



**Public Health Association**  
AUSTRALIA

**Public Health Association of Australia  
submission to the Liquor & Gaming NSW  
evaluation of the Community Impact  
Statement requirement**

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## **Introduction**

### **The Public Health Association of Australia**

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia. The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

The NSW Branch of the PHAA has a strong history of working with Government and communities in NSW to provide evidence and advice on alcohol related harms and strategies to reduce harm and achieve better health outcomes for the community, both through working with all levels of Government and agencies, and promoting key policies and accurate information through the media, public events and other means.

All members of the Association are committed to better health outcomes based on these principles.

### **Vision for a healthy population**

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

### **Mission for the Public Health Association of Australia**

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

## Preamble

PHAA welcomes the opportunity to provide comment on the Liquor & Gaming NSW *Evaluation of the Community Impact Statement (CIS) requirement for liquor licence applications Discussion Paper*. This evaluation can be a positive step for members of the public to have a greater say in liquor licencing decisions that impact their communities and an opportunity to examine the effectiveness of current regulatory protections and their improvements.

According to the Liquor & Gaming NSW (L&GNSW) Discussion paper, the purpose of the Liquor CIS process evaluation is to:

1. examine whether or not the current CIS process effectively captures local community concerns and feedback, and suggest improvements if required
2. examine how effective the CIS process is in facilitating the provision of feedback and information from local residents and other community stakeholders to support decision making by ILGA and delegated officers
3. examine whether and how relevant stakeholders are being consulted by liquor licence applicants under the CIS process, and suggest improvements to increase transparency
4. examine existing time and cost impacts on industry to comply with the CIS requirement, and suggest improvements to cut red tape and minimise the potential for delays in the licence approval process
5. consider ways in which any duplication in CIS and consultation-related processes across local and state government authorities can be minimised, including information technology enhancements and business process changes
6. consider the appropriateness of maintaining separate CIS categories (A and B) which relate to different levels of risk
7. consider whether certain liquor application types should continue to be excluded from CIS-type requirements, and whether any types that are not currently excluded from the requirement should be.

The PHAA's response will comment on issues within the expertise of the PHAA, specifically:

1. The need for greater transparency and objectivity
2. Genuine community participation and resourcing in licensing matters
3. Properly resourced and effective regulatory system
4. 'Onus of Proof' of predictable health and social impacts affecting communities being the responsibility of the applicant

It is difficult to interpret the purpose of point 4 regarding time and cost implications and 'cutting red tape' for industry compliance. This may be interpreted as removing regulatory barriers to establish a licenced premise and sell as much alcohol as possible to any adult, whenever it wants using whatever marketing it can get away with. Clearly this interpretation would maximise profits for industry with communities, Police and health services bearing the social and service costs.

The reduction of social and health inequities should be an over-arching goal of government policy and recognised as a key measure of our progress as a society, promoting a healthy ecosystem and reducing social and health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity.

## Supporting documentation

The following provides further evidence about community input into liquor licensing decisions. The NSW Government should read these in conjunction with this submission.

- Foundation for Alcohol Research and Education (FARE). (2013). *Breaking down barriers: community involvement in liquor licensing decisions in NSW*. Canberra: FARE.
- Martino FP, Miller PG, Coomber K, Hancock L, Kypri K (2017): *Analysis of Alcohol Industry Submissions against Marketing Regulation*. PLOS ONE 12(4): e0175661. <https://doi.org/10.1371/journal.pone.0175661>
- Manton, E., Room, R., Giorgi, C. & Thorn, M. eds (2014). *Stemming the tide of alcohol: Liquor licensing and the public interest*. Canberra: FARE in collaboration with the University of Melbourne.
- Babor, T., Caetano, R., Casswell, S., et al. (2010). *Alcohol, No Ordinary Commodity: Research and public policy* 2nd edition, Oxford University Press.
- Foster, J., Harrison, A., Brown, K., Manton, E., Wilkinson, C. & Ferguson, A. (2017). *Anytime, anyplace, anywhere? Addressing physical availability of alcohol in Australia and the UK*. London and Canberra: Institute of Alcohol Studies and FARE.
- Muhunthan, J., Angell, B, Wilson, A., Reeve, B. & Jan, S. (2017). *Judicial intervention in alcohol regulation: an empirical legal analysis*. *Aust NZ J Public Health Online*. Doi: 10.1111/1753-6405.12666

## Summary

Alcohol is not an 'ordinary commodity' and as such In NSW, the Liquor Act 2007 and the Gaming and Liquor Administration Act "regulates and control the sale, supply and consumption of alcohol in a way that is consistent with the expectations, needs and aspirations of the community".<sup>1</sup>

