



**South Australian
Independent Retailers**
Supporting local

**Submission by South Australian Independent Retailers Inc
to Mr TR Anderson QC in respect of Liquor Licensing Discussion Paper**

Consumer and Business Services

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Introduction

The purpose of this submission is to respond to the issues for consideration as identified in the Liquor Licensing Discussion Paper published by the South Australian Government on 2 October 2015, and in particular to respond to the following issues:

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.

...

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

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

We need to consider whether the need 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?

Should alcohol be able to be sold in supermarkets?

In responding to the primary issues above, this submission will also touch upon the following:

1. *Is there too much red tape when applying for a liquor licence?*
2. *Are the statutory liquor licence conditions outdated?*

This submission will provide an overview of the licensing laws in South Australia that prevent operators of independent supermarkets from entering the packaged liquor market.

This submission will also address the current packaged liquor market in South Australia in the context of the current licensing regime.

It will be submitted that there are considerable benefits to the public and to the South Australian economy in making appropriate amendments to the *Liquor Licensing Act 1997* (the **Act**) to allow for the expansion of the packaged liquor market to include independent supermarkets.

Appropriate amendments to the Act allowing such expansion would:

1. make the liquor licensing regime in respect of packaged liquor sales better reflect current day community attitudes, standards and expectations relating to the accessibility of packaged liquor and related goods and services;
2. promote greater business and labour market flexibility and employment generally;
3. encourage the development of a more competitive market for packaged liquor; and
4. provide opportunities for South Australian liquor suppliers to access the packaged liquor market.

It will be submitted that the abolition of the need test will not lead to adverse outcomes in terms of alcohol related harm.

About South Australian Independent Retailers Incorporated

South Australian Independent Retailers Incorporated is an advocacy organisation representing South Australian independent supermarket business owners. At this time, South Australian Independent Retailers Incorporated represents in particular the Foodland, IGA and Friendly Grocer Groups.

The above mentioned groups are independently owned by South Australian families. The group comprises 236 supermarkets across metropolitan and regional South Australia. There are 115 Foodland Supermarkets, 98 IGA Supermarkets and 23 Friendly Grocer stores. This group of supermarkets currently employs approximately 15,000 people across South Australia (full time, part time and casual employees).

Foodland supermarkets are a South Australian success story, with Foodland supermarkets having served South Australia for over 50 years. The annual retail turnover of Foodland supermarkets is the largest of the independents and exceeds \$1.92b. Direct employment of South Australians by Foodland supermarkets stands at approximately 9,000 people, with a further 900 South Australian jobs indirectly associated with Foodland supermarkets.

Supermarket owners represented by South Australian Independent Retailers Incorporated are proudly South Australian and have a particular focus on promoting and supplying local produce and supporting local causes, charities and communities.

The South Australian Independent Retailers (the Group) has supported and continues to support the development of South Australian producers, with notable examples of successful South Australian brands stocked and promoted by the Group in their early years and continued associations - brands such as “Maggie Beer”, “San Remo” and “Beerenberg”. The Group collectively was also the largest purchaser from “Spring Gully” after it was recently under threat of closure.

More than 35% of the Group’s turnover is generated from South Australian products. This includes a high percentage of locally produced fruit and vegetables and products from South Australian manufacturers, with a large percentage of the balance of products sourced from Australian manufacturers. Many local products which have been discontinued or which are not available at the national supermarket chains are frequently stocked at the Group stores. Stores in regional and local areas also stock and promote goods from their local areas, meaning a great variety of goods is sold across South Australia, and support is provided to producers from local areas. This focus on local and regional producers improves exposure of local producers not only to locals, but also to tourists.

Ongoing focus on South Australian produce and suppliers is at the core of the Foodland business model and is similarly supported in the IGA current branding program.

It is important to state that this local branding support would apply equally to liquor suppliers as it does to any other traditional supplier.

The awareness rate for the Foodland brand in South Australia stands at 96%, with the primary focus of the branding for many years being based on “The Mighty South Aussies” slogan. The IGA group operates under the “Price Match banner” and promotes itself as “convenient shopping, locally owned supermarkets, catering to the needs of their community”.

Although the Foodland, IGA and Friendly Grocer brands are significant and well known in South Australia, they are relatively small businesses when compared to the major supermarket chains comprising the duopoly of Coles and Woolworths, with Aldi and Costco also recently entering the South Australian grocery market. The Independent

stores represent approximately 34% of the South Australian grocery market, which is the highest state market share for independent supermarket operators in Australia.

