
Rational Social Impact Assessment of Alcohol Outlets: Slip Sliding Away

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In 2004 legislators in New South Wales relied on Australia's National Competition Policy to change the reason for determining alcohol outlet approvals from a "needs" to a "harm minimisation" basis. This was predicated on the application of a rational social impact assessment (SIA) process. Within a short time, however, the volume of liquor licence applications began to erode that intention and the delays that applicants encountered placed politicians under pressure to fast-track the process. Subsequent liquor legislation retained the statutory obligation on decision-makers to ensure no overall detrimental social impact associated with the approval of an alcohol outlet licence. However, legislative amendments to the approval process reduced the number and kinds of licences and authorisations to which the social impact test applied and encouraged other shortcuts which undermine the validity of these assessments. The resulting statutory approval system in practice relegates SIA to an exception rather than the rule and has revealed the relative weakness of SIA as a public health safeguard.

Keywords: *public health; alcohol regulation; social impact assessment*

I. MANAGING QUANTITY OF SIAs – A CASE STUDY HISTORY

Much has been written about the history of liquor licencing laws in New South Wales, an Australian State which began as a convict settlement displacing the Indigenous population, and in which supply of liquor was controlled by the government of the colony.

Early conservative estimates indicate that in the 1830s in New South Wales, 13.6 litres of pure alcohol in the form of spirits were consumed each year by each inhabitant, predominantly males.¹

Various efforts were made to reduce levels of alcohol consumption, including early closing times and legislation prohibiting Aboriginal people from drinking alcohol. Nonetheless "[a]nual alcohol consumption in Australia reached a peak of 9.8 litres per capita in 1982",² the year in which the then New South Wales Attorney-General, Frank Walker, introduced a new Liquor Act noting:

The Liquor Act, 1912 has been amended on at least forty-five occasions, and it is more the fault of governments than of the draftsman that only a seasoned mariner, closely familiar with its shoals and reefs, would hazard the risk of escorting his client through the murky waters of its provisions.³

The *Liquor Act 1982* (NSW) established a central Licencing Court of New South Wales (replacing a licencing court for every licensing district in NSW) and the New South Wales Liquor Administration Board (replacing the Licenses Reduction Board). Mr Walker further noted:

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¹ Ministerial Council on Drug Strategy, *Alcohol in Australia Issues and Strategies* (July 2001) 1 <http://www.health.gov.au/internet/drugstrategy/publishing.nsf/Content/alc-strategy/%24FILE/alcohol_strategy_back.pdf>.

² Ministerial Council on Drug Strategy, n 1, 2.

³ New South Wales, *Hansard*, Legislative Assembly, 24 November 1982, 2981.



Many applications which now go before the court will be dealt with by informal proceedings before the board.⁴

Liquor licences and permits, he said, now numbered “almost 8000”.

By 30 June 2003 there were 12,638 licences in operation, and some 3,717 liquor licence applications had been processed in the previous 12 months.⁵ Despite these numbers and the known relationship between the availability of alcohol and alcohol-related harm⁶ and despite the opportunity to exempt liquor licencing from the National Competition Policy on public interest grounds,⁷ the State Government commissioned a National Competition Policy Review by Gaming and Racing NSW. In 2003 this Review recommended the Government

29. Establish a tiered Social Impact Assessment process, to apply before a new liquor licence can be granted. A comprehensive SIA would be required for any proposed new hotel, club or bottle shop, while restaurants and other venues that are not traditionally associated with excessive anti-social behaviour, would be required to undertake a less detailed process.
30. Provided public interest issues are adequately addressed through the Social Impact Assessment process, there is no need to retain a formal right to object to a liquor licence.⁸

At the time, a tiered approach was already in use in some local government authorities in New South Wales in response to requirements to consider social impacts when evaluating development applications including alcohol outlets. The usual strategy in that jurisdiction is to require a social impact assessment (SIA) for larger developments and a social impact statement for everything else.⁹

The Premier, Bob Carr, introduced the *National Competition Policy Amendments (Commonwealth Financial Penalties) Bill* the following February (2004) noting:

[T]he National Competition Council continues to hold that the current needs test in the Liquor Act restricting the number and location of liquor outlets is being used by existing liquor licensees to restrict competition.

Therefore, this bill will make changes to the Liquor Act’s licensing provisions that we think will be sufficient to satisfy the Commonwealth while hopefully maintaining the integrity of our liquor licensing system. The bill will replace the needs test with a rigorous and comprehensive social impact assessment process.¹⁰

The *Liquor Act 1982* (NSW) was duly amended by the inclusion of a new Div 6A social impact assessment process which required an SIA to be submitted for a hotelier’s licence and for an “off-licence to sell liquor by retail”¹¹ (s 62B). This took effect on 1 August 2004. A liquor licence application could not be granted unless the Board had approved the SIA (s 62C(1)(b)) and the Board could only approve a liquor licence application if it was satisfied that “the overall social impact of the application being granted by the court will not be detrimental to the local community or to the broader community”¹² (s 62F(1)(b)).¹³

⁴ New South Wales, *Hansard*, Legislative Assembly, 24 November 1982, 2981.

⁵ NSW Liquor Administration Board, *Annual Report 2002–2003*, NSW Government, Appendix 1 (2003) <<https://www.opengov.nsw.gov.au/searches?query=&agencyId=25838&page=1&size=10&fullAgencyId=25838&maxPages=1>>.

⁶ World Health Organisation (WHO), Regional Office for Europe, *Evidence for the Effectiveness and Cost Effectiveness of Interventions to Reduce Alcohol-related Harm* (2009) 65–67 <www.euro.who.int/_data/assets/pdf_file/0020/43319/E92823.pdf>.

