

January 6, 2017

Fassina Liquor Merchants Response

To Proposed SA Liquor Licensing Amendments

As part of the public consultation process on the new Draft Liquor Licensing Amendment Bill 2016, we wish to provide our feedback on the structure of the proposed Draft Community Impact Assessment Guidelines presented. We have also taken into account the recent Anderson Report and the SA Government Response to the proposed amendment of Liquor Licensing in South Australia.

It seems clear that the government is of the view that unwanted proliferation of bottle shops is undesirable and not in the best interest of the public. However, in the draft's current form there is no clear requirement to guard against proliferation.

This submission is focused on the case against proliferation and the safeguards required to help mitigate against potential negative outcomes of the new test based on the concept of community interest.

PROLIFERATION – *Documented points provided by the government against proliferation*

1. Government Response page 21- "...careful consideration will need to be given to framing this test to protect against proliferation of liquor outlets and alcohol-related harm".
2. Minister Rau then talks in his news release of 17/11/16 of "...high risk applications, such as late night venues or bottle shops..."
3. The Government's Summary of Proposed Changes to the Liquor Licensing Act document of November 2016 states at page 18 that "...careful consideration will need to be given to framing this test to protect against proliferation of liquor outlets.." in discussing the proposed new test to replace the "needs test".
4. The Anderson report at page 169 states that in replacing the "needs test", "...if left unregulated, the increase in outlets would clearly be contrary to the harm minimisation objectives of the Act and could impact negatively on the local community and the public as a whole".
5. The Draft Community Impact Assessment Guidelines at page 4 describe Tier 2 applications, including for packaged liquor outlets, as "...more complex and have a greater impact on the surrounding community"

It is clear from the points provided above that the Government is of the view that the new test should guard against a proliferation of liquor outlets, including packaged liquor outlets. The next part of the submission is to examine how this has failed to be included in the current draft proposal of the legislation.

CURRENT DRAFT BILL AND GUIDELINES – Review in regards to proliferation

1. *Current Draft Bill*

While the new Community Impact Test in s53A sets out matters that must be taken into account, there is no explicit reference in the existing availability of liquor in the locality. Nor is there even an affirmation that proliferation is a negative outcome. This is odd, as the government position is quite clear that proliferation must be guarded against.

Therefore, it would seem desirable for there to be a reference in s53A for the requirement to have regard to the need to guard against proliferation of licences in the public interest.

2. *Current Draft Guidelines*

As for what the Draft Guidelines require the authority to consider, understandably harm minimisation is a key consideration. The Guidelines require an applicant to provide information as to certain "at risk" groups in the community, and location of community facilities.

Interestingly, the guidelines require that an applicant provides information as to whether there are any "existing outlets in the locality" as part of the social impact consideration. It is not clear what the authority is supposed to do with that information. It could be that the question of other outlets in the locality should be taken into account to guard against proliferation.

If that is the case, and the intention is that a packaged liquor outlet should not be granted when there are perhaps "some", "enough" or "too many" nearby, then that sounds much like the current demand test. It is not clear what the government's intention is.

Further to this, under the category of "Nature of services to be provided", an applicant must provide details of "how does this differ from other existing licensed premises in the locality". However, again this is much like the current needs test without clear explanation of how it is meant to be applied.

Hence, it would seem necessary to clarify the guidelines on how the LLA is required to assess the number of existing outlets in a locality under the context of 'social impact consideration' and 'nature of services provided' considerations.

The new test in s53A does not refer to existence of other outlets, or availability of liquor, or need or demand, as considerations. The Guidelines do however require a consideration of availability of liquor, and whether the proposal differs from what is currently available. Those considerations are very much like the current need and demand test considerations. Public interest is already the overriding concern in the current Act and s53(1a).

After examination, the issue of how the new legislation and guidelines will be applied in practice in regards to control of proliferation of outlets, is still significantly vague and unclear.

SUMMARY

It has been shown that the State Government is of the opinion that proliferation of liquor licences is of concern in regards to the outcomes of the newly proposed Liquor Licensing Amendment Bill 2016 and therefore by extension the application of the Community Impact Test.

From our review, the new Community Impact Test will require applicants to go to more time and effort to make an application. There will be similar considerations for the authority to take into account- availability of liquor in the locality, is the new proposal different from existing, and is it in the public interest to grant the application.

What the new test fails to address is the potential for a proliferation of licences in areas where there may not be significant "at risk" groups, which is presumably an unintended consequence. This unintended consequence can be easily highlighted when comparing the application of the test to lower socio-economic areas versus more affluent suburbs.

In summation, our recommendations for the Draft Liquor Licensing Amendment Bill to address this issue are as follows:

1. Section 53A should explicitly require the authority to have regard to prevention of proliferation of licences
2. Section 53A should also explicitly require consideration of the availability of liquor in the locality
3. Section 3 Objects of the Act should include reference to prevention of the proliferation of licences
4. The Liquor Licensing Commissioner at first instance under Part 4 S22 should be required to explicitly consider and state the reasoning for or against proliferation issue under S53A

We ask Minister John Rau and the South Australian State Government to seriously consider our submission for the good of public interest. And further to this, to consider the long term consequences if the careful balance of our vibrant local wine industry and independent liquor retailers is eroded through uncontrolled proliferation.

Yours Sincerely,

Ross Fassina

Managing Director

Fassina Group