In short, the success of independent supermarkets is inextricably linked to the success of South Australian producers, and vice versa.

Brief overview of the current liquor licensing regime in respect of packaged liquor sales

Public demand for liquor for consumption off licensed premises (packaged liquor) is presently dealt with by way of liquor sales from the holders of two categories of liquor licence:

1. Hotel Licences providing the trading rights set out in section 32 of the Act; and
2. Retail Liquor Merchant's Licences pursuant to the trading rights set out in section 37 of the Act.

Although some liquor sales are made under the auspices of other licence categories such as Producer's Licences, Direct Sales Licences, Wholesale Liquor Merchant's Licences and Special Circumstances Licences, the overwhelming majority of packaged liquor sales is made by hotel and bottle shop outlets pursuant to Hotel Licences and Retail Liquor Merchant's Licences.

It is these licence categories which provide trading rights which are adequate to provide for the retail sale of an unrestricted range and quantity of packaged liquor.

However, due to specific provisions of the Act, these categories of licences are not suitable for or permitted in respect of supermarket premises:

1. Section 32 of the Act sets out the trading rights and obligations pursuant to Hotel Licences and includes mandatory licence conditions in respect of requirements to provide meals. The purpose of section 32 is clearly to authorise the operation of traditional hotel businesses, as opposed to supermarkets.
2. In respect of Retail Liquor Merchant's Licences, section 37(2) of the Act imposes a restrictive condition which effectively prevents the grant of Retail Liquor Merchant's Licences in respect of supermarket premises across South Australia generally:

- (2) *It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.*

The Act identifies two exceptions to the licence condition imposed by section 37(2), neither of which provide an avenue for use of Retail Liquor Merchant's Licences by supermarkets, due to the fact that supermarkets primarily sell goods which are not of a kind normally associated with, and incidental to, the sale of liquor:

“Exceptions—

- 1 *Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (e.g. glasses, decanters, cheeses and pâtés).*
- 2 *The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.”*

Section 58 of the Act provides the primary requirement which applicants for Hotel Licences and Retail Liquor Merchant's Licences have to satisfy for a licence to be granted by the Licensing Authority.

“58 – Grant of hotel licence or retail liquor merchant's licence

- (1) *An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.*
- (2) *An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.*
- (3) *A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.”*

Although the provisions of section 58(1) and (2) are different in their drafting, the principles and evidentiary matters under each sub-section are similar.

The requirements of section 58(1) and (2) are colloquially referred to as the “need test”.

In addition to the burden of proof imposed on applicants by sections 58(1) and (2), sections 77(5)(b) and (c) of the Act expressly include the need test as grounds of objection to applications for Hotel Licences and Retail Liquor Merchant's Licences.

Further, section 53(1) of the Act provides a broad discretion to grant or refuse an application under the Act on any ground, or for any reason, the licensing authority considers sufficient (but prohibits the licensing authority from taking into account economic effect on other licensees in the locality), while section 53(1a) requires the licensing authority to refuse an application if it is satisfied that to grant the application would be contrary to the public interest.

Operation and Impact of Present Regime

Under the present packaged liquor regime described above, potential entrants to the packaged liquor market must satisfy the “need test”.

The need test represents a significant and often insurmountable barrier to entry for new entrants to the packaged liquor market.

Section 77(1) of the Act allows the right to object to be exercised by “*any person*”.

Despite the provisions of section 53(1) of the Act which provide that the Licensing Authority “*is not to take into account an economic effect on other licensees in the locality affected by the application*”, it is extremely common for objections to applications for Retail Liquor Merchant’s Licences to be lodged and pursued by commercial competitors.

The vast majority of contested applications for Retail Liquor Merchant’s Licences are pursued by competitors whose motives are commercial in nature. By way of example, we understand that in the last two years there have only been four Retail Liquor Merchant’s Licence applications which proceeded to contested hearings before the Liquor Licensing Court of South Australia, none of which involved objectors with non-commercial interests in the application.

The costs provisions in the Act, which provide for the Court to award costs against an objector only if it exercises the right to object to an application “*frivolously or vexatiously*”, provide little disincentive to commercial objectors motivated to prevent potential competitors from entering the packaged liquor market. We are not aware of any costs awards having been made against commercial objectors seeking to rely on the need test grounds of objection.