Problematic drinking is a serious systematic and cultural issue in Australia, with alcohol related injury and other harms at unacceptable levels in many communities in NSW. Alcohol use disorders are among the most prevalent disorders in the community. Alcohol is a key factor in the lead cause of death and disability among males aged 15 to 59 years and the three leading causes of death in Australia among adolescents;<sup>2</sup> unintentional injury, homicide and suicide.<sup>3</sup> People in rural and regional areas suffer higher rates of alcohol related harms and are more than twice as likely to die from alcohol related causes than people living in metropolitan Sydney (NSW Health Stats, 2015). Additionally, one in four Australians report being the victim of verbal abuse by intoxicated persons.<sup>4</sup>

Availability of alcohol and marketing strongly influence drinking patterns. There is strong evidence of an association between density of alcohol outlets,<sup>5</sup> availability of alcohol, price, alcohol promotion and high level consumption, particularly in relation to binge drinking, alcohol dependence and longer term harm associated with alcohol consumption.

A growing body of literature points to the role of vested interests as a barrier to the implementation of effective public health policies. Corporate political activity by the alcohol industry is commonly used to influence policy and regulation. The dominance of large corporations with extensive resources<sup>6</sup> winning legal appeals against the wishes of local communities and obstructing better health and social outcomes is of particular concern.

Based on liquor licence decisions published on the L&GNSW website it is clear that the regulatory system is weighted heavily against local communities, despite legislation intended to protect communities from alcohol related harms. Communities are generally ill informed of development applications and poorly resourced (time and financially), and lack expertise in understanding the NSW liquor licencing regulation process and access to evidence of predictable harms associated with the application. Greater resourcing of industry and obfuscation of facts together with courts implementing licensing conditions that generally have little impact on actual harm have resulted in industry most often being awarded preference over community autonomy and evidence based concerns. It's not a level playing field and efforts to impact an entrenched culture in NSW

of binge drinking and high level intoxication has not been attained by industry dominating community decision making.

Responding to this imbalance requires a coordinated response involving governments being accountable to communities through informed community input into decision making as a function of democratic governance, protecting community amenity, safety and wellbeing and enforcing regulations and procedural fairness.

There is a clear need for reform to ensure the CIS addresses four key areas:

1. The need for greater transparency and objectivity
2. Genuine consideration of predictable health and social impacts affecting communities
3. Reversing the onus of proof
4. Properly resourcing community consultation and regulators

There is now an opportunity to build on the success of measures shown to reduce alcohol related harms in NSW to ensure effective consultation and enforcement of regulatory strategies to genuinely impact alcohol related harm and community wellbeing.

## Recommendations

1. That the NSW Government make liquor licencing processes more transparent and improve public awareness, engagement and community input to these processes with support to access accurate information.
2. That the NSW Government make the CIS a requirement for all licence applications and notify at a minimum the local consent authority, local police and all occupants of neighbouring premises within the primary trade area.
3. That the NSW Government make the CIS and all supporting documentation, including the social impact assessment, publicly available in real time on the Liquor and Gaming Application Noticeboard. Any submissions made in favour or opposition of a licence application should also be published.
4. That the NSW Government establish an independent Community Defender's Office (CDO) to support communities in licensing matters. The CDO should consist of an advisory service and central information service, with staff that have appropriate skills and expertise in alcohol related planning and licensing systems, including legal skills and an understanding of public health impacts of alcohol and community needs and expectations.
5. That the NSW Government act in the interests of communities, enforce existing legislation and ensure that the onus of proof is on applicants to objectively demonstrate that no harm will be caused by the granting of a licence.
6. That a requirement of the CIS is to list current and predicted (if licence application approved):
  - a. Alcohol outlet density of the catchment area
  - b. Alcohol related assaults (including sexual assaults)
  - c. Alcohol attributable hospitalisations
  - d. Malicious damage counts and rates
  - e. Litres of pure alcohol sold in catchment area (compared to NSW average)
  - f. Number of community members with alcohol dependence
  - g. Number of underage regular drinkers

And outline how they will mitigate any predicted increases to these figures.