⁷ Council of Australian Governments, *Competition Policy Agreements* (1994) 15 <<https://www.pc.gov.au/inquiries/completed/access/files/ncpagreement.pdf>>.

⁸ Gaming and Racing, *National Competition Policy Review, NSW Liquor Act 1982 and Registered Clubs Act 1976* (October 2003) 71 <<http://ncp.ncc.gov.au/docs/NSW%20Liquor%20Act%201982%20%26%20Registered%20Clubs%20Act%201976%2C%20review%202003.pdf>>.

⁹ Liverpool City Council, *Social Impact Assessment Policy* (October 2015) 7 <https://www.liverpool.nsw.gov.au/_data/assets/pdf_file/0017/112931/Social-Impact-Assessment-Policy-Adopted-by-Council-26-August-2015-PDF-Version.pdf>.

¹⁰ New South Wales, *Hansard*, Legislative Assembly, 17 February 2004, 1 <<https://www.parliament.nsw.gov.au/bill/files/2324/National%20Com%20Amdts.pdf>>.

¹¹ Now known as a packaged liquor licence.

¹² The NSW Liquor Board established a Social Impact Assessment Panel in 2002 to review gaming machine SIAs but did not adopt this strategy for liquor licence matters.

¹³ The same provision was replicated in the *Liquor Act 2007* (NSW) s 48(5) <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/la2007107/s48.html>.

However, within three years, difficulties in managing “a rigorous and comprehensive social impact assessment process” for a large number of liquor licence applications were already apparent. Introducing a new Liquor Bill in the New South Wales Legislative Assembly on 28 November 2007, Mr Graham West, noted there were now to be “six liquor licence categories” requiring social impact assessment,¹⁴ but at the same time

One area of the current liquor laws that is in need of reform is social impact assessments. These assessments have been criticised for being costly, time consuming, subjective, incomplete, and bewildering to residents and other stakeholders. A more efficient, less costly, and better targeted process is needed. The Liquor Bill 2007 therefore introduces a new community impact statement. The object is to facilitate consideration by the authority of the impact that the granting of certain applications will have on the local community...

Community impact statements [CIS] apply in different formats to low-impact licence applications. However, the authority will require that a statement be prepared with any application detail that it considers necessary... One aim of the new process will be to minimise time and costs...

The new community impact statement process will relieve applicants from having to obtain **large amounts of data** and prepare **complex and costly assessments**, so they can focus on consultation with the local community. Bringing the assessment process in-house will **facilitate a more objective process** that can better meet the needs of the authority. The Government believes that this type of process is essential for high-impact liquor licence applications. The bill requires that liquor regulators **must** be guided by harm minimisation principles.¹⁵ (emphasis added)

Unlike the previous focus on “the integrity of the liquor licence system”, these changes aimed to:

- i save the applicant time and money;
- ii improve efficiency;
- iii replace all social impact assessments provided by applicants with community impact statements;
- iv have different formats for these statements depending on the perceived level of social risk of liquor licence applied for;
- v make the liquor regulators responsible for obtaining “large amounts of data” and preparation of “complex and costly assessments” and
- vi facilitate “a more objective process”.

The *Liquor Act 2007* (NSW) (the Act) also created the Casino Liquor and Gaming Control Authority, renamed, in 2012, the Independent Liquor and Gaming Authority (ILGA), responsible for determining liquor licence applications.

Thus, in a sequence of legislative changes apparently designed to reduce the time taken to process liquor licence applications, the Act shifted the administrative burden onto the public regulator by making it responsible for the collection and presentation of a significant amount of material¹⁶ which had previously been required from the applicant.

By 2015 the Authority was still dealing with 2,475 liquor licence applications (year to 30 June 2015),¹⁷ and the processing of these was still considered too slow by the New South Wales Government which introduced further administrative changes, as described by the Department of Justice:

¹⁴ (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence; (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises; (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar 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) – as subsequently set out in s 48(2) of the *Liquor Act 2007* (NSW).

¹⁵ New South Wales, *Hansard*, Legislative Assembly, Liquor Bill 2007, 28 November 2007 <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-39810/HANSARD-1323879322-80171>>.

¹⁶ As described in guidelines available at the time, such as F Vanclay, “International Principles for Social Impact Assessment” (2003) 21 *Impact Assessment and Project Appraisal* 1; P Harris et al, *Health Impact Assessment: A Practical Guide* (Centre for Health Equity Training, Research and Evaluation (CHETRE), Sydney, 2007). Part of the UNSW Research Centre for Primary Health Care and Equity, UNSW.

¹⁷ ILGA, *Annual Report for 2014–15* (2015) 14 <<https://www.liquorandgaming.nsw.gov.au/documents/ilga/media-annual-reports-done/ILGA-2014-15-Annual-Report.pdf>>.

During 2015–16 the NSW Government undertook a reform to improve the regulation of the liquor and gaming industries...

To ensure timely and transparent decision making, the Authority is subject to ministerial directions on administrative matters. As part of the ministerial directions, the Authority board can be directed on the frequency of meetings to allow them to make decisions quickly.

The work of the Authority has been refocused on **high-risk** licence applications, such as new bottle shops or night clubs, and disciplinary matters ... In addition, Liquor and Gaming NSW was established within the Department of Justice as a new fit-for-purpose regulator undertaking the work previously performed by the Office of Liquor, Gaming and Racing and Authority staff. Administrative and processing functions have been transferred to Liquor and Gaming and the Authority has delegated **low-risk, non-contentious** decisions to Liquor and Gaming NSW.¹⁸ (emphasis added)

This change did not reduce the number of liquor licence applications requiring a social impact assessment but did reduce the number being determined by ILGA members. This was achieved by delegating several categories of application such as small bars¹⁹ and online-only packaged liquor²⁰ to public servants in Liquor and Gaming NSW to determine under delegation from ILGA. In the first six months of 2018, 106 of 146 (72.6%) published liquor licence decisions in New South Wales were made by delegates with the remainder being determined by ILGA. By designating delegated categories of liquor licence applications as “low risk” this strategy also appears to have permitted a formulaic assessment of social impacts, as will be shown below.

