

South Australian Government  
Consumer and Business Services

**Liquor Licensing Act Review 2015  
Submission**



**SOUTH AUSTRALIAN WINE INDUSTRY**  
ASSOCIATION INCORPORATED

**SUBMISSION OF:** SOUTH AUSTRALIAN WINE INDUSTRY  
ASSOCIATION INCORPORATED

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## **ABOUT THE SOUTH AUSTRALIAN WINE INDUSTRY ASSOCIATION INCORPORATED**

- The South Australian Wine Industry Association Incorporated (SAWIA) is an industry employer association representing the interests of wine grape growers and wine producers throughout the state of South Australia.
- SAWIA is a 'not for profit' incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of our members' wine businesses.
- SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture.
- SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater South Australian wine industry with government and related agencies in a wide variety of business issues impacting on the wine sector.
- What SAWIA does for members is covered in four key areas:
  - Representation and Leadership;
  - Advice and Information;
  - Products and Services; and
  - Promotion and Opportunities.
- SAWIA has developed expertise in liquor licensing which is of interest and as a service to members.

The association had its beginning in 1840 as the Society for the Introduction of Vines, and last year SAWIA is celebrated 175 years of service to the wine industry in South Australia.

The SAWIA submission addresses only relevant questions to the wine industry raised in the Liquor Licensing discussion paper.

SAWIA welcomes the opportunity to have input into the review of liquor licensing laws and agrees that it is timely to ensure that those laws meet the needs of liquor businesses and their changing nature.

SAWIA provided the discussion paper and the questions raised for the South Australian industry to respond to and the contents of this submission contain the substance of the information provided to the association through that consultation process.

## **SUBMISSION of the SOUTH AUSTRALIAN WINE INDUSTRY ASSOCIATION**

### **Reducing red tape**

*We need to reduce the red tape surrounding our liquor licensing system and enable business owners to easily navigate the liquor licence application process.*

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

The overwhelming majority of wine licenced businesses consider that there is too much red tape when applying for a liquor licence. The application process needs to be simple, specific and clear about what is required and in what form. Too much time is involved in getting all the documentation in order to make application – it is not a simple process. To that extent a checklist may assist. In the majority of cases wine businesses are holders of a producer's licence but are required to apply for other licence types depending on the nature of the activity.

In most cases the red tape goes to process when dealing with changes to licensing. It is reasonable to expect that if a licensee submitted the necessary documentation to instigate changes that those changes would be dealt with in timely and efficient manner.

There are examples of a strong disruption within the process. This can involve the following:

- Inconsistent messages and directions from members of the licensing staff - one will say one thing and another staff member states something else, leading to confusion as to what the process is that should be followed;
- Responses made by a licensee or a request made by a licensee during the licensing process – the lack of recognition within the process suggests that either it is not recorded in a case file or the request has been ignored and not responded to. This conclusion is reached because a response is a standard form letter - this suggests a lack of basic file management / active management of files.
- Licensing issues when involving other parties (such as local government) becomes much more difficult to deal with and in many cases is far from simple to resolve.

The nature of undertaking risk assessments and developing management plans (General Code of Practice) for small businesses in relatively safe locations with minimal customers continues to be onerous. In the wine industry, the risk is considered low for many businesses, yet the solution provided under the Code of Practice is a process that all licensees must undertake.

The holder of a producer's licence needs to obtain further licences (and pay additional fees) when conducting their business.

There appear to be a number of examples:

- an activity on the business premises of the producer but not within the licensed area of the business premises such as releasing a new wine / new vintage wines with a breakfast in the winery or vineyard;
- an activity within the wine region – tastings and / or sales;
- an activity outside the wine region such as the Adelaide city precinct – tastings and or sales.

It could be argued that the necessity of obtaining separate licences for events related to the business should be dealt with in other ways. The nature of winery business operations has changed to such an extent that functions, activities and promotions could be added to an existing licence as an endorsement – to undertake say 5 events for the year without the

need to seek approval and pay additional fees. This is particularly important for a number of events that contribute to the 'vibrancy' of the city of Adelaide or local regional areas. The endorsement should include tastings and sales of product.

