

LIQUOR LICENSING ACT 1997

NATIONAL COMPETITION POLICY REVIEW

REVIEW OF SECTIONS 37(2), 58 & 61

DRAFT REPORT

APRIL 2003

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SUMMARY

This report analyses sections 37(2), 58 and 61 of the *Liquor Licensing Act 1997* in accordance with national competition policy. The terms of reference of the review are attached as Appendix I.

Section 37(2) requires that under a retail liquor merchant's licence, liquor may only be sold from separate premises dedicated to the purpose, unless an exemption is granted. This prevents liquor sales, for example, in supermarkets.

Sections 58 and 61 require that applicants for new hotel or retail liquor merchant's licences, and applicants to remove such licences to new localities, demonstrate the public need or demand in the locality is not met by existing licences.

The report discusses submissions received in response to an Issues Paper published in November 2002, and also analyses the effects of comparable deregulation in Victoria and New Zealand.

It preliminarily concludes that s. 37(2) is an intermediate restriction of competition that can be justified on the ground of public benefit and should be retained, whereas the need test in ss. 58 and 61 is a serious restriction that cannot be justified by public benefits and should be abolished.

1. INTRODUCTION

1.1 General obligation to review legislation

The present review meets the South Australian Government's remaining obligations under clause 5 of the Competition Principles Agreement, in relation to the *Liquor Licensing Act 1997* ('the Act'). This is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995 giving effect to the National Competition Policy. The Agreement obliges the Government to review and, where appropriate, reform, legislation that restricts competition.

The review follows the Terms of Reference attached as Appendix I. The guiding principle in competition review is that the Act should not restrict competition unless:

'the benefits of the restriction to the community as a whole outweigh the costs; and the objectives of the legislation can only be achieved by restricting competition.'

In addition, the review considers whether administrative procedures required by the Act are unnecessary or impose an unwarranted burden on any person.

1.2 Principles for competition analysis of ss 37(2), 58 and 61

In 1996, the South Australian Government released the *Review of the South Australian Liquor Licensing Act* by Mr T. R. Anderson Q.C. The Anderson report fulfilled South Australia's obligations under national competition policy with regard to the *Liquor Licensing Act 1985*. The report, however, required further subsequent review of ss. 37(2), 58 and 61.

The competition analysis process to be followed by the review in relation to these sections of the Act is detailed in the Terms of Reference (Appendix I). It can be summarised as follows:

- Identify any restrictions on competition that arise from the sections under consideration. These can include restrictions such as constraints on who may enter the market, limitations on business structures that may be used, monopolies and the like.
- Assess the severity of each identified restriction. In general, competition review is concerned with restrictions of competition that are "intermediate" or "serious", rather than merely "trivial" restrictions.
- Identify the public benefits, if any, conferred by any restriction that is more than "trivial", and weigh up the costs against these benefits to form a view as to whether the restriction is justifiable.
- Consider whether the legislative restriction is necessary to achieve these benefits, or whether they could be achieved by a less regulatory structure. Options such as partial and total deregulation may be considered.
- Identify any administrative burdens encompassed in these sections and consider less burdensome alternatives.

In this review, this process will be applied to these three sections.

1.3 Overview of the Act

The *Liquor Licensing Act 1997* establishes a system for the regulation of liquor sales and the licensing of premises where liquor is sold. The Act creates a range of licence types, each of which entitles the licensee to sell liquor under certain conditions, such as conditions as to hours of trading, provision of meals, whether the liquor may be consumed on the premises or may be taken away from the premises, etc.

An applicant for a liquor licence must show that he or she is a 'fit and proper person' and must follow an application process. Certain applications must be advertised, and any person may then object to the application. Objection may be taken on any of the grounds set out in the Act, e.g. that the grant of the application would be contrary to the Act, or would impair the amenity of the area, that the applicant is not a fit and proper person, that the premises are unsuitable to be licensed, and so on.

Uncontested applications (and applications for limited licences) are determined by the Liquor and Gambling Commissioner. For contested applications, conciliation is the first step. Matters that do not resolve in conciliation are determined either (at the option of the parties) by the Commissioner or by the Licensing Court of South Australia. Their decisions are subject to the review and appeal processes set out in the Act.