Thus by 2015, the tiered approach to SIA envisaged by the National Competition Policy Review in 2003 had been structured so as to minimise the number of applications requiring this level of assessment and maximise the number processed by public servants – now in the Department of Industry. At the same time, the burden of preparing information for assessment had been almost entirely removed from applicants. Currently a Category A community impact statement (CIS) is required for licence types considered low risk, and a Category B CIS for licence types more likely to be “high risk”.²¹ Both CISs are short questionnaires chiefly about notification and consultation procedures. Neither CIS is a social impact assessment. In addition, applications for an on-premises liquor licence or for a small bar not in a prescribed precinct (with automatic provision for the sale of alcohol to 2.00 am²²) do not always require a CIS.²³ Small bars comprised 32% of decisions in the first six months of 2018.

However, at the time of writing, Liquor and Gaming NSW is considering a new regulation that may exempt high-risk liquor licence applications that currently require a CIS from “the requirement that the application is accompanied by a community impact statement” as currently required under s 48(3) of the *Liquor Act 2007* (NSW).²⁴

Following submissions from a number of public health agencies²⁵ opposing the proposed amendments, this change was not included in the Liquor Regulation that came into effect on 1 September 2018

¹⁸ NSW Department of Justice, *Annual Report 2015–16*, Ch 11, Independent Liquor and Gaming Authority, Chairperson’s Report (2017) 137 <<https://www.justice.nsw.gov.au/Documents/Annual%20Reports/JusticeAnnualReport2015-16.pdf>>.

¹⁹ ILGA, *Regulatory Delegations Manual, Liquor Act 2007* (2016) s 20A, 88 <<https://www.liquorandgaming.nsw.gov.au/documents/ilga/publications/ilga-regulatory-delegations-manual.pdf>>.

²⁰ ILGA, n 19, s 45(1), (2), 97.

²¹ NSW Legislation, *Liquor Regulation 2007*, Clause 10 <<https://legislation.nsw.gov.au/#/view/regulation/2008/240/historical2016-07-01/part3/div2/sec10>>.

²² *Liquor Act 2007* (NSW) s 20B(2) <<https://www.legislation.nsw.gov.au/#/view/act/2007/90/part3/div3a/sec20b>> and s 49A <<https://www.legislation.nsw.gov.au/#/view/act/2007/90/part4/div2/sec49a>>. All other types of alcohol outlets seeking to trade after midnight require an ETA accompanied by a CIS (B) given the well documented higher risks of harm associated with the extended availability and supply of alcohol.

²³ Liquor and Gaming NSW, *Small Bar Licence* <<https://www.liquorandgaming.nsw.gov.au/operating-a-business/liquor-licences/liquor-licence-types/small-bar-licence>>.

²⁴ Liquor & Gaming NSW, *Regulatory Impact Statement, Liquor Regulation* (August 2018) 18 <<https://static.nsw.gov.au/nsw-gov-au/1530242467/Regulatory-Impact-Statement-Liquor-Regulation-2018.pdf>>.

²⁵ For example from the Northern Sydney Local Health District on 19 July 2018 <<https://www.liquorandgaming.nsw.gov.au/documents/submissions/liquor-regulation-2018/northern-sydney-local-health-district-health-promotion.pdf>>; from St Vincent’s

with the Department noting that further refinement was needed before introducing changes to the CIS requirements.²⁶

Should the requirement for a CIS be withdrawn, and in the absence of an alternative requirement, decisions about the likely social impacts of granting a liquor licence will likely rely on three sources of information: the application, any submissions received, and any social research data provided (eg by public servants) to the Authority or its delegate. The scope of such social research data would be at the discretion of the decision-makers. It is unlikely to include a history of notification of stakeholders by the applicant, as this information is currently only provided to the Department via a CIS,²⁷ although with little independent check of veracity.

In this situation, the social impact safeguard introduced to accompany competition reforms would take place almost wholly out of public view:

- there would be no CIS on the public record;
- submissions to Liquor and Gaming are not currently published; and
- the scope of the social research relied on by the decision-maker, if current practice is continued, may only become apparent (if at all) after the Decision is published.²⁸

A. High Risk in the Context of Administrative Burden

Section 48(5) of the Act places the following statutory obligation on ILGA with respect to the consideration of higher risk applications. It “**must not** grant” an application unless it is satisfied that the “overall social impact ... will not be detrimental to the well-being of the local or broader community”.²⁹ (emphasis added)

The current tiered system relies on two factors to identify which liquor licence applications should receive the most attention in terms of the statutory requirement to consider social impacts. These are the presence of high risk and the type of liquor licence. The tiered system correlates high risk with licence type.

1. High Risk Identified by Social Indicators

In September 2018, ILGA re-published *Guideline 6 Consideration of Social Impact under Section 48(5) of the Liquor Act 2007*.³⁰ This Guideline listed research which “assists in identifying risk factors” and “features of communities” relevant to “consideration of social impacts”. It notes:

The Authority may apply the following general propositions from the available literature.

- High levels of outlet-density have been shown to be positively associated with higher levels of alcohol-related harm (Campbell, 2009).
- High levels of packaged liquor outlet-density have been shown to be positively associated with higher rates of alcohol-attributable morbidity and mortality (Richardson, 2015).
- Socio-economically disadvantaged communities are at greater risk of alcohol-attributable chronic disease or accident or injury (NSW Chief Health Officer, 2016).
- High levels of packaged liquor outlet-density have been shown to be positively associated with higher rates of alcohol-related DV assault (Donnelly, Menendez & Mahoney, 2014).