7. That the NSW Government establish an independent Community Defender's Office (CDO) to support communities in licensing matters. The CDO should consist of a legal advisory service and control

- information service, with staff that have appropriate skills and expertise in alcohol related planning and licencing systems, including legal skills and an understanding of community needs and expectations.
8. The Authority use evidence of predicted harm through conducting a health impact assessment to objectively indicate locations that are (or are not) appropriate for liquor outlets.
  9. That the NSW Government properly resource ILGA to monitor compliance and independently assess every application.
  10. Appoint a minimum of two positions on the ILGA Board to eligible candidates with public health qualifications and significant knowledge of health and local government legislation.
  11. Local councils should be resourced and supported to adequately assess a DA. Allocate significant weighting to submissions provided by the Local Health District regarding liquor licensing decisions

## **1. Community participation in licensing matters**

Public participation and engagement in licensing matters is essential to the achievement of transparent and democratic governance and procedural fairness. It also results in administrative decision-making being more responsive to the public interest.<sup>7</sup>

Importantly, communities place their trust in the local and state governments whom they elect to act in their best interest and protect their health and wellbeing through legislation, consultation and the establishment of offices and agencies. Local government plays a key role as a 'place shaper' and its importance in meeting the needs of citizens local health, safety and amenity issues related to alcohol, and satisfaction with, the areas in which they live.<sup>8</sup> The extent to which citizens are able to exercise autonomy and community choice is an indicator of the quality of government, both local and state.

The primary object of the NSW Liquor Act 2007 is as follows:

*"To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community."*

Enhancing community awareness, engagement and input in licensing, serves to make policy decision-making more responsive to the increasing community concern regarding alcohol harm. Each day in NSW, alcohol is responsible for 32 emergency department presentations, 149 hospitalisations and four deaths.<sup>9</sup> Ambulances are more commonly called to neighbourhoods near bottle shops, with areas near larger chain stores reporting even higher injury rates (Morrison & Smith, 2015).<sup>10</sup>

Many families are not aware of the risks associated with alcohol or have little influence over the consumption of others. They may however be impacted by violence, loss of income and impaired health associated with alcohol dependence and lifelong disability associated with children born with foetal alcohol spectrum disorder. Research shows that violence in homes increases by 26 per cent for every extra 10,000 litres of alcohol sold (Liang & Chikritzhs, 2011).<sup>11</sup>

In light of the evidence of alcohol related harms and effectiveness of reducing these harms, the health and wellbeing of communities need to be taken seriously and regulators need to be sufficiently resourced and act with the highest levels of objectivity and impartiality and influence.

Associated legislation also underpins regulatory decision-making to best serve the 'public interest'. Specifically, the *NSW Public Health Act 2010* (particularly No 127 part 2, section 7) and the *NSW Environmental planning Act 1979* (no 203, part 4).

The CIS fails to effectively engage the local community in liquor licence decisions due to fundamental flaws within the system. There is an inherent lack of transparency surrounding licence applications and a lack of accountability for due process. For the burden of proof that a liquor licence will cause harm to the community to rest heavily and unfairly on under resourced and under informed community members rather than the

applicant is unfair and destined to fail. Additionally, not all applicants are required to complete a CIS and the local community are often left unaware of an application. These concerned community groups and individuals lack the knowledge and resources to properly formulate an evidence-based argument against well-funded industry bodies.

However the current system is complex and community impact including the known and predictable health impacts of development applications and costs to communities are not adequately assessed or addressed.

**Recommendation:**

1. That the NSW Government make liquor licencing processes more transparent and improve public awareness, engagement and community input to these processes with support to access accurate information.

## **2. Is the regulatory system effective in addressing community concerns regarding alcohol related harm?**

The majority (83 per cent) of NSW adults believe more needs to be done to address alcohol harm and more than half of Australians feel they do not have enough say in the number of licensed venues in their community.<sup>12</sup> The applicant is the party who stands to financially benefit from the increased supply of a product known to cause significant negative social, health and economic impacts. Therefore it is the Applicant who should be required to empirically demonstrate that there will be no harm caused by the granting of a licence.

According to the alcohol industry a small proportion of the community generate the majority of alcohol industry profits.<sup>i</sup> The costs of injury and the associated harms of alcohol are transferred to families, the health system and emergency services. These costs are not reasonably considered in licencing applications, rather the economic case of the applicant is generally favoured.

As at 27 June 2017, there were 133 liquor licence decisions published on the L&GNSW website in 2017, with ILGA granting the licence in every case.<sup>13</sup> This 100% approval rate in favour of the liquor industry indicates that valid community concerns are not being appropriately considered. PHAA believe the current licensing system (including the CIS requirement) is seriously flawed and requires fundamental reform.

For example, The Shoalhaven Council rejected a development application of a Dan Murphy's in Nowra on the basis of the unacceptable social impact particularly amongst the nearby socially disadvantaged community. The suburb of Nowra is classified in the most disadvantaged 10% of the NSW population according to the Australian Bureau of Statistics.<sup>ii</sup> This directly correlates with fewer resources for quality food, education and opportunity and is associated with high vulnerability, including alcohol related violence, child neglect, gambling and poorer health compared to more advantaged communities.

