



SANDAS submission to:

REVIEW OF THE LIQUOR LICENSING ACT 1997

January 2016

SANDAS is the peak organisation for the non-government alcohol and other drugs sector in South Australia.

SANDAS works to lead and strengthen community responses to the harms caused by alcohol and other drugs.

SANDAS facilitates networking, collaboration, research, information sharing, advocacy, training and policy reviews to reduce the harmful impacts of alcohol and other drugs. We are the voice of our members at national and state levels.

INTRODUCTION

SANDAS is the peak organisation for the nongovernment alcohol and other drugs sector in SA.

SANDAS represents over 30 organisational members that provide a broad range of services including drug and alcohol health promotion, early intervention, treatment, and after-care programs. These community based organisations operate throughout South Australia. They comprise both large and small services that are diverse in their structure, philosophy and approach to drug and alcohol service delivery.

SANDAS's vision is to lead and strengthen community responses to the harms caused by alcohol and other drugs.

SANDAS facilitates networking, collaboration, research, information sharing, advocacy, training and policy reviews to reduce the harmful impacts of alcohol and other drugs. We are the voice of our members at national and state levels.

SANDAS is governed by a Board of Directors primarily elected from the SANDAS membership

Further information about SANDAS, its programs and services is available on the SANDAS website at www.sandas.org.au.

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Preamble to the SANDAS response

This discussion paper asks a number of questions about the licencing of alcohol sales in South Australia. As such it is a useful start in considering changes to the existing Liquor Licencing Act. However, the document reflects the inherent confusion of the existing Act which is unclear in its objectives. That is should the role of the Act be to regulate the sale of alcohol to minimise the harm it causes to individuals, their families and the wider community or to enable business owners to more simply and cheaply obtain the necessary permits to deal in a restricted substance. SANDAS takes the view that the primary role of any Licencing Act should first and foremost be the reduction in harm that is currently experienced in our community by the consumption of alcohol at levels that engender short and long term risks of harm. In so doing the Act should reflect the State and national Alcohol and Drug Strategies, health and welfare legislation and policies and be based on the best available evidence drawn from South Australia, National sources and internationally.

The regulation of the business aspects of selling the commodity should be clearly secondary to this primary goal.

Following are the SANDAS responses to the current questions in what is hoped is an initial discussion paper.

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

In the first instance the intent of the legislation should be to reduce the harms caused by alcohol, rather than to mitigate challenges associated with licencing processes. Alcohol is not 'an ordinary commodity' but one that is associated with significant harms to many users, their families and communities. The management of alcohol in the community is established by the Liquor Licencing Act and its regulations. This question should therefore be reframed as:

- What are the essential elements of a licencing system that will ensure the safety and health of all residents and visitors to South Australia accepting that alcohol consumption is a given in our society?

The development of an appropriate legislative framework should not be conceptualised as 'red tape' but rather an integrated approach by the government, cognisant of the impact of alcohol use (both positive and negative) on individuals and the community. Licencing processes should seek to balance the risks of harm to individuals, their community and wider society (e.g., health detriments, increased public and intimate family violence, engagement in dangerous behaviours, the burden of disease, impact on specific groups such as Aboriginal and Torres Strait Islander communities) with the positive social aspects of its consumption. This integrated approach should involve consideration not only of the business of selling alcohol but the health, social and cultural issues that arise from its use.

Do we need twelve liquor licence categories?

The number of categories is not the essential issue. The wording of the question suggests that this many licence classes is too many. The real question is do the licence classes we have meet the requirements of a comprehensive licencing system? That is a system which identifies the range of models for distribution of alcohol and seeks to regulate each model according to the risks of harm that arise from it. This may give rise to an underpinning 'risk of harm' model. This would require that different models of alcohol distribution be subject to different licence requirements. It may also mean that some licensees who distribute alcohol through outlets where there is increased risk (proximity to other late night venues, areas where there are high concentrations of alcohol related harms, high volume sites) may be subject to stricter and more financially onerous licencing conditions.

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?

