

GUIDELINE

Consideration of social impact under Section 48(5) of the *Liquor Act 2007*



Independent
Liquor & Gaming
Authority

Overview

This Guideline concerns the process by which the Authority considers the likely social impact of a licence, authorisation or approval on community well-being when determining whether to grant certain applications. It provides information to relevant stakeholders (including applicants for a licence, authorisation or approval and members of the community) about the type of information that is likely to be of assistance to the Authority when considering that impact.

Background

1. The object of section 48 of the *Liquor Act 2007* ("**Act**") is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community. This is achieved by providing a process through which the Authority is made aware of:
 - a) the views of the local community, and
 - b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
2. The Authority is required to consider a community impact statement provided with an application, and have regard to the impact of the proposed licence, authorisation or approval on community well-being, before determining whether to grant it.

Applications that require consultation on community impact

3. Section 48(3) of the Act requires certain applications to be accompanied by a community impact statement. Those applications are, as set out in section 48(2) ("**Relevant Applications**"):
 - a) an application for a hotel licence, club licence or packaged liquor licence,
 - b) an application under section 59 for approval to remove a hotel licence, club licence or packaged liquor licence to other premises,
 - c) an application for an extended trading authorisation in relation to a hotel licence, club licence or packaged liquor licence,

- d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
 - e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
 - f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
 - g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,
- but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49(5)(b) or section 49(5A)).
4. There are two categories of Community Impact Statement: category "A" and category "B". Clause 10(1) of the *Liquor Regulation 2008* ("**Regulation**") requires the preparation of a category "A" Community Impact Statement in respect of an application for a packaged liquor licence for sale of liquor only by telephone, fax, internet or mail order; an application for an extended trading authorisation enabling an on-premises licensee to sell liquor between 5 and 10 am or between 10 pm and midnight on a Sunday; or an application for a primary service authorisation under section 24(3) of the Act.
 5. Those applications for which a category "B" Community Impact Statement is required are set out in clause 10(3) of the Regulation. They include an application for a hotel licence; club licence; packaged liquor licence and an on premises licence that relates to a public entertainment venue (other than a cinema or theatre). They also include an application for an extended trading authorisation or an application to remove any of the aforementioned licence types.
 6. Moreover, a Category B Community Impact Statement will be required when extended trading is sought to enable any on premises licenced business to supply liquor between the hours of midnight and 5 am, or if a producer/wholesaler licensee proposes to do the same (other than in respect of the licensee's residents or guests). Finally, a Category B Community Impact Statement will be required if the Authority requires it pursuant to section 48(2)(f) of the Act.

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Community Impact Statement

7. Requirements in relation to the preparation and content of a Community Impact Statement are set out in section 48(3), (4) and (6) of the Act and clauses 10 to 11 of the Regulation. Applicants must also comply with the the advertising and notification requirements of clauses 6 to 9 of the Regulation.
8. This Guideline is not intended to outline the Community Impact Statement *procedure* for applications made under categories "A" and "B" in detail. Explanatory information regarding the Community Impact Statement process is available on the "liquor" pages of the Office of Liquor, Gaming & Racing ("OLGR") website at www.olgr.nsw.gov.au.

Requirement to have regard to impact upon community well-being

9. Section 48(5) of the Act provides that the Authority must not grant a licence, authorisation or approval unless it is satisfied, having regard to the Community Impact Statement and any other matter it is made aware of, that the overall social impact of granting the licence, authorisation or approval will not be detrimental to the well-being of the local or broader community.
10. The Authority is required to:
 - a) assess the overall social impact of a licence, authorisation or approval being granted, and
 - b) determine whether it is satisfied that that impact will not be detrimental to the well-being of the community (Act, section 48(5)).
11. When making an assessment of the overall social impact of a licence, authorisation or approval being granted, the Authority will consider, without limitation, the following aspects of a Relevant Application:
 - a) The **type** of proposed licensed premises applied for – for example, whether it is a hotel, general bar, registered club, public entertainment venue (nightclub) or packaged liquor licence (takeaway liquor store).