The rejection led to an appeal to the NSW Land and Environment Court who found in favour of the owners of Dan Murphy's – Woolworths on the grounds of supposed appropriate mitigating harm minimisation conditions to the Development Application (including by closing a smaller outlet, not selling cask wine over 2L and paying community groups \$5,000 per year).<sup>14</sup> The Council spent over \$500,000 opposing the application and the Aboriginal Medical Service invested a large sum on behalf of the local community.

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<sup>i</sup> 20% of Australians aged over 14 account for 74% of all the alcohol consumed nationally each year

<https://www.theguardian.com/australia-news/2016/jan/20/alcohol-industry-relies-on-risky-drinkers-for-profits-report-claims>

<sup>ii</sup> ABS (2011) Socioeconomic Indices for Areas (SEIFA) Index of Education and Occupation. The lower an individual's socioeconomic position, the worse their health and the less resources they have for autonomy over their circumstances. Prof Michael Marmot. The health gap: the challenge of an unequal world, *The Lancet* 2015 [http://dx.doi.org/10.1016/S0140-6736\(15\)00150-6](http://dx.doi.org/10.1016/S0140-6736(15)00150-6)



See also Dan Murphy's Mosman,<sup>15,16</sup> approved by ILGA "in the face of significant local community opposition" and Police opposition. Dan Murphy's Leichhardt was approved in relation to closing a low volume liquor outlet to be replaced by a high volume liquor outlet.<sup>17</sup>

In a comparable application in Campbelltown in 2013, among a less disadvantaged community (most disadvantaged 30% of the NSW population according to the ABS SEIFA Index) the court ruled that Woolworths were not capable of reducing harms associated with supply of alcohol.<sup>18</sup>

Prior to 2017 there are cases where community members have opposed a Development Application (even when local council has approved the application) and been supported by the Independent Liquor and Gaming Authority (ILGA), however such cases are rare and in areas of highly visible intoxication. ILGA have successfully upheld rejections because:

- The number of liquor licenses in the area and the rates of alcohol-related crime in the area
- The venue was in an area where there are high levels of harm caused by alcohol
- Extended trading hours of a bar was not in the public interest
- A pre-packaged outlet would make a significant contribution to under-age drinking, contribute to preloading and facilitate drinking in Alcohol Free Zones and other public places.<sup>19</sup>

Importantly, despite legislation that explicitly protects the community from harm both the development processes and the liquor licensing processes favour industry, as they have the money and resources to object decisions made by the Independent Liquor and Gaming Authority (ILGA) and Local Council in court. A recent study conducted by the Australian Prevention Partnership Centre found that courts favoured the alcohol industry in more than 75 per cent of cases across Australia.<sup>20</sup>

The current system is flawed and is not adequately addressing the social impact of liquor licences. Community members are not being genuinely consulted and if they do object to an application or demonstrate sound evidence of predictable harm to communities, their concerns are most often not given adequate weight in comparison to the applicant's business case. Community members are often aware that participating in community consultations, researching processes and impact is a waste of their time as concerns are not fairly considered.

**Recommendation:**

2. That the NSW Government make the CIS a requirement for all licence applications and notify at a minimum the local consent authority, local police and all occupants of neighbouring premises within the primary trade area.
3. That the NSW Government make the CIS and all supporting documentation, including the social impact assessment, publicly available in real time on the Liquor and Gaming Application Noticeboard. Any submissions made in favour or opposition of a licence application should also be published.
4. That the NSW Government establish an independent Community Defender's Office (CDO) to support communities in licensing matters. The CDO should consist of an advisory service and central information service, with staff that have appropriate skills and expertise in alcohol related planning and licensing systems, including legal skills and an understanding of public health impacts of alcohol and community needs and expectations.

### **3. 'Onus of Proof' of social impact**

The current CIS process requires the community to provide sufficient evidence that a liquor licence will cause harm. It is both unfair and unrealistic to expect the community to have the capacity to present this kind of empirical evidence.

The NSW community is affected by alcohol in many ways. Alcohol is one of four modifiable risk factors that contributes to a third of preventable chronic disease.<sup>21</sup> Alcohol is also associated with family violence,<sup>22,23,24</sup> road traffic accidents,<sup>25</sup> child maltreatment and neglect,<sup>26</sup> vandalism and lost productivity in the workplace.<sup>27</sup> Alcohol harm affects not only the drinker but others in the community.