Section 77 also provides for objections to be made on grounds other than the need test such as the adequacy of planning approvals (see also section 57(2) of the Act). These grounds, together with the general discretion in section 53, can be and are frequently litigated by commercial competitors as matters additional to the need test. The re-examination by the Licensing Authority of matters already dealt with at the planning law level is an example of unnecessary red tape built in to the existing liquor licensing regime. That said, the need test is invariably the primary matter to be addressed.

As demonstrated by numerous decisions of the Licensing Court over a number of years in respect of applications for Retail Liquor Merchant's Licences, contested hearings dealing with the need test typically involve evidence from "need witnesses" providing evidence that the need for packaged liquor in the particular localities is not presently being met by existing premises. "Contra-need witnesses" provide evidence for the objector(s) that there is no need for another licence.

These witnesses are invariably sourced and called by the parties thereby forcing the applicant to devote considerable time and incur significant expense.

The short-comings of reliance on "need witnesses" have been clear for some time, and have been the subject of judicial comment. For example, in *Harding Hotels Pty Ltd & Ors v Jatadd Pty Ltd*_ No. SCCIV-01-1425 [2001] SASC 439 (20 December 2001), Chief Justice Doyle said:

"[21] This Court has previously referred to the desirability of the Licensing Court having regard to objective features of the locality, the makeup of the population and the Court's own expertise, when assessing the demand for liquor, and not paying undue regard to evidence of demand from witnesses. This is because of the way in which the witnesses can be hand-picked, and because of the subjective nature of their evidence: see, for example, Liquorland (Australia) Pty Ltd v Hurley's Arkaba Hotel Pty Ltd & Ors [2001] SASC 232; (2001) 80 SASR 59 at [107]. On the other hand, the calling of witnesses from the locality is a permissible means of proving that the public demand for liquor is not adequately catered for by existing premises in the locality. Perhaps the main point to emphasise is the need to pay careful attention to the objective features of the locality, and to the makeup of the local population, when considering whether the need witnesses are representative of a significant part of the public in the locality."

Similar comments can be made in respect of "contra-need witnesses".

Due to the significant uncertainty as to whether an application for a Retail Liquor Merchant's Licence will be successful, and the likely costs of the application (both in a monetary sense and in terms of the time to litigate an application), potential applicants often incur significant costs obtaining detailed legal advice before proceeding with an application.

The uncertainty in respect of the likely outcome of applications negatively impacts other aspects of decision making in respect of commercial investment by potential applicants. For example, potential applicants face difficulties in negotiations with potential landlords who may be reluctant to commit to expensive lease negotiations in circumstances where the grant of a liquor licence may not occur (either at all, or within commercially acceptable time and expense parameters).

Under the current regime, the purchase of an existing licence may be the only way for an operator to enter the packaged liquor market in any given locality. The cost of purchasing an existing licence is a significant barrier to entry to new competitors in the packaged liquor market.

A changing feature of the South Australian packaged liquor market in recent years has been the increased scope of packaged liquor offerings provided pursuant to Hotel Licences.

In a number of cases, existing hotel businesses have been purchased (often by entities controlled by Woolworths and Coles), with upgraded or “big box” liquor stores then being built as an adjunct to the existing hotel enterprise. The use of a Hotel Licence in this way has been sanctioned by the Licensing Authority following applications by licensees to redefine, and to make alterations to, existing licensed premises.

In this way, the introduction of upgraded or big box liquor stores to localities is able to be achieved by the “big players” without the need test being considered, often in localities where an application for a new licence application would have failed to satisfy the need test.

The introduction of upgraded or big box liquor stores to localities in this way makes the need test harder for potential competitors (new applicants) to satisfy, and promotes the consolidation of dominant market power by existing large operators.

This means of entering the packaged liquor market in a locality (ie, the acquisition of separate hotel premises) does not allow liquor to be sold in supermarket premises and is not a commercially viable option for smaller operators/potential operators of independent supermarket premises.

The impact of the present regime on competition in the packaged liquor market is clear.

The continued acquisition and granting of licences for packaged liquor outlets by the two biggest supermarket retailers impacts competition not only in the packaged liquor market, but also in the grocery market, due to factors

such as store location and the ability of the large supermarket operators to cross-promote grocery and liquor offerings (including using methods such as “shopper docket”).