An application may be granted subject to conditions, including conditions as to noise, offensive behaviour, patron safety, and other matters. The Act also imposes certain mandatory conditions, including a requirement to comply with approved codes of practice. A breach of a licence condition may lead to disciplinary action. Sanctions include a reprimand, fine, licence suspension or disqualification.

Licensees must comply with the requirements of the Act as to the supervision of the premises by a responsible person, refusal of service to minors or intoxicated persons, display of notices, records of transactions, and other matters. Enforcement of the Act occurs through inspectors with statutory powers, and through police intervention.

1.4 Background to the Review

The Act dates from 1997, and arises from an earlier full review of the *Liquor Licensing Act 1985*. That review, conducted by Mr Anderson Q.C., recommended significant changes to the law, including rationalisation of licence types. To a substantial degree, it addressed the competition policy issues raised by the former Act. However, that review left two specific issues open for further review.

The first issue relates to section 37(2), which imposes a mandatory condition on retail liquor merchant's licences. That section provides that:

'It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.'

The section goes on to provide two exceptions, as follows:

'1. Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (e.g. glasses, decanters, cheeses and pates).

2. The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.'

The effect of this section is that, generally, the retail sale of packaged liquor under a retail liquor merchant's licence cannot take place in any store that sells other products, for example, packaged liquor cannot be sold as a product line in a supermarket or department store. A retailer wishing to offer packaged liquor for sale in such a store under this type of licence would need to establish 'physically separate' premises for the purpose. The Act does not define in more detail what constitutes physical separation.

The second issue relates to ss. 58 and 61 of the Act, which deal with the need test. These sections apply to hotel licences and retail liquor merchant's licences. They provide as follows:

'Grant of hotel licence or retail liquor merchant's licence

58. (1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.

(2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.

(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.'

'Removal of hotel licence or retail liquor merchant's licence

61. (1) An applicant for removal of a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality to which licence is to be removed, the licence is necessary in order to provide for the needs of the public in that locality.

(2) An applicant for the removal of a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality to which the licence is to be removed do not adequately cater for the public demand for liquor for consumption off licensed premises and the removal of the licence is necessary to satisfy that demand.

(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a

licence is to be granted, or to which a licence is to be removed, under an existing certificate of approval.'

The tests with respect to hotel and retail liquor merchant's licenses are slightly different. For a hotel licence, it must be established that

'having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.' (s. 58(1)).

For a retail liquor merchant's licence, the applicant must show that

'the licensed premises already existing in the locality in which the premises or proposed premises are or are to be situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand' (s. 58(2))

By s. 61, the equivalent tests apply to the removal of existing licences from one locality to another.

This review is limited to the consideration of these three sections of the Act.

1.5 Consultation

An issues paper published in November 2002 was advertised in the press, and sent to the stakeholders listed in Appendix II. The paper was also published on the internet. Eighteen submissions were received, as listed in Appendix IV.

This draft report is published to enable comment on the panel's analysis of submissions and preliminary conclusions. Comment is also invited on the particular questions raised in Chapter 8.

2. COMPETITION ISSUES

2.1 Purpose of the Legislation

2.1.1 Background

The liquor industry in South Australia has long been regulated by statute. The first *Licensing Act*, which took effect in 1932, repealed the former *Innkeepers Act*. The *Licensing Act* was amended repeatedly during the 1940s, 50s and 60s, and was finally replaced by the *Licensing Act 1967-75*. That in its turn was repealed by the *Liquor Licensing Act 1985*, which preceded the present Act.

The Anderson competition policy review of the 1985 Act recommended major amendments, including the removal of a number of provisions identified as anti-competitive. For example, it recommended abolition of the need test in respect of wholesale licences, entertainment venue licences and general facility licences (which became the present 'special circumstances' licences). Mr Anderson Q.C. also discussed the 'need' test in respect of other licence types. He identified it as *probably the major restriction which, on the face of it, may offend the National Competition Policy* (p. 18).

He considered that there were several reasons why the need test should remain for hotel and retail liquor merchant's licences, at least in the short term. These were:

'First, there is some truth in the proposition that a total deregulation could literally result in a bottle shop on every street corner and that would, in my view, be inconsistent with the minimisation of harm principles which I have recommended.'

'Secondly, there have been submissions both for and against the proposition that sales of liquor should be allowed in supermarkets. Up to now the Licensing Court has interpreted s. 38(3) to mean that supermarkets cannot sell liquor in South Australia. On the face of it, it seems to me an anomaly that someone can purchase liquor from a bottle shop which is immediately adjacent to, but separate from, a supermarket, but not within the same four walls.'