In order for the community to make an informed assessment of the likely harm posed by an additional alcohol outlet in their neighbourhood, the CIS must transparently detail current alcohol outlet density and alcohol-related harms in the local community. This would provide the community with a better understanding of the current impact. Harms and risk factors to be reported include:

- Alcohol-related assault counts and rates
- Alcohol-attributable hospitalisation counts and rates
- Domestic assaults counts and rates
- Malicious damage counts and rates

The PHAA recommend an informed assessment include:

- Litres of pure alcohol sold in catchment area (compared to NSW average)
- Number of community members with alcohol dependence
- Number of underage regular drinkers

From this base an estimate of the predicted impact a licence will generate can be established.

If L&GNSW consider the above requirement to be an unacceptable regulatory burden for applicants it is also a burden for communities. Communities should be afforded a say on how alcohol is made available in their surrounds, whether it be through participating in liquor licensing application processes or making complaints. However, for a range of reasons, communities' ability to do so is constrained.

Community objectors do not necessarily have the capabilities (in terms of time, financial costs, and research capacity) that are needed to meet the burden of proof in licensing matters.

A similar requirement exists in Western Australia where the onus is on the applicant to demonstrate that granting a liquor licence is in the public interest (under S.38(2) of the Liquor Control Act 1988).<sup>28</sup> As stated by the Western Australian Director General, it should not be sufficient that "applicants merely express opinions about the perceived benefits of their application without an appropriate level of evidence to support those opinions and assertions".<sup>29</sup> NSW liquor licence applications should also require an appropriate amount of evidence to demonstrate that granting a liquor licence is in the public interest and will not contribute to further harm.

Primacy must be given to protecting the health and safety of the community. Ultimately, a liquor licence application should not be approved if the applicant cannot demonstrate that granting the liquor licence is in the public interest and will not contribute to further harm. Consideration should also be given to cumulative impact.

#### **Recommendations:**

5. That the NSW Government act in the interests of communities, enforce existing legislation and ensure that the onus of proof is on applicants to objectively demonstrate that no harm will be caused by the granting of a licence.

6. That a requirement of the CIS to list current and predicted (if licence application approved):

- alcohol outlet density of the catchment area
- alcohol-related assaults (including sexual assaults)
- alcohol-attributable hospitalisations

- malicious damage counts and rates
- litres of pure alcohol sold in catchment area (compared to NSW average)
- number of community members with alcohol dependence
- number of underage regular drinkers

and outline how they will mitigate any predicted increases to these figures.

## 4. An independent Community Defender's Office

There is no targeted support for communities interacting with liquor licensing or planning systems. This results in unsuccessful but valid objections and complaints, or community members not engaging with these systems at all.

Research and preparation of effective and evidence-based submissions is very time consuming for community members at both the DA and liquor licensing stages. Objectors and complainants do not necessarily possess the relevant skills and experience required to prepare submissions and are not necessarily in a position to afford the outsourcing of such activities to professional service providers. Communities without such skills and expertise may hold warranted concerns that deserve further investigation. However, their cause may be overlooked due to them not having access to the human and financial resources required to overcome the onus of proof.

The development and funding of an independent Community Defender's Office (CDO) based on the Alcohol Community Action Project (ACAP) pilot<sup>30</sup> would help individuals and communities in navigating and interacting with the liquor licensing system. The PHAA considers a CDO a more effective substitute for the community access team.

The purpose of the ACAP pilot was to assist individuals and organisations who wanted to interact with the liquor licensing and planning systems with the aim to reduce alcohol harms in their community.<sup>31</sup>

The project consisted of two key resources, a community adviser and a website. The ACAP successfully assisted numerous communities within NSW to lodge objections to liquor related development applications and liquor licence applications and provided advice to individuals who were not aware of their rights when dealing with licensing applications. The demand experienced by the ACAP demonstrates the need within the community for such a service.

The lessons from the ACAP serve as a clear case study to help inform the development and requirements of the CDO. For the CDO to be as successful as possible there are two main functions that must exist within the service:

1. An advisory service that provides communities with free and timely access to skilled legal personnel.
2. A central information service to provide information on health and social impacts

A significant strength of the ACAP was the accessibility of the service. The ACAP worked with communities in the local area that they were assisting, which enabled the ACAP to provide relevant and appropriate advice tailored to individual community needs.

### **Recommendation:**

7. That the NSW Government establish an independent Community Defender's Office (CDO) to support communities in licensing matters. The CDO should consist of a legal advisory service and central information service, with staff that have appropriate skills and expertise in alcohol related planning and licensing systems, including legal skills and an understanding of community needs and expectations.

