Review of the NSW CIS review process submission – from a community perspective

A summary of recommendations is provided at p17ff

Locating the NSW liquor license/authorisation CIS approval process

Any consideration of amendments to the current disjointed and anachronistic NSW alcohol outlet approval process reflecting the CIS process must be consistent and align with the broader context of:-

1. Australia's Competition Policy (Harper Report[1])
2. Australia's National Drug Strategy 2017 – 2026[2]
3. The International Principles for Social Impact Assessment (SIA)[3]
4. Recent NSW Land & Environment Court decisions relating to approval of alcohol related Development Applications (DAs) in particular problematic hotels. In particular, the Casula hotel decision of December 2016[4]
5. NSW Ombudsman's guidelines on procedural fairness[5] and reasons for decision[6]

It is suggested that the application of the current NSW alcohol outlet regulatory approval system is inconsistent and incongruent with all five above requirements and community expectations.

The 2015 Harper report rejected the alcohol industry's submissions that the production, promotion, sale, service and supply of alcohol should be regulated just like any other ordinary consumer product – 'just like breakfast cereal and toilet paper'[7]. Harper dismissed the alcohol industry self-deregulation argument and found regulatory interventions for the availability and supply of alcohol were appropriate and in the public interest.

The new National Drug Strategy highlights the importance of alcohol harm prevention measures and reinforces the effectiveness of supply reduction interventions to reduce alcohol related harms.

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[1] http://competitionpolicyreview.gov.au/final-report/

[2] http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/$File/National-Drug-Strategy-2017-2026.pdf

[3] https://www.iaia.org/uploads/pdf/IAIA-SIA-International-Principles.pdf

[4] Suh v Liverpool City Council and Casula Community Group for Responsible Planning Inc No. 2 [2016] NSWLEC 1596

[5] https://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/state-and-local-government/natural-justiceprocedural-fairness

[6] https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0018/3717/FS_PSA_18_Reason_for_decisions.pdf

[7] Part of a packaged liquor outlet submission to the review of the NSW liquor promotion guidelines (LSA October 2012)

The international SIA principles provide a solid and legitimate framework to urgently recast NSW alcohol outlet assessment/approval process including the CIS process to one based on transparency, objectivity and inter-generational equity. Other key SIA principles included the Precautionary principle[8], Polluter pays, the right to be involved in decisions impact upon communities and the importance of local authentic community experiences.

In 2017 ILGA and L&GNSW has a near 100% approval of liquor outlet and related applications. This corresponds with their rejection of virtually all objections from the community, NSW Health and NSW Police and appears inconsistent with the above recognised basic standards of best practice. It also undermines the credibility of the above regulatory process and militates against community participation in the system.

The following pages respond to the questions posed by L&GNSW in their discussion paper.

1. Are community stakeholders being appropriately consulted? No

Are the right community stakeholders being invited to provide feedback on proposed liquor applications via the CIS process?

a. Local residents are not recognised as "stakeholders" in the Liquor Regulation. ILGA and L&GNSW have to date shown little genuine regard for local resident, police and health official legitimate objections to problematic licence applications

b. The quality and authenticity of the feedback is also a critical factor. Due to the attempts of the alcohol industry to normalise the consumption of alcohol through various acculturalisation processes and multi-media saturation promotion, some community members are unaware of the robust independent scientific and medical evidence[9] of the harms to one's self and others from the consumption of alcohol.

   It is also known for applicants to allegedly offer incentives or inducements to community groups and individuals within a community to support a DA and/or license application[10].

   Residents in a number of different locations across NSW have also reported[11] alleged intimidation from applicants seeking alcohol outlet approvals or variations to the same. It is not suggested that this is a widespread practice but needs to be properly prevented and addressed.

[8] See emphasis placed on prevention in Director of Liquor Licensing v Kordister Pty Ltd & Anor [2011] VSC 207 (Bell J) and Director of Liquor Licensing v Kordister Pty Ltd & Anor [2012] VSCA 325

[9] See for example https://www.saxinstitute.org.au/wp-content/uploads/Community-impact-of-liquor-licences-1.pdf

[10] See following media report http://www.smh.com.au/nsw/hotelier-peter-de-angelis-accused-of-trying-to-bribe-school-over-pub-and-pokie-plan-20150829-gjannd.html

[11] See following report containing allegations of intimidation http://www.smh.com.au/nsw/intimidation-claims-after-anti-poker-machine-meeting-20151105-gkry2d.html

This creates an imperative for decision makers in both jurisdictions to never allow the alcohol outlet approval process be debased into a simplistic untested popularity contest.