- b) The **scale** of the proposed licensed premises – that is, its size, layout and the maximum number of persons that the premises can accommodate (under an approval from the local consent authority or, where such an approval does not exist, under other appropriate building standards). Whether or not entertainment is to be provided, and its nature, may also be relevant in considering the scale of the proposal.
- c) The **trading hours** of the proposed licensed premises – whether the venue will trade within the standard hours prescribed by section 12 of the Act, what the proposed six-hour closure period under section 11A of the Act will be (if applicable), any trading hour arrangements approved by the local consent authority, and whether an extended trading authorisation is sought to enable the premises to trade beyond midnight and, if so, until when and for how many days per week.
- d) The **location** of the proposed licensed premises – whether the existing density of licensed premises in the relevant local community (the locality in which the premises is situated) or broader community (usually the relevant local government area) is relatively high or low by comparison to the New South Wales State average and what cumulative social impact the addition of a further premises of the type, scale and with the trading hours proposed is likely to have upon those communities – by reference to such issues as transport problems, overcrowding of footpaths, increased pedestrian traffic, littering, noise pollution and the prevailing exposure of the local and broader communities to relevant types of anti-social behaviour and crime, including the proximity of any "hot spots" for the occurrence of such incidents.

The Authority may consider whether the populations of the relevant local or broader communities have demographic traits that are linked to relatively higher or lower vulnerability to alcohol-related social problems than the State population as a whole.

The Authority will also consider those matters relevant to location that must be addressed by a Community Impact Statement – including the proximity of the proposed licensed premises to: hospitals or other health facilities; nursing homes; places of worship; schools, universities, TAFE colleges or other educational facilities; facilities for

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the homeless; facilities for people with alcohol related problems; public parks and other public facilities; and alcohol free zones or any other areas identified by police as being a problem area for public drinking. Also relevant will be the nature of the surrounding buildings or activities – for example whether or not the area is wholly residential or commercial/industrial.

- e) Whether any **specific measures**, over and above those required by legislation, will be implemented at the proposed licensed premises (whether by way of licence conditions or otherwise) that may contribute to reducing the potential social detriment that premises of the relevant type, scale, trading hours and location may otherwise pose to the local and broader communities. For example, some larger developments such as hotels and nightclubs may, as a condition of development consent, have produced a Plan of Management or a Security Management Plan. Similarly, the Authority may consider whether any particular aspects of the proposed licensed premises may enhance its potential to have a positive social impact upon the local and broader communities.

Matters the Authority must consider

12. In determining whether it is satisfied that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community, the Authority is required to have regard to:
- a) the Community Impact Statement;
 - b) any submissions received by the Authority during the application process;
 - c) any reports received by the Authority during the application process; and
 - d) any other relevant matter the Authority is made aware of during the application process.
13. Upon receiving a Relevant Application, the Authority may refer the matter to the Director General of the Department of Trade and Investment, Regional Infrastructure and Services ("**Director General**") for a report pursuant to section 42 of the Act, and will invariably do so. The Director General's report may include information and/or comment on the potential social impact posed to the local or broader communities should the application be granted. The report may

recommend conditions to which the proposed premises may be subject if a licence is granted, and address the compliance history, if any, of the Relevant Applicant.

14. Where such a report is provided, the Authority is required to have regard to it in determining whether it is satisfied that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

Matters the Authority may consider

15. While the Authority must have regard to the matters referred to above, the Authority need not confine its assessment of the overall social impact of a Relevant Application being granted to that material alone.
16. The Authority may consider domestic and international public health and other relevant research regarding those demographic indicia that are linked to a population's relatively higher or lower vulnerability to alcohol-related harm.
17. The Authority may also consider domestic or international research on the association between high alcohol outlet density and adverse social outcomes, including but not limited to rates of alcohol-related crime and anti-social behaviour, hospital admissions, child abuse and neglect, alcohol related assaults, motor vehicle accidents, pedestrian injuries, drink driving and reported rates of public drunkenness.
18. Recent crime statistics and analysis, including data pertaining to general and alcohol related crime rates in the relevant communities, may be obtained from the NSW Bureau of Crime Statistics and Research ("**BOCSAR**"). This material may be taken into account by the Authority when considering the extent of prevailing social problems and crime trends in the relevant communities.
19. In 2009, OLGR published a series of *Social Profile Reports* for each Local Government Area in New South Wales ("**OLGR Reports**"). These reports (available in the "liquor" section of the OLGR website) compile relevant statistics on population characteristics (sourced from the Australian Bureau of Statistics and the NSW Department of Planning and Infrastructure), socio-economic index for areas ("**SEIFA**") data (from the Australian Bureau of Statistics), crime data (from BOCSAR), transport services data (from the NSW Transport Data Centre),