'However, once again, having regard to the principles of the minimisation of harm, I am of the view, but very marginally, that this situation should prevail at least in the short term, but that it should be subject to a very thorough review in three or four years time. By then there should be information available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales of liquor in supermarkets.' (page 19)

Mr Anderson's report went on to say:

'I am convinced from my own inspections and discussions within the industry throughout Australia that the standard of hotels and bottle shops in South Australia is the highest in Australia. I am concerned that an immediate total deregulation by removing the 'need' concept and allowing the sale of liquor in supermarkets and elsewhere, may not be in the best interests of the government's economic development strategy and tourism development and the wider needs and interests of the South Australian community' (page 19).

Mr Anderson's report therefore recommended that such a test remain for hotel and retail liquor merchant's licences only, and that this situation should be reviewed after three or four years with the benefit of interstate experience (Recommendation 3.7.3).

2.1.2 Objects of the Act

The objects of the Act are set out in s. 3, as follows:

'3. The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—

(a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the responsible service and consumption principles) and minimise the harm associated with the consumption of liquor; and

(b) to further the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls; and

(c) to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and

(d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and

(e) to encourage a competitive market for the supply of liquor.'

These objects then are relevant in identifying the public benefits that the Act seeks to deliver. Only if a restriction of competition is necessary to deliver one or more of these public benefits is it likely to survive competition policy analysis.

The panel invited comment on whether and how the restrictions in ss. 37(2), 58 and 61 achieve the objects of the Act. Several submissions argued that they serve harm-minimization purposes. The strength of this argument is evaluated later. Some submissions noted that the provisions may serve some objects of the Act, such as harm minimization, but work against other objects, such as the encouragement of a competitive market for the supply of liquor. Possible tension among the objects was noted.

2.2 Markets

Evaluating the impact of legislative restrictions upon competition requires that relevant markets are identified and the impact of the restriction in the market is assessed. Delineation of the relevant markets involves identifying those products that are substitutable for one another. All substitutable products will be included in a single market. This approach to delineating markets is the same as is reflected in section 4E of the *Trade Practices Act 1974* (Commonwealth) which defines "market" as "a market in Australia and, when used in relation to any goods or services, includes a market for those

goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services”.

Substitutability is considered from two perspectives. First, demand side substitutability exists where consumers would shift their consumption from one product to another when faced by a small, but not insubstantial, price rise. Secondly, where a producer can shift production from one product to another in response to a price rise in the second product, there is said to be supply side substitutability.

2.2.1 Aspects of the Market

There are four aspects of a market to be considered in determining the relevant market. These are:

- a) the product aspect;
- b) the geographic aspect;
- c) the functional aspect; and
- d) the temporal aspect.

2.2.2 Competition within markets

(a) The Product

The product in this case is liquor. The relevant market consists on the supply side of applicants for, and holders of, hotel licences and retail liquor merchant's licences. On the demand side, it includes those members of the public who patronise hotels or who buy packaged liquor for consumption off the licensed premises. In respect of the rule against packaged liquor sales in stores other than liquor stores, the market could also be said to include potentially those traders who would wish to sell liquor in other stores, for example, supermarket and department store chains, were this lawful, and any who are able to do so as a result of exemption or under other licence types.

In this market, it seems likely that on the demand side only very similar products are substitutable for one another. For example, if a customer is faced with an increase in the price of a particular bottled wine, he or she may be willing to buy another similar wine, but is unlikely to choose beer, spirits, fortified wine or cask wine as a substitute. The customer is also unlikely to choose a non-alcoholic beverage as a substitute. In choosing the substitute, the customer is likely to select something similar to the desired product in style, quality and perhaps origin. In particular, there are significant price differences for the same volume of product, as between beer, wine and spirits, as well as social acceptability constraints on substitution (for example, one would be unlikely to take a cask of wine or bottle of spirits to a social occasion such as a dinner party, in place of a bottle of wine). Products in this market therefore do not have high substitutability.

Of course, this analysis is limited to short-run substitutability and it is difficult to generalise about longer term substitutability, such as where a particular product becomes unavailable altogether.

In contrast, on the supply side of the market, most of the vendors carry a wide range of alcoholic products, which suggests a high level of substitution.

