



Local Government Association Tasmania

**Review of the
Liquor Licensing Act 1990
Proposal Paper
&
Budget Decision Regarding the
Licensing Board**

Submission

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Introduction

The Local Government Association of Tasmania (LGAT/The Association) is incorporated under the *Local Government Act 1993* and is the representative body for Local Government in Tasmania.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

General Comments

The Association appreciates the level of consultation provided by the Department of Treasury and Finance on this issue and the extension of time for responding. As noted in our covering letter, this submission has been developed in collaboration with member councils. Where a Council has made a direct submission to this process, any omission of these specific Council comments in the LGAT submission should not be viewed as lack of support by the Association for that specific issue.

This submission follows our previous submission to the *Review of the Liquor Licensing Act 1990* Discussions Paper

Specific Comments

Proposal 1. Objectives of the *Liquor Licensing Act (the Act)*

LGAT supports the amendment of the Act to introduce an objectives provision that will include regulation, harm minimisation and responsible development of industry.

Proposal 2. Best Interests of the Community

LGAT supports the proposal that the liquor regulations be amended to set out matters that the Licensing Board or Commissioner for Licensing will have regard to in determining the "best interests of the community". The Association agrees that guidance as to the matters that the Commissioner and the Board would generally consider in determining whether a liquor licence or permit application is in the best interests of the community would assist in improving transparency of the administration of the Act and facilitate better community understanding of the regulatory process. It is also noted that other jurisdictions have

legislated criteria and/or comprehensive information providing guidance as to what should be considered when determining a liquor application.

It is agreed that that the matters that would generally be taken into account in determining best interests of the community, should consider the proposed objectives of the and be broad in nature so as not to unnecessarily restrict decision-makers in applying appropriate reason to determinations. It is also agreed that these matters should be described within regulations and that a review of current published material provided for guidance to applicants and to the community would be sensible. Changes arising from such a review must provide clarity in relation to best interests of the community.

LGAT requests that an engagement process be undertaken as part of the process to confirm what “matters” are to be included in the regulations in relation to the best interests of the community.

Proposal 3. Community Impact Statements

LGAT is cautiously supportive of the proposal to require a Community Impact Statement (CIS) for liquor licence or permit applications deemed to by the Commissioner to be high risk, however, it is critical that an interpretation of what is deemed ‘high risk’ is provided. For councils and the community to comment meaningfully on this proposal, it is essential that the term “high risk” is clearly and uniformly understood. It is noted and supported that additionally, “guidance to applicants on what may be considered high risk would need to be developed”.

LGAT requests, however, that Local Government is included in the defining of what is to be deemed “high risk”, via engagement with the Association in the first instance. While LGAT understands the practicalities of applying a risk management approach for CIS, if levels of risk are not defined with care and to the satisfaction of stakeholders, the proposal for a CIS process risks becoming meaningless. This is particularly significant for licence/permit applications where planning approval is not required as a prerequisite to the granting of a licence.

Proposal 8. Licence and permit conditions

LGAT supports the principle that the Act be amended to

- a) Provide the Board and Commissioner with the power to apply a range of conditions to all licence and permit types; and
- b) Provide an appeals process against the imposition of conditions by the Commissioner.

However, it is essential that conditions that are applied to a liquor licence recognise any conditions that are required under a planning permit to ensure consistency between the two approvals. Such conditions may relate to operating hours, security, car parking etc. The above issue highlights the need for there to be, at a minimum, formalised collaboration and communication between the Board and local government in regards to the liquor licensing (See comments in next section).

Role of Local Government

Proposal 9. Maintain separation between the planning and development and the liquor licensing process.

The Proposals paper recommends that the planning approvals process and the liquor licence application process remain separate. Local Government, through both LGAT's and individual councils' previous submissions had not argued that the processes be joined. Rather, many councils argue that appropriate planning approval should be in place as a prerequisite to the lodgement of a liquor licence application, as is the case in Victoria, New South Wales, Western Australia, South Australia and Queensland. LGAT, on behalf of its member councils, has been advocating to the State Government for this change since a motion was raised by Councils at a General Meeting in 2010.

LGAT disagrees with the statement in the Proposals Paper that the two varying positions on the issues associated with the parallel processes therefore deem both positions redundant. This position fails to take account of the reasons behind the positions and only focuses on the proposed remedies.