This question suggests that dual/multi layered systems are necessarily problematic. However alcohol is both a commodity and a cause of significant social problems (burden of disease, violence, accidents, family breakdown, increased engagement in crime, high risk behaviours etc.). As such it is essential that the Liquor Licencing system addresses both the business and wider social issues inherent in alcohol use. This requires complex processes involving input from health, planning, policing, and local communities, and with an understanding of the implications that a licence may have at individual, family, community and state level. Hence, it is more than likely that responses will involve the intersection of a range of planning and modelling processes. Seeking a simplistic solution through a single framework risks developing a licencing system that produces unintended and harmful outcomes. Thus any licencing framework should be developed with an awareness of and consistency with other legislation and policy that underpins social wellbeing (e.g., those relating to health, justice, planning and infrastructure, social inclusion to name a few). As such the Liquor Licencing Act and its regulations should be developed in light of and consistent with a range of other State and National frameworks and legislation relating to health, crime, child and family welfare, family and intimate partner violence, social inclusion and education.

'The linear liquor licence approval process duplicates steps already taken by a business owner in the separate council development approval process. This means that prior approvals granted and consultation already undertaken in the development process is subject to further scrutiny'.

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

The discussion paper implies that an individual can seek planning permission to commence a business, receive such permission and then subsequently seek a licence to sell alcohol. This licence is then likely to be given as the business has met planning approvals.

In any future model where a person seeks planning permission to undertake a business where the intention is to seek a licence, it should be a requirement that such intent is explicit in the planning submission. 'Tacking on' a licence at a later date should be the exception not the rule. All planning decisions should be made cognisant of any future liquor licence and granted only once 'a risk of harm' assessment has been made in relation to the liquor licence.

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

Any system that allows a development application to proceed to consent without consideration of a likely subsequent licence application is a failed system. The role of alcohol in a business planning application should be explicit from the start. Failure to disclose the intention to seek a licence in an initial planning application should be a risk born by the business seeking to benefit from such a change in planning use, not the council. Both the planning and licencing processes should commence with community consultation, with the revised Act specifying the requirements for such consultation prior to the submission of any application.

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

'An objection to a liquor licence from a member of the public can cause unnecessary delay for the business owner and can provide a second forum for an objector to be heard. Change is needed to improve the reliability and predictability of the planning and liquor licensing systems'.

No licence should be granted without clear evidence of appropriate community consultation prior to the application. The sale of alcohol is not a right that is modified by the imposition of a licence. Rather the granting of a licence is the provision of an exception to the general prohibition placed on all members of the community that they do not sell alcohol. Hence, prior to the granting of a licence those that benefit from its provision (the business owner) should be required to undertake (at the business's expense) all necessary consultations to ensure that the operation of such a business will not harm individuals or the community. This may or should involve seeking the support of the local community through existing channels where appropriate (local council planning processes, state planning processes) and in some cases direct community consultation.

'Individual liquor licence conditions imposed as a result of conciliation can create inconsistency and are difficult to enforce. We need to consider whether the conditions being imposed as a result of conciliation are the right solution.'

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

Standard liquor licence conditions should be developed and implemented across the board. Where a business seeks a variation to these conditions the onus of proof that such variation will not be to the public detriment should be on the applicant. Such proof should include consideration of the health, justice, child and family welfare, and community vulnerability at issue in the application. As the licenced business will be the primary beneficiary of a positive licencing decision it is appropriate that this is seen as a standard business cost. To place the burden of such costs on other individuals or the community is to preference the outcome of the decision making process in favour of granting a licence and to subsidise what in any other business would be a reasonable cost.

'Business owners who wish to appeal a liquor or planning decision may have more than one appeal process to navigate. We need to consider whether we can streamline the appeal processes for business owners to reduce the time taken and the costs incurred.'

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

If planning processes that will involve liquor licencing are correctly designed, this could result in a single integrated process. Essential would be full disclosure of the intent to seek a licence, comprehensive community consultation and consideration of local and state planning guidelines and processes.

‘The approval of crowd controllers under two separate Acts creates an administrative burden for the applicant.’

Should crowd controllers be approved under two Acts?