Unlike the previous ILGA, it appears from the limited number of decisions currently made available that the new decision making regime has yet to demonstrate its full impartiality and independence by rejecting a higher risk outlet application on their own volition, notwithstanding the same application may have been supported by the police and local council.

A recent ILGA decision[12] to reject a PLL for a small IGA in Stockton, a suburb of Newcastle, appears to contradict the above statement as all stakeholders including the police supported the application. However, the decision is inconsistent with ILGA's approval of three Primary Service Authorisations in Newcastle's CBD area that arguably posed much higher risks in a much more violent location.

This rejection also appears to contradict a number of other ILGA approvals of PLLs in Sydney that were opposed by the police, councils, Health and the community[13].

The apparent inconsistent approach to outlet licence application approvals further undermines community's confidence. It would be interesting compare the success rate of larger packaged liquor outlet owners such as Woolworths and Coles compared with smaller stores (and Aldi) with likely fewer resources to appeal any adverse decision to NCAT or the Supreme Court.

c. The compulsory notification process is totally inadequate and limited to occupiers within just 50 or 100m. This bears no correlation with the well-known footprint of harms and dislocation associated with some alcohol outlets and related events.

d. In general, the quality and relevance of responses to CIS's from some of those agency and organisations required to be notified has been very poor or non-existent

Do community stakeholders have the information, time and knowledge they need to provide informed feedback about a proposed application? No.

[12] http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/ILGA Decision - Refusal of PLL application - IGA Stockton - 14 June 2017.pdf

[13] See for example http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/Decision-Camperdown_Cellars_Mosman-Application-PLL-Granted-240516%20(1).pdf , http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/Decision-Bray's_IGA_Castlecrag-Application-PLL-Granted-Nov2015.pdf and http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/Statement%20of%20Reasons-Chambers%20Cellars%20-Milsons%20Point.pdf

a. The amount of relevant detail provided by most applicants and provided on the noticeboard is totally inadequate

b. Compounding the egregious lack of information is L&GNSW's refusal to provide important information on request. This represents a serious denial of procedural fairness. When L&GNSW where asked for the reasons an applicant sought a PSA, the reply was this was none of the community's business. This appears inconsistent with the NSW Ombudsman's recommendations

c. A key element of procedural fairness deprived of all objectors is that any information the decision maker relies upon to determine the outcome must be shared with the potential objectors. Under current arrangements, the applicant is unfairly afforded the opportunity to comment on all objections, introduce new information and assertions that in some cases are erroneous and misleading, and have the same accepted on face value by the decision maker.

d. There are well recognised substantial impediments for resident/community based objectors to have timely access to specialised independent expert legal, planning and social impact assessment advice. An independent Community Defenders Office (CDO) as previously trialled by FARE would help to address this issue.

e. The reality is that most local communities have very little understanding and experience with the very complex legal planning and licensing jurisdictions. It is also likely that some particularly disadvantaged communities may have little appreciation and understanding of the conclusive independent scientific evidence linking varying acute and chronic alcohol related harms (eg domestic and non-domestic violence, FASD etc) with the immediate and cumulative impact of increasing liquor outlets, extending trading hours especially past midnight, increasing drink strengths, the promotion and unqualified availability of dirt alcohol etc - is very low, especially given the saturation promotion of alcohol (including to young children) and the industry's endeavours to normalise its consumption.

f. The current almost 100% alcohol outlet approval rate and the blanket rejection of community and agency objections associated in part with the mistaken belief that "mitigation" measures can address all potential harms and concerns, is a major factor contributing to the community and agencies' loss of confidence in the non-transparent alcohol outlet/licensing and disciplinary decision making processes. A key consideration missing in this review exercise is the importance of **creating and sustaining the public's and agencies' trust and confidence in this important regulatory process**.

Agencies are far less likely to instigate very costly and time consuming s51 and related disciplinary proceedings against recalcitrant owners of licensed premises and/or object to alcohol license applications if the current predictable approval situation continues. This will have a detrimental impact upon public and emergency worker safety and contribute to an increase in alcohol related harms.

Is the CIS, once submitted by an applicant to L&GNSW, being promoted by L&GNSW in an effective and appropriate way to provide background on community consultation conducted by the applicant and reflect feedback from community stakeholders? No.

The existing CIS process is fundamentally flawed and should be abandoned and replaced by a contemporary evidence/interests based conflict/dispute resolution model that incorporates independent professional and timely mediation that will resolve the vast majority of disagreements with the small percentage of those unresolved referred to timely independent arbitration by an independent expert with substantial experience in social impact assessment and alcohol harm prevention.