Health Australia on 27 July 2019 <<https://www.liquorandgaming.nsw.gov.au/documents/submissions/liquor-regulation-2018/st-vincents-health-australia.pdf>>; the Centre for Population Health, NSW Ministry of Health on 18 July 2018 <<https://www.liquorandgaming.nsw.gov.au/documents/submissions/liquor-regulation-2018/nsw-ministry-of-health-submission.pdf>>.

²⁶ Liquor and Gaming NSW, n 23.

²⁷ Liquor & Gaming NSW, *Community Impact Statements (CIS)* <<https://www.liquorandgaming.nsw.gov.au/Pages/liquor/community-involvement/community-impact-statements.aspx>>.

²⁸ A Ziller, “Eroding Public Health through Liquor Licencing Decisions” (2018) 25 *JLM* 489.

²⁹ See <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/la2007107/s48.html>.

³⁰ ILGA, *Guideline 6, Consideration of Social Impact under Section 68(5) of the Liquor Act 2007* (September 2018) <https://www.liquorandgaming.nsw.gov.au/documents/ilga/guidelines/ILGA-Guideline-6_3-September-2018.pdf>.

- High levels of hotel outlet-density, and highly concentrated clusters of hotels in an area, have been shown to be positively associated with higher rates of alcohol-related non-DV assault (Livingston M, 2008).³¹

This list of propositions from the literature is incomplete since the risks of harm associated with extended trading hours (past midnight) are also well established.³² However, Guideline 6 establishes that ILGA recognises outlet density and socio-economic disadvantage as risk factors for alcohol-related harm which is reflected in socio-economic, health or crime statistics. Further, many published decisions by the Authority refer to crimes rates and indicators of relative disadvantage. The crime rates usually referred to are domestic and non-domestic assaults, and less frequently, malicious damage to property. Crime data are derived from incidents reported to the police and published quarterly.³³

However, the pattern of decisions by ILGA in the period January to June 2018 does not reflect the risk of social harm indicated by the crime data. In this six-month period, the Authority approved five new hotel licence applications notwithstanding that three of them were located in both a high-density domestic assault hotspot and a high-density non-domestic assault hotspot or postcode with high rates. The Authority also approved 10 of 11 applications from hotels for extended trading authorisations (ETAs). Six of these hotels are located in high-density domestic assault hotspots and one is in a medium-density domestic violence hotspot or postcode. Five hotels are in high-density non-domestic assault hotspots or postcode (Table 1).

TABLE 1. Analysis of ILGA Liquor Decisions re. Applications for new hotels and extended trading hours in hotels by two risk factors for the period 1 January–30 June 2018

Hotel name and address	New hotel?	ETA approved/refused	In a high-density domestic violence hotspot	In a medium-density domestic violence hotspot	In a high-density non-domestic hot spot	In a medium-density non-domestic hot spot
The Station House Hotel removal to 203 Beamish St, Campsie		Withdrawn	Yes		Yes	
Bath Arms Hotel, Parramatta & Burwood Roads BURWOOD NSW 2134		Approved				
Padstow Park Hotel 31 Howard Rd, PADSTOW 2211		Approved	Yes			

³¹ ILGA, n 30, Annexure A, citing CA Campbell et al, “The Effectiveness of Limiting Alcohol Outlet Density as a Means of Reducing Excessive Alcohol Consumption and Alcohol-related Harms” (2009) 37 *American Journal of Preventative Medicine* 556; EA Richardson et al, “Is Local Alcohol Outlet Density Related to Alcohol-related Morbidity and Mortality in Scottish Cities?” (2015) 33 *Health Place* 172; NSW Department of Health, *Trends in Alcohol Use and Health-related Harms in NSW, Report of the Chief Health Officer* (2016) <<https://www.health.nsw.gov.au/hnsnw/Publications/chief-health-officers-report-2016.pdf>>; D Donnelly, P Menendez and N Mahoney, “The Effect of Liquor Licence Concentrations in Local Areas on Rates of Assault in New South Wales”, *BOCSAR, Crime and Justice Bulletin*, No 181, December 2015 <<https://www.bocsar.nsw.gov.au/Documents/CJB/CJB181.pdf>>; M Livingston, “Alcohol Outlet Density and Assault: A Spatial Analysis” (2008) 103 *Addiction* 619.

³² S Moffatt and D Weatherburn, “Trends in Assaults after Midnight”, *Crime and Justice Statistics*, Issues Paper 59 (April 2011) <<http://www.bocsar.nsw.gov.au/Documents/BB/bb59.pdf>>; C Wilkinson, M Livingston and R Room, “Impacts of Changes to Trading Hours of Liquor Licences on Alcohol-related Harm: A Systematic Review 2005–2015”, (2016) 26 *Public Health Research and Practice*.

³³ NSW Bureau of Crime Statistics and Research (BOCSAR), *Crime tool* <<http://crimetool.bocsar.nsw.gov.au/bocsar/>>.