Again the question is not, "Should crowd controllers be approved under two Acts?" but rather, "What are the essential skills, knowledge and attributes of a crowd controller and how should these be recognised under law?". Further, are there specific requirements for a crowd controller working on a licenced premises as opposed to some other settings (e.g., dealing with intoxicated people, conflict resolution, responsible service of alcohol duties, and advanced first aid)? From that position it then becomes apparent that neither Act defines these requirements so any revision of the Liquor Licencing Act should focus on the requirements of crowd controllers on licenced premises and make explicit any expectations. Further, a recommendation could be made relating to the review of the *Security and Investigation Industry Act 1995* to address its shortcomings.

‘We need to consider whether we can make further improvements to ease the administrative burden in relation to responsible person approvals while ensuring ongoing compliance.’

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

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

The question requires consideration of the role and duties of a responsible person. When a person sells alcohol they are not only selling a legal and socially acceptable substance but one that can cause significant harm to individuals, their families, the community and wider society. As such a responsible person's role is to weigh up the risks and benefits of supplying a product to a customer or customers. In most instances the benefits will accrue to the business (profits) and the risks will be borne by the individual or their community (intoxication, acute or cumulative harms, crime etc.). A system is required that ensures that any person deemed by the system as eligible to undertake such a role has clearly defined roles and responsibilities, brings appropriate skills and knowledge to their decision making and is aware of both their and their company's duty of care and the ramifications for failing to act appropriately. A systemic approach may be achieved by the Commissioner or the Act recognising an appropriate nationally recognised qualification or skills set as meeting the requirements for designation as a responsible person. However, in undertaking such a process there is need to consider the rigour required in delivering such a qualification given the issue with the quality of some of the responsible service of alcohol training that has been delivered.

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

Workplace alcohol and drug testing has limited evidence of efficacy in preventing substance misuse in the workplace (see the work of Pidd and Roche at the National Centre for Education and Training on Addiction). A better approach may be a more comprehensive inspection process that involves licencing inspectors in reviewing the 'fit for work' status of the responsible person, taking into account intoxication (alcohol and other drugs including prescription medication), fatigue awareness, capacity to act (especially in large or crowded venues) and other issues that may hinder risk awareness and decision making.

‘We also need to consider whether we can improve the application process for dry areas and allow another authority to become responsible for responding to the needs of members of the community. We also need to consider whether the enforcement powers in dry areas should be expanded to include other authorities.’

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

Should other enforcement strategies in dry areas be considered?

Dry areas are a complex and sometimes problematic response to the competing interest of a range of stakeholders in relation to alcohol consumption in public spaces. Historically they have been responsive to the needs of empowered interest groups of those who are more marginalised. The imposition of dry zones sometimes leads to perverse and unintended consequences (problem shifting, increased risks of harm to marginalised groups, lack of integration between the promotion of cheap alcohol proximate to dry zones and the enforcement of the zone). As such, dry zone policy requires consideration of evidence developed both locally a, nationally and internationally. At this point it is probably valuable to empower the Commissioner to establish such zones. However in doing so consideration as to the evidence of their efficacy and the consequences for all parties should be considered. Of particular concern is the criminalisation of public drinking by homeless and marginalised groups in the community.

A safer drinking culture

Our liquor licensing system must place a high value on health and safety for the community.

We must consider whether the current measures in place to reduce alcohol-related harm are effective and what we can do to improve.

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

Currently the Act does not expressly state the responsibilities of persons covered under the act (Commissioner, inspectors, police, licence holders, responsible persons, venue staff etc.) in relation to the primary duty of care to individuals and the community in relation to the risks of harms posed by alcohol consumption. By clarifying the primacy of harm minimisation and public health outcomes the Act would more adequately reflect other government policies such as the Health in All Policy approach. This would reduce the confusion inherent in the existing document. The processes of licencing could then be addressed in regulations or codes of conduct established under the Act.

What role should SAPOL play in the application process?

SAPOL is a significant stakeholder in the licencing process. Given the lack of capacity for the inspectorate to visit all premises, inspections are often in response to SAPOL reports relating to risky behaviour on the part of customers and licensees.