## **Licensing Categories**

### **Do we need twelve liquor licence categories?**

Some licence categories could be included into other existing licence categories. It is possible the number of categories have been created because many of the parameters of existing licence categories are too narrow.

If the nature of the activity undertaken can be accommodated under a 'principal business' licence category then this would allow for all licensed activity to be included under the one licence. For example, if all activity requiring a licence could be accommodated in this way, it could be argued that from a wine industry perspective, a limited licence category would not be required.

If a producer's licence set out or made allowance for all licensed events and activity conducted by the producer this would have the effect of minimising the numbers of other types of licence.

A producer's licence could also set out and cover all locations owned or leased by the producer and this would have the effect of reducing the number of licensees.

However, the State Government approach to licensing when recent amendments are considered has been to 'add' licence categories – such as the 'small venue' licence and the proposed but withdrawn 'supermarket' licence. This recent experience tends to support intent by the Government at least to match the licence type with the different circumstances of the business operation. This does allow for quite specific rules to be provided in those identified sectors.

There have been attempts in other jurisdictions to limit the number of licence categories but this has resulted in the creation of sub-categories. On that basis what has been achieved? If this approach was undertaken in South Australia there would need to be clear improvement and tangible systems improvement and savings to business.

There is a need to ensure any legislation arising from this review is not overly complex, reduces red tape, minimises the cost to implement and comply with, is simple to administer and easy to understand.

## **Licensing, Planning Noise and Health Laws**

### **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?**

There is significant confusion within the wine industry not only about the role but also the requirements of liquor licensing, planning, noise and health.

In addition, SAWIA raises a varying level of knowledge of individuals from the various government bodies particularly taking into account rural local government councils operating in the various wine regions in South Australia. In the wine industry experience, even with long term people in these jobs it is likely there will be a lack of consistency of advice which

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also is replicated with high turnover. In addition, there seems to be no system that reviews the consistency of advice.

Overall, this leads to confusion, a lack of clarity of what is required, is costly and can waste significant time.

SAWIA suggests once legislation is settled for liquor licensing and planning a 90 day project be instigated with industry participation to create tools to assist all participants understand the process, the steps and the law so that compliance becomes easier.

*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?**

It would appear that the duplication of process extends beyond consultation. There is wine industry support for a review of all the planning and liquor licensing processes.

Any process needs to be designed to avoid duplication at all stages to ensure it is efficient. A streamlined process that achieves what is required in the least possible time, activity and cost would be well received by the wine industry.

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

There is very limited support for local government to have the right to intervene having already approved the development application. In general terms, any issues should have been dealt with, the activity to be conducted should be known including the conditions to operate.

The wine industry considers the right to intervene should be set at a high threshold.

*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.*

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

Members of the public should be able to raise points of concern as early in the process as possible (on application / publication). The concerns should be submitted in writing (in such form to be dealt with as a paper submission) and available to all parties to enable responses to be prepared. There is also a view that the concerns should be limited to the numbers attending at the venue and any concern regarding noise.

Any changes must achieve improvement in the process aimed at avoiding the potential for delays or to provide the opportunity for issues to be simply re-run or to have another go at frustrating the application.

*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?**

In general terms, standard liquor licensing conditions could be developed subject to being simple and fair. The process of conciliation enables resolution of an issue and it is unclear whether the concern that is raised is just about enforcement and compliance.

It is likely that standard liquor licensing conditions would be based on a combination of factors such as capacity and it is likely conditions will have a similarity by licence class.

However a broad brush approach may not provide the flexibility needed for the diverse nature of business operations that exist and are emerging within the licence classes.

*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 a proposed appeal mechanism that is capable of dealing with liquor and planning issues can achieve clarity of purpose and time and cost savings for all participants then this should be examined and explored. Obviously, fairness and sense of justice will be paramount in considering any reform mechanism.

**Responsible Persons**

*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?**

It is clear there remains licensee confusion in South Australia between the concept of 'responsible person' and 'responsible service' of alcohol training.

Any opportunity that can reduce administrative burden should be embraced. This will have flow on savings to licensees.

A number of smaller wineries with a cellar door are able under current provisions to seek exemption from the requirement for a responsible person and this opportunity and concept should be maintained following any review.

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

There are no suggestions for other mechanisms to be introduced to ensure appropriate persons are in the industry.