(b) The Functional level

The functional level of the market directly affected by the relevant provisions of the Act, is the retail level, i.e. the purchaser of the good or service is its ultimate consumer. This is the level at which the restrictions discussed in this report impact directly.

(c) The Geographical Extent of the Markets

The Act covers liquor sales anywhere in South Australia, and indeed also regulates sales over the internet or otherwise where the liquor is delivered from South Australia to a purchaser elsewhere. However, as to the particular aspects of the Act here under review, it is also necessary to consider a smaller geographic unit: the locality. The need test relates to a particular locality, as it seeks to identify the needs or the demand level of the public in that locality, and whether these needs or demands are already met by licences already granted within the locality.

The locality is the approximate region from which consumers likely to purchase liquor from the relevant outlet would be drawn. However, the courts have made clear that there is no fixed rule for defining a locality, the precise size of which will vary from case to case. Considerations include *'the type of community that is envisaged, the type of work which they do, the way in which they use common transport and other facilities, and in general whether they are a group bound together as a community having common interests'* (*Buttery v Muirhead*, (1970) SASR 334 at 352, per Zelling J). Indeed, it has been said that the precise delineation of a locality may divert the licensing authority from the true matter for consideration (see *Nepeor v Liquor Licensing Commissioner* (1987) 46 SASR 205).

The locality may be quite discrete, as in the case of an application for a licence in a country town. However, in a city, it may be difficult to define the locality with any precision. This may not matter. What is important is to match the alleged public demand against the existing facilities of established licensed premises in the area from which the demand comes. For example, customers coming from further afield are more likely to be able to have their demands met by other facilities (*Nepeor* case, above).

The assumption behind the concept of a locality is that the public will generally patronise hotels, and buy liquor from outlets, located near their homes or places of work. One issue in evaluating the public benefits delivered by the test, is whether this assumption is true.

It is also the case that both a hotel licence and a retail liquor merchant's licence permit the holder to sell liquor to any patron, regardless of whether he or she has any connection with the locality, and to distribute packaged liquor to any address, whether or not in the locality, for example in response to orders placed by internet, telephone, facsimile transmission or mail order. That is, although the test looks to need in the locality, the outlet, once established, need not confine itself to serving the locality. Hence, another relevant consideration may be how much of a given outlet's trade is in fact local.

Thus, it can be said that at the geographic level, the market has both local and Statewide aspects. Further, since the advent of the internet, it is possible to make purchases from liquor retailers interstate or overseas. To that extent, it is arguable that there are no geographic limits on the market.

(d) The Temporal Aspect of the Markets

The market is continuous, that is, it is not subject to a high and low season, or confined to a particular part of the year. Hotels and liquor stores may open throughout the year, subject to rules about special days such as Good Friday and Christmas Day. The hours of opening are controlled by the licence and/or by an extended trading authorisation. Subject to these constraints, there are no significant temporal aspects to the market. Consumers may use the market at any time and any number of times.

The panel invited comment on whether the above discussion correctly describes the market. Submissions generally agreed that it did so. One submission argued that more emphasis should be given to the local nature of an outlet's trade. Another argued that the discussion overlooks the restrictions on packaged liquor sales by licensed clubs.

2.3 Restrictions on competition

There are three types of restrictions upon competition:

- (a) barriers to entering (or re-entering) markets;
- (b) restrictions on competition within markets; and
- (c) discrimination between market participants.

South Australia has adopted the legislation review methodology of giving restrictions on competition an initial analysis and then categorising them as either: trivial, intermediate or serious. This assists in prioritisation, and determines the level of resources that should be applied to the legislation review.

A **trivial** restriction on competition imposes, at most, an insignificant cost upon the competitive process relative to the natural commercial cost of doing business in the relevant market. At its lowest level, it may be a restriction on competition simply because it fits an analytical pattern, but on examination, has no practical adverse impact on relevant markets. A categorisation as trivial carries with it an intuitive cost-benefit analysis of net public benefit, given that relevant markets have been identified and the objectives of the legislation are known. However, if an Act contains administrative or reporting burdens that are not necessary to achieve the objects of the Act, the Government has required that they should be removed even if their cost is insignificant relative to the cost of doing business in the relevant market.

An **intermediate** restriction upon competition imposes a cost upon the competitive process that is, at least, more than nominal or trivial. It has a measurable effect such that it is capable of altering, in an identifiable way, the dynamic characteristics of a market, or the level of economic activity in a market, or if there is a lack of countervailing power, it will be able to be identified that the cost is being passed on to consumers or suppliers.