This above suggested model based on existing successful structural processes in some other jurisdictions is the antithesis of the current system that is responsible for an unprecedented level of mistrust and lack of confidence by the community and even some other NSW government agencies involved in the alcohol out approval jurisdictions.

For the above proposed system to work requires explicit acknowledgement and support/investment to redress the significant power and resource/information imbalance between the NSW alcohol industry and the disaffected community.

It must be remembered that the above proposed fair, transparent, objective and impartial dispute resolution process would only be required for a very small number of contested applications. It places an emphasis on early/timely resolution through independent evidence based mediation in a non-legalistic setting focusing on common interests and goals. The system however, would not preclude the ultimate rejection of an application on the basis of detrimental social impact but this would likely occur on a relatively small number of occasions.

Better planning guidelines that exclude certain alcohol outlets by reasonable evidence-based distances from vulnerable locations including schools, medical centres, women's refuges, public housing, emergency accommodation etc and, predetermined controls on outlet density and the numbers of bottle shops (including size, cumulative impact, saturation levels etc) in communities would provide an effective and fair upfront filter to staunch the current unsustainable number of

alcohol outlet approvals. It would also provide greater certainty for the powerful alcohol industry.

Additional concerns with the current CIS process include:-

a. It is misleading and contains no objective community impact assessment process

b. It is the applicant's alleged summary of various stakeholders' opinions. These are full of assertions and like DA's; has there ever been a CIS where an applicant has admitted community and/or police concerns are insurmountable?

c. In most incidences, L&GNSW do not include attachments to CIS's on their noticeboard despite requests to do the same for several years. It is not a community friendly process.

d. The application should be predicated as much as possible on current, freely available and common objective evidence/statistics including EVAT evaluations, police, health, crime, outlet density (including type of licences, extended trading), patron capacity etc, demographic, social welfare and geo-mapping locations/proximity of vulnerable communities, schools, parks, child minding etc. This data is invaluable to better inform the community consultation and decision making processes at both the DA and licensing stages.

e. All applications and submissions should be placed on-line in a timely fashion as occurs with some local council's DA tracker data bases. The applicant should pay for these costs

How can consultation and notification processes be improved? See suggestions above

a. Restore a modicum of community and agency trust and confidence in the approval system that it will genuinely reflect the needs, expectations and aspirations of local communities – not the alcohol industry and its consumers.

b. Address the two current paradoxes

i. ILGA Guideline 6 - social impact assessment stresses impartiality and objectivity however this is currently completely undermined and subordinated by the subjective political process where the decision maker then goes onto (notwithstanding may find negative social impact) "balancing stakeholder interests". It has in virtually all applications this year (2017) placed a greater unreasonable weighting on industry v local residents, police and health department interests.

ii. The second related paradox is within the balancing process where the decision makers place undue emphasis on satisfying "consumer convenience" when this is not a statutory prescribed object or criteria. ILGA has previously commissioned its own independent research (2015) that refuted alcohol industry assertions that more packaged liquor outlets were required to satisfy consumer "convenience" so called requirements.

- The result of this above process involved with the second paradox is that distinguishing/differentiating alcohol industry suppliers from their consumers results in this notional "balancing process" two against one. The alcohol supplier and consumer counted separately will mostly outweigh and outnumber the potential third stakeholder, the objector – whether they be residents, medical experts, police and/or health department officials.

- Even within this spurious balancing process you can identify the fundamental bias or double standard resulting from undue industry influence against alcohol harm prevention where it may impact upon alcohol supply and industry profits. Those parties advocating for refusal of an application based on public health and safety concerns or the applicant not being a "fit and proper person" are all lumped under the one heading of "objector" when conducting this "balancing" exercise. Yet the decision maker retains this artificial distinction between the industry/applicant and their potential and existing customers.

c. Effectively increase the capacity of disadvantaged and other communities to make better informed submissions with the expectation/certainty that these will be fairly and impartially considered and respected by the decision maker

d. Restore "preventing alcohol related harms" having primacy in the application of the Objects of the Act – noting reducing the availability and supply of alcohol is recognised by the World Health Organisation (WHO) and others as the most cost effective measure to reduce alcohol related harms

e. As a priority, enable the community to freely subscribe to an accurate and timely application notification/advisory electronic system for any (all) geographic location in NSW

f. Reinforce existing statutory provision that any person/organisation can lodge an objection and the same person/organisation should have the same right as the applicant to seek a right of review

g. The current statutory list of which type of applications can be reviewed by NCAT is nonsensical and needs to be coherent and consistent

h. Expand the compulsory notification parameters to match the trade area for the proposed outlet and the likely potential footprint of associated harms

i. Remove the current notice of intention requirements. This should not preclude an applicant seeking informal exploratory with agencies and local residents

