

South Australian Liquor Licensing Reform

September 2016

**Response to the report:
*Independent Review Into
Liquor Licencing Act 1997***



SOUTH AUSTRALIAN GOVERNMENT RESPONSE TO RECOMMENDATIONS OF THE REVIEW OF THE *LIQUOR LICENSING ACT 1997*

Introduction

On 30 November 2015, former Supreme Court Justice, the Honourable Timothy Anderson QC, was appointed by the Deputy Premier to conduct an independent review of South Australia's liquor licensing framework.

The *Liquor Licensing Act 1997* (the Act) regulates the sale, supply and consumption of liquor in South Australia. Although there have been a number of amendments to the Act in recent years, and other liquor licensing reforms such as the introduction of a General Code of Practice and Late Night Trading Code of Practice, a comprehensive review of the Act has not been undertaken since 1996.

Mr Anderson was a Judge of the Supreme Court from 2003 until his retirement in 2014. He is a former Acting Judge of the Liquor Licensing Court and has also served as a member of the Board of the Drug and Alcohol Services Council. As such, Mr Anderson was well qualified to conduct this review.

The terms of reference for the independent review included assessment of the existing liquor licensing regime under the *Liquor Licensing Act 1997* and the examination of options for improving the regime to reduce red tape, promote safer drinking and allow greater flexibility to encourage innovative business models.

Mr Anderson's review followed on from a discussion paper released by the Attorney-General's Department in October 2015 on options for improving the liquor licensing framework. In conducting his review, Mr Anderson considered around 90 written submissions received in response to that discussion paper and held face-to-face discussions with approximately 60 relevant entities or persons for further elaboration or information.

Mr Anderson's 'Report of the Review of the *Liquor Licensing Act 1997*' (the Report) was provided to the Minister for Consumer and Business Services on 29 June 2016.

In his report, Mr Anderson noted that "there have been so many changes in the expectations of the community in relation to the consumption of liquor both on and off licensed premises that ideas and attitudes which prevailed 20 years ago [when the liquor licensing regime was last reviewed and the current Act passed] are not necessarily relevant today."

The Report contains 129 recommendations for extensive and far reaching changes to the liquor licensing regime in South Australia.

South Australian Government Response to the Recommendations - Summary

The South Australian Government Response has been prepared in consultation with key government organisations with an involvement or interest in liquor licensing, including South Australia Police (SAPOL), Drug and Alcohol Services SA in SA Health and the Department of Planning, Transport and Infrastructure (DPTI).

The Government accepts the vast majority of Mr Anderson's recommendations, including:

- streamlining of licence categories (various Chapter 4 recommendations)
- retention, subject to later review, of the late night 'lockout' from licensed premises (recommendation 14)
- that all restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve be abolished and trading under all types of licence be able to be authorised on any day of the week without differentiation (recommendation 16)
- replacement of the existing objections process for new licence applications with restricted grounds for making submissions (recommendation 51)
- replacement of the 'needs test' in sections 58 and 61 of the Act with a Community Impact and Public Interest Test to apply to certain high risk categories of licence, with a discretion for the Licensing Authority to include other applications (recommendation 72)
- that the legislation make it clear that licensed premises can exist under the same roof as a supermarket, provided the licensed premises are physically separated and operate as a separate shop (recommendations 74 and 75) and
- measures to make it easier to enforce the liquor licensing laws and tougher penalties for breaches (various Chapter 15 recommendations).

Several of the recommendations are accepted in principle, with further or separate consideration required, including:

- a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms (recommendation 97)
- introduce a web based notification system or portal for licensees, SAPOL and CBS to manage collectively the barring of persons from licensed premises (recommendation 102)
- consider a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence (recommendation 104)
- that the issue of alcohol advertising during telecasts of live sporting events be considered at a national level (recommendation 119)

- that minimum alcohol pricing should be considered at a national level to ensure consistency across Australia (recommendation 121) and
- conduct a feasibility study to determine the merits of an expanded 'After Midnight' public transport service as part of harm minimisation practices connected to the late night economy (recommendation 124).

Some of the recommendations are accepted in part, with the Government proposing alternative measures or variations to the measures recommended, including:

- introduction of new mandatory three hour 'break in trade' for late-night premises (recommendation 15)
- that licensees holding a Liquor Production and Sales Licence be allowed to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee (recommendation 43). The Government accepts this recommendation in part on the basis that this should be limited to endorsement for low risk events only and
- removal of requirements for notification and advertising of licence applications. The Government prefers to retain the requirement for a notice to be placed on the premises or land to ensure local residents are notified of applications (recommendation 50).

Recommendations 30, 45, 52, 67, 68, 77, 87 and 88 are not supported by the Government, for the reasons outlined in detail below.

Most of the recommendations accepted by the Government will entail change to legislation. Cabinet approval will be sought to draft a Bill to implement those changes, for subsequent consultation with interested parties.

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OBJECTS OF THE ACT

- 1 *Section 3(1) of the Act be amended to reflect the significance of the objects, contemporary standards and provide greater clarity particularly in respect to harm.*

The Government accepts this recommendation.