A **serious** restriction upon competition imposes high costs on market participants and/or on consumers. This may occur because there are high barriers to entry or re-entry (such as numerical restrictions), because there is a prohibition on certain conduct that is commercially desirable, or by placing certain market participants in a highly advantageous position such that their market power is increased and they are able to demand a rent.

Such a restriction will probably already be contentious and the subject of reaction by, at least, a segment of the public.

The review process entails examining both the identified restrictions to assess their severity.

2.4 Costs of Restrictions

The types of cost that may be generated by legislated restrictions on competition are:

- (a) costs on participants within affected markets generated by complying with restrictions contained in the Act. In the case of the *Liquor Licensing Act*, an example might be the cost of application for a licence, including, for example, the legal fees if the application is contested;
- (b) costs associated with efficiency losses or the sub-optimal allocation of resources that may result from direct intervention in an otherwise freely operating market, including costs generated by restrictions on the levels of competition. For example, if it costs more to sell liquor in physically separate premises than it would cost the same operator to sell the same liquor in an existing store, the difference is an efficiency loss; and
- (c) costs to the public of administering the regulatory regime established by the Act. In the case of the *Liquor Licensing Act*, this would include the cost of enforcing the Act by means of inspectors and police intervention.

Examples of costs that might arise as a result of the restrictions of competition under consideration here include:

- a reduced number of liquor outlets
- less variety or innovation in the type of outlet through which liquor is available
- reduced product ranges
- reduced variety of services
- less convenience of location
- reduced price competition.

However, these costs, if present, may be less significant in metropolitan areas where there is ready access to a number of outlets by private vehicle or public transport, as compared with country areas.

2.4.1 *Compliance costs to market participants*

As discussed above, the process of application for a licence may entail a cost, and in the case of licences to which the need test applies, a significant cost. This type of application must be advertised, and may attract objections on the ground that the need test is not satisfied. In that case, there may be a contested hearing and, very often, an appeal. The parties may engage lawyers and may become liable to legal fees, including, if the matter proceeds to the Supreme Court, the loser's liability for the legal costs of the other party. These costs may be reduced or avoided if the need test were abolished.

2.4.2 Efficiency losses

Efficiency losses occur where the law requires business to be conducted in a particular way, when other, more efficient ways of doing business might exist. For example, the provision that packaged liquor may only be sold in dedicated premises could result in efficiency losses if it would be more economic to permit liquor to be sold in other shops.

2.4.3 Costs of regulatory regime

Costs may be imposed on an industry through a regulatory regime, for example, if the industry is levied to pay for supervisory services. It does not appear that either of the restrictions under consideration here is of this type.

2.5 Public Benefits

The term 'public benefits' refers to benefits to the public as a whole. Benefits to a particular interest group, such as licensees, are not public benefits. Competition policy analysis requires identification of the public benefits, if any, delivered by a restriction of competition. These benefits must be weighed against the restrictions to determine whether the net public benefit justifies the restriction. The review must also consider whether similar benefit could be delivered in less restrictive ways.

Thus, for example, one issue to be considered may be whether the need test delivers benefits to the public above and beyond those it may deliver to existing licensees in protecting them from unrestrained competition.

2.6 Alternatives

The Terms of Reference of this review require consideration of alternative means of delivering the objects and benefits of the legislation. These are considered below as part of the analysis of ss 37(2), 58 and 61 of the Act.

3. SECTION 37 - PACKAGED LIQUOR SALES

3.1 Restriction of competition

Section 37(2) prevents the sale of packaged liquor other than in separate premises dedicated to the purpose, unless an exemption is granted. It also restricts the goods that may be sold in dedicated liquor stores to goods 'normally associated with and incidental to the sale of liquor'. This can be analysed as a discrimination between market participants or possibly more generally as a restriction of competition. It impacts on the market for packaged liquor at the retail level, in that some retailers who might otherwise wish to include packaged liquor among their product lines cannot do so.

This could result in efficiency losses that might be achievable if packaged liquor were sold in supermarkets and other food retailers. It could also prevent the development of specialist retailers, for example, dealing in the produce of a particular region, in which both characteristic foods and wines might be sold.