Another changing feature of the packaged liquor market in South Australia in recent years has been the increased integration of retail liquor offerings directly adjacent to existing or new supermarkets. This has occurred in several ways:

1. The grant of new Retail Liquor Merchant’s Licences to premises adjacent to, or in shopping centres containing or proposed to contain, supermarkets.

We understand in the last two years there have been four Retail Liquor Merchant Licences granted to premises adjacent to, or within shopping centres containing or to contain, supermarkets.

An example of this approach can be seen in the decision of the Licensing Court in *BWS Mt Gambier* [2013] SALC 82 (19 December 2013), where a new licence was granted at a new shopping centre development on the edge of Mount Gambier.

2. The removal of existing Retail Liquor Merchant’s Licences to premises with increased integration with the adjacent supermarket premises.

An example of this approach can be seen in the decision of the Licensing Court in respect of *BWS – Beer Wine Spirits* [2013] SALC 7 (15 February 2013). In that case, a Retail Liquor Merchant’s Licence held at Collinswood in respect of premises which shared a wall (but not an entrance) with a Foodland supermarket was removed to new premises in Walkerville adjacent to a new Woolworths supermarket. The new Walkerville BWS premises have an external entrance/exit to Walkerville Terrace, and an internal entrance/exit to the Woolworths supermarket.

Another example is the removal in 2015 of a Retail Liquor Merchant’s Licence from premises on Henley Beach Road (BWS) to the Brickworks complex on South Road (Dan Murphy’s, sharing a car park with the Woolworths supermarket).

3. The redefinition of existing Retail Liquor Merchant’s Licences to achieve greater integration of the retail liquor offering with the adjacent supermarket.

This approach is perfectly illustrated by the existing BWS (Woolworths) premises in Rundle Mall. The licensed premises comprise a self-contained liquor store **existing wholly within** the Woolworths supermarket premises. Although the BWS store is physically partitioned from the supermarket, and has separate cash registers, customers of the BWS cannot access the liquor store without first entering the supermarket premises, via the supermarket entrance/exit to Rundle Mall. The BWS store does not have an entrance/exit point to Rundle Mall or any other external road/walkway.

We refer to and support the comments in paragraph 3.4.2 of the “*Review of the South Australian Liquor Licensing Act, 1985*” delivered in October 1996 that:

“...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.”

In our submission, provided the existing harm minimisation requirements of the Act are complied with, there is no rational basis for the continuance of this anomaly. The condition in section 37(2) of the Act should be removed (ie the requirement for the licensed premises to be “devoted entirely to the business conducted under the licence”, and “physically separate from premises used for other commercial purposes”).

In our view, the willingness of the courts to allow increased integration of retail liquor offerings with supermarket offerings within the existing framework has been a sensible development which is in line with the reasonable expectations of contemporary South Australian society, and highlights the outdated nature of the current regime employing the need test. We note that the Licensing Court has noted “there is clear evidence that has emerged from many cases of “the community’s wish for one stop shopping”” (see *Woolworths Limited* [2013] SALC 23 per Gilchrist J as quoted below).

The position of the public in respect of wine in independent supermarkets is illustrated by research conducted by McGregor Tan Research on behalf of Foodland in 2013 which found that:

- 53% agreed with bottled wine being sold in supermarkets;
- 63% agreed with South Australian bottled wine being sold in independent supermarkets;
- 75% would purchase South Australian bottled wine at independent supermarkets, if it were sold there;
- 82% agreed that selling SA bottled wine in independent supermarkets would benefit SA wine-growers; and

- 77% said that selling SA bottled wines in independent supermarkets would benefit South Australia in general.

McGregor Tan Research surveyed over 400 respondents across the Adelaide metropolitan area.

We note that a number of recent decisions of the courts in determining cases dealing with applications involving the need test have referred to contemporary standards and reasonable expectations of the public in respect of access to packaged liquor. For example, in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors* [2015] SASCFC 72 (15 May 2015) at [50] – [51], Justice Parker observed:

[50] I stress that s 58(2) re-focuses the test from a question as to whether the demand in a locality can be “met” without unreasonable inconvenience by existing local retail facilities to require an assessment by the licensing authority of whether the existing facilities “adequately cater” for that demand. The term “adequately cater” has altered the focus of the public demand test to require consideration of the public’s expectations as to the accessibility of retail liquor services.