- 2 *Section 3(2) of the Act be amended so that the Licensing Authority shall not grant an application for a licence or removal of a licence for premises or proposed premises unless it is consistent with the objects of the Act. This section should also provide the Licensing Authority with discretion to have regard to the objects when determining conditions of a licence or an application to vary the conditions of a licence.*

The Government accepts this recommendation.

- 3 *The form of application to require the applicant to make a submission addressing each of the objects of the Act to allow the Licensing Authority to make an informed decision.*

The Government accepts this recommendation.

- 4 *Section 53(1a) of the Act be amended to require that an application for the grant or removal of a licence must be refused if the Licensing Authority is satisfied that to grant the application would be contrary to the public interest or is not consistent with the objects of the Act.*

The Government accepts this recommendation.

CATEGORIES OF LICENCE

5 *The special circumstances category of licence be abolished.*

The Government accepts this recommendation.

6 *The existing Hotel Licence and relevant sub-category of Special Circumstances Licence including trading conditions be abolished and incorporated under a General Liquor Licence with common trading conditions.*

The Government accepts this recommendation.

7 *The existing Entertainment Venue Licence and relevant sub-category of Special Circumstances Licence be abolished and incorporated under an On-Premises Licence with common trading conditions.*

The Government accepts this recommendation.

8 *The existing Residential Licence be retained.*

The Government accepts this recommendation.

9 *The trading conditions of the existing Restaurant Licence be expanded to reflect catering services and be renamed as a Restaurant and Catering Licence. This licence will also be simplified to allow consumption of liquor without a meal if the provision of meals is the primary activity, without the need for an authorisation as presently required.*

The Government accepts this recommendation in part. The proposed extension of the Restaurant Licence to incorporate catering services is accepted. However, with respect to the proposal to allow consumption of liquor without a meal without the need for an authorisation, there is concern to ensure that this cannot be a backdoor means to a restaurant being able to operate as a bar, for example ceasing to serve meals after a certain hour but being permitted under the licence to continue to provide a late night bar service. This aspect of recommendation 9 is not supported.

10 *The existing Limited Club Licence and relevant trading conditions be abolished. All licensed clubs to be incorporated under a single category of Club Licence with common trading conditions.*

The Government accepts the recommendation. This recommendation will result in former limited clubs losing their exemption from the payment of annual licence fees and the requirement to formally comply with responsible service principles, therefore the Government notes that consideration will need to be given to the impact on former Limited Clubs, for example via fees differentiation as proposed in the Report.

11 *The existing Small Venue Licence be retained but extended to include North Adelaide.*

The Government agrees in part with this recommendation. The existing small venue licence has proven successful in its limited application to the CBD and should be retained, however consideration as to possible expansion to other areas will be deferred for later review in two to three years to allow consolidation and proper review of the impact of the existing small venue licence (see also recommendation 77).

12 *The existing Retail Liquor Merchant's Licence, Direct Sales Licence and relevant sub-category of Special Circumstances Licence including relevant trading conditions be abolished and incorporated under a Packaged Liquor Sales Licence with common trading conditions.*

The Government accepts this recommendation.

13 *The existing Producer's Licence and Wholesale Liquor Merchant's Licence including relevant trading conditions be abolished and incorporated under a Liquor Production and Sales Licence.*

The Government accepts this recommendation.

TRADING CONDITIONS

14 *The current 'Lockout' provisions be retained for a further two or three years to allow for their effect to be assessed over a longer term.*

The Government accepts this recommendation.

15 *It is a mandatory condition of a licence that licensed premises must be closed for a minimum of three continuous hours between 3.00am and 9.00am. Alternatively, the premises could remain open for those three hours but not sell liquor.*

The Government accepts this recommendation in part but with a preference to restrict the break-in-trade window to between 3am and 8am (rather than 9am). The option to close from 6am to 9am is not considered to be a proper break in the night trade, which is the intention of the break-in-trade.

16 *All restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve should be abolished. Trading under all types of licence should be able to be authorised on any day of the week without differentiation.*

The Government accepts this recommendation.

17 *The compulsory hours of trading for hotels and any obligation to provide meals during certain hours be abolished.*

The Government accepts this recommendation.

18 *The designation of areas within licensed premises (including designated dining areas) be abolished.*

The Government accepts this recommendation.

19 *The imposition of capacities for individual areas within licensed premises be abolished and a total capacity for the premises imposed.*

The Government accepts this recommendation. DPTI confirms that overall capacity restrictions dealing with fire and structural safety (eg having regard to the availability of fire escapes and exit door widths as well as load capacity for balconies) are dealt with at planning. There were residual concerns about crowd behaviour due to overcrowding in one area of a premises, however as the Report points out, designated area capacity restrictions are difficult or impossible to enforce.

20 *Entertainment other than 'prescribed entertainment', for all types of licences requiring such a facility should be permitted as a matter of right at any time during nominated trading hours.*

The Government accepts this recommendation.

21 *Legislate for the authorised trading hours applicable to each category of licence as set out in table 5.*

The Government accepts this recommendation.