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

According to the Preventative Health Taskforce's Technical Paper 3: Preventing Alcohol-related harm in Australia: a window of opportunity, "Restricting the hours and days of sale of alcohol is a standard component of alcohol policy and regulation, and there is a substantial body of international and Australian work that has examined the impact of changes to trading hours for licensed premises on levels of alcohol consumption and rates of related harms. Most Australian studies have shown that increased trading hours have been accompanied by significantly increased levels of alcohol consumption and/or harms." This paper includes further information about the correlation between the density of licensed outlets and an increase in alcohol-related harm in the community. In light of this evidence, the number of trading hours and the number of licensed venues in an area should be a fundamental consideration of any license application. The paper can be accessed here: <http://www.health.gov.au/internet/preventativehealth/publishing.nsf/Content/tech-alcohol-toc~tech-alcohol-4~tech-alcohol-4.2>

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

Outlet density, ease of access to licenced premises including length of trading day and price mechanisms in outlets all play significant roles in the harms experienced as a result of alcohol consumption. It is essential that in any consideration of the granting of a licence consideration be given to the number of existing outlets, their size, their pricing profile and the level of harm associated with them. This applies equally to on and off premises, club and small venue licences. Again the model should be framed around risk of harm assessment in the first instance rather than a focus on business or profit motives.

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

Absolutely, these are key mechanisms for managing the risks of harm created by the supply of alcohol. All mechanisms which can be used to reduce such risks of harm should be under consideration. The business of selling alcohol should be

clearly seen as secondary to the health and welfare of individuals and the community and legislation should give primacy to the management of such risks. Contrary to some opinions this will have a significant benefit in terms of social amenity and vibrancy.

We need to consider whether the needs test is still the appropriate mechanism to use in order to balance competition and alcohol-related harm.

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

The primary consideration should not be the regulation of competition but the management of the risks of harm associated with the supply of alcohol. Significant research has been done on the correlation between outlet density, ease of access to alcohol and harms to the individual and the community. The primary purpose of regulation should be health and welfare focused not profit or business focused. A move to a 'risk of harm' construct in considering licence applications would have significant merit. (See the submission by FARE for a more detailed analysis).

Should alcohol be able to be sold in supermarkets?

The underlying concern is not that supermarkets are an inappropriate business to sell alcohol, rather that the licencing of supermarkets may lead to significantly more outlets retailing alcohol at very low costs per unit of alcohol. The revised Act would need to address these concerns before moving to licence supermarkets (or any other additional outlets). In revising the Act consideration should be given to capping the number and size of outlets in a region or location. The current 'need' test should be replaced by a 'risk of harm' test.

Penalties should act as a deterrent and enable liquor inspectors or SAPOL to respond quickly and effectively to breaches of our liquor licensing laws. Change is needed to increase inspectors' compliance and enforcement powers to ensure that any breaches of liquor laws are dealt with swiftly and public safety remains a priority.

Should other mechanisms be introduced to detect breaches?

Should other penalties be introduced to assist with enforcement? (For example, expiation notices.)

The Australian Bureau of Statistics (2005-2015 Data set 3101.0) identifies that there are over 6287 Licenced premises in South Australia and that last year (according to the discussion paper) there were 2000 licencing inspections. It is assumed that this does not include police visits to premises. Given that inspections are weighted towards large, high volume venues, this implies that a significant number of venues and responsible persons have never been subject to inspection. The first method for detecting breaches would be to ensure an increased number of inspections.

The Act should consider establishing a mechanism for monitoring outlets (at individual outlet, locale, regional/LGA level) to identify venues or groups of venues that contribute to social harms. This information could be used to inform decisions about future licencing decisions or the revocation of existing licences.

Enhancing the powers of inspectors and police officers to impose penalties from warnings and expiation notices (served on both individuals and businesses) for minor breaches to immediate licence suspension and outlet closure for significant breaches should be considered. Revocation of a number of licences held by a business for a breach in a single outlet should also be considered.

The liquor licensing system regulates the sale of alcohol in public places. The consumption or possession of alcohol at private events including those attended by minors is presently unregulated.

To enhance community protection, we need to consider the relationship between minors and alcohol and the role that the South Australian Government should play in the future.