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

This should not be dealt with under a mandated provision. There are also a number of other ways in which this can be dealt with adequately by way of policy provision. There is evidence of enormous challenges enforcing testing of individuals even where it is justified on clear health and safety grounds.

*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?**

There is a risk with extending the power to declare short term dry areas of an inconsistent application of policy unless there is proper guidance, training, instruction and overview of decisions. Without this it is unlikely to achieve the aims.

### **Should other enforcement strategies in dry areas be considered?**

Authorities with the current power to enforce are considered adequate.

### **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?**

The current objects of the Act refer to 'harm' and various provisions of the Act seek to deal with 'harm'.

The wine industry considers that inclusion of and promoting messaging relating to 'moderation' with the inclusion of associated policy is appropriate. The Objects of the Act in subclauses (a) and (f) would be further supported and enhanced by such an emphasis.

The current words used in the Objects such as encourage responsible attitudes, minimise the risk of intoxication would benefit from a focus on consumption in moderation.

### **What role should SAPOL play in the application process?**

They have a role to ensure that any information they possess which goes the test of a licensee being a fit and proper person is important. Beyond the current role set out in the current Act, it is not evident there are any grounds requiring an expansion of the role.

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

There are many issues that must be given due consideration. If there are social issues and concerns in a particular area the opportunity to adjust the trading hours of a particular venue or of licensed venues in the area may be one option. If this option was taken, a reduction in

trading hours may impact on business viability and a careful assessment should be undertaken to ensure a fair and reasonable result is achieved.

However, the number of licensed venues in an area would be more difficult to regulate without a sudden impact on business viability. If this was a preferred approach then the area could have a declared number of licensees. Dealing with the transition to that number could present a number of problems for the licensed businesses in the area.

This result may also have an unintended consequence for licensees who are not part of the problem, yet by the nature of the question asked are impacted by the solution.

*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?**

For some time a new hotel licence or retail liquor merchant's licence has been subject to a 'needs test'. Effectively this is a regulation on the availability of alcohol or a means to regulate competition within a locality. Providing for the needs in that community may not be the best indication of service by the current licensees in that locality.

Without the 'needs test' or a similar mechanism that achieves those outcomes and given the current objects of the Act, eliminating the regulation to competition is likely to be inconsistent with many of the objects of the current Act principally (a), (c), (d) and (f).

### **Should alcohol be able to be sold in supermarkets?**

SAWIA notes that in January 2014, the State Government announced a proposal for legislation to allow wine sales (and particularly South Australian wine sales) in supermarkets but this proposal was withdrawn in August 2014. SAWIA notes the current question embraces a broader concept in that it includes 'alcohol' rather than 'wine'.

In the question and associated information, there is no clear definition of what a supermarket is. Various definitions abound and one could be *"a self-service retail market selling foods and household merchandise or something resembling a supermarket especially in the variety or volume of its goods or services"*.

SAWIA does not support any provision that would allow alcohol to be sold in supermarkets beyond the current provisions of the Act.

The existing development of licensing and access to it has taken many years to develop. The current system is working well and most licensees that wish to access a licence have organised their business affairs to comply with the current system. The current separation of food and alcohol should continue.

South Australia already has the highest number of liquor licences in Australia. If a 'supermarket' as defined was added to this list it is likely to add over 500 new licensees to the tally. This is a significant number and even taking into account that perhaps the large retailers may relinquish current retail liquor licences, the number remains significant.

Increasing competition through distribution will also have an impact on all licensees, meaning that there will be existing businesses that will show decline in revenue and will need to change or adapt to remain a viable business. Many of those businesses may not be able to continue given the purchasing power of some of the supermarkets and their pricing policies. Allowing alcohol sales in supermarkets will likely result in market place disruption with fierce competition to achieve market share. Wine producers in South Australia are unlikely to benefit from this period of disruption.

Current experience with the duopoly supermarkets in control of retail liquor stores suggests setting price point levels that are unsustainable for some wine producers (and wine grape growers). The centralisation of purchasing power has and continues to place enormous market pressure on wine producers.

Allowing alcohol sales in supermarkets will effectively strengthen the existing duopoly and reduced margins for wine producers. The returns throughout the wine supply chain will also be impacted that will have an impact on those businesses.