[52] The extent to which existing facilities cater for the contemporary shopping habits of the public as a whole, or significant sections of it, is an important element of the “adequately cater” test. The degree of difficulty and inconvenience that the public, or a significant section of it, will suffer, if an application is refused, is an important element of that test. However, it is not the sole criterion. Contemporary patterns of family, work, and social life that rely on the convenience of one-stop shopping are also relevant considerations. In that respect, the current provision has effected a significant relaxation of the former test.

By way of further example, in *Woolworths Limited* [2013] SALC 23 (4 April 2013), Judge Gilchrist said:

92. *As I observed in Liquorland (Aust) Pty Ltd “I am permitted to know that some people do not like purchasing takeaway liquor from a hotel and would prefer to make their purchases from a dedicated retail facility.” This is consistent with the observations of Cox J in Lovell and Another v New World Supermarket Pty Ltd where he said:*

“I think that in recent cases the Court has shown a proper responsiveness to the preference of many people, such as a number of the witnesses who testified in this case, for buying their liquor from a modern bottle shop that is not part of a hotel.” (References omitted.)

...

104. *I acknowledge that the grant of this application will mean two takeaway liquor facilities within a relatively close proximity. I am aware that this Court has on occasions exercised its discretion in not granting a licence because of concerns about undue proliferation. The close distance between the two facilities is clearly a relevant factor that I must take into account. However, it is of significance that there are differences between the two facilities. One is attached to a hotel. The other will be a stand-alone liquor outlet.*

105. *Another relevant consideration in determining the issue of discretion is clear evidence that has emerged from many cases of “the community’s wish for one-stop shopping”.*
106. *I conclude that the public interest does not require the refusal of the application. To the contrary, the grant of this licence is in the public interest. Many of the people living in the locality are using Mawson Central. The addition of a retail liquor facility will further add to the attractiveness of the shopping centre and will meet a growing desire by many to combine their takeaway liquor purchases with their supermarket shopping. (References omitted.)*

Of course, despite the willingness of the judiciary to grant applications allowing greater integration of grocery and packaged liquor operations consistent with contemporary expectations of the public, the existence of the need test still remains an overriding and often insurmountable barrier to entry to the packaged liquor market by independent supermarket operators.

We endorse the findings of the Competition Policy Review Final Report, March 2015 (the Harper Review) (at page 150) that:

“As with other regulations, liquor and gambling regulations should be included in a new round of regulation reviews (see Recommendation 8) to ensure that they are meeting their stated objectives at least cost to consumers and are not unduly restricting competition.”

Interstate Experience and Alcohol Related Harm Minimisation

South Australia is the only jurisdiction within Australia which employs a “need test”.

We note that the “*Review of the South Australian Liquor Licensing Act, 1985*” delivered in October 1996 commented as follows (at page 19):

- “3.4 *However, I am concerned that hotels and bottle shops should be regarded differently. There are several reasons, in my view why proof of “need” should still be required for both these licences.*
- 3.4.1 *First, there is some truth in the proposition that a total deregulation could literally result in a bottle shop or hotel on every street corner and that would, in my view, be inconsistent with the minimisation of harm principles which I have recommended.*
- 3.4.2 *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 Section 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.*

3.4.3 *However, once again, having regard to the principles of 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."*

and recommended (at page 20):

"3.7.3 The whole area of "need" should be reviewed again with the benefit of interstate experience in three or four years' time."

It is nearly 20 years since those comments were made.

It is important to note that since the above comments were made in the 1996 report, consideration has been given to the harm minimisation aspects of the South Australian Liquor Licensing Regime and significant measures have been taken to strengthen the regime. These measures include the adoption and review of the General Code of Practice Guidelines (which were reviewed most recently in February 2014) and the adoption of Intoxication Guidelines (which were reviewed most recently in May 2014).

While we of course accept that there are a number of factors at play in respect of alcohol consumption and alcohol related harm, if South Australia's outcomes in respect of alcohol consumption and alcohol related harm were better than outcomes experienced in other states (and in particular those which do not employ a need test), at first blush it might be reasonable to attribute at least some of the superior outcome to the existence of the need test.

However, there is evidence to suggest that rather than having better outcomes in respect of alcohol consumption and alcohol related harm than other states, South Australia's outcomes are inferior.

We note in particular that the Australian Institute of Health and Welfare released the National Drug Strategy Household Survey detailed report 2013, finding:

"In Victoria ... The proportion exceeding the lifetime risk guidelines for alcohol declined in 2013 (from 18.8% to 16.1%) and was the lowest reported across all jurisdictions. [at page 11].

