venue might well be counselled to take objection at every opportunity. This is compounded by the merit review provisions in the Gaming Machines Act which could result in a scenario where the Licensing Court heard the same matter twice at significant intervals, once in relation to the liquor licence and then, after a decision process by the Liquor and Gambling Commissioner, in relation to the social effect of a gaming licence.

The mere prospect of navigating this process might cause potential licensees and their backers to regard gaming as inherently too risky and to pursue other opportunities.

4. Possible reform

The present comprehensive review presents an opportunity to make provision for the questions of the grant of a liquor licence and the consideration of the social effect of a gaming licence (and potentially other steps in the process) to be the subject of a single, consolidated application to the one decision-maker.

If accepted in principle, the detail of the process should be developed in consultation with the hotel and club peak bodies and key communities representatives, all briefed with a view to the end objectives of timely, cost effective and final decision-making.

For both liquor and gaming, these considerations should particularly seek to strike a balance between the pre-application consultation and community engagement processes. Is it feasible for the “heavy lifting” to be done in the community engagement phase or is it better to quickly bring matters before a decision maker who will hear at length from the stakeholders?

Equally, a balance should be struck between the relationship between the first instance and review jurisdictions. Should there be an initial decision phase to identify whether the application is complex or straightforward, with complex matters being escalated immediately, or should the initial decision maker deal with all matters and be reviewable only for error rather than by way of rehearing?

5. Conclusion

The Authority submits that an outcome of the review should be that the licensing regimes for liquor and gaming give the proponents of a new gaming venue the option to commence the process with a single application addressing all issues related to the grant of a liquor licence, the social effect of the grant of a gaming licence and any other matter of policy complexity.