TABLE 1. *continued*

Nick and Nora's 45 Macquarie Street PARRAMATTA 2150	Yes	Approved	Yes		Yes	
Panania Hotel 63 Anderson St PANANIA NSW 2213		Approved		Yes		
Copper City Hotel removal to 40 Lewis Street, Cobar		Approved				
Lakes Hotel – The Entrance 201 The Entrance Road, The Entrance 2261		Approved	Yes		Yes	
Marrickville Ritz Hotel, 252-254 Illawarra Rd, Marrickville 2204		Approved	Yes		Yes	
Finley Country Club Hotel Motel, 167-177 Murray Street FINLEY NSW 2713	Yes	Not applied for				
Mullane's Baulkham Hills, 34/36 Brookhollow Avenue BAULKHAM HILLS NSW 2153	Yes	Refused				
Four Points by Sheraton Sydney Central Park, Block 4N, 88 Broadway CHIPPENDALE NSW 2008	Yes	Approved	Yes		Yes	
Cookies Lounge Bar, 1-11 George Street NORTH STRATHFIELD NSW 2137		Approved				
Broken Hill Outback Resort, Mount Gipps, Barrier Highway, Mount Gipps NSW 2880	Yes	Approved	No* Postcode rate: 1085.5 NSW rate: 370.0		No* Postcode rate: 854.4 NSW rate: 413.2	

Source: ILGA Liquor Decisions January – June 2018 as published in September 2018, NSW Bureau of Crime Statistics and Research (BOCSAR) crime maps data for July 2017–June 2018.³⁴ *This out of town venue is not in a hotspot but is in a postcode in which reported rates of domestic violence and non-domestic assault (per 100,000 population) are more than twice the comparative NSW rate.

The relationship between alcohol-related harm, relative disadvantage, outlet density and extended trading hours was well documented in literature published before 2018 – as ILGA noted in the reference list attached to Guideline 6.

In the case of packaged liquor licences for the same period of analysis, the Authority approved 15 of 23 applications (Table 2). The NSW Coroner's Office, Domestic Violence Deaths Review Team

³⁴ ILGA, *Liquor Decisions* (ILGA LD) are published on the Liquor and Gaming NSW Website <<https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/liquor-decisions>>; BOCSAR, n 33.

recommended a rebuttable presumption against approval of new liquor licences in domestic violence hotspots.³⁵ Research suggests that the density of packaged liquor licences is of particular concern regarding domestic violence.³⁶ Again these sources (and others) have been available for some time.

However, nine of the approved packaged liquor licences were for premises located within or very close to a high- or medium-density domestic assault hotspot. Published crime data show that domestic violence assault hotspots tend to persist, year after year.

TABLE 2. Co-location of approved packaged liquor licence premises and domestic violence hotspots

Packaged liquor licence approvals 1 January–30 June 2018	In a high-density hotspot	In a medium-density hotspot
David Jones Pty Ltd, Corner Keira & Burelli Street WOLLONGONG	Yes	
DC/SIA Mart 155 Peats Ferry Road HORNSBY		
Rostrade Pty Ltd 2/4 Homepride Avenue WARWICK FARM 2170	On edge of a large hotspot	
ALDI Riverwood 247-263 Belmore Road RIVERWOOD	Yes	
BWS Shellcove Corner of Harbour Boulevard & Cove Boulevard ShellCove		
Southside Liquor Shop 7, 94 Bent Street SOUTH GRAFTON	Close to a small hotspot	
Envy Liqueurs, Wines and Spirits 347 Bong Bong Street, BOWRAL		
BWS (Merimbula) Removal to 107-113 Main Street Merimbula		
BWS (N Sydney) 100 Miller Street NORTH SYDNEY		Yes
BWS (Lindfield) 23-41 Lindfield Avenue Lindfield		
Le Pont Wine Store (removal to 88 Alfred Street MILSONS POINT)		Yes
Friendly Grocer Supermarket, cnr Yala and Menai Roads, Bangor 2234		
Bayswater Fine Wines, 69-77 Bayswater Road Rushcutters Bay NSW 2011	Yes	
Henlee Supa Supermarket 27-31 Belmore Street BURWOOD 2134		Yes
ALDI Wetherill Park, Corner The Horsley Drive & Rossetti Street WETHERILL PARK NSW 2164		Yes

Source: ILGA Liquor Decisions. January–June 2018 as published in September 2018, BOCSAR crime maps data for July 2017–June 2018.³⁷

The Authority also cites relative socio-economic disadvantage as a risk factor for alcohol-related harm and uses a Social and Economic Index for Areas (SEIFA) prepared by the Australian Bureau of Statistics to indicate the presence of relative disadvantage in an area. However, rather than using the SEIFA Index

³⁵ NSW Coroner's Office, *Domestic Violence Deaths Review Team Report for 2015–2017*, Recommendation 14, xvii <[http://www.coroners.justice.nsw.gov.au/Documents/2015-2017_DVDRT_Report_October2017\(online\).pdf](http://www.coroners.justice.nsw.gov.au/Documents/2015-2017_DVDRT_Report_October2017(online).pdf)>.

³⁶ M Livingston, "A Longitudinal Analysis of Alcohol Outlet Density and Domestic Violence" (2011) 106 *Addiction* 919; JL Connor et al, "Alcohol Outlet Density, Levels of Drinking and Alcohol-related Harm in New Zealand: A National Study (2011) 65 *Journal of Epidemiology and Community Health* 841.

³⁷ ILGA, n 34; BOCSAR, n 33.

of Relative Disadvantage (IRSD) prepared precisely for this purpose, the Authority uses the SEIFA of Relative Advantage and Disadvantage (IRSAD). In this index, areas of disadvantage are minimised where there are also areas of relative advantage in the area selected. That is, in a local government area the presence of relatively advantage areas can effectively “white out” the presence of disadvantaged areas when the IRSAD index is reported for the local government area as a whole.³⁸ Since alcohol-related harm is clearly associated with relative disadvantage,³⁹ there are no good public interest grounds for avoiding the purpose-built IRSD social index.

The published decisions therefore do not suggest that in practice “high risk” is determined by social indicators.