22 *Subject to the terms and conditions of the licence, the Licensing Authority shall fix and prescribe on the licence the actual trading hours as nominated by the licensee (to be known as the Nominated Trading Hours).*

The Government accepts this recommendation, noting that the nominated hours would be approved and fixed as a trading authorisation by the Licensing Authority and would need to be within the hours authorised under the Act for that licence category and approved by council.

23 *It is a mandatory condition of a licence that a licensee must not conduct trade in liquor outside the Nominated Trading Hours specified in the licence.*

The Government accepts this recommendation.

24 *A standard automatic extension of Nominated Trading Hours until 2.00am on New Year's Day shall apply to licences authorising the consumption of liquor on the licensed premises.*

The Government accepts this recommendation.

25 *A licence should state the specific terms and conditions including the Nominated Trading Hours fixed by the Licensing Authority.*

The Government accepts this recommendation.

26 *Statutory licence conditions should continue to be retained within the legislation rather than captured within a code.*

The Government accepts this recommendation.

27 *A General Liquor Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.*

The Government accepts this recommendation, with off-premises restricted to a cut-off time of 10pm. For the existing bottle shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other hotels selling for off-premises consumption and any new General Liquor Licences.

28 *An On-Premises Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of meals is not the primary and predominant business of the licensee.*

The Government accepts this recommendation, however consideration will be given to whether a requirement to have food available should be imposed by the General Code in relation to certain premises, such as for On-Premises Licences trading after a certain time.

29 *A Residential Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of accommodation is the primary and predominant business of the licensee.*

The Government accepts this recommendation.

30 *A Restaurant and Catering Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises or at a place other than the licensed premises where the provision of meals is the primary and predominant business of the licensee.*

The Government does not support this recommendation for the reasons outlined for recommendation 9.

31 *A Club Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.*

The Government accepts this recommendation, noting that authorisation for off-premises sales will still need to pass the Community Impact and Public Interest Test. Trading hours for off-premises consumption should also be consistent with Packaged Liquor Sales licences and therefore limited to 10pm, not extend until midnight.

32 *A Small Venue Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises between 8am and 2am on any day.*

The Government accepts this recommendation.

33 *A Packaged Liquor Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption off the licensed premises for a maximum of 13 hours in any one day.*

The Government accepts this recommendation, noting that the Government agrees with the proposed cut-off time of 10pm for packaged liquor sales. For the existing bottle shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other bottle shops, clubs and hotels selling for off-premises consumption and any new licensees in these categories.

34 *A Liquor Production and Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor or the licensee's own product for consumption on or off the licensed premises.*

The Government accepts this recommendation.

ANNUAL LICENCE FEES

35 *Describe the annual fee within the legislation as an 'annual licence renewal fee'.*

The Government accepts in principle the need to bolster processes to ensure timely payment of annual licence fees and enforce disciplinary consequences for failure to pay, however the Government is concerned that use of the term “renewal” could adversely affect the value of licences, which are perpetual. It is considered that implementation of recommendation 46 is a more appropriately targeted measure for achieving the objective.

36 *Change the annual licence renewal fee structure to incorporate the concepts of a fee based on the premises capacity, trading hours, extended event authorisation and compliance record (i.e. the later the closing time, the higher the fee) so that it is applicable to all classes of licence.*

The Government accepts this recommendation but notes the need to consider the impact on licensed premises that have large capacity but generally very low patronage or small client base. Implementation of this recommendation will require change to fees prescribed by regulation and further consideration will need to be given, in consultation with affected parties, to determining the appropriate fee levels.

37 *That the amount of the annual licence renewal fee applicable to premises which typically trade as hotels or taverns (i.e. with approval to sell liquor for consumption on or off the premises) under the proposed General Liquor Licence class be increased.*

The Government accepts this recommendation, however further consideration will need to be given, in consultation with affected parties, to determining the appropriate fee levels.

38 *That the fee structure for a General Liquor Licence be also applicable to licences which authorise the sale or supply of liquor for consumption on the premises under an On-Premises Licence (irrespective of whether the sale of liquor is the predominant activity or not).*

The Government accepts this recommendation.

39 *Introduce interim capacity thresholds for the calculation of annual licence renewal fees for Club Licences and imposing a different fee for clubs with or without gaming.*

The Government accepts this recommendation.

40 *The holder of a Club Licence may apply to the Licensing Authority to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee.*

The Government accepts this recommendation but notes that consideration will need to be given to the fees payable for Event Endorsements where all events are charitable or community events.

41 *Increase the amount of the annual licence renewal fee applicable to the sale of packaged liquor products under the Packaged Liquor Sales Licence and the introduction of an increased fee for holders of multiple package liquor sales licences.*

The Government accepts this recommendation in part. The Report points out that 80 per cent of alcohol consumed in Australia is sold through off-licence premises. Accordingly, a significant degree of risk of alcohol-related harm, and significant costs to the community arising from alcohol-related harms, are associated with this licence type and the Government agrees that the annual licence renewal fee level for the packaged liquor sales licence should better reflect, and better offset, these costs. However, the Government is not persuaded that the proposed graduated fee (payable per licence, increasing depending on the number of outlets held) for holders of multiple packaged liquor sales licences is justified.

