

Productivity Commission Review of the National Competition Policy Arrangements – Submission by the Australian Hotels Association (NSW)

This submission restricts itself solely to a brief commentary on recent changes to the liquor legislation in New South Wales to comply with the National Competition Policy.

The Australian Hotels Association (NSW) writes in support of the recently introduced New South Wales legislation. The National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004, introduced a range of new laws that apply to hotel and liquor store licences from 1 August 2004.

The new legislation ensures the objectives of harm minimisation and protection of the community by bringing into force the introduction of a social impact assessment process for all liquor licensing applications for hotels and bottle shops while removing the “needs test” and disallowing the right to lodge formal objections to licences, based solely on needs ie that the needs of the public inside and outside the neighbourhood of the proposed premises could be met by existing premises operating either within or outside the neighbourhood.

The review was originally undertaken by the Department of Gaming and Racing in accordance with the competition principles agreement to which NSW was a signatory and concluded that the NSW liquor laws contained significant barriers to entry and restricted competition. However, some barriers and restrictions are necessary to achieve the objectives of the legislation – primarily the minimisation of alcohol-related harm in the community.

Thus, the new legislation, in our opinion, removes the anti-competitive features which were in the legislation previously but at the same time replaces them with a model that assures the public interest is protected when new applications are filed either seeking a licence or removal of existing licence.

Hotels/bottle shops are not able to be established in areas where such hotels/bottle shops are considered to be against the public interest and a burden to the community and as such is consistent with recommendations arising out of the New South Wales Government’s Summit on Alcohol Abuse made specifically to prevent the proliferation of liquor in the community and access by young persons to liquor, ie the minimization of alcohol related harm in the community.

The needs ground was anti-competitive as any operator could object on that ground and the onus was on the applicant to satisfy the Licensing Court of NSW that such a need existed.

Social Impact Assessment Process

The needs test for hotels and liquor stores has been replaced with a social impact assessment. An SIA is required for an application for a new or

removed hotel or off-licence (retail). The SIA requirements do not extend to any other licence types.

There are two types of SIAs – Category A and Category B.

A Category A SIA process applies where the application involves:

- A removal to premises within one kilometre for a hotel, or within 500 metres for an off-licence (retail), in the NSW metropolitan area;
- A removal to premises within five kilometres for a hotel or an off-licence (retail) outside the NSW metropolitan area;
- No increase in trading hours;
- Generally no variation to liquor licence conditions; and
- No more than a 10 percent increase in the area of the licensed premises.

A Category B SIA process applies in all other situations.

Category A SIAs must include information on whether a range of facilities, including schools, places of worship, etc, are in the immediate vicinity of the proposed premises.

Category B SIAs must contain more detailed information on population demographics for the area where the proposed premises are situated, crime and health indicators, and the number and density of licensed premises.

A SIA applicant must publicly notify a SIA that has been lodged for approval. A notice must be posted at the proposed hotel or liquor store premises during the 30-day public consultation period. The notice will indicate where members of the public can inspect the SIA.

Also, the applicant must advertise the SIA in a statewide newspaper and in a local newspaper circulating in the venue's area. The advertisement will also indicate where the SIA can be inspected.

Members of the public together with police, council and other licensees are able to make submissions to the Liquor Administration Board within a 30 day period from when the advertisement has been placed. The Board has to consider any submission received before a determination on the SIA.

Objections can still be made to a hotel licence and off-licence (retail) application before the Licensing Court in addition to the submissions that can be made through the SIA process.

However, existing hotels and liquor stores are no longer able to object to the new venues on the basis of the needs test. Objections may only be made on grounds like fitness, disturbance to the neighbourhood, against the public interest, etc.

In making these comments to the Productivity Commission, the Australian Hotels Association (NSW) is aware that Woolworths made a submission to the Commission in July 2004 prior to the new legislation taking effect.

The Association considers that the legislation is not anti-competitive simply because of the requirements that a Category B SIA must be completed should Woolworths or any other retailer seek to increase the size of their existing premises by more than 10 per cent. This requirement does not prevent this taking place but merely requires the applicant to provide all the details required in respect to Class B SIA applications.

If such a restriction was not there, Woolworths and other major supermarket/bottle shop operators could dramatically change the existing off-licence (retail) from that originally approved by the Licensing Court which could have a dramatic impact and adverse effect on the local community.

The Association understands that in some Woolworths applications to replace an existing off-licence (retail) by a Dan Murphys store, can result in a dramatic increase in size from say approximately 174 sq m to 1500 sq m (which the Association understands is the standard size for a Dan Murphys store).

The Association also is aware that Independent Liquor Stores Association made a submission to the Productivity Commission in July 2004 criticising the failure of the Department of Gaming and Racing to fully consult with the liquor industry. The AHA (NSW) does not share in such criticism and up until and since the passage of the legislation through Parliament, this Association has regularly conferred with representatives of the Minister's Office and the Department. The ILSA is primarily concerned at the likelihood of the independent liquor store owners being "invaded" by the two major supermarket chains.

The Association understands that immediately prior to the introduction of the new legislation on 1 August 2004 a significant number of applications for off-licence (retail) and hotels were lodged in the Licensing Court under the old application process. This was no doubt due to some uncertainty in the liquor industry as to how the new SIA process would operate. Moreover, those licensees who had dormant licenses took the opportunity to seek to remove them because it was uncertain as to what would be the future and value of such licences.

Since 1 August 2004 applications for both Category A SIA and Category B SIA are now starting to be received by the LAB but it is of course early days. No doubt as legal practitioners become more familiar with the new SIA process further applications will be received.

Nevertheless, the Association is confident that the new SIA process will achieve the NSW Government's intention to satisfy the National Competition Policy whilst at the same time have proper regard to the recommendations and concerns expressed arising out of the Summit on Alcohol Abuse to ensure the minimisation of alcohol related harm in the community.