2. Does the CIS capture local community concerns and feedback? No

Does the process give sufficient opportunity for community stakeholders to express any concerns or provide positive feedback on a proposed application?

a. You cannot trust any summary prepared by an applicant (because of an inherent conflict of interest) to accurately and genuinely reflect the concerns of the community

b. This process is further undermined by the current arrangements where the applicant alone is unfairly afforded a second opportunity of reply[14] and can contradict and malign any community and agency objections with the latter's opportunity to provide any evidence to correct erroneous applicant assertions denied. This risks constituting serious jurisdictional error particularly where ILGA subsequently relies upon the same applicant assertions to form its decision.

c. See above comments relating to the community's level of knowledge and experience compared with that of the applicants' legal teams

Are the feedback and concerns of stakeholders being reported by applicants via the CIS in a reliable and accurate manner? No

Applicants are also afforded an opportunity to include untested testimonials supporting the application and petitions etc from existing and likely patrons supporting any extensions and changes to an existing licence. The approval process should not be allowed to degenerate into a popularity contest.

Does the CIS process meet the needs of people from culturally diverse backgrounds or people with a disability, including applicants and community stakeholders? No

The current system fails the needs of all communities including those whose religious beliefs restrict or prohibit the consumption of alcohol.

[14] See for example http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/ilga-decision-dan-muphys-rosebery.pdf

Does the CIS ensure applicants consult and respond to feedback received from community stakeholders prior to submitting an application? No.

In most cases where there is community opposition and concern, the applicant attempts to marginalise or ignore such feedback.

Do community stakeholders have confidence that ILGA and delegated officers will take their feedback into account when making a decision on an application? No

In many instances the decision maker gives greater weight to the nefarious concept of "consumer convenience" that does not appear to be identified in the Act. ILGA previously commissioned independent research (IAB?) associated with the Harper competition inquiry 2015 that found that there was little foundation in the industry argument that customers of packaged liquor outlets in Sydney were reasonably inconvenienced by a lack of packaged liquor outlets.

As further indication of a major reversal of the rationale of ILGA decisions following critical changes to its Act in late 2015, a concerning trend is the decision maker relying upon advice from Council's regarding their support for an application or variation notwithstanding it does not meet the statutory test (s45 (3) (c)) of having actual DA approval.

These legal concerns were raised directly with senior departmental officials but no substantive replies were provided and the practice appears to continued unabated.

This discernible pro-industry, laissez faire approach to the alcohol outlet approval regulatory process is creating significant disillusionment amongst both the community and other government agencies who provide input into the liquor outlet approval process. It undermines good government and the administration of justice in NSW.

3: Is the information collected during the CIS process useful? No. It cannot be relied upon.

Does the CIS help to identify the risks to the community of a proposed liquor licence or authorisation, including with respect to alcohol-related violence and anti-social behaviour?

No. The applicant has a fundamental conflict of interest against accurately and fully reporting such information. ILGA itself is prone to discounting the significance of such data and EVAT evaluations finding "extreme" risk but still approving a number of additional Primary Service Authorisations (PSA) in a location that has nearly double the NSW average rate of non-domestic alcohol related violence. It also ignored the advice from L&GNSW's own compliance branch. ILGA's approval of one PSA where more than half of a restaurant's floor space was effectively converted to a bar and that did not require the provision of food, challenges the Act's primary purpose test (s22).

ILGA's current almost blanket approval seriously jeopardises the outstanding achievements in Newcastle of sustaining a 72% reduction in non-domestic assaults in its CBD on weekend nights since March 2008. The package of alcohol supply measures primarily based on the

modest reduction in late trading hours has created much safer streets. The creation of a much safer and more diverse precinct is estimated to have prevented well over 6,000 young people from being assaulted and seen the number of small licensed venues (eg small bars and licensed restaurants) more than double in number creating many more jobs and more vibrant nightlife.

Does the CIS help to identify the benefits to the community of a proposed liquor licence or authorisation?

The CIS is written by the applicant to promote the applicant's business interests. This should never be conflated as equivalent to the community's interest as long as the industry exerts a controlling influence on the government's alcohol and gambling regulatory agenda.

Are there any categories of information currently missing from a CIS that would help to identify the aforementioned risks and /or benefits? Yes.

Of great interest and concern to local communities is the **track record** of the applicant whether they be an individual or large corporation, in controlling liquor outlets, preventing violence and anti- social behaviour and their compliance record.