42 *Should the Government choose to retain the existing option for this category of licence to trade beyond 10.00pm to midnight, a further increase to the licence fee of between \$2,500 and \$5,000 should be applied.*

The Government accepts this recommendation. The Government is of the view that no packaged liquor outlets ought to be allowed to trade past 10pm. For the existing bottle shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other bottle shops, clubs and hotels selling for off-premises consumption and any new licensees in these categories.

43 *Licensees holding a Liquor Production and Sales Licence be allowed to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee.*

The Government accepts this recommendation in part on the basis that this should be limited to endorsement for low risk events only (eg weddings and food and wine functions, but not music festivals) with high risk events requiring separate application and authorisation.

44 *Exempt businesses from late trading fees where the predominant activity conducted relates to restaurants, cafes and tourism operators with only a BYO facility, catering providers and bona fide cooking schools.*

The Government accepts this recommendation.

45 *Incorporate a penalty fee in the annual licence renewal fee to reflect serious incidents of non-compliance in the previous 12 months or fee period.*

The Government does not support this recommendation. The concern is that a penalty fee effectively penalises the licensee twice for the same offence. The Government prefers to see non-compliance, and in particular repeated non-compliance, result in suspensions or trading restrictions being imposed on the licensee, which are considered to be a better targeted and more effective enforcement measure. To that end the Government is strongly supportive of recommendations 86 and 100, which would mandate disciplinary action by the Licensing Authority for a second offence after expiation of a first.

Instead of a non-compliance penalty fee, the Government proposes to legislate to provide that the Licensing Authority may impose conditions on a licence as well as issuing an expiation fee for a first offence, after giving the licensee the opportunity to make submissions.

46 *The provisions of section 50A of the Act be strengthened to mandate sanctions and include time frames following the non-payment of annual licence renewal fees.*

The Government accepts this recommendation, noting however the response to recommendation 35 regarding use of the term “renewal”.

RED TAPE

47 *The provisions of section 51 of the Act (form of application) be retained.*

The Government accepts this recommendation.

48 *There should be one application form for all categories of licence.*

The Government accepts this recommendation.

49 *In keeping with the Premier's Digital by Default Declaration, the process for submitting liquor applications and ongoing administration of the liquor licensing regime should be through a web-based digital portal.*

The Government accepts this recommendation, noting that Consumer and Business Services has already commenced work on moving to online liquor licence applications.

50 *Amend section 52(2) of the Act so that notice of the application is required to be published on the CBS website and all other notification or advertising requirements are removed. The Licensing Authority should retain the discretion to require any further advertising or notification.*

The Government accepts this recommendation in part. The Government is concerned to ensure that local residents and adjacent occupiers are notified of a liquor licence application. Not all applications will entail planning approval and notification of residents pursuant to the planning process, therefore the Government considers that retaining the requirement to place a notice on the premises is reasonable to achieve that objective.

51 *General objections should be replaced with written submissions and the rights of review of the Commissioner's decision should apply only in limited situations.*

The Government accepts this recommendation.

52 *Amend sections 71 and 97 of the Act to provide clarity and a distinction between persons who manage the business under the licence and persons exercising responsibilities on a day to day basis as responsible persons.*

The Government does not support this recommendation on the basis that there is no demonstrated problem and the recommendation would cause unnecessary red tape, for example of notifying the Licensing Authority of periodic changes in this manager. A nominated manager is unlikely to be present on the premises when enforcement officers visit, whereas a 'responsible person' would be.

53 *Amend the Act to expressly allow the Licensing Authority to issue a temporary approval of responsible persons in its absolute discretion.*

The Government accepts this recommendation.

54 *Amend the Act to give the Commissioner a general discretion to revoke an approval of a responsible person.*

The Government accepts this recommendation.

55 *Approval of crowd controllers to work in licensed premises should only be administered under the Security and Investigation Industry Act 1995.*

The Government accepts this recommendation.

56 *Amend the definition of 'controlling crowds' in section 3(1) of the Security and Investigation Industry Act 1995 to exclude the functions of responsible persons and licensees.*

The Government accepts this recommendation.

57 *Amend the Act so that clubs are only required to notify the Commissioner of the members of the committee of management and any changes to the composition of that committee.*

The Government accepts this recommendation.

58 *Replace the eligibility requirements for membership of clubs in section 49(3)(b) of the Act with the requirement that the rules of the club must make provision for the criteria for admission to membership of the club.*

The Government accepts this recommendation.

59 *Amalgamating clubs should only be required to notify the Commissioner of the amalgamation, provided that there are no changes to the trading rights attached to the host premises, which was the subject of a liquor licence.*

The Government accepts this recommendation but notes that Club amalgamation notifications will entail assessment, and the issue of a new licence, by CBS and will therefore need to attract a fee.

60 *The trading conditions applicable to clubs that share licensed premises should be more flexible to allow either club to conduct operations on any day subject to both clubs maintaining a joint register.*

The Government accepts this recommendation.

61 *The Act be amended to include an exemption for cruise ships operating in South Australian waters, provided certain conditions are met.*

The Government accepts this recommendation.

