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Contents

Introduction	1
Background	2
Mandatory 5am closing time	4
Application of the Community Impact Test to On-Premises Licences	7

Late Night Venue Association of SA Incorporated
ABN 94 395 237 892
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Introduction

ABOUT THE LATE NIGHT VENUE ASSOCIATION OF SA INCORPORATED

The Late Night Venue Association of SA Incorporated (**LNVA SA**) is the representative body for South Australian businesses operating late night licensed venues, principally nightclubs.

The LNVA SA's objectives are to:

- provide a collective industry voice by championing the causes of its members;
- promote, protect and develop the interests of its members; and
- Foster communication and knowledge sharing amongst late night venue licensees through training, seminars, publications and social events.

ABOUT THIS SUBMISSION

The LNVA SA has prepared this submission in response to the *Review of the South Australian Liquor Licensing Act 1997* by former Supreme Court Justice the Hon. Tim Anderson QC dated 29 June 2016 (**Liquor Review**), the State Government response to the Liquor Review dated November 2016 (**State Government Response**), and the draft *Liquor Licensing (Liquor Review) Amendment Bill 2016 (SA)* (**Bill**).

Rather than addressing every issue in the Liquor Review, the State Government Response and the Bill which has the potential to affect our members, this submission addresses **two key issues** which, in the view of the LNVASA, have the real potential to adversely affect our members and not be in the best interests of the State Government's economic development strategy and tourism development and the wider needs and interests of the South Australian community:

1. The proposed mandatory 5am closing time (clause 23 of the Bill); and
2. The proposed application of a community impact assessment in relation to applications for new On-Premises Licences trading past 2am (clauses 5(8) and 34 of the Bill).

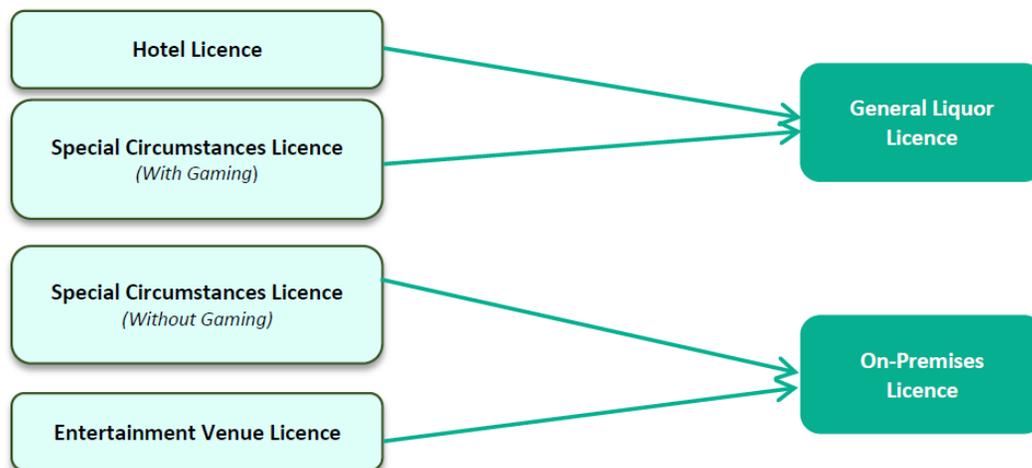
Background

Currently, late night venues in South Australia trade under one of three liquor licence classes, namely a Hotel Licence, an Entertainment Venue Licence or a Special Circumstances Licence. Over the last 20 years, the biggest percentage increase in the number of liquor licences has not been in the categories associated with late night venues. In actual fact, they have been in the categories of Direct Sales Licences, Producers Licences, Restaurant Licences and, of course, Small Venue Licences which commenced in 2013 and of which there are now 73.

LIQUOR REVIEW RECOMMENDATIONS

In the Liquor Review, it was recommended (among other things) that:

- Existing Hotel Licences and relevant sub-category of Special Circumstances Licence (with gaming) be incorporated under a General Liquor Licence (**recommendation 6**); and
- Existing Entertainment Venue Licences and relevant sub-category of Special Circumstances Licence (without gaming) be incorporated under an On-Premises Licence (**recommendation 7**).



- It be a mandatory condition of all liquor licenses (except the liquor licence held by Skycity Casino) that licensed premises be closed for a minimum of three continuous hours between 3am and 9am i.e. mandatory 6am close (**recommendation 15**); and
- An applicant for an On-Premises Licence seeking approval to trade later than 2am and where the primary and predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke lounges and other bars, would be subject to a Community Impact & Public Interest Test (**recommendation 72**).