This information is applicable to both the DA and license assessment processes.

Any pub or club owner who has allowed their premise to be listed as a "violent premise" should be restricted from acquiring additional premises for a minimum of five years. Any additional "listings" should double this restricted period.

Communities are also aware that the majority of assaults linked to a premise occur outside the venue where usually the owner shares no responsibility/accountability in the same though most assaults are associated with higher levels of intoxication and clearly failed RSA practices.

Therefore for all higher risk outlets applications including all those with extended trading authorisations, the community should be provided with at least a summary of COPS linking data for all other licensed premises owned and/or controlled by the applicant.

Bottle shop applicants should also be required to provide authentic BOCSAR data of the impact of the placement of their other outlets on the number of domestic assaults in surrounding higher risk and vulnerable communities.

As submitted previously, the CIS prepared by the applicant is not the appropriate vehicle to provide objective information.

Does the CIS generate new and additional information beyond what is provided by community stakeholders via the DA consultation process?

No. As mentioned previously, the applicant provides additional information/assertions to the decision maker that is never seen by the community and agency objectors.

Is the feedback and information collected via the CIS of the nature that is useful to inform decision-making with respect to the consideration of applications? It is largely irrelevant.

The decision maker has in almost all cases, rejected objections from the community and agencies and supported the application with some minor ineffective conditions.

Do the benefits of the CIS justify the costs or time impositions placed on businesses, local residents and other stakeholders to participate in this requirement?

The current CIS process has many faults and is in urgent need of a fundamental overhaul to meet the objectives of those national policies/strategies mentioned previously including National Drug Strategy, National Competition Policy and International Principles for Social Impact Assessment. Also needs to be consistent with NSW Land & Environment Court and NSW Ombudsman's requirements regarding natural justice and reasons for decisions.

4: Are there opportunities to cut red-tape and minimise delays from the CIS process?

How much time and resources do applicants spend on complying with the CIS requirement, from start to finish?

Current practices in many instances reflect a basic "tick box" that appears consistent with the de facto blanket approval approach to licensing approvals by the NSW government.

Have ILGA and L&GNSW done a satisfactory job providing guidance and instruction to applicants on how to complete the CIS? NA

What aspects of the CIS process involve the greatest time commitment, and are subject to the longest delays? NA

Are there any aspects of the CIS process that are unnecessary and not useful?

What enhancements could be made to the CIS process to reduce costs and regulatory burden for applicants and other stakeholders, and shorten completion timeframes?

There is a fundamental problem with this line of questioning that appears to assume that alcohol is an ordinary consumer product "just like breakfast cereal and toilet paper", and that private business interests have a greater priority than public health and safety and reducing the same substantial public costs.

A 2013 NSW Auditor General Report into the impact of alcohol found that each NSW household was paying on average $1565 per annum for the total (including social) cost of the oversupply, availability and consumption of alcohol in NSW ($3.87B pa). This provides 1565 good reasons why the regulation of alcohol in NSW should be further strengthened to substantially reduce these primarily preventable public costs[15].

5: Are there opportunities to minimise overlaps in community consultation processes across local and state government? Yes

It is essential to retain and strengthen the DA social impact assessment process as this provides the only true independent judicial process to ultimately determine applications with a slightly higher degree of impartiality and objective than is provided in the licensing jurisdiction.

Community groups however require a legal capacity to seek a Land & Environment Court review of any council decision to approve an alcohol related DA as the same legal right exists for the applicant to seek a review of an adverse Council decision.

The greatest area to achieve cost savings and substantial efficiency gains between the two jurisdictions is the commonality of relevant social impact related data and the international scientific research relating to preventing alcohol related harms.

Many Councils however lack the training, experience and proper policies to conduct detailed independent social impact assessments of alcohol related DAs. Some still incorrectly believe that this is the sole province of ILGA and L&GNSW.

The December 2016 Land & Environment Court decision Suh v Liverpool City Council and Casula Community Group for Responsible Planning Inc No. 2 [2016] NSWLEC 1596 that rejected an appeal by the De Angelis hotel group because of its negative social impact established beyond any reasonable doubt that local government has the important role of conducting social impact assessments for alcohol related DAs.