62 *The Act be amended to include an exemption for retirement villages provided certain conditions are met.*

The Government accepts this recommendation.

63 *The Act be amended to include an exemption for businesses selling gifts which include alcohol, provided certain conditions are met.*

The Government accepts this recommendation.

64 *The Act be amended to extend the exemption relevant to the provision of bed and breakfast facilities.*

The Government accepts this recommendation.

PLANNING AND LIQUOR LICENSING REGIME OVERLAP

65 *The Planning and Design Code under the Planning, Development and Infrastructure Act 2016 to prescribe in which areas different types of licensed venues are an acceptable use of land and contain general land use conditions relating to those licensed venues.*

The Government accepts this recommendation in principle. This is a matter for further consideration by DPTI during development of the Planning and Design Code.

66 *Implement a clear delineation of responsibilities between relevant planning authorities and the Licensing Authority.*

The Government accepts this recommendation in principle, agreeing with the objective of reducing duplication in the planning and liquor licensing processes. However, there are some planning-type matters that do not currently fall under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* as strictly constituting development and there will need to be further consideration given as to how to appropriately delineate responsibilities.

67 *Certain applications under the Act should trigger the need for development approval under the Development Act 1993 or the Planning, Development and Infrastructure Act 2016 (when that comes into operation).*

The Government does not support this recommendation. Although the Government is committed to reducing duplication in the planning and liquor licensing processes, this recommendation potentially adds additional red tape to the planning process. The Government prefers to explore alternative options, such as assessing planning and licensing applications in tandem and early notification of licensing applications to councils to achieve this objective.

68 *The necessary approvals under the Development Act 1993 or the Planning, Development and Infrastructure Act 2016 (when that comes into operation) must be obtained before lodgement of the application with CBS.*

The Government does not support this recommendation for the same reasons as outlined in relation to recommendation 67.

69 *Remove the ability of council to object or make a submission on matters that are dealt with or addressed at the planning level and remove the ability of council to intervene in the liquor licensing process.*

The Government agrees with this recommendation, noting that the new *Planning, Development and Infrastructure Act 2016* will already substantially achieve this by the consequential amendment to the *Liquor Licensing Act 1997* provided for in Schedule 6, Part 6 removing the ability of a local council to intervene by making representations in a matter that is dealt with or addressed at the planning level under the new Act.

70 *The Commissioner should have an absolute discretion to add, substitute, vary or revoke any existing conditions as a result of any proposed reforms and because it is a matter that is dealt with or addressed under the Development Act 1993 or the Planning, Development and Infrastructure Act 2016 (when that comes into operation). Please see chapter 21 for further discussion.*

The Government accepts this recommendation.

71 *Section 106 of the Act relating to complaints about noise etc. emanating from licensed premises should be retained.*

The Government accepts this recommendation.

NEEDS TEST

72 *The 'needs test' in sections 58 and 61 of the Act be replaced with a Community Impact and Public Interest Test to apply to certain high risk categories of licence, with a discretion for the Licensing Authority to include other applications*

The Government substantially accepts this recommendation but notes that careful consideration will need to be given to framing this test to protect against proliferation of liquor outlets and alcohol-related harm. Under this new Community Impact and Public Interest Test (the new Test) an applicant will have to satisfy the Licensing Authority that granting the application will not detract from the safety and well-being of the community and is in the public interest. This will involve the Licensing Authority balancing any benefits against any detriment. This Test will consider matters that are wider than the aspirations and expectations of the public (which must be satisfied as part of the objects of the Act).

The new Test should be a wide test to capture a broad range of matters. The Government agrees that the types of matters set out in section 9.7 of Mr Anderson's Report are appropriate matters to include in the proposed guidelines and agrees that the new Test threshold, including the type and amount of supporting information that must be provided by an applicant, must vary depending on the licence type, with higher risk businesses needing to meet a higher threshold.

The Licensing Authority must be able, in its discretion, to require the applicant to provide such further information as it may require.

Further, the Government is concerned to ensure the new Test continues to apply to a sufficiently wide range of on-premises venue types to guard against a proliferation of bars in the community. The Report proposes that the new Test apply to on-premises licenses authorised to trade past 2am. However, the Government takes the view that the new Test should apply to any on-premises general licence regardless of whether the licensee trades past 2am - with exceptions for businesses predominantly providing a conveyance service or accommodation and sporting venues as recommended in the Report.

73 *Guidelines should be issued by the Commissioner about the Community Impact and Public Interest Test to inform the public and applicants about the assessment process.*

The Government accepts this recommendation. Rather than prescribing or entrenching these matters within the legislation, it is proposed, consistent with the approach taken in other jurisdictions with a similar test, that the Commissioner issue guidelines about the Community Impact and Public Interest Test and set out what matters will be considered as part of that Test. This will allow the Licensing Authority to be unfettered in the matters that it can consider.