3.2 Objectives of the restriction

The restriction could be related to the object set out in s. 3(a) of the Act, that is, the responsible sale of liquor and the minimization of harm. It may be thought to assist in ensuring that liquor is not sold to minors, bought on impulse or bought at the expense of, or in preference to, foodstuffs. It may also contribute to the liquor industry by promoting specialisation.

The panel invited comment on whether these were the objectives of the section and whether they are still important today. Submissions that answered this question agreed that these were the objectives. One suggested that the s. 3(c) object of ensuring that the liquor industry develops in a way that is consistent with the needs and aspirations of the community, was also relevant.

One submission suggested that the objectives are less important than they were five years ago, because interstate experience tends to demonstrate that these matters can be adequately managed without the restriction.

Several submissions noted a major change in the market since the mid-1990s with the entry of supermarkets into the liquor retailing business.

3.3 Scope of restriction

This restriction can be considered **intermediate**. It is a restriction on conduct in the market. It is more than trivial in that it is likely to impose efficiency costs on business by restricting the manner of business. For example, the restriction might require a retailer to rent two separate premises when otherwise it would have required only one, or it may require part of the premises to be refurbished at some cost so as to form a separate liquor store. There may be consequent effects on the price of the product.

The restriction is unlikely to be serious from the demand side, in that it does not prevent liquor sales or restrict the number or range of products to be sold, but only prevents the mixing of liquor products with other lines. Packaged liquor is nonetheless readily available, and competition between liquor stores remains possible. In many cases, liquor stores exist side by side with other retailers such as supermarkets. They can even exist under the one roof, as a 'store-within-a-store', so that the effect of the restriction may be little more than an inconvenience from the point of view of the consumer.

The panel invited comment on whether this discussion correctly identifies the restriction, how serious it is and what are its effects.

One submission argued that s. 37(2) does not restrict competition, because it is relatively easy to meet the requirement for separate premises and because exemptions are readily granted. It was said that the restriction does not have any effect on the market as a whole. This submission also argued that the effect of s. 37(2) is to reinforce that liquor must be purchased with care and not on impulse, and also to maximize the range of liquor products in the market. On the other hand, other submissions argued that s. 37(2) is an intermediate or even serious restriction of competition, with possible effects on consumer convenience and on competition.

One submission argued that, because of the way s. 37(2) has been applied by the licensing authority, a result similar to that in Victoria has been achieved in practice without legislative change. This submission argued that, as seen in the Woolworths Rundle Mall store, separate premises can be taken to mean a dedicated area under the same roof as a supermarket. If so, then the result is little different from the position in Victoria, which requires an area in which liquor sales 'predominate'. The main difference between South Australia and Victoria, on this argument, is not the requirement for separate premises, but rather the inability to mix products at all in the dedicated area in South Australia, compared with the predominance rule in Victoria.

One submission argued that the restriction was trivial, or that s. 37(2) did not restrict competition at all. It was argued that exemptions are readily granted. Most other submissions that addressed this question considered the restriction intermediate. The reasons supporting this conclusion appear to be:

1. The Act does not necessarily require the licensee to buy or lease two different premises. As some submissions pointed out, the provision does not prevent liquor sales under the same roof as a supermarket. Licences have been granted that permit liquor sales within a separate dedicated area under the same roof as a supermarket (as for example in Woolworth's, Rundle Mall) or in a dedicated store adjacent to a supermarket (as at Coles Fittle).

2. The Act does not restrict the types of business that could potentially be licensed under s. 37. Unlike the Victorian law, which expressly forbids the licensing of petrol stations, drive-in cinemas and mixed businesses, or the New Zealand law, which forbids the licensing of 'dairies' and of supermarkets under a certain size, there is no rule against the licensing of a particular type of business. The requirement is rather for separate premises. The suitability of the particular premises is considered case-by-case, having regard to objections and to the objects of the Act.

3. The restriction does not apply to other types of licence that permit packaged liquor sales to the public. A hotel licence, which includes a right to operate a bottle shop, is not restricted in this way, even though such shops may be regarded as direct competitors of liquor stores. Similarly, a producers' licence allows wineries to sell other products as well as packaged liquor at the cellar door, and a wholesale liquor merchant's licence carries no restriction on the sale of other products. A direct sales licence does not preclude the sale of other products by the same business, and their delivery together with the ordered liquor. A special circumstances licence can also permit such sales.