STATE GOVERNMENT RESPONSE

In the State Government Response, the State Government effectively accepted the above recommendations, save and except for the following:

- The mandatory closing time be 5am rather than 6am because, in the State Government's view, the recommendation was not considered to be a proper break in night trade. The State Government has stated that a proper break in night trade was the intention behind the recommendation but that was never expressly stated in the Liquor Review;
- The State Government would consider whether a requirement to have food available should be imposed by the *General Code of Practice* in relation to On-Premises Licences trading after a certain time. This is a completely new response, never considered by the Liquor Review, let alone commented upon. It is an absurd suggestion and should be dismissed out of hand. Community expectations and contemporary needs do not dictate that licensed premises should have food available at all times they are open; and
- Amend the proposed Community Impact & Public Interest Test to a Community Impact Assessment, with the aim to "*protect against proliferation of liquor outlets and alcohol-related harm*". The LNVASA is more than bemused by the fact that the State Government wishes to guard against a proliferation of bars in the community. The State Government is an enthusiastic supporter of small bars, of which there have been 73 new ones since 2013.

Mandatory 5am closing time

The LNVASA strongly opposes the introduction of a mandatory 5am closing time for licensed premises.

The State Government prefers to use the term “break in continuous trade” but, in reality, this is a mandatory closing time for licensed premises in South Australia.

There is no proper justification for mandatory closing times of any nature. The Liquor Review was bereft of any reasonable consideration of the matter.

This is not the first time that a mandatory closing time has been considered. In 2015, mandatory closing times were considered as part of the State Government’s *Review of the Codes Established under the Liquor Licensing Act 1997 (Review of the Codes)*. At the time, the following concerns were raised with regards to mandatory closing times – which have not changed:

- A break in trade wouldn’t be effective in reducing alcohol-related violence because most assaults happen before 4am;
- Fears for safety of people being ejected onto the streets;
- Perceived discrimination against hotels, bars and nightclubs as opposed to restaurants;
- The disadvantage to local shift workers; and
- Existing officials (police and licensing authority) could do better with the existing powers they already have.

There is no evidence that supports an argument that mandatory closing times reduce alcohol-related violence. The LNVASA questions what mischief is being targeted by the proposed 5am mandatory closing time.

Based on the evidence provided by SA police to the Review of the Codes (which the LNVASA contends does not, in fact, accurately reflect alcohol-related incidents), there is a notable drop off after 3am in reports to police and apprehensions by police, and a substantial decrease between 5am and 7am (even without mandatory closing times). The police evidence (for what it was worth) also showed that there has been an ever-decreasing number of reports and apprehensions over the last three years:

Figure 4: Number of selected offences on police incident reports occurring in the CBD recorded between 12:00am and 7:00am, by hour, October 2011 to September 2014.