PACKAGED LIQUOR SALES IN SUPERMARKETS

74 *The requirement in section 37(2) that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from the premises used for other commercial purposes, should be retained. Notwithstanding this, the legislation must make it clear that licensed premises can however exist under the same roof as a supermarket.*

The Government accepts this recommendation, noting that the new Community Impact and Public Interest Test (the new Test) will still operate as a guard against outlet proliferation, in particular in risky areas. For example, where there is a supermarket within a shopping centre and already a bottle shop nearby within the centre, the application of the Test may well prevent the supermarket getting a licence to establish an additional bottle shop within the supermarket area. However, where that supermarket business owns the bottle shop in question, it may be successful in removing the bottle shop from the separate premises to within the supermarket area, provided it can meet the separation and other requirements.

The physical separation requirements also safeguard against harm. The Government agrees that the ‘shop within a shop’ concept as set out in recommendation 75 provides significant protection without need for a separate roof, and acknowledges that in fact there are already examples of licences issued under the present *Liquor Licensing Act* provisions where physical separation has not entailed a separate roof. However, the Government believes physical separation needs to be more than proposed in the Report and should also require a separate entrance. In the case of supermarkets, this would mean that the entrance to the liquor shop must be a separate entrance from the street or shopping centre. Further, to guard against legal arguments about what constitutes adequate “physical separation”, the Government also proposes to legislate that this must include a permanent and substantial physical barrier, non-transparent and at least 2.5 metres high.

75 *The licensed premises in respect to a Packaged Liquor Sales Licence should have a separate checkout with an adult operator trained in responsible service of alcohol and supervised/managed by a responsible person at all times.*

The Government accepts this recommendation.

76 *Legislation should expressly prohibit specific types of business from holding a Packaged Liquor Sales Licence (see paragraph 5.7.42 for the complete list).*

The Government accepts this recommendation.

SMALL VENUE LICENCES

77 *Extend the application of the Small Venue Licence to include the area of North Adelaide.*

The Government does not support this recommendation. The existing small venue licence has proved successful in its limited application to the CBD, however consideration as to possible expansion to other areas will be deferred for later review in two to three years to allow consolidation and proper review of the impact of the existing program (see also recommendation 11).

LIMITED LICENCES

78 *The existing Limited Licence class of licence be abolished and incorporated under a Liquor Permit, Extended Liquor Permit or Special Event Permit depending on the duration and nature of the event.*

The Government accepts this recommendation.

79 *There should be a renewable BYO Permit (for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence). This could apply to galleries, studios, café's and tourism providers.*

The Government accepts this recommendation.

80 *The requirement for a separate application for a low-risk single occasion event should be dispensed with and replaced with a system of permits by notification.*

The Government accepts this recommendation.

81 *The Government may wish to give consideration to allowing the Licensing Authority to grant an event permit for a period not exceeding three years (e.g. for low risk events such as Tasting Australia, and the Glendi Festival).*

The Government accepts this recommendation.

DRY AREAS

82 *Amend section 131 of the Act to allow local councils, in limited circumstances, to prohibit the consumption and/or possession of liquor in public places within their relevant local government area.*

The Government accepts this recommendation noting that the recommendation is for a limited council power to declare a dry area for a maximum 48 hours and requires public notification as well as notification of SAPOL and the Licensing Authority. The Licensing Authority would be given the power to vary or revoke those dry areas if it is in the public interest.

83 *Amend section 131 of the Act to allow the Minister and Commissioner to revoke or vary a prohibition order made under that section.*

The Government accepts this recommendation.

84 *The impact of prohibition orders made under section 131 of the Act should be monitored, particularly in regional centres such as Ceduna and Coober Pedy.*

The Government accepts this recommendation.

MINORS

85 *Offences which relate to the sale of liquor to minors on licensed premises should be strict liability offences and be recorded on the Minors Non-Compliance Register.*

The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing the defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof. The Government agrees with the recommendation to record offences on a Minors Non-Compliance Register (see also recommendation 95).

86 *Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to the supply of liquor to minors on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority.*

The Government accepts this recommendation.

87 *Disciplinary action in relation to the supply of liquor to minors should be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period.*

The Government does not support this recommendation for the same reasons outlined in relation to recommendation 45.

88 *Legislate to require persons who appear to be under the age of 25 years to produce evidence of age.*

The Government does not support this recommendation. Licensees may already require persons who they reasonably suspect to be under 18 to produce ID. The proposed offence would be difficult to comply with and to enforce. There would not appear to be a need to legislate for a requirement to show ID. To encourage licensees to check for age (noting that under the response to recommendation 85 they will now commit the offence of supplying a minor unless they can prove that they didn't serve them), however it is proposed to broaden the existing provision to allow licensees to require any person (regardless of whether there is a reasonable suspicion that they are under 18) to produce ID. Failure to produce ID should require denial or entry or service, as relevant.

89 *Legislate to entrench powers to seize false or fraudulently used evidence of age identification documents.*

The Government accepts this recommendation, noting the need to draft carefully with the impending trials of digital driver's licences.

