

Peter Cox

Director, Program Implementation & Improvement
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

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Dear Mr Cox

I write to you on behalf of the Australian Health Promotion Association Ltd (AHPA[®]) regarding the Evaluation of the Community Impact Statement (CIS) requirement for liquor licence applications, currently being undertaken by Liquor & Gaming NSW (L&GNSW).

AHPA is the peak body for health promotion in Australia and is committed to improving the health and wellbeing of all people. Australia is one of the healthiest countries in the world largely because of effective health promotion practice - creating social and environmental conditions that enable Australians to enjoy a healthy and happy life.

To maintain and improve our quality of life, Australia must continue to address the misuse of alcohol which remains a great threat to the health of current and future generations. Its contribution to Australia's total disease burden is unacceptable. Alcohol misuse costs Australia 36 billion dollars annually, despite ongoing industry self-regulation and 'responsible drinking' education campaigns.

We know that in both Newcastle and Kings Cross in NSW, sharp reductions in alcohol related violence and other anti-social behaviour have resulted since restrictions were imposed, yet the alcohol industry has consistently criticised the government response, claiming restrictions to personal freedoms and erosion of profits.

Regarding this CIS review, our observation is that liquor licence applications are invariably approved by the authority, sometimes despite significant community opposition and strong objective evidence indicating a likely increase to alcohol-related harm caused by an additional liquor outlet.

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. This 100% approval rate in favour of the liquor industry indicates that community concerns are not being appropriately considered. We believe the current licensing system (including the CIS requirement) is seriously flawed and requires fundamental reform.

AHPA[®] raises the following issues with the current CIS process and recommendations to ensure a more balanced and transparent system that improves community confidence in the authority:

'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 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.

Recommendations regarding onus of proof:

1. Reverse the onus of proof so that liquor licences will only be granted if the Applicant can objectively demonstrate that no harm will be caused by the granting of a licence.
2. Make it a requirement of the CIS to list the current alcohol outlet density of the relevant suburb, as well as alcohol-related assaults, alcohol-attributable hospitalisations, domestic assaults and malicious damage counts and rates, and outline how they will mitigate any potential increases to these figures*.

Community notification requirements

The notification requirements of the current CIS process are inadequate and do not sufficiently inform the community about proposals that are likely to impact on them. In decision reports published on the L&GNSW website, when identifying the community impacted by a licence the Authority deems the local community as the suburb and the broader community as the Local Government Area. However, the Applicant is only required to consult with local residents and businesses within a 100m radius of the proposed premises, leaving the majority of impacted residents uninformed.

The NSW Ombudsman defines natural justice as decision-makers informing people of the case against their interests and giving them a right to be heard¹. In this situation, the potential for natural justice is only provided to the minority of residents that happen to live within 100m of the proposed licence (if they read their mail) or those that happen to see the small application notice on the premises, or routinely visit the ILGA Noticeboard. The Authority must improve the notification process for liquor licence applications to at-least provide the potential for natural justice.

There are currently two categories of CIS (Category A and B), with separate notification requirements for each. To remove this complexity, it is recommended that a single CIS be adopted and that L&GNSW take a coordination role in the notification process. Notification requirements for all current Category B CIS applications should be adopted for this proposed single CIS process.

Community notification requirements also impact on the community's ability to appeal licensing decisions (eg. request a NSW Civil & Administrative Tribunal review). The current system and legislation are exclusionary and minimise any recourse for appeal against ILGA/delegated decisions, as only the community required to be notified and who initially made a submission are eligible to request a review. Expanding the notification requirements beyond the 100m radius of the proposed licence and notifying all agencies required through a Category B CIS for every liquor licence application will ensure a fairer and more transparent review process.

Recommendations regarding community notification:

3. L&GNSW to adopt a coordination role of the liquor licensing notification process.
4. Increase the current 100m notification boundary to a minimum 1km radius of the proposed premises.
5. Implement a single CIS process that incorporates the current notification requirements of the Category B CIS.
6. Develop an 'opt-in' online notification tool for community members and stakeholders (similar to <https://www.planningalerts.org.au/>) that will generate an automated email once a liquor licence application is received by the Authority within a specified suburb or postcode.
7. Remove the current restrictions on appeals, allowing any objector the opportunity to request a review through the NSW Civil and Administrative Tribunal.

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 (again) 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. 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 current liquor licensing system does not enable procedural fairness, with the applicant afforded the final right of reply to objections received from the community's response to the CIS. In our experience the applicant's final reply, often based on misleading interpretation of selected data (to downplay or refute the community's concerns) is invariably accepted without scrutiny by the Authority when making their final determination. Procedural fairness dictates that the community (as the stakeholder vulnerable to harm) be given the final right of reply to ensure "that a decision is based upon findings of fact that are in turn based upon sound reasoning and relevant evidence"³.

Recommendations regarding transparency of applicant:

8. L&GNSW to publish all correspondence relating to liquor licence applications on the ILGA Noticeboard as it is received including CIS forms, application forms, community objections, applicant responses etc.
9. L&GNSW to adopt the proposed liquor licensing process outlined in Appendix 1, providing the community the final right of reply before the matter goes to the Authority for a decision.

Transparency of ILGA Decisions

The current decision-making process lacks transparency and gives the impression that liquor licences are simply being "rubber-stamped" by the Authority. 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.

To make an informed, consistent and transparent assessment of the likely harm posed by an additional alcohol outlet in their neighbourhood, ILGA must transparently detail current alcohol outlet density and alcohol-related harms in the local community for every liquor licence application. Alcohol harm indicators that must be considered include:

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

AHPA strongly encourages L&GNSW to publish the criteria outlining the local conditions/circumstances where it is inappropriate for a licence to be approved (such as outlet density beyond 3 per square km, within 100m of schools and social housing estates, youth spaces, within areas with higher alcohol-related assaults and domestic assaults etc). This would allow applicants to identify more appropriate locations for alcohol outlets and also assist the community to determine whether it is worthwhile investing time and resources objecting to a liquor licence application in their neighbourhood.

To enhance this transparency further, L&GNSW should partner with the Health sector to develop agreed criteria whereby a geographical mapping tool can be published and utilised (by applicants and the community alike) to objectively indicate locations that are (or are not) appropriate for liquor outlets. Such a tool would minimise the need for both the applicant and the community to invest time and resources either defending or objecting-to liquor licence applications. We believe this action would increase the health and wellbeing of our community and also achieve L&GNSW's stated objective of "reducing costs and regulatory burden for applicants".

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.

Recommendations regarding transparency of ILGA:

10. The Authority to develop and publish a set list of objective decision-making criteria, stipulating when it would be inappropriate to grant a liquor licence.
11. The Authority to partner with the Health sector to develop a geographical mapping tool to objectively indicate locations that are (or are not) appropriate for liquor outlets.
12. Decision reports to be made mandatory and published online for all liquor licensing decisions where objections were received from the community.

Thank you again for the opportunity to comment on the review of the Community Impact Statement requirement.

Your sincerely



Paul Klarenaar
Director & Advocacy Lead
Australian Health Promotion Association