2. High Risk Identified by Licence Type

On the other hand, licence type almost always accounts for which decision-maker, ILGA or a Delegate, determines likely social impact. This is reflected in the Authority’s Regulatory Delegations Manual,⁴⁰ Guideline 6,⁴¹ and the pattern of delegation in the first six months of 2018 as shown in Table 3. Table 3 shows that in the first six months of 2018, 100% of online-only packaged liquor licences (OPLL) (55 applications), 100% of producer/wholesaler licences (Prod/W) (seven applications) and all but four on-premises, small bars and clubs determinations were approved by Delegates, that is staff in the NSW Department of Industry.⁴²

TABLE 3: Distribution of published decisions between ILGA and delegates by licence type for the period 1 January–30 June 2018

Premises type decision	On-premises	PLL	OPLL	Small bar	Hotel	Club	Prod/W	Total	% all decisions
ILGA approved	1	15	0	1	13	1	0	31	21.2%
ILGA refused	1	8	0	0	0	0	0	9	6.2%
Delegate approved	37	0	55	7	0	0	7	106	72.6%
Delegate refused	0	0	0	0	0	0	0	0	0%
Total	39	23	55	8	13	1	7	146	100%

Source: ILGA Liquor Decisions 2018 as published in September 2018.⁴³

Of the four on-premises applications, one refusal was due to a procedural failure, one decision also concerned gaming machines and one decision had strong police opposition to one part of the application (minors authorisation). The fourth, an application for a small bar in Wagga Wagga suburb may have been referred by staff to the Authority because of the following licence density and alcohol-related crime data:

³⁸ Australian Bureau of Statistics 2016, *SEIFA Technical Paper* <[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/756EE3DBEFA869EFC258259000BA746/\\$File/SEIFA%202016%20Technical%20Paper.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/756EE3DBEFA869EFC258259000BA746/$File/SEIFA%202016%20Technical%20Paper.pdf)>.

³⁹ SV Katikireddi et al, “Socioeconomic Status as an Effect Modifier of Alcohol Consumption and Harm: Analysis of Linked Cohort Data”, (2017) 2 *The Lancet Public Health* e267.

⁴⁰ ILGA (NSW Independent Liquor and Gaming Authority), *Regulatory Delegation Manual* (11 April 2018) <<https://www.liquorandgaming.nsw.gov.au/documents/ilga/publications/ilga-regulatory-delegations-manual.pdf>>.

⁴¹ ILGA, n 30.

⁴² In 2016, Liquor and Gaming NSW was transferred from the NSW Department of Justice to NSW Department of Industry.

⁴³ ILGA, n 34.

TABLE 4. Licence density in Wagga Wagga suburb and LGA compared with NSW

Area Rate	NSW	Wagga Wagga LGA	Wagga Wagga suburb	Suburb rate compared with NSW rate
Hotel licences per 100,000 persons	28.37	43.28	197.07	Seven times greater
Club licences per 100,000 persons	17.45	12.82	70.38	Four times greater
On-premises licences per 100,000 persons	113.71	133.4	957.21	Eight times greater

TABLE 5. Alcohol-related crime rates in Wagga Wagga suburb and LGA compared with NSW

Area Rate	NSW	Wagga Wagga LGA	Wagga Wagga suburb	Suburb rate compared with NSW rate
Incidents of alcohol-related domestic assault per 100,000 persons	114.4	199.7	286.0	2.6 times greater
Incidents of alcohol-related non-domestic assault per 100,000 persons	130.4	201.3	667.3	Five times greater
Incidents of malicious damage to property per 100,000 persons	779.5	1,515.2	3,173.1	Four times greater

Source: Tables 4 and 5, ILGA Rabbit Books Arthouse decision.⁴⁴ Comparative rates by the authors.

Despite these comparative rates, which are readily identifiable from the data provided in the decision, ILGA approved the small bar licence.

The pattern of decisions documented in Tables 1–5 shows that high risk as evidenced in alcohol-related crime data, rarely interrupts the pattern of liquor licence application approvals.

II. CONSEQUENCES FOR PUBLIC HEALTH

A. Proliferation of Licensed Premises

The cumulative effect of broad-scale delegation, minimisation of social impact assessment and an apparent reluctance to rely on social data is a proliferation of liquor licences. While there were 12,638 liquor licences in 2003, by 30 June 2018 there were 16,295,⁴⁵ an increase of 29%.⁴⁶ During this time the population of NSW increased by approximately 18%.⁴⁷

Proliferation of outlets increases the availability and supply of alcohol which is recognised as a major contributor to alcohol-related harm. Reducing supply is an important counter-measure.⁴⁸ According to the Australian Burden of Disease Study, in 2011 alcohol was the leading contributor to the burden of

⁴⁴ ILGA Liquor Decision re Rabbit Books Arthouse Studio Gallery Art School on 21 June 2018 <https://www.liquorandgaming.nsw.gov.au/documents/ilga/decisions/Rabbit-Books_statement-of-reasons.pdf>.

⁴⁵ NSW Government, NSW Department of Industry Annual Report for 2017–18, 150 <<https://www.parliament.nsw.gov.au/lc/papers/DBAssets/tabledpaper/WebAttachments/75063/Dept%20Industry%202018.PDF>>.

⁴⁶ This figure is likely to be an underestimation of the true increase in alcohol outlets given a new licensing fee regime which has reduced the number of non-operational licenses.

⁴⁷ Australian Bureau of Statistics 2006, *Population by Age and Sex, New South Wales, Jun 2003* <<http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/0AFB778A107EABAFCA25702F0071FA07?OpenDocument>>; Profile.id, 2018, *NSW, Estimated Residential Population* (30 June 2017) <<https://profile.id.com.au/australia/about?WebID=100>>.