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liquor licence distribution data from licensing records and risky drinking practices data (from NSW Health). The OLGR reports may be taken into account by the Authority when considering the overall social impact of a licence, authorisation or approval being granted.

20. While the data cited in the OLGR Reports may date from 2007 or earlier, they provide a useful overview of the recent demographic profile of a Local Government Area. It should be noted that updated BOCSAR data is available. The other categories of data noted in the OLGR Reports may similarly be updated from the source agencies referred to above. The Authority notes, for example, that data from the 2011 Census has recently been published by the Australian Bureau of Statistics.

Content of submissions from relevant stakeholders

21. As noted above, the Authority must consider all submissions received by it. These will include:

- a) submissions from those stakeholders with whom a Relevant Applicant must consult pursuant to the Regulation. These include, in the case of a category "A" Community Impact Statement, the local consent authority (Council), the local police and such other stakeholders as are determined by the Authority (Regulation, clause 11(2)). In the case of a category "B" Community Impact Statement, the relevant stakeholders include all those agencies who must be consulted in respect of category A Community Impact Statement, plus the Ministry of Health, the Department of Family and Community Services, Roads and Maritime Services, any recognised leaders or representatives of the local Aboriginal community, and the occupiers of "neighbouring premises" (as defined by the Regulation) (Regulation, clause 11(3));
- b) if the Authority has advised a Relevant Applicant to consult with a specified person or body, any submissions from that person or body; and
- c) submissions received from other persons or groups, whether or not the Act or Regulation requires a Relevant Applicant to consult with those parties.

22. When framing submissions, stakeholders should consider the statutory objects and considerations to which the Authority must have regard under section 3 of the Act:

3: Objects of Act

- 1) The objects of this Act are as follows:
 - a) 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,
 - b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
 - c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- 2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
 - a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

23. Without limitation, members of the local or broader community may have concerns in relation to such matters as:
- a) undue disturbance to the neighbourhood of the proposed licensed premises caused by the operation of the premises and/or the conduct of patrons;
 - b) alcohol-related anti-social behaviour or crime;
 - c) alcohol-related hospitalisations and health problems;
 - d) increases in pedestrian and motor traffic numbers;
 - e) road safety (including but not limited to incidents involving motorists, cyclists and pedestrians affected by alcohol);

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- f) increases in domestic violence associated with alcohol consumption; or
 - g) litter and other pollution associated with the operation of the premises.
24. Other stakeholders may wish to identify the benefits of a Relevant Application, which may include, without limitation:
- a) increased social and recreational opportunities;
 - b) addressing a shortage of entertainment venues in the relevant local or broader community;
 - c) increased opportunities for live music and other artistic pursuits;
 - d) increased employment and economic activity in the hospitality or tourism industries; and
 - e) other benefits to consumers.
25. The key facts and contentions asserted in a Relevant Application or submission regarding social impact should be supported by appropriate evidence or other material. To the extent that contentions are based upon underlying material (for example, a Police or Council submission based upon data on alcohol linked crime rates or disturbance complaints in a community), then the underlying material upon which those contentions are based should be either provided to the Authority or identified in a manner that would enable an opposing party to make an informed response.
26. Similarly, if a public agency (for example, the Ministry of Health) or an industry consultant makes a contention about the likely positive or negative social impact of a proposed licensed premises that is based upon research or statistics, the underlying research or statistics should be identified.
27. Notwithstanding paragraphs 25 and 26, members of the local and broader communities may express their observations or opinions regarding the social impact of a proposed licence premises without providing expert or statistical evidence in support of those submissions. The Authority encourages members of the local or broader communities to address the particular application before the Authority, in light of the statutory objects and considerations provided by section 3 of the Act, reproduced in paragraph 22 of this Guideline.
28. When submissions are made directly to the Authority they should, wherever practicable, be made in writing, addressed to the Authority and preferably sent by email to the officer who is case managing the Relevant Application. Contact details for the responsible officer may be obtained from the OLGR Licensing Section or the Customer Service Team.
29. Persons making submissions to the Authority should be aware that their submissions will usually be provided to an applicant and that their identity and a summary of their submissions may be published. If they do not wish their identities to be disclosed or the submissions published, they should advise the Authority, when making the submissions, and explain why.
30. Relevant Applicants and stakeholders should act on the basis that the Authority may not take into account submissions received by the Authority after the consultation process has concluded, or after any other date that has been specified by the Authority for the receipt of submissions. The Authority will determine most Relevant Applications at its ordinary meetings, usually held in the last week of each month. Staff assisting the Authority will require any submissions to be filed two weeks in advance of a meeting date to enable Members to be properly briefed, in the day/s that precedes the monthly meeting, the Authority generally publishes its agenda for liquor matters on the Authority website: www.ilga.nsw.gov.au. It may not be possible for the Authority to consider submissions received less than two weeks before its consideration of the Application.