- 90 *Minors should not be allowed—*
- (a) *on licensed premises where the primary and predominant business conducted under the licence is that of a nightclub, karaoke bar or other type of bar between 9.00pm and 5.00am; or*
 - (b) *on licensed premises where the primary and predominant business conducted under the licence is the sale of packaged liquor products (i.e. bottle shops) unless accompanied by a responsible adult at all times; or*
 - (c) *on any other licensed premises between 9.00pm and 2.00am unless accompanied by a responsible adult; or*
 - (d) *on any other licensed premises between 2.00am and 5.00am.*

The Government agrees with this recommendation in part. Although noting the proposed exemptions set out in the body of the Report, further consideration needs to be given to the recommended 9pm cut-off for “any other licensed premises” (ie other than nightclubs or bottle shops) to ensure that this does not apply to restaurants. The Government is also concerned that the restriction not apply to minors attending, for example, functions at sporting clubs and considers that midnight is a more appropriate cut-off time, after which a minor may not remain on hotel, club etc premises unaccompanied by a responsible adult, noting that the equivalent cut-off time under the existing legislation is midnight. With the proposal to remove ‘designated dining areas’ under these recommendations, a later midnight cut-off will address the likely situation of minors on premises past 9pm while dining.

- 91 *Legislate to exempt certain categories of minors from the prohibition from licensed premises.*

The Government accepts this recommendation.

- 92 *Adopt legislation for the secondary supply of liquor to minors, particularly in relation to residential premises and strengthen the regulation of minors consuming liquor and adults supplying liquor at high risk after-parties or events.*

The Government accepts this recommendation. The Government acknowledges concerns about application of these offences to parents (eg who supply their child’s friends during a private party), however there is a demonstrated problem with secondary supply to minors at ‘schoolies’ type events and parties. These offences should serve as a strong deterrent. Further, as the Report notes, South Australia is currently out of step with other jurisdictions in not having secondary supply offences.

93 *Consider penalties for the supply of liquor to minors equivalent to the monetary amounts and term of imprisonment prescribed under New South Wales legislation.*

The Government agrees with this recommendation in principle, agreeing that the penalties for secondary supply need to serve as a strong deterrent. Having considered the NSW penalties, the Government takes the view that a penalty of imprisonment is excessive and prefers the alternative Report option of a considerable monetary penalty of \$10,000 with an expiation fee of \$500.

94 *Legislate to prohibit the sale and delivery of liquor to minors through direct sales transaction.*

The Government accepts this recommendation.

95 *Legislate to require that offences relating to the sale of liquor to minors are strict liability offences with offending licensees recorded in a register and the details published on the CBS website.*

The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing these defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof. The Government agrees with the recommendation to record offences on a Minors Non-Compliance Register (see also recommendation 85).

COMPLIANCE AND ENFORCEMENT

96 *The provisions of the Declared Public Precincts Bill, if enacted, should be applied concurrently with the provisions of the Liquor Licensing Act 1997.*

The Government accepts this recommendation.

97 *There should be a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms.*

The Government agrees with this recommendation but notes the need for separate consideration of the resource implications for SAPOL and CBS.

98 *The compliance and enforcement activities of CBS should have a greater focus on assessing compliance with the objects of the Act, particularly licensee's obligations to minimising harm or the potential for harm associated with excessive or inappropriate consumption of liquor.*

The Government accepts this recommendation.

99 *Make it a strict liability offence for a licensee, employee of the licensee or other person engaged by the licensee to grant entry, sell or supply or allow an intoxicated person to be on licensed premises.*

The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing these defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof.

Further, the Government is concerned with the Report's recommendations for new offences of allowing an intoxicated person to enter or remain on licensed premises. There are already powers and requirements to deal with an intoxicated person posing a risk to other patrons and to refuse supply to intoxicated persons.

An offence of allowing entry to an intoxicated person would require licensed premises to employ a crowd controller to police entry. Further consideration will be given to limiting the scope of this proposed offence to high risk or late night premises.

The proposed offence of allowing an intoxicated person to remain on premises could lead to injury or harm if an intoxicated person is ejected onto the street as opposed to being allowed to remain in the relative safety of the premises. It is not proposed to introduce this offence.

100 *Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to intoxicated persons on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority.*

The Government accepts this recommendation but to apply to the scope of offences outlined in relation to recommendation 99.

101 *The Liquor and Gambling Commissioner should have wider power to suspend a licence for repeat breaches of the Act or for a serious or prescribed first offence.*

The Government accepts this recommendation.

102 *Introduce a web based notification system or portal for licensees, SA Police and CBS to manage collectively the barring of persons from licensed premises.*

The Government agrees in principle with this recommendation, subject to further costing and feasibility studies.

103 *Provisions relating to 'welfare barring orders' under sections 125(1)(aa) and 125B(1)(e) of the Act should be amended to reflect the revised objects of the Act if enacted.*

The Government accepts this recommendation.

104 *Consider a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence.*

The Government agrees with this recommendation in principle, noting that only certain types of (generally 'clear cut') offences are suitable for expiation.

105 *All offences and relevant penalties, whether by expiation or through disciplinary action, should be contained under a specific part of the Act.*

The Government agrees with this recommendation in principle, however this may not be achievable and should be subject to the advice of Parliamentary Counsel.

106 *Amend section 11A of the Act to allow for the expiation of offences relating to codes of practice consistent with the State's gambling legislation.*

The Government accepts this recommendation.