## 5. Transparency of Community Objections and Applicant Responses

There is currently little accountability for Applicants to disclose community objections received at the Notice of Intention stage. The onus is on the community to ensure the Applicant has responded appropriately to their concerns through the CIS. This appears to be a clear conflict of interest for the Applicant to withhold issues raised that may be against their financial interests.

The liquor licensing system is complex and difficult for the community to navigate.

The 100% approval rate of liquor licences in 2017 (as at 27 June 2017) undermines the credibility of the Authority and any perception that the community have a legitimate voice in liquor licensing decisions.

Often when a community member provides an objection to a Notice of Intention, they assume that their issues will be considered by the Authority and are unaware that they can also provide a submission directly to the Authority at the CIS stage. With no formalised system for ensuring applicants have been transparent with community concerns in their CIS, it is impossible for the Authority to be confident of their understanding of community concerns when assessing the merits of the licence.

The lack of transparency and accountability of the current decision-making process gives the impression that liquor licences are simply being “rubber-stamped” by the Authority.

The requirement for certain ILGA decisions to be published on the L&GNSW website has improved the Authority’s accountability and transparency of the decision-making process. However not all decisions are required to be published. Decision reports should be mandatory for all liquor licensing decisions that receive objections to improve community confidence and to identify whether there are legitimate grounds for appeal.

### **Recommendation:**

8. The Authority use evidence of predicted harm through conducting a health impact assessment to objectively indicate locations that are (or are not) appropriate for liquor outlets.

## 6. Properly resourcing assessors and regulators

The current regulatory system in NSW is complex, and ineffective.

In order to maintain effective regulation, responsibility for regulating liquor licensing should be independent of industry interests and processes should be facilitative, timely and reduce the burden on community stakeholders. Belated interventions hinder actions to minimise alcohol-related harm and pose a barrier to engagement by community members.

There are also two distinct legal processes regarding liquor licensing: the Development Application (DA) process relating to planning, land use and structural impact and the liquor licence application process relating to the licence to sell and serve alcohol. The DA is assessed by Local Council and the liquor licence application is assessed by ILGA. Communities wish to engage in both of these processes but are limited due to the complexity and confusion surrounding the two. Decisions made that oppose applications in either phase are frequently taken to court by the alcohol industry, thereby undermining the authorities’ decisions regarding the health and safety of the community.

It is argued that the social impact of licence applications is not effectively being assessed due to the lack of compliance, the lack of data collected and the bias in applicants collating community concerns for the purpose of the CIS requirements. ILGA relies on the licence applicant as the primary reporter of social impact – assuming no independent complaints or objecting submissions are made to ILGA.<sup>32</sup> ILGA is not properly supported to assess the social impact.

There are serious concerns as to the degree of compliance with notification requirements for CIS, and the lack of procedural fairness of the CIS system. Despite ILGA being aware of the lack of compliance, little has been done to improve this.

### **Resources skills and independence**

It is important that ILGA is sufficiently resourced to independently review and assess concerns raised in CIS to gain a greater understanding of the social impact. Along with improving the requirements of a CIS, improving alcohol-related data collection and strengthening the role and responsibilities of authorities will support decision makers in assessing the broader social impact liquor licenses will have on communities.

Good governance depends on the knowledge and skills of ILGA Board members to understand predictable social impacts and independently apply existing regulations to the assessment of liquor licence applications and decisions. The ILGA Board Position Description does not include qualifications in public health or social impact. It is the PHAA's opinion that public health skills are a significant omission from the criteria and as such, health and social impacts are not being given adequate consideration in comparison to business interests in licensing decisions. In the absence of any health expertise on the current ILGA Board, significant weighting must be given to submissions provided by the Local Health Authority who have the skills, experience and local knowledge to assess the potential health impacts (of additional liquor licences) on the community.

There is the need for more checks on licence applicants to ensure their compliance with CIS and public notice requirements. Such actions secure the integrity of Liquor Act's Objects as well as the right of the public to make submissions in relation to licence applications under section 44 of the Act.

ILGA and Liquor & Gaming NSW have the capacity to conduct a comprehensive social impact assessment. However, this cannot be achieved without sufficient resources and personnel. Furthermore, support needs to be given to local councils to make thorough social impact assessments during the development and planning stages.

#### **Recommendations:**

9. That the NSW Government properly resource ILGA to monitor compliance and independently assess every application.
10. Appoint a minimum of two positions on the ILGA Board to eligible candidates with public health qualifications and significant knowledge of health and local government legislation.
11. Local councils should be resourced and supported to adequately assess a DA. Allocate significant weighting to submissions provided by the Local Health District regarding liquor licensing decisions.