Submissions that a local or broader community "does not need" another liquor business

- 31. The fact that a locality may already be well served by liquor businesses is not, of itself, a basis for refusing a new licence application.
- 32. The former *Liquor Act 1982* enabled parties to object to an application on the basis that there was no "need" for a new liquor business in a neighbourhood. This provision enabled incumbent businesses to restrict the access of potential competitors to local markets.

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33. Following a recommendation by the National Competition Council that the State of New South Wales reform its liquor laws to better conform with National Competition Policy, the State Parliament enacted the *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004* which replaced the "needs" test with provisions that focused upon community impact. Those amendments have largely been carried through to the current Act.
34. As noted in paragraphs 9 and 10 of this Guideline, under the current Act, s 48(5) requires the Authority to be satisfied, as a prerequisite to the grant of certain licences, authorisations and approvals, that the overall social impact of the relevant licence, authorisation or approval being granted will not be detrimental to the local and/or broader community.
35. While the statutory focus has shifted from the question of whether there is a need for a new liquor business, the number of existing liquor businesses in a locality and the cumulative impact of a further liquor outlet may be relevant to the issue of overall social impact. If so, it will be considered by the Authority in determining the Relevant Application. For example, stakeholders may have concerns that a net increase in the availability of liquor services in an area that already has a high density of liquor outlets might exacerbate prevailing levels of alcohol related harm and disturbance. Alternatively, the lack of licensed venues in a local or broader community or low documented levels of alcohol related harm or disturbance in a community may be factors identified in support of the proposed licensed premises. These issues should be addressed in submissions to the Authority.
- Informal process**
36. The Authority is an independent administrative body, not a court. Section 36B of the *Gaming and Liquor Administration Act 2007* provides that a formal hearing involving the legal representation of parties is not required to be held in relation to any application or other matter that may be dealt with or decided by the Authority under the Act.
37. However, the Authority must observe the requirements of administrative law, including principles of natural justice or procedural fairness, when undertaking administrative action.
38. The Authority administers its power to determine Relevant Applications in a manner that is as efficient and informal as possible, with a view to minimising time and costs to all stakeholders. While the Authority may, in its discretion, decide to conduct an interview, convene a conference or otherwise receive submissions orally, the Authority expects to determine most Relevant Applications "on the papers" (that is, on the basis of written material).
39. Each Relevant Application will be determined on its merits. Issues relevant to the overall social impact of an application being granted will vary according to the circumstances of each case, and will be influenced by the extent of stakeholder participation. Submissions identifying both positive and negative aspects of the proposed licensed premises will be taken into account by the Authority when considering whether the overall impact of a liquor application will be detrimental to the local or broader community.
40. Relevant Applicants may engage legal representatives or expert consultants to address questions of social impact - although this is not essential.
41. The matters discussed in this Guideline are not intended to comprise an exhaustive list of factors or material that may be taken into account by the Authority when determining whether a Relevant Application meets the requirements of section 48(5) of the Act.
42. Subject to the Authority's duty to afford natural justice and the practical constraints of time and resources in a high volume jurisdiction, the Authority may further explore, of its own volition, with applicants or other stakeholders, matters pertaining to social impact that have been touched upon in submissions, or identify further issues or material that have not been raised in submissions.