⁴⁸ R Burton and N Sheron, “No Level of Alcohol Consumption Improves Health” (2018) 392 *The Lancet* 987; GBD 2016 Alcohol Collaborators 2018, “Alcohol Use and Burden for 195 Countries and Territories, 1990–2016: A Systematic Analysis for the Global Burden of Disease Study 2016” (2018) 392 *The Lancet* 1015; WHO, n 6; P Miller et al, *Interventions for Reducing Alcohol Supply*,

disease for people aged 0–44 in Australia.⁴⁹ According to the Chief Health Officer, in New South Wales the overall impact of alcohol on health is high.⁵⁰

The risks of liquor outlet proliferation have also been recognised in reviews of competition policy, most recently in the Harper report:

restrictions on opening hours, or planning and zoning rules, or liquor licensing regimes, or gaming licensing, should not be designed to benefit particular competitors or classes of competitors, but only to achieve the stated public policy benefits.⁵¹

More competition can reduce price and increase availability of alcohol and thus alcohol-related harm. Alcohol-related harm is not a public policy benefit.

B. Inadequate Constraint on Pressures from Industry

Ambiguity within the Act's objects is also a significant enabler of outlet proliferation and increased harm.

Section 3(1) "Objects" of the Act are:

- (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.

The first objective to be "consistent with the expectations, needs and aspirations of the community" is open to as many interpretations as there are points of view in the community, and so is unclear. The remaining objectives concern benefits to the alcohol and related industries. The absence of promoting and sustaining public health and safety as an objective of the Act is a significant omission.

In securing the above objects of the Act, s 3(2) requires the decision makers to "have due regard to" the following provisions:

- (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.

Minimising alcohol harm enjoys the same level of consideration as encouraging responsible attitudes of alcohol suppliers, promoters and drinkers and, the positive contribution of alcohol to the "amenity of community life". There remains however, an overarching whole of government obligation to ensure all decisions under a statute take into account the overall public interest that is not constrained by the objectives of individual statutes.⁵²

Alcohol Demand and Alcohol-related Harm (Research Bulletin 3, National Drug Law Enforcement Research Fund, 2016) <<http://www.ndlerf.gov.au/sites/default/files/publication-documents/bulletins/research-bulletin-03.pdf>>; WHO, "Harmful Use of Alcohol Kills More than Three Million People Each Year, Most of Them Men" (News release, 21 September 2018) <http://www.who.int/substance_abuse/publications/global_alcohol_report/en/>; World Economic Forum and World Health Organisation, *From Burden to "Best Buys": Reducing the Economic Impact of Non-communicable Diseases in Low and Middle-income Countries* (2011) <https://www.who.int/nmh/publications/best_buys_summary.pdf>.

⁴⁹ Australian Institute of Health and Welfare, *Impact of Alcohol and Illicit Drug Use on the Burden of Disease and Injury in Australia, Australian Burden of Disease Study 2011* (29 March 2018) <<https://www.aihw.gov.au/reports/burden-of-disease/impact-alcohol-illicit-drug-use-on-burden-disease/related-material>>.

⁵⁰ NSW Department of Health, n 31.

⁵¹ I Harper et al, "Competition Policy Review" (Final Report, Commonwealth of Australia, March 2015) 146 <http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf>.

⁵² See *Minister for Planning v Walker* (2008) 161 LGERA 423, [39]; [2008] NSWCA 224, cited in *La La Land Byron Bay Pty Limited v The Independent Liquor and Gaming Authority* [2015] NSWCA 254, [15].

The objects of the Act confuse and potentially contradict the otherwise unequivocal requirement of s 48(5) of the Act to ensure that a licensing decision must not be “detrimental to the wellbeing of the local or broader community”. This establishes a broad scope of subjective discretion open to potential undue direct and indirect industry influence for the decision-makers whose determinations are not made in public view. The objectives’ contribution to undermining a more rational approach to alcohol outlet determinations is evidenced by the way in which these contradictions have been interpreted. For example:

This past year for the Authority has been shaped by further growth and transformation as the first full year of reforms to liquor and gaming regulation in NSW have been in operation. In line with these reforms the Authority has implemented a number of improvements to provide greater certainty for industry and the community in relation to licensing matters ... The Authority has also been working closely with Liquor & Gaming NSW to ensure decisions are made in a timely manner and in accordance with the determination timeframes outlined in the ministerial directions.⁵³

And as the Authority’s Guideline 6 notes:

Applicants are reminded that whether or not the overall social impact test applies to an application, all Authority liquor decisions will be informed by an assessment of the statutory objects and considerations prescribed by section 3 (“Objects”) of the Act.⁵⁴

That is, the obligatory social impact test outcome has then to be considered against statutory objectives which focus on industry interests and a vague community expectations requirement. Harm minimisation, and presumably public safety, is just one consideration alongside responsible “promotion, sale, supply, service and consumption of liquor” and amenity of community life (often interpreted as mere customer convenience).

Pressure on politicians from industry stakeholders tends to be strong and persistent.⁵⁵ The above pattern of decision making, and the transfer of Liquor and Gaming NSW to the NSW Department of Industry in early 2016, suggest that the interests of the industry and their customers (objective 3(1)(b)) have been weighed favourably against requirements to reject applications likely to have an overall adverse social impact (s 48(5)) or contribute to increased harm (s 3(2)(a)).

Thus, the statutory requirement for a social impact assessment required to determine the yardstick of no detriment, has effectively been erased by administrative strategies to deal with a large number of applications and encourage and promote “a flexible and practical regulatory system with minimal formality and technicality” (s 3(1)(b)).

C. No Basis for Authority Satisfaction as to Likely Social Outcomes

The several administrative strategies described above have shortened the time taken to consider most liquor licence applications. This too has resulted in apparent inadequate scrutiny of social impacts for the majority of decisions falling within the scope of s 48(5) of the Act as shown for the period under review (January–June 2018). This is particularly evident for those licence types dealt with under delegation where all applications are approved and the assessment, as reported in the decisions, is formulaic. For example, in the first six months of 2018, Delegates approved 55 online-only packaged liquor licenses relying upon the following identical reasoning.