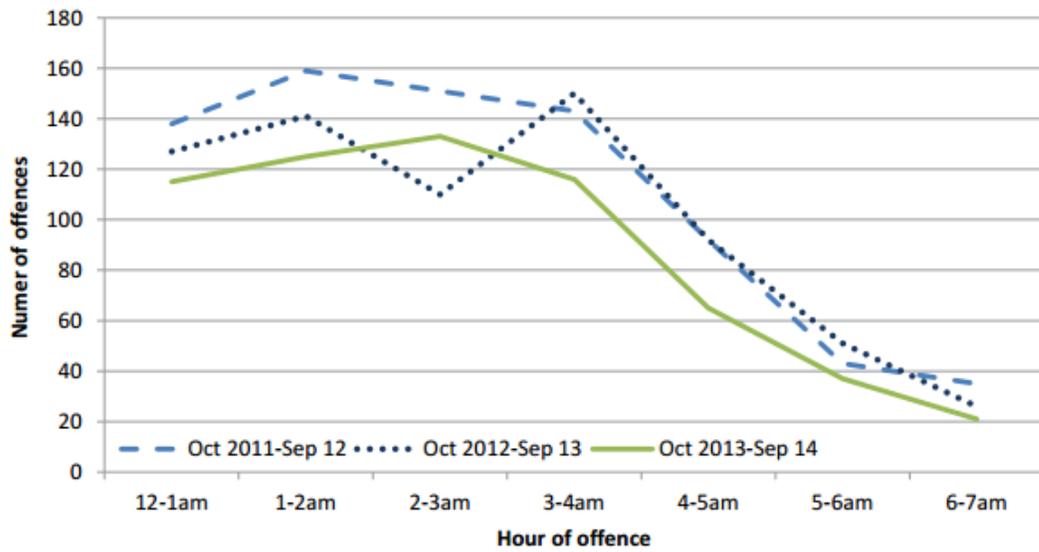
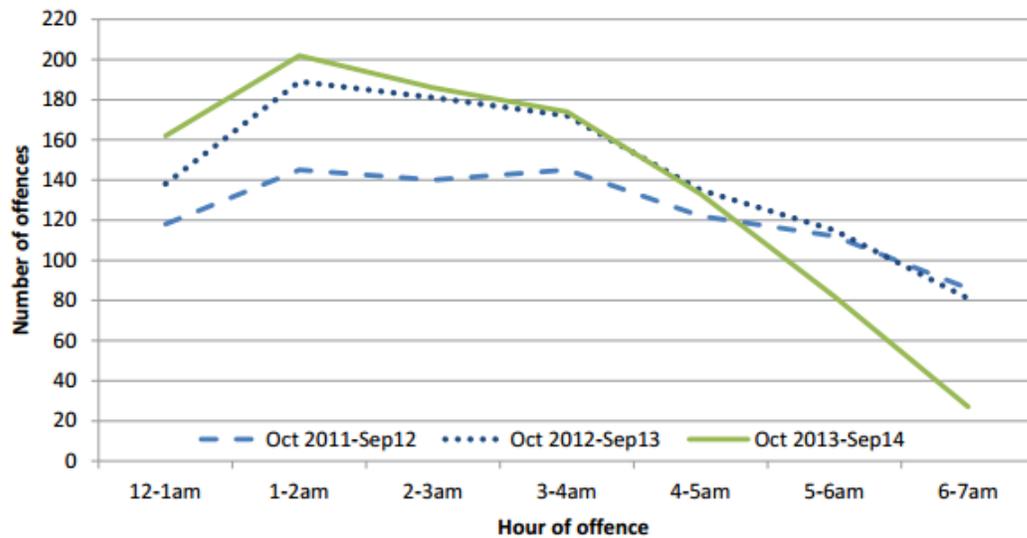


Figure 6: Number of selected offences on apprehension reports for recorded between 12:00am and 7:00am in the CBD, by hour, October 2011 to September 2014.



Mandatory closing times are a form of restricted trading hours. Restricted trading hours are an unjust restriction on the freedom of both late night venue operators and patrons. In a free market economy, decisions regarding trading hours are best made by licensees themselves. Patrons will drive demand and determine whether licensed premises should trade past 5am.

Much has been made in the Liquor Review of changing community expectations and new liquor licensing laws that reflect the contemporary needs of South Australians. The Liquor Review notes that over the last 20 years trading hours generally have been extended, particularly in relation to late night venues. This reflects the community's on-going expectations and contemporary needs. Restricting trading hours in the manner proposed is completely inconsistent with the community's expectations and contemporary needs of licensed premises trading late.

Imposition of a mandatory 5am closing time would further exacerbate the unfair competitive advantage that the Skycity Casino enjoys over other late night venues. Currently, the 3am lockout applies to all licensed venues in South Australia except the Skycity Casino. If a mandatory 5am closing time is introduced, the only licensed premises open at 5am in the Adelaide CBD will be Skycity Casino. Skycity Casino would effectively have a monopoly in the Adelaide CBD on the ability to serve liquor between 5am and 8am.

Application of the Community Impact Test to On-Premises Licences

Clause 34 of the Bill proposes inserting a new section 53A – Licensing to be satisfied that designated applications in community interest, in the Act. The new section 53A introduces the concept of a “designated application”, which is proposed to mean (among other things) an application for the grant or removal of a “designated licence”.

Clause 5(8) of the Bill proposes inserting a definition of “designated licence” in section 4 of the Act to mean:

- “(a) a general liquor licence;*
- (b) an On-Premises licence, unless:*
 - (i) the premises to which the proposed licence relates is a public conveyance or a major sporting venue; or*
 - (ii) the licence is, or is proposed to be, subject to a condition that the business conducted at the licensed premises be such 20 that at all times the primary service provided to the public at the premises is the provision of accommodation; or*
- (c) a club licence, if the licence is, or is proposed to be, subject to a condition authorising the sale of liquor to persons (other than a resident) for consumption off the licensed premises; or 25*
- (d) a packaged liquor sales licence, other than if the licence is, or is proposed to be, subject to a condition authorising the licensee to only sell liquor through direct sales transactions.”*

There is no mention in either the proposed new section 53A or section 4 definition of “designated licence” to an On-Premises Licence seeking approval to trade after 2am. So how does the State Government propose that the community impact test apply to On-Premises Licences seeking approval to trade after 2am?