*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?**

Subject to seeing what mechanisms are proposed and what if any impact there is on a licensee these may be considered.

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

There are already provisions within the *Liquor Licensing Act 1997* that set out penalties for a breach that can be dealt with by expiation and a general provision set out in section 132 of the Act. It is therefore unclear from the Liquor Licensing discussion paper what is proposed to enable commentary.

*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?**

Even before considering the merits of such a proposal it appears to be entirely impossible to regulate parties of a private nature. Given that, it is also difficult to comprehend how such provisions could be enforced.

*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?**

SAWIA agrees state and federal governments should work together and coordinate their efforts on matters of interest and concern to the community.

The State Government should be working with the Commonwealth government to reduce alcohol abuse based on sound information and research.

Alcohol access is currently regulated by State Governments and their respective Liquor Licensing legislation. There are a number of matters set out in the discussion paper that clearly deal with the issue of alcohol access.

### **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?**

When the “Objects of the Act” provisions are compared with other jurisdictions in Australia each shows a strikingly similar approach to the words used and intent. On that basis the current objects appear to have maintained currency.

In terms of changes, the current Act provision appearing in 3 (1) (a) could consider including the word ‘service’.

Given an emphasis on flexibility, a new provision could be included that provides for “a flexible and practicable regulatory system with minimal formality and technicality”. An Act that embraced easy to understand provisions, with less complexity would be of great benefit to all users and assist in compliance.

### **Do annual liquor licence fees need to be reviewed?**

On the introduction of an annual licence fee, holders of a producer’s licence pay a minimal fee (level 1) consistent with the risk posed and servicing required by their licence type. However, in responding to this question all producer licensees responded that licence fees should be reviewed. While generally, a review can signal a price increase that would not be consistent with the need for governments and their agencies to minimise costs for business and therefore the wine industry is not advocating a review if the intent is to result in an increase in fees for a holder of a producer’s licence. More efficient practices within the legislation and the department should result in a decrease of business costs negating one or more annual adjustments or a reduction in fees payable by licence type.

Since annual fees were introduced there have been “unpaid” producer licence fees each year since their commencement requiring reminder notices and the eventual cancellation of licences for those that remain unpaid. SAWIA is not aware whether these unpaid fees relate to an inability of the business to meet these government charges but is aware that the wine industry has been through a very challenging business period. It is also recognised that the process of dealing with unpaid fees can also have an impact by identifying current and

continuing producers within the wine industry on an annual basis. An up to date data base is a beneficial outcome.

There should also be an option to pay fees for a longer period (say up to 5 years at the prevailing rate) which would reduce the cost to business as well as the associated paper work for both the business and the department.

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

SAWIA would support access to the small venue licence in any location within the state where the licence applicant could demonstrate a need and / or a creative, innovative and viable business.

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

Since the last Liquor Licensing Act review, the wine industry has been involved with various activities that assist with meeting the vision and State Government strategic policy for 'city vibrancy' and premium food and wine from our clean environment. These activities include lane way 'pop up' style wine promotion and sales events that commenced in March 2013 and continue with approximately 5-6 wine industry activities being undertaken over a year.

With changes to licencing fees this has meant that in addition to a producer's annual licence fee, an additional fee will apply for each event based on the number of participating wineries. These charges are recovered by the organising entity from participating wineries.

Given these are additional fees, it would be useful to explore the prospect of having a producer's licence endorsed to allow for undertaking a number of 'pop up' events during a year. This would avoid the need to apply for a 'limited licence' and associated paper work for the licensee and the applicable fees.

*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?**

These conditions need to be capable of reflecting the changing circumstances of business, regulation and community expectations.

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

In general inflexible provisions requiring business and department time in dealing with applications and associated paperwork add to red tape. The question that arises is does a rule require such oversight and or the need to have oversight before a decision is made to allow a change in trading hours add to vibrancy or is the rule necessary for some other administrative reason. There are various mechanisms that could be provided for to allow flexibility for trading hours that adds to and is consistent with vibrancy.

Entertainment consent has recently been dealt with under the *Liquor Licensing (Entertainment on Licensed Premises) Amendment Act 2015* which commenced on 20 December 2015. This is an example of a sensible amendment that was universally supported.