The Court

- Preferred the broader 1 km "locality" description of the impact of immediate harm preferred by the Council's social planning expert
- Accepted that the location was a very socially disadvantaged area (13th percentile seifa[16])
- Acknowledged the location was an existing hotspot for domestic violence
- Did not accept the substance & sufficiency of the "mitigation" measures proposed by the developer and supported by the police

[15] See http://www.audit.nsw.gov.au/publications/performance-audit-reports/2013-reports/cost-of-alcohol-abuse-to-the-nsw-government

[16] http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2011.0~2016~Main%20Features~Socio-Economic%20Indexes%20for%20Areas~10007

- Afforded significant weight to the evidence from local objectors, proximity of vulnerable locations and the public interest test. This was an attribute of the previous ILGA.

Bearing in mind that the Court and ILGA/L&GNSW conduct the same ostensive social impact assessment process for the provision of the same product – alcohol, arguably no other recent decision of the NSW Land & Environment Court establishes just how far removed from the concepts of objectivity, impartiality, fairness, equity, transparency and justice are the spate of current alcohol and related approvals by the decisions makers under the NSW Liquor Act.

The community is concerned that this CIS review will be utilised as a mechanism for the alcohol industry to emasculate the capacity of the Court to consider alcohol outlet related matters because in part of the above decision one of two ever we understand to have rejected an alcohol outlet application.

It has been estimated that the cost to the Casula community party opposed to the large hotel proposal over a three year period would have cost them in excess of $330,000 in legal and related costs had they not received generous external support. This highlights one of many very substantial impediments community based objectors confront in their attempts to compete with the powerful and well-funded alcohol industry to prevent predictable alcohol and gambling related harms within their local community locations.

There are however, three obstacles to NSW Local Government playing a much more effective role in preventing alcohol related harms (including domestic violence) within its planning approval responsibilities:-

1. A broad spread of Councils lack sufficient training and experience in conducting comprehensive and independent social impact assessments of alcohol related DAs.

   Many NSW Councils mistakenly still believe it is not their statutory responsibility under s79C of the Planning Act to properly consider the negative social impact of an alcohol outlet application and that this is the sole province of ILGA or OLGR.

   Some Councils accept without question assertions made by the applicant that the alcohol outlet will have no negative or detrimental social impact.

2. In terms of equity and fairness, the NSW Planning Act must urgently redress the current situation where the applicant can obtain a Court merit appeal/review of an adverse Council decision or deemed refusal[17], whereas community and other objectors including police and health authorities have no similar opportunity as the Act assumes the Council acts on behalf of the whole community.

   Point “1” above exposes the fallacy of this presumption.

[17] Where council fails to make a decision on the DA usually within 30 days

It was an exceptionally rare event where the court allowed the Casula community group to be joined[18] in the legal case instigated by the applicant against Liverpool Council's deemed refusal of their DA. Planning laws require urgent amendment to provide this legal recourse to community groups seeking to prevent alcohol and gambling related harms in their location as a normal course of action – not the rare exception.

3. Amend Planning laws by removing packaged liquor outlets from the list of consent/complying development[19] and thereby avoiding rigorous social impact assessments by the local consent authority. The size, density and cheap prices of unlimited supplies of alcohol are clearly linked to domestic violence and related harms.

   An alarming recent apparent example of the exploitation of this loophole is ILGA's reported approval[20] of the high risk Dan Murphy's in Rosebery despite strong police and community objections and Sydney Council's earlier rejection of the DA in 2014 because of the negative social impact and consistency of community objections. It is understood that Woolworths did not appeal the council DA rejection and simply bypassed this relatively more objective jurisdiction by a "removal" of an existing license to the proposed site.

What types of stakeholders, if any, are consulted via the CIS that are not also consulted via DA consultation processes?

The current CIS process is neither effective nor reliable.

What types of issues, if any, are subject to stakeholder feedback via the CIS process that are not also the subject of feedback during DA consultations?

It is very important that both jurisdictions:

a. acknowledge and assess the cumulative impact of additional alcohol outlets
b. give priority to the precautionary principle by refusing applications where insufficient data/research exists to ensure there is no potential negative social impact
c. ensure the onus of proof rests with the applicant to satisfy on the balance of probabilities there will be no negative social impact
d. acknowledge the reliance of mitigation measures to moderate anticipated harms will not always be sufficient to reduce the risk to acceptable levels for the community. Any proposed mitigation measures must be proven effective in preventing the harm and the cost of the same borne by the applicant and subject to ongoing assessment of their effectiveness

[18] Suh v Liverpool City Council [2016] NSWLEC 25 https://www.caselaw.nsw.gov.au/decision/56f1b835e4b05f2c4f04c218

[19] NSW *State Environmental Planning Policy (Exempt and Complying Development Codes)* (NSW SEPP (CDC)), 2008, current version 5 August 2016, Part 2, Division 1, Subdivision 10A, cl 2.20B(f) http://www.legislation.nsw.gov.au/#/view/EPI/2008/572