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

Many jurisdictions have moved the regulation of secondary supply to minors. This is often a response to high profile harms arising from particular instances of provision. The Act should provide for the capacity to regulate the provision to minors within regulations. A process of evidence review and development of evidence-informed, best practice regulation development, utilising national and international research should then be undertaken. This process should ensure that SA has the best models for regulating the provision of alcohol to minors. Consideration could also be given to regulations which control the use of alcohol at events where there are significant numbers of children (e.g.,

school events, public sporting events, festivals and community events). This could have the effect of normalising 'responsible drinking' rather than reinforcing cultural norms of excessive use and consequent harms.

The South Australian Government does not have the power to regulate the price of alcohol. We need to consider how the price of alcohol impacts upon alcohol-related harm and whether the State and Commonwealth Governments can work closely together to address this issue.

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

The price and availability of alcohol is a significant factor in the harms it causes to others. The State Government should work with other jurisdictions and the federal government to develop a model of alcohol pricing that better reflects the harms caused by alcohol. Whether this is a floor price model or a volumetric model or a combination of the two will require significant negotiation. However, at present Australian governments collectively subsidise the alcohol industry by meeting the costs of the harms it causes through the provision of health services. Increasing the return to government (and hence the community) by increasing the excise on alcohol would have a double benefit of reducing consumption and the burden of disease associated with alcohol use and increasing the funds available for the delivery of health and welfare services.

Vibrancy

Our liquor licensing framework should be modernised to promote greater flexibility and encourage entrepreneurs to emerge with new business models.

Are the objects of the Act outdated?

Do annual liquor licence fees need to be reviewed?

There is currently significant variation in what a licence costs and these costs do not seem to in any way reflect the 'risk of harm' to the community that a licenced outlet presents (on or off premises, large or small). Serious consideration should be given to ensuring that licencing costs reflect the impost on the community of managing the licencing system. A liquor licence is a significant financial benefit for a business. The costs of managing the licencing system should not be borne by a community that is already paying a significant price in terms of burden of disease and the financial and human costs of alcohol's harms to individuals who use it and their families and communities.

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

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

We need to assess whether statutory liquor licence conditions and mandatory trading hours still reflect community expectations. Consideration should be given to the risk of reducing the administrative burden of applying for and extending trading hours within each licence category.

Are the statutory liquor licence conditions outdated?

The current liquor Act is subject to a number of limitations. Most importantly, the objects of the Act reflect conflicting interests between harm minimisation (regulation) and enhanced competition (deregulation facilitating greater consumption and associated harms). These conflicting interests have the propensity to confuse the licensing authority's interpretation of the Act, undermining the primacy of risks of harm when deciding on matters put before it. A revised Act should explicitly state that risk of harm, harm reduction, individual and community health outcomes, justice and safety have primacy over business activities and profit.

It is notable that this discussion paper does not adequately address the health and welfare challenges alcohol consumption poses to the SA community. It also fails to address mechanisms to integrate alcohol regulation with SA's Alcohol and Other Drug Strategy or Health in All policies approach to policy development when proposing changes to liquor regulation.

Without objective, balanced and thorough consideration of the existing and foreseeable harms, and the interrelations between the health, welfare, and justice and the commercial benefits of the liquor trade, this review of the Act will fail to serve the public interest.

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

“Vibrancy” is not predicated on unfettered access to alcohol but rather a combination of social and cultural assets and amenity (of which alcohol is a minor part for most people). Where there are high rates of alcohol consumption and correlated risks of harm (crime, assaults, loss of a sense of safety in a locale) whilst business profits of alcohol outlets may increase, community amenity or vibrancy is diminished. Rather than consideration of the administrative burden, the risk of harms to individuals, communities and society at large should be the prime foci of the Act’s review.

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

Again, it is not the form of the liquor licensing conditions that should be considered here but rather the purpose. Legislation reflects a clear statement by government that the issues being dealt with are of serious concern to the community. Whilst not as flexible as regulation, legislation provides a robust foundation for government, policy makers and the community to address alcohol issues in the community. Legislation also provides the community and businesses with a long-term framework in which to develop regulations and processes informed by existing and emergent evidence.