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Determination

43. The overall social impact of an application being granted comprises only one part, albeit a significant part, of the matters to be considered by the Authority when determining a Relevant Application. The time taken to determine a Relevant Application will vary from case to case, and will be affected by such matters as whether an application meets the formal requirements of the legislation, the complexity of issues, the number of submissions received, whether submissions are made in a timely manner and, particularly, the time taken by the Relevant Applicant to respond to any questions or requests from the Authority for further information.

Notification of Authority's Decision

44. When the Authority has determined a Relevant Application, it will issue a letter to the Applicant advising the Applicant of its decision. The Authority may, in its discretion, advise the Applicant of the outcome of a Relevant Application informally before the formal decision letter is notified.
45. Due to the volume of submissions it receives, the Authority does not routinely advise persons who have made submissions to it under section 44 of the Act, or otherwise, of its determination of a Relevant Application. Nor does the Authority always publish primary liquor and gaming decisions on its website. However, the Authority will generally inform persons who make enquiries to it of the outcome of Relevant Applications.

46. Persons wishing to obtain further information held by the Authority concerning Relevant Applications are advised to apply for that information under the *Government Information (Public Access) Act 2009*. This allows the Authority to ensure that any sensitive personal, business or commercial information is not released where there is an overriding public interest against its disclosure.

47. Information about the process for seeking information held by the Authority is available on the Authority's website www.ilga.nsw.gov.au.

Appeal Rights

48. There is no statutory mechanism for review on the merits of a decision made by the Authority on an application for a new liquor licence/authorisation or the removal of an existing licence/authorisation. In New South Wales judicial review of administrative action is available only at common law, which is accessed via section 69 of the *Supreme Court Act 1970*.

Review of this Guideline

49. The Authority may review the operation of this Guideline from time to time and may update the Guideline as and when considered appropriate.

APPROVED by the Independent Liquor & Gaming Authority

On 8 November 2012



Chris Sidoti
Chairperson



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Annexure A



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The Authority will inform itself from time to time of relevant domestic and international public health and criminological research pertaining to the social impact of alcohol.

The following list of research is provided for the information of applicants and stake holders. The list is not intended to be exhaustive.

- Livingston, M:
"Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms"
Drug and Alcohol Review (September 2011) Australasian Professional Society on Alcohol and Other Drugs
- Liang W and Chikritzhs T:
"Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability" (2011)
Drug and Alcohol Review (September 2011)
- Livingston, M:
"A longitudinal analysis of alcohol outlet density and domestic violence"
Addiction (2011) Society for the Study of Addiction
- NSW Department of Health:
"The Health of the People of New South Wales: Report of the Chief Health Officer" (2010)
- New Zealand Law Reform Commission:
Alcohol in our Lives (2010), particularly Part 3 "Reducing the Demand for Alcohol."
- Australian Institute of Health and Welfare:
National Drug Strategy Household Survey Report (2010)
- Livingston, M:
"A longitudinal Analysis of Alcohol Outlet Density and Assault" (2008).
Alcoholism: Clinical and Experimental Research Vol 32, No 6 (June 2008)
- Booth *et al*:
"Independent Review of The Effects of Alcohol Pricing and Promotion".
University of Sheffield Report for the Department of Health (UK, September 2008)
- Berry J, Kidd P, Roche A and Harrison J (2007):
"Prevalence and patterns of alcohol use in the Australian work force: findings from the 2001 National Drug Strategy Household Survey".
Addiction, Volume 102, Issue 9, pages 1399-1410, September 2007
- Loxley, W *et al* (2004):
National Drug Research Institute and the Centre for Adolescent Health:
"The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence."
- NSW Bureau of Crime Statistics and Research (1996-):
see all publications under the subject category "alcohol" that are published at www.boscar.nsw.gov.au .
The Authority routinely refers to BOCSAR annual crime data and crime maps pertaining to the relevant Local Government Area when considering an application.