The PHAA appreciates the opportunity to make this submission and contribute to the Liquor & Gaming NSW evaluation of the CIS requirement.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.



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4 August 2017

## References

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- <sup>1</sup> Liquorandgaming.nsw.gov.au. (2017). *Liquor law - Liquor & Gaming NSW*. [online] Available at: <http://www.liquorandgaming.nsw.gov.au/Pages/liquor/law-and-policy/liquor-law.aspx> [Accessed 4 Aug. 2017].
- <sup>2</sup> Australian Institute of Health and Welfare (2017). *Australia's Health 2016: Leading causes of ill health*. [online] Available at: <http://www.aihw.gov.au/australias-health/2016/ill-health/> [Accessed 4 Aug. 2017].
- <sup>3</sup> Australian Institute of Health and Welfare & ABS (2008). *Injury among young Australians Bulletin 60*. [online] Available: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442452801>
- <sup>4</sup> Australian Institute of Health and Welfare (2008). [online] Available: *2007 National drug strategy household survey: first results, Australia*. Canberra: AIHW. <http://www.aihw.gov.au/publications/index.cfm/title/10579>
- <sup>5</sup> Hobday M, Chikritzhs T, Liang W, Meuleners L. (2015). *The effect of alcohol outlets, sales and trading hours on alcohol-related injuries presenting at emergency departments in Perth, Australia, from 2002 to 2010*. *Addiction*.
- <sup>6</sup> BIS world (2016). *Liquor wholesaling in Australia is projected to grow to \$5.2 billion in 2016-17*. [online] Available: <https://www.ibisworld.com.au/industry-trends/market-research-reports/wholesale-trade/grocery-liquor-tobacco-product-wholesaling/liquor-wholesaling.html>
- <sup>7</sup> Buffinton, L. (2013). *Community engagement in liquor licensing*. Chapter 7 in *Stemming the tide: Liquor licensing and the public interest*. Canberra: Foundation for Alcohol Research and Education (FARE).
- <sup>8</sup> Ryan, R., Hastings, C., Woods., R., Lawrie, A., Grant, B. (2015). *Why Local Government Matters: Summary Report 2015* Australian Centre of Excellence for Local Government, University of Technology Sydney Australia.
- <sup>9</sup> New South Wales Health (2016). NSW health stats. [online] Available: [http://www.healthstats.nsw.gov.au/Indicatorgroup/indicatorViewList?code=beh\\_alc&topic=topic\\_alcohol&name=AlcoholTopic](http://www.healthstats.nsw.gov.au/Indicatorgroup/indicatorViewList?code=beh_alc&topic=topic_alcohol&name=AlcoholTopic)
- <sup>10</sup> Morrison, C., Smith, K., Gruenewald, P. J., Ponicki, W. R., Lee, J. P., and Cameron, P. (2016) Relating off-premises alcohol outlet density to intentional and unintentional injuries. *Addiction*, 111: 56–64. doi: 10.1111/add.13098.
- <sup>11</sup> Liang, W. and Chikritzhs, T.N. (2011). Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability. *Drug and Alcohol Review*, 30, (5), pp. 524-35.
- <sup>12</sup> Foundation for Alcohol Research and Education (2017). Annual alcohol poll: attitudes and behaviours. Canberra: FARE.
- <sup>13</sup> Liquorandgaming.nsw.gov.au. (2017). *Community impact statements - Liquor & Gaming NSW*. [online] Available at: <http://www.liquorandgaming.nsw.gov.au/Pages/liquor/community-involvement/community-impact-statements.aspx> [Accessed 4 Aug. 2017].
- <sup>14</sup> Martin Morris & Jones Pty Ltd v Shoalhaven City Council (2012) NSWLEC 1280. [online] Accessed at <https://www.caselaw.nsw.gov.au/decision/54a6385f3004de94513da097>
- <sup>15</sup> Independent Liquor and Gaming Authority (2016). Independent Liquor and Gaming Authority Decision – application for new packaged liquor licence – Dan Murphy’s Mosman RM8 ref # DOC16/132393. Accessed 26 July 2017 [http://www.lgnoticeboardassets.justice.nsw.gov.au/liquor\\_applications/docs/1-4027289017-resultB.pdf](http://www.lgnoticeboardassets.justice.nsw.gov.au/liquor_applications/docs/1-4027289017-resultB.pdf)
- <sup>16</sup> Schwartz, T. (2016). Community Impact Statement for the grant of a packaged liquor licence for proposed Dan Murphy’s Mosman. Accessed 26 July 2017 [http://www.lgnoticeboardassets.justice.nsw.gov.au/liquor\\_applications/docs/1-4027289017-CISB.pdf](http://www.lgnoticeboardassets.justice.nsw.gov.au/liquor_applications/docs/1-4027289017-CISB.pdf)
- <sup>17</sup> Brodie, M. (2016). *Decision - BWS to Dan Murphys Leichhardt - Removal of PLL - Granted*. [pdf] NSW: NSW Government - Independent Liquor & Gaming Authority. Available at: <http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/Decision%20>