Negative impacts: The nature of the licence sought means that there are unlikely to be any amenity impacts on the local community.⁵⁶

or more descriptively

Negative impacts: No objections were received and no concerns were raised in respect of the application. This licence application is for a home office at which orders will be processed, with liquor to be stored and

⁵³ NSW Department of Justice, *Annual Report 2016–17*, Chapter 11, Independent Liquor and Gaming Authority, Chairperson’s Report (2018) 320 <<https://www.justice.nsw.gov.au/Documents/Annual%20Reports/justice-nsw-annual-report-2016-17.pdf>>.

⁵⁴ ILGA, n 30, 1.

⁵⁵ D Wood and K Griffiths, *Whose in the Room, Access and Influence in Australian Politics* (Grattan Institute, September 2018) <<https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>>. See also T Brown “Legislative Capture: A Critical Consideration in the Commercial Determinants of Public Health” (2019) 26 JLM 764

⁵⁶ ILGA Liquor Decision re 7 Pelangi Pty Ltd (11 January 2018) <<https://www.liquorandgaming.nsw.gov.au/documents/ilga/decisions/decision-online-packaged-liquor-licence-7-pelangi-pty-ltd-11-01-18.pdf>>.

dispatched at from a separate location. Customers will not be attending the premises to browse, purchase or taste products. The nature of the licence sought means that there are unlikely to be any amenity impacts on the local community.⁵⁷

The customer catchment of an online retail outlet has nothing to do with local amenity. The blanket repetition of summary statements such as these suggests in the absence of any evidence to the contrary, that the question of negative impacts has not been adequately considered.

While alcohol outlet density and relative disadvantage have been identified by ILGA as indicators of risk for alcohol-related harm, the social data must be seen to be applied for the criteria to be credible. The pattern of decisions in the first half of 2018 considered vis-a-vis significant crime data (Tables 1 and 2 above) and SEIFA indexes, does not support the proposition that the social data are given consistent and due weight.

Inconsistent use of social data has flow-on consequences such as continuing unfamiliarity with applying social research and/or a willingness to be convinced that industry-proposed strategies such as a Plan of Management,⁵⁸ or requirements for responsible service of alcohol are effective mitigations of risk. Neither of these requirements are realistically enforceable.⁵⁹ As such they are not credible mitigations. Misunderstanding and misapplying social data fundamentally undermines social impact assessment and erodes the duty of care owed to the public with detrimental public health and crime outcomes.

III. CONCLUSION

The 2004 amendment to the *Liquor Act 1982* (NSW) made social impact assessment a requirement for decisions concerning higher risk liquor licence applications. But social impact assessment is not suited to rapid consideration of a large number of applications with “minimal formality and technicality”. All available guidelines, including the Authority’s Guideline 6, make it clear that well-considered social impact assessments take time. When the number of applications exceeds assessment capacity, there is likely to be strong industry pressure to reduce the number of applications requiring assessment and find short cuts with supporting narrative justification to make the remaining assessments manageable. When these administrative devices result in 94% of all valid applications being approved, the system of determining social costs and benefits via social impact assessment can be regarded as failed. The important safeguard has slid away.

Social wellbeing and public health and safety are fundamental public interest considerations in comparison to the private commercial interests of the alcohol industry. Alcohol-related harm is a major public health issue and the regulation of liquor licences is an important control on the availability and supply of alcohol.

Because of these important public duties, the answer to the problem of quantity of licence applications is not to enfeeble or emasculate social impact assessment or cease using it altogether. Burdened licensing authorities could take other “upstream” steps to reduce the quantity of applications requiring assessment. These steps could include raising the criteria to be satisfied for a liquor licence to be granted, for example by setting density limits, refusing new licences and extended trading hours in and near violence hotspots, and raising licencing fees to reflect the true cost of alcohol misuse to the public.⁶⁰ These steps would assist

⁵⁷ ILGA Liquor Decision re Dirt Candy Wine Online (16 April 2018) <<https://www.liquorandgaming.nsw.gov.au/documents/ilga/decisions/decision-packaged-online-liquor-licence-dirt-candy-wine-online.pdf>>.

⁵⁸ ILGA, n 30, 2.

⁵⁹ J Brick and CK Erickson, “Intoxication Is not Always Visible: An Unrecognized Prevention Challenge” (2009) 33 *Alcoholism: Clinical and Experimental Research* 1489; N Donnelly, “Young Adult’s Experience of Responsible Service Practice in NSW: 2011 Update” *Crime and Justice Bulletin, Contemporary Issues in Crime and Justice* (April 2012) 162 <<https://www.bocsar.nsw.gov.au/Documents/CJB/cjb162.pdf>>.

⁶⁰ NSW Auditor General, Report to Parliament, *Cost of Alcohol Abuse to the NSW Government*, Key Findings (August 2013) <<https://www.audit.nsw.gov.au/our-work/reports/cost-of-alcohol-abuse-to-the-nsw-government>>.

an appropriately skilled and resourced fully accountable public licensing authority give the necessary time and due diligence to its social impact assessment statutory obligations.

Finally, the licensing authority could also be supported by an unambiguous enabling clause in the legislation stating that the authority is a public health agency with a primary duty to reduce and minimise alcohol-related harm,⁶¹ rather than an administrative arm of government promoting alcohol industry growth and development.

⁶¹ Exemplified in the objectives of the Licensing (Scotland Act) 2005 <<https://www2.gov.scot/Topics/Justice/policies/drugs-alcohol/alcohol-licensing>>.