The answer is that the State Government proposes to distinguish between On-Premises Licences that trade up to 2am and those that trade after 2am within the Draft Community Impact Assessment Guidelines (**Guidelines**). The Guidelines do not have the force of a Code of Practice so arguably they are mere policy of the licensing authority. This means that the licensing authority could, at any time, amend the Guidelines and this would not require legislative intervention. This is a concerning development indeed.

The purpose of the Guidelines is purportedly to “*provide additional information about how the community impact assessment under the liquor Licensing (Liquor Review) Amendment Bill 2016 is intended to operate.*” However, the Bill is silent with regards to the application of the community impact assessment to On-Premises Licences that trade up to 2am and those that trade after 2am. In their present form, the Guidelines fall outside of the Act and they have no real foundation (despite the Guidelines purporting to be guided by the Bill).

The State Government argues that a new threshold test should be implemented that is variable depending on the licence type “with higher risk businesses needing to meet a higher threshold”. Here the State Government erroneously confuses licence type with business type. What the State Government really means is that businesses that trade past 2am are higher risk than business that trade to 2am. However, what is the justification for this? There is no evidence that a licensed business that trades past 2am is a higher risk business (whatever that term means) than one that trades up to 2am.

Under the Guidelines, an On-Premises licence trading past 2am is to be considered a tier 2 application. Tier 2 applications are said to be more complex and have a greater impact on the surrounding community. The LNVASA does not understand how an application for an On-Premises Licence trading past 2am is more complex or have a greater impact on the surrounding community than an application for an On-Premises Licence that trades up to 2am

Further, under the Guidelines, it is proposed that tier 2 applications must provide a greater level of supporting information and conduct consultation. The State Government effectively acknowledges that it is proposing to increase the regulatory burden and red tape associated with applying for an On-Premises Licences that trades past 2am, even though one of the main justifications for the Liquor Review was to reduce red tape.

The Guidelines list a significant amount of information required of a tier 2 applicant as follows:

Factors to be considered by the Licensing Authority	Information to be provided by applicants
<p>The harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor</p>	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people and communities; • people from regional and remote communities, families; • migrant groups from non-english speaking countries;

	<ul style="list-style-type: none"> • people in low socio-economic areas; • mining communities; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community buildings, facilities and areas within the locality? Such facilities would include–</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • aboriginal communities; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What operating policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities?</p> <p>Operating hours, conditions and the way a business is managed and staffed may also be a means of minimising the potential for harm or health impacts.</p>
<p>Social impact in, and the impact on the amenity of, the locality</p>	<p>What is the character or nature of the locality of the area in which the premises are proposed to be located?</p> <p>This information should include crime statistics and social profile information. Social profile information includes average age, average income, unemployment statistics and population.</p> <p>Are there any existing licensed premises within the locality?</p> <p>Tier 2 applicants should provide information on the potential impact of the premises/proposed premises on vandalism, litter, criminal acts within the vicinity of the premises/proposed premises and strategies to minimise the impact.</p> <p>Tier 2 applicants should provide information on the potential impact of the premises/proposed premises on the level of noise and anti-social activities in the locality and the management strategies to minimise the impact.</p> <p>Tier 2 applicants should provide a map depicting the proposed premises and surrounding suburbs.</p> <p>Tier 2 applicants should provide details of public transport that would be available to patrons. This will not be required for a Packaged Liquor Sales Licence.</p>
<p>Cultural, recreational, employment or tourism benefits for the local community area</p>	<p>Will the proposed licensed premises provide cultural, recreational, employment, tourism or other economic</p>

	benefits and to what level?
Nature of services or trade to be provided	What is the nature of the trade or services to be provided and the intended client base?
	How does this differ from other existing licensed premises in the locality?
	What additional services will be provided? For example accommodation or dining.
	Will it use existing premises, improve or add to existing premises or is it a new premises?
	Tier 2 applicants should provide evidence of support from members of the community. This could include survey results, petitions or letters of support from members of the public.
Consultation	Tier 2 applicants will be required to provide a notice of the application (in the approved form) to occupiers of land or premises within a 200m radius.

The information required of a tier 2 applicant highlighted in yellow in the Guidelines:

- is unnecessary;
- in some cases is not publicly available;
- is generally addressed by a relevant noise report which is provided in most cases concerning new licensed premises;
- will significantly increase the cost of an application for an on-premises licence trading past 2am;
- will be a disincentive to investing in late night venues; and
- is an increased barrier to entry.

In the view of the LNVASA, the Guidelines should not apply to on-premises licences at all. There is no proper justification for extending the community impact assessment to this category of liquor licence.