%20BWS%20to%20Dan%20Murphys%20Leichhardt%20-%20Removal%20of%20PLL%20-%20Granted%20.pdf [Accessed 4 Aug. 2017].

<sup>18</sup> Caselaw.nsw.gov.au. (2013). *Cardno Pty Ltd v Campbelltown City Council - NSW Caselaw*. [online] Available at: <https://www.caselaw.nsw.gov.au/decision/54a639923004de94513da7fa> [Accessed 4 Aug. 2017].

<sup>19</sup> Acap-nsw.org.au. (2012). *Case studies – Alcohol Community Action Project*. [online] Available at: <http://acap-nsw.org.au/useful-information/case-studies/> [Accessed 4 Aug. 2017].

<sup>20</sup> Muhunthan, J., Angell, B, Wilson, A., Reeve, B. & Jan, S. (2017). *Judicial intervention in alcohol regulation: an empirical legal analysis*. Aust NZ J Public Health. Online; doi: 10.1111/1753-6405.12666  
<http://onlinelibrary.wiley.com/doi/10.1111/1753-6405.12666/pdf>

<sup>21</sup> Australian Institute of Health and Welfare. (2014). *Australia's Health 2014*, Cat. No. AUS 178. Canberra: AIHW.

<sup>22</sup> Livingston, M. (2011). *A longitudinal analysis of alcohol outlet density and domestic violence*. *Addiction* 106(5): 919–25.

<sup>23</sup> Jochelson, R. (1997). *Crime and place: An analysis of assaults and robberies in Inner Sydney*. Sydney: New South Wales Bureau of Crime Statistics and Research (BOCSAR).

<sup>24</sup> Briscoe, S. & Donnelly, N. (2001). *Temporal and regional aspects of alcohol-related violence and disorder*. *Alcohol Studies Bulletin*. Sydney: New South Wales Bureau of Crime Statistics and Research (BOCSAR).

<sup>25</sup> Morrison, C., Smith, K., Gruenewald, P. J., Ponicki, W. R., Lee, J. P., & Cameron, P. (2016). *Relating off-premises alcohol outlet density to intentional and unintentional injuries*. *Addiction*. 111(1), 56-64.

<sup>26</sup> Laslett, A.M., et al. (2010). *The range and magnitude of alcohol's harm to others*. Melbourne: Centre for Alcohol Policy Research, Turning Point Alcohol and Drug Centre, Eastern Health.

<sup>27</sup> Jochelson, R. (1997). *Crime and place: An analysis of assaults and robberies in Inner Sydney*. Sydney: New South Wales Bureau of Crime Statistics and Research (BOCSAR).

<sup>28</sup> Liquor Control Act 1988 (Western Australia) s.38(2).  
[https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:29785P/\\$FILE/Liquor%20Control%20Act%201988%20-%20\[08-f0-02\].pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:29785P/$FILE/Liquor%20Control%20Act%201988%20-%20[08-f0-02].pdf?OpenElement)

<sup>29</sup> Department of Racing, Gaming and Liquor (WA). (n.d.). *A note from the Director General on applying for a liquor licence*. [http://www.rgl.wa.gov.au/docs/default-source/rgl/dg\\_note\\_liquor\\_licence.pdf?sfvrsn=0](http://www.rgl.wa.gov.au/docs/default-source/rgl/dg_note_liquor_licence.pdf?sfvrsn=0)

<sup>30</sup> Acap-nsw.org.au. (n.d.). *Alcohol Community Action Project – Engaging communities in liquor licensing decisions in NSW*. [online] Available at: <http://acap-nsw.org.au/> [Accessed 4 Aug. 2017].

<sup>31</sup> Alcohol Community Action Project (ACAP). (2014). Funded by Australian Rechabite Foundation and the Foundation for Alcohol Research and Education (FARE). Accessed 11 July 2017: <http://acap-nsw.org.au/>

<sup>32</sup> Liquor Act 2007 (NSW) No. 90, section 48(5).