...

In South Australia ... 18.5% exceeded the lifetime risk guidelines for alcohol use [at page 11].

...

While overall there was a decrease in daily drinking between 2010 and 2013 (from 7.2% to 6.5%), the fall was only significant in Victoria (from 6.6% to 5.5%) and some jurisdictions (South Australia, the Australian Capital Territory and the Northern Territory) reported a slight rise. [at page 78]

...

... the pattern of lifetime risky drinkers varied across jurisdictions, ranging from a low of 16.1% in Victoria to a high of 30% in Northern Territory". [at page 78]

We note that the report indicates that the results in Victoria, which abolished its need test in 1999, were in fact better than the results in South Australia.

In our submission, the ongoing review and strengthening of the harm minimisation regime including the General Code of Practice and the Intoxication Guidelines, and not the need test, is the appropriate means of adequately addressing concerns as to alcohol related harm.

Further, the vast majority of enforcement action taken in the Licensing Court in respect of breaches of harm minimisation provisions involves licensed premises providing liquor for consumption on premises, as opposed to provision of liquor for consumption off licensed premises. In our submission, this demonstrates the capacity and willingness for packaged liquor retailers to comply with harm minimisation requirements.

Proposal

We propose that the Act be amended to enable packaged liquor to be sold and supplied in supermarkets pursuant to Retail Liquor Merchant's Licences for consumption off the licensed premises, as well as by way of sample in a designated area on the licensed premises.

We do not consider that there is any reason to limit the number or size of packaged liquor outlets operated pursuant to Retail Liquor Merchant's Licences, or for the liquor licensing regime to be used as a means to regulate competition in the packaged liquor market. We note that competition policy and regulation is dealt with by other laws.

We agree with the comments in the Harper Review (at page 145) that:

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

To ensure that high standards are maintained in respect of minimisation of alcohol related harm, and to assist with the orderly and responsible sale of liquor, we propose the inclusion of sensible provisions requiring the separation within supermarkets of the packaged liquor offering, and the grocery offering. This separation should involve:

1. physical separation of the packaged liquor section from the grocery section in such a way as to ensure that supervision of alcohol-purchasing is readily achieved.

This should involve a separate area (such as a designated area within the supermarket) to be used for the display of packaged liquor;

2. separate check-outs for liquor purchases;
3. staff (of at least 18 years of age) trained in Responsible Service of Alcohol to oversee the designated area and all liquor sales; and
4. designated liquor area to comply with all signage requirements in respect of supply of liquor to minors and intoxicated persons.

Our proposal would require compliance by supermarkets with the existing requirements of the Act in respect of harm minimisation, including but not limited to requirements for a member of staff with formal training in respect of the Responsible Service of Alcohol to be present at the licensed premises at all times; compliance with the General Code of Practice; and compliance with signage requirements.

In our view, supermarket operators are well placed (perhaps better placed than many other businesses) to ensure compliance with such requirements.

Supermarket operators are experienced in compliance with a number of legal and regulatory matters including those relating to the wellbeing of staff and customers including (but not limited to) compliance with work health and safety requirements, and compliance with legal requirements relating to the sale of tobacco products pursuant to Tobacco Licences. Compliance matters such as these frequently require supermarkets to develop and implement internal policies (such as policies in respect of requesting evidence of proof of age) and to carry out associated staff training.

Proposed Amendments to the Liquor Licensing Act 1997

In order to give effect to our proposal, we suggest the following amendments be made to the Act:

1. Deletion of section 37(2) (requiring premises with a Retail Liquor Merchant's Licence to be devoted entirely to the business conducted under the licence).
2. Deletion of section 58(2) (need test in respect of Retail Liquor Merchant's Licence applications).
3. Deletion of section 77(5) (c) (need test as a ground of objection to Retail Liquor Merchant's Licence applications).

Benefits of Proposed Amendments

In our submission, the benefits of adopting our proposal to provide for the sale of packaged liquor in independent supermarkets are extensive and clear.

Our proposal is consistent with the existing objects of the Act (as set out in section 3), in particular those relating to furthering the interests of the liquor industry in South Australia (including tourism); ensuring that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and ensuring that the supply of liquor contributes to the amenity of community life and does not detract from the harm minimisation objects of the Act.