107 *Enact legislation to provide police with the power to conduct alcohol and drug testing of licensees and responsible persons who are on duty and that it should be an offence for failing to comply.*

The Government accepts this recommendation, noting that crowd controllers are already subject to zero tolerance testing.

108 *Enact legislation or incorporate within the Late Night Code of Practice requirements to mandate the use of ID Scanners concurrently with the use of CCTV and metal detectors.*

The Government agrees with this recommendation in principle, subject to further consideration of feasibility and impacts on licensees and noting that adoption within the Late Night Code would appear the most appropriate approach. The Government notes that ID scanners are in use interstate and will require legislated controls around privacy and use of the information.

LICENSING AUTHORITY

109 *The Commissioner and Licensing Court two tier structure should be retained.*

The Government accepts this recommendation.

110 *A maximum of three judges from the existing pool of judges be designated as Licensing Court judges so that there is a consistency and efficiency in the decision making process.*

The Government accepts this recommendation.

111 *Amend section 26 of the Act to include a power to award costs where the conduct of proceedings is frivolous or vexatious.*

The Government accepts this recommendation.

112 *Include a power for the Licensing Court to impose an injunction to prevent a breach of the Act or the codes of practice.*

The Government accepts this recommendation.

113 *The right of appeal from the Licensing Court to the Supreme Court should be retained.*

The Government accepts this recommendation.

LIQUOR LICENSING AND GAMBLING REGIME OVERLAP

114 *The Government may wish to consider a more in-depth review of the overlap between liquor and gambling legislation with the view of identifying red tape barriers, digital strategy potential and opportunities for legislative and regulatory improvement and to remove inconsistencies.*

The Government accepts this recommendation and has decided to appoint the Honourable Tim Anderson QC to conduct this further review.

RSA STANDARDS AND COMPETENCY

115 *There should be greater focus on responsible service of alcohol training through mechanisms such as refresher courses, enforcement and specific training for responsible persons.*

The Government accepts this recommendation.

116 *Licensees to ensure as part of their responsibilities for holding a liquor licence, that all relevant staff are checked for responsible service of alcohol competency on a regular basis.*

The Government accepts this recommendation.

117 *Mutual recognition of responsible service of alcohol training qualifications should be discussed at the appropriate national inter-governmental meeting.*

The Government accepts this recommendation.

MISCELLANEOUS MATTERS

118 *Amend the Act to define 'body corporate' and insert eligibility provisions to hold a licence and an accreditation to act as a responsible person.*

The Government accepts this recommendation.

119 *That the issue of alcohol advertising during telecasts of live sporting events be considered at a national level.*

This is a matter for the Commonwealth and the Government has brought the recommendation to the attention of the relevant Commonwealth Minister.

120 *Legislation should be considered to ban alcohol advertisements on public transport and public transport infrastructure in South Australia.*

The Government has changed requirements for Adelaide Metro vehicle contracts, to take effect in mid-2017 so that no alcohol advertising will appear on public transport.

121 *Minimum alcohol pricing should be considered at a national level to ensure consistency across Australia.*

The Government agrees in principle with this recommendation, noting that this is a matter for consideration at the national level.

122 *Wholesale alcohol sales data be collected in South Australia, with a view to implementing a nationally consistent approach.*

The Government accepts this recommendation in principle subject to costing and feasibility studies.

123 *To supplement current in-venue signage requirements, street signage in and around entertainment precincts should be improved to direct the public to the nearest after midnight transport service.*

The Government agrees in principle with this recommendation, subject to discussion with council and noting the need to consider the outcome of the response to recommendation 124.

124 *Conduct a feasibility study to determine the merits of an expanded 'After Midnight' public transport service as part of harm minimisation practices connected to the late night economy.*

The Government agrees in principle with this recommendation, however, in light of recent decisions regarding entry of ride sharing services such as Uber it is proposed to defer further consideration of this proposal to enable patronage of the 'After Midnight' service and impact of ride sharing services to be evaluated first.

125 *Amend section 111 of the Act to allow the Licensing Authority at its discretion to declare any area as out of bounds to minors.*

The Government accepts this recommendation.

126 *Amend schedule 2 of the Liquor Licensing (General) Regulations 2012 to prescribe graphical and simplified premises signage directed to minors.*

The Government accepts this recommendation.

TECHNICAL AMENDMENTS

127 *Subject to the recommendations in this report being enacted, appropriate consequential amendments to the Gaming Machines Act 1992 will need to be provided for in the amending Act.*

The Government accepts this recommendation.

128 *Subject to the recommendations in this report being enacted, appropriate administrative amendments will need to be provided for in the amending Act.*

The Government accepts this recommendation in principle, noting that some of the proposed changes suggested under this recommendation require further consideration. For example, the proposals to provide that land owners be liable to disciplinary action for licensee misconduct, or brought within the definition of “close associate”, appear excessive.

TRANSITIONAL PROVISIONS

129 *Subject to the recommendations in this report being enacted, appropriate transitional arrangements should be provided for in the amending Act.*

The Government accepts this recommendation.