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

This outcome would be favourably considered if it ultimately lead to greater flexibility. There must be tangible benefits for the licensee and the department. The challenge for any legislation is to ensure the user can find the information. Too often it is not easily found, leading to confusion, frustration and the potential to be unknowingly non-compliant.

**General Issues**

**What other aspects of liquor licensing concern you that can be addressed in a review of legislation?**

**Responsible Service of Alcohol (RSA)**

While it is acknowledged this issue extends beyond the boundaries of South Australia, and therefore the current review of liquor licensing is unlikely to achieve any change, any changes proposed to RSA in South Australia could have an impact on South Australian businesses.

All businesses need to comply with RSA requirements.

Wine businesses conducting tastings, promotional events and sales events interstate need to comply with the relevant liquor licensing requirements of that State including RSA requirements. There is a lack of consistency in approach beyond the base of 'RSA' qualifications achieved through training under the National Unit of Competency – 'Provide Responsible Service of Alcohol'.

There are enormous challenges for wine businesses to comply with RSA obligations interstate including process challenges, costs and effort required to comply. There are significant variations relating to RSA compliance between States and this adds to the regulatory burden and costs for each business before any wine is poured interstate.

This has a direct impact on the delivery of the government strategic policy of premium food and wine from our clean environment as the domestic market provides opportunity for sales of South Australian wine but at a significant additional cost in order to be compliant.

While there are similarities between the States the means necessary to achieve compliance are not easy to navigate. There is no one stop shop to find out a licensee's RSA obligations for all States or in each State and this requires significant time and effort to research to identify the necessary training, approved providers, cost variations and documentation. Government liquor agency websites do not set out what is required for interstate parties.

In March 2014, the Liquor & Gambling Commissioner achieved some concessions through recognition for short term one off events but challenges continue in some jurisdictions.

For example, proof of identity photos (photo ID is required for RSA in New South Wales) now require a person to physically attend at an interstate location to have the photo verified.

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In one example, SAWIA is aware compliance would involve a 600km return journey to comply. No alternative solution was offered by the jurisdiction but offered by SAWIA.

Previously, an on line training was removed requiring interstate persons to travel a day earlier than the event (requiring a night's accommodation cost) to undertake the training and deal with photo requirements. While the on line training has been restored, the photo requirements is a new development following Australia Post no longer being an accepted service provider.

Overall the RSA requirements should be made easier to allow cross border serving and supply of alcohol without huge costs arising through additional training or requirements such as photo ID.

SAWIA is looking for a more harmonised approach in being compliant with RSA requirements across the States but this request would not involve a solution of raising the bar of compliance to the highest threshold such as a mirror of legislation to reflect the most prescriptive State.

### **Objections – the making of and substance of**

An application for a licence or a change to an existing licence can be objected to by a simple tick the box because an objector considers "*the application would not be consistent with the objects of the Act or would be contrary to the Act*". The lack of detail does not appear to provide an efficient process. The reasons for objection should be stated in full and in sufficient detail to allow the applicant time to respond in a meaningful way allowing the applicant to respond with proposals that seek to address the nature of the objections made. This will allow a more efficient process, saving time and effort for the applicant and objector and allow for more appropriate use of the time when dealing with such applications.

In addition, objectors should be required to demonstrate a genuine connection between their business operations or show a direct impact in relation to the application made. If objections made do not meet these criteria they should not be valid and dismissed. Having a clear understanding of the grounds for objection and the requirement to provide supporting reasons and evidence will assist all parties deal effectively and efficiently on the papers within a process. Such an outcome would also assist the effective administration of the Act.

### **Use of signage**

A review of a realistic approach to the quantity of signage required in a venue in order to be compliant would be appropriate given current examples provided seem excessive.

### **Unintended consequences**

Any proposed changes arising from the review should closely consider the impact on the operations and viability of cellar doors, their communities and the impact, if any, on regional tourism.

### **Minor breaches of licensing laws**

Minor breaches of conditions of licences and the enforcement of such conditions need to reflect the seriousness of the breach. Some enforcement activity seems to be excessive given the minor nature of the breach.

## **END OF SUBMISSION**