“we conclude the two distinct views expressed in submissions (legislate to consider one process before the other process; or collaboration between the two process and independent bodies) to be redundant as these views require the two approval processes to be connected in some way.” (Review of the Liquor Licensing Act 1990 – Proposals Paper July 2014, pg 23)

At a minimum, LGAT is supportive of the view within the Proposals Paper that “collaboration between the Board and Local Government established either administratively or by way of mutual recognition agreement” (Review of the Liquor Licensing Act 1990 – Proposals Paper July 2014, pg 23), however it is noted that this view is not carried as a formal proposal in the Paper. LGAT requests that this proposal be formalised as a recommendation.

The Stennings Report and Proposals Paper both note that councils currently have the ability to provide advice to the Board on the best interests of the community but this is typically not exercised. Part of the issue for Local Government in regards to their ability to make a submission to the Licensing Board, is not related to understanding of their rights or the process under the Act, as was suggested may be the case (re: Findings of the Independent Review Committee (Western Australia, Proposals Paper July 2014, pg 24) - rather, it is due to lack of information.

Currently, councils are not automatically notified of the lodgement of liquor licence applications. Therefore if an applicant has not sought planning approval before seeking a liquor licence, the Council may not be aware of the application and any associated potential issues of community concern. LGAT is pleased to note that the Commissioner will aim to “provide clarity to applicants on the two processes by the establishment of new liquor licence application guidelines and a process for alerting councils on the lodgement of liquor licence applications”(Proposals Paper July 2014, pg 24). LGAT looks forward to discussions on these matters with the Liquor and Gaming Branch in the near future. LGAT also requests that this is noted as a formal recommendation.

A key point made by one council, however, is that it is by going through the planning approval process that Council may become fully aware of the potential impacts of a proposal on the wider community. Therefore, without the planning approval process being undertaken as a prerequisite, Council may be limited in the depth of insight it is able to provide the Licensing Board.

This issue of the requirements of the *Land Use Planning and Approvals Act 1993*, sometimes preventing a council from being able to consider the best interests of the community as a factor in determining a planning decision is challenging. While it is possible for a council to give planning approval and then provide a recommendation to the Licensing Board opposing the license, this is not the ideal outcome for the applicant, nor for the Council. Ideally, there would be processes in place to enable the Licensing Board and the Council to consider an application concurrently. LGAT would be interested to discuss this issue with the Liquor and Gaming Branch to see if there are any avenues for resolution.

Proposal 10. Continue dialogue between the regulators and Local Government to ensure that all local authorities understand the licensing process and their ability to participate in that process.

As mentioned above, LGAT does not believe that a lack of a council understanding of process is the key issue in regards to a council’s ability to make a submission to the Licensing Board. Rather, the Association believes the key issue is communication or lack of in regards to the lodgement of liquor licence applications. That said, LGAT is very supportive of the proposal to continue dialogue between the regulators and Local Government to ensure that all local authorities understand the licensing process and their ability to participate in that process.

Proposal 16. Trading hours and outlet density

LGAT supports the proposal to make outlet density data available to the Board when undertaking licensing decisions.

Budget Decision re Licensing Board

With only limited information provided, at this stage LGAT does not foresee any significant issues for Local Government in regards to the Budget decision to amalgamate the Tasmanian Gaming Commission and Licensing Board are also provided. LGAT would however appreciate being kept informed on this issue.

Concluding Comments

Councils are concerned about the negative social impact that the use of alcohol can have on their communities. It is believed that much can be achieved to minimise these impacts by potential changes to the legislative framework underpinning the sale, use and management of alcohol in our communities or improvements and through improved collaboration and coordination of parties involved in regulation of such activities.

Local Government believes that the *Liquor Licensing Act* should be underpinned by harm minimisation objectives and that the interface between land use planning and the liquor licensing approval process should be formalised and stipulated in legislation. As noted, the Association is please to see this proposal has been included.

The importance of a robust and consistent assessment of 'the best interest of the community' by the Commissioner for Licensing and the Licensing Board cannot be understated. The issue is of considerable importance to councils; as councils are often restricted by the limitations placed on them as a planning authority and cannot always give weight to social and health issues as part of the planning process.

LGAT appreciates the opportunity to provide feedback on the Proposal Paper and hopes that the issues raised in this submission are taken on board by the Department of Treasury and Finance in their review of the Act.

If you have any further questions please contact Kate Hiscock, Senior Policy Officer, Local Government Association on 6233 5965 or Kate.Hiscock@lgat.tas.gov.au