Significant benefits of our proposal are:

1. Increased competition

Increased competition in the packaged liquor market will have benefits in terms of:

- 1.1 consumer choice in respect of the range of packaged liquor available as retailers search to differentiate their stores based on product range;
- 1.2 greater access to markets and promotional opportunities for local and regional suppliers;
- 1.3 prices paid by consumers being subject to greater competition; and

1.4 the ability of smaller supermarkets to compete with the existing duopoly in terms of product offering.

2. Increased choice for customers

Allowing additional entrants to the packaged liquor market, particularly those with a focus on using local suppliers, will inevitably increase the range of liquor available to the public.

3. Creation of additional opportunities for local suppliers to access markets and creation of new promotional opportunities

This benefit is closely allied to the increase in choice for customers. Given that the packaged liquor market is presently dominated by two main players, local liquor producers who do not (and could not hope to) have contracts to supply retailers presently face significant barriers to getting their products to market.

The potential to obtain market access through channels other than the existing big players would also put local suppliers in a better negotiating position with existing operators.

Channels to market would be created for smaller, boutique-type liquor producers whose product would never be considered by the big players due to economies of scale.

4. Increased convenience to consumers

The constantly evolving way people shop on a weekly and daily basis has seen a shift from large weekly shopping, to quick and more frequent shopping, often on a meal-by-meal basis. It is reasonable for consumers to want and expect to be in a position to purchase liquor in the same convenient way, on a one-stop basis.

5. Fostering development of new business models and innovation within supermarkets

As noted above, supermarkets within our group are proudly South Australian. The business models adopted by supermarkets within our group are varied, and are significantly different from the “one size fits all” approach of the existing supermarket duopoly.

Supermarkets within our group are independently owned. Individual operators have significant and ultimate control of the particular way in which their supermarkets are operated, meaning that our supermarkets present an opportunity for significant variation in packaged liquor offerings across South Australia in terms of product ranges, promotional opportunities for supermarket operators to work with local liquor suppliers, and store layouts.

In our submission, vibrancy is not a concept which should be restricted solely to the small bar scene and the central business district of Adelaide.

6. Creation of incentives to investment

This is closely related to the benefits addressed above. The introduction of packaged liquor to supermarkets will strengthen the independent supermarkets and their ability to compete with the existing supermarket duopoly.

New business opportunities will be presented at the retailer and supplier level and will provide confidence for retailers and suppliers to invest. This will have numerous flow-through benefits.

7. Employment opportunities

Our proposal would require supermarkets to appropriately staff the packaged liquor area of the business, both on the shop floor level and at back-of-house level.

In addition to employment opportunities within supermarkets, employment opportunities will flow through the local economy (e.g., tradespeople will be required to modify existing supermarkets and warehouses, transport operators will be required to move liquor to supermarkets, etc).

The creation of employment opportunities within South Australia should be considered a key benefit of our proposal, particularly given the current difficult economic climate in South Australia. We note in particular that according to figures published on the Australian Bureau of Statistics website as at 29 January 2016 (www.abs.gov.au), the unemployment rate in South Australia in December 2015 stood at 7.3% (up from 6.5% in December 2014), and that the national unemployment rate in December 2015 stood at 5.8% (down from 6.2% in December 2014).

8. Red tape reduction

Reduction of the uncertainty and expense involved with the need test, as discussed above, is a key benefit of our proposal.

9. Labour market flexibility and upskilling of employees

Under our proposal, supermarket employees will be required to undertake training in respect of alcohol related harm minimisation. This will provide supermarket employees with skills necessary to readily transfer to the hospitality industry and visa versa. Supermarket employees will gain knowledge and skills in respect of the liquor industry.

Conclusion

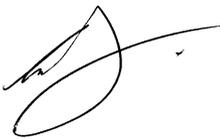
The need test represents a significant and often insurmountable barrier to competition in the packaged liquor market and associated markets, thereby causing cost and inconvenience to the community which is out of step with contemporary expectations of the public.

Allowing liquor to be sold in independent supermarkets would increase competition and provide access to markets for local suppliers, with benefits to local employment, suppliers and consumers.

These benefits can be achieved while taking proper account of the public interest in minimising potential harm associated with liquor consumption by sensible regulation requiring independent supermarkets to comply with the existing and continually evolving harm minimisation regime applicable to holders of Retail Liquor Merchant's Licences.

3rd February 2016

Yours sincerely,



Colin Shearing
Executive Spokesperson