[20] http://www.liquorandgaming.nsw.gov.au/Documents/ilga/decisions-of-interest/ilga-decision-dan-muphys-rosebery.pdf

e. full transparency and timeliness of notifications, publication of all submissions and correspondence
f. no limitations on who can lodge objections and subsequently seek an independent merit review of any adverse outcome

Can the DA process, in isolation, give sufficient opportunity for stakeholders to give feedback on the potential community impacts of a new liquor licence or authorisation? No

In some councils, the DA notification process can be sporadic. As mentioned previously some councils are significantly under resourced to conduct fair and thorough social impact assessments particularly on alcohol related DAs.

Another major problem of the planning jurisdiction is that high risk packaged liquor outlets can readily by-pass the important social impact assessment process because they are deemed "complying development" if they are proposed to be situated in a "commercial business" zone. This is a major impediment to alcohol harm prevention initiatives.

It is essential to preserve both jurisdictions. Any more concrete consideration to alter the current differential jurisdictions must be subject to more detailed consultation involving specific proposed amendments to existing legislation.

Does the CIS consultation process, in circumstances where a DA is not required, encompass a sufficient and appropriate range of community stakeholders?

Please note that it appears in the current legislation that surrounding communities are not identified as "stakeholders". The artificially restricted distances surrounding occupiers are required to be notified is irrational and bear no correlation with the potential adverse impact of the establishment of an alcohol outlet, event or variation to a license condition.

In what ways can the CIS and council DA processes be coordinated to minimise unnecessary duplication?

As mentioned above, create a common data/research base.

Create common minimum distances from vulnerable places and communities for alcohol outlets and events eg 500m from a school, preschools, child minding facilities, hospital etc.

Retain the two jurisdictions.

6: Are the separate CIS categories (A & B) necessary and appropriate? No

All applications should be subject to a fair and objective social impact assessment.

ILGA needs to exhibit a much higher degree of impartiality, objectivity and fairness. It's reliance on delegates from L&GNSW to determine most of its applications presents a

serious potential conflict of interest and jurisdictional error particularly as those who make the decision can arbitrarily determine review rights to NCAT. This lends itself to easy manipulation to circumvent an independent review of an adverse decision.

ILGA also needs to demonstrate it can act in its own capacity (exercise genuine independence) to reject an application because of its likely negative social impact notwithstanding there may be no objections.

It is understood that the CIS process does not apply to boundary change applications and variations to existing extended trading authorisations. This is an oversight as both of these applications can result in a negative social impact.

Do application types listed under the A and B categories have sufficiently different risks and risk consequences to warrant different CIS processes? No.

This is a place where consideration of the cumulative impact of an additional outlet and whether the same may be "feeder/pre loading ports" for higher risk late trading venues. Kings Cross and Newcastle are experiencing the age old problem of restaurants morphing into bars via the PSA provision that appears to be encouraged by the approval bodies and local police.

The existing statutory "primary purpose" test has effectively been suspended by the approval bodies in their desire to remove "red tape" and facilitate the development of the alcohol industry.

What changes, if any, should be made to Categories A or B to improve the effectiveness of the CIS process (including combining, removing or changing each or both of the current categories) to ensure different risk profiles are appropriately recognised in the local stakeholder engagement undertaken by applicants?

The decision makers' apparent desire (2017 record) to approve virtually all applications and address/mitigate any concerns through ineffective license conditions makes this above consideration superfluous and tokenistic.

7: What types of liquor licences and authorisations should be required to complete a CIS?
Are there any applications or venue types that are currently excluded from the CIS requirement that should not be excluded?

Abolish the existing CIS process, rely on a current/common independent data base provide disaffected communities with free and timely access to independent and professional advice to respond to all applications. The applicant's input has to be clearly differentiated from that of objectors.

Are there application or venue types that are not excluded from the requirement that should be?

The consideration and rapid increase in the approval of on-line PLL applications is totally unsatisfactory. These types of licences pose significant RSA failure and under aged drinking risks that are inadequately addressed.

Summary of Recommendations

1. Any consideration of amendments to the current disjointed and anachronistic NSW alcohol outlet approval process reflecting the CIS process must be consistent and align with the broader context of:-

a. Australia's Competition Policy (Harper Report)
b. Australia's National Drug Strategy 2017 – 2026
c. The International Principles for Social Impact Assessment (SIA)
d. Recent NSW Land & Environment Court decisions relating to approval of alcohol related Development Applications (DAs) in particular problematic hotels. In particular, the Casula hotel decision of December 2016
e. NSW Ombudsman's guidelines on procedural fairness and reasons for decision

2. It is essential to create and sustain the public's and government agencies' trust and confidence in the NSW alcohol outlet approval regulatory processes and the administration of justice in NSW.

3. The CIS process is fundamentally flawed and should be abandoned and replaced by a contemporary evidence/interests based conflict/dispute resolution model that incorporates independent professional and timely mediation that will resolve the vast majority of disagreements with the small percentage of those unresolved referred to timely independent arbitration by an independent expert with substantial experience in social impact assessment and alcohol harm prevention.

4. Better planning guidelines that exclude certain alcohol outlets by reasonable evidence-based distances from vulnerable locations including schools, medical centres, women's refuges, public housing, emergency accommodation etc and, predetermined controls on outlet density and the numbers of bottle shops (including size, cumulative impact, saturation levels etc) in communities would provide an effective and fair upfront filter to staunch the current unsustainable number of alcohol outlet approvals. It would also provide greater certainty for the powerful alcohol industry

5. Effectively increase the capacity of disadvantaged and other communities to make better informed submissions with the expectation/certainty that these will be fairly and impartially considered and respected by the decision maker. Establish an independent and free Community Defenders Office (CDO) to professionally support local communities navigate the complex alcohol outlet approval regulatory systems

6. Restore “preventing alcohol related harms” having primacy in the application of the Objects of the Act – noting reducing the availability and supply of alcohol is recognised by the World Health Organisation (WHO) and others as the most cost effective measure to reduce alcohol related harms
7. Remove from consideration the often relied upon non-statutory criteria that lacks any objectivity of “consumer convenience”

8. As a priority, enable the community to freely subscribe to an accurate and timely application notification/advisory electronic system for any (all) geographic locations in NSW

9. Reinforce existing statutory provision that any person/organisation can lodge an objection and the same person/organisation should have the same right as the applicant to seek a right of review

10. Review the current incoherent and inconsistent list of types of decisions that can be reviewed by NCAT

11. An applicant’s prior track record of compliance and coming to the attention of authorities should be a prerequisite in any application. Any pub or club owner who has allowed their premise to be listed as a “violent premise” should be restricted from acquiring additional premises for a minimum of five years. Any additional “listings” should double this restricted period. For all higher risk outlets applications including all those with extended trading authorisations, the community should be provided with at least a summary of COPS linking data for all other licensed premises owned and/or controlled by the applicant

12. Bottle shop applicants should be required to provide BOCSAR and related medical data of the impact of the placement of their other outlets on the number of domestic assaults in surrounding higher risk and vulnerable communities

13. It is essential to preserve both local government – planning approval and liquor licensing jurisdictions. Any more concrete consideration to alter the current differential jurisdictions must be subject to more detailed consultation involving specific proposed amendments to existing legislation

14. Retain and strengthen the DA social impact assessment process as this provides a more independent process to ultimately determine applications than is provided in the licensing jurisdiction. Community groups require a legal capacity to seek a Land & Environment Court review of any council decision to approve an alcohol related DA as

the same legal right exists for the applicant to seek a review of an adverse Council decision

15. Removal all planning law loopholes that current allow some bottleshop DAs to escape the local government social impact notification and independent assessment processes.

16. It is very important that both jurisdictions:

a. acknowledge and assess the cumulative impact of additional alcohol outlets
b. give priority to the precautionary principle by refusing applications where insufficient data/research exists to ensure there is no potential negative social impact
c. ensure the onus of proof rests with the applicant to satisfy on the balance of probabilities there will be no negative social impact
d. acknowledge the reliance of mitigation measures to moderate anticipated harms and "membership of liquor accords" will not always be sufficient to reduce the risk to acceptable levels for the community. Any proposed mitigation measures must be proven effective in preventing the harm and the cost of the same borne by the applicant and subject to ongoing assessment of their effectiveness
e. full transparency and timeliness of notifications, publication of all submissions and correspondence
f. ensure all objectors are afforded full procedural and substantive fairness
g. timely publish decisions for all contested applications, those where the decision maker rejects an application and all disciplinary decisions
h. no limitations on who can lodge objections and subsequently seek an independent merit review of any adverse outcome
i. utilise current common social impact, related alcohol harm and independent research data bases

17. Create common minimum distances for alcohol outlets and events from vulnerable places and communities eg 500m from a school, preschools, child minding facilities, hospital etc

18. Review the current proliferation of on-line packaged liquor outlet approvals and the lack of effective alcohol harm prevention monitoring and controls

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