4. Supermarkets now own a substantial share of the packaged liquor trade, either through having established their own liquor chains, such as Vintage Cellars, Liquorland, Quaffers, BWS and the like, or through having taken over other stores (such as the Super Cellars and Le Grog chains). Direct competition between supermarkets and other liquor stores is therefore not prevented by the requirement.

5. The licensing authority has power to grant exemptions from the general rule, if satisfied that the demand for liquor in the locality is insufficient to justify the establishment of separate premises, or there is some other proper reason. This deals with the situation where, for example in a small country town, there is insufficient demand to support a liquor store, but sufficient demand that a local general store wishes to offer some packaged liquor lines. Exemptions can also be made for other reasons, in the authority's discretion.

The practical effect of all this is that, although liquor stores may generally only sell liquor in accordance with this condition, packaged liquor is nonetheless widely available and competition in packaged liquor sales is strong. Several submissions, for example, referred to the large and frequent newspaper advertisements placed by liquor stores. These advertisements evidence keen price competition between rival chains. Thus, the impact of this restriction on competition in packaged liquor sales, and on the economy as a whole, is not serious.

3.4 Effects and costs of restriction

This restriction may impose costs on the licensee, in meeting the requirement for separate premises, both the initial construction and the ongoing supervision costs. This cost may be passed on to the consumer in the price of the product. It may also impose a cost in terms of loss of efficiencies that might be gained if the product were sold together with other products in a general store. There could also be a reduction in the number, range and variety of liquor outlets, less convenience of location or reduced price competition.

The panel invited comment on the costs and effects of this restriction. As to costs imposed by the restriction, several submissions argued that these were not substantial, because, as the law has been applied, the licensee need not construct or lease a separate building, but can section off an area within an existing shop, for example using partitions and a turnstile, or other methods.

Only one submission highlighted the additional labour cost associated with this requirement. Licensed premises require a responsible person to be in charge at all times. If the mixing of product were lawful, then, in a small shop, it may be possible for the one person to act as the responsible person for the liquor premises and also serve customers in

the other part of the store. This might not generally be possible, however, in larger stores or supermarkets.

Submissions that argued that this restriction is trivial did not advert to the need for a staff member dedicated to the management of that part of the premises.

No other costs were identified, and no submission attempted to quantify costs.

3.5 Public benefits

The panel invited comment on public benefits delivered by s. 37(2). Two lines of argument were presented. One dealt with the protection of existing businesses and the other with harm minimisation.

3.5.1 Protection of existing businesses

It was argued that, if liquor is treated like other products and can be sold in any outlet together with any other products, liquor stores will be unable to compete. One submission explained that this was because some 20% of a liquor store's product range yields some 80% of the revenue, and enables the trader to afford to carry the other 80% of products that complete the range. The core products, because they are the most popular, are the most likely to form the product range of a trader who sells liquor together with other products, such as a supermarket. Since this part of the product range is price-sensitive, and bulk retailers such as supermarkets can afford to undercut liquor stores, those stores will fail. This means that the other 80% of products, which are unlikely to be sold in supermarkets, will no longer be available in the marketplace. This is predicted to harm the wine and tourism industries as well as the liquor industry.

The panel accepted that the removal of the s. 37(2) restriction may have an adverse effect on the licensees of specialist liquor stores and on the range of liquor products available in the market. It noted that benefit to a particular industry or industry group is not a public benefit in competition-policy terms. The protection of a particular group cannot therefore justify the retention of an anti-competitive practice. The availability of a wider range of packaged liquor products in the marketplace may be a public benefit. However, it may not be a sufficient benefit to justify this restriction of competition.

The panel was not satisfied that the s. 37(2) restriction can be justified on these grounds.

3.5.2 Harm

It was also argued that the sale of liquor together with other products carries increased risks of harm. As outlined in the issues paper, these were identified as:

(a) the risk that liquor will be sold to a minor. It was argued that it is more difficult to prevent liquor sales to minors where the liquor is simply one among many product lines, for several reasons. One is that whereas the presence of a minor in a liquor store is obvious, their presence in a supermarket or department store is not. Another is that many businesses, including supermarkets, rely on a workforce of young people, often school or university students, amongst whom there is a fairly high turnover. This leads to several related problems.

One is that, since minors cannot sell liquor, systems would be needed to ensure that juniors were never rostered into a position where liquor sales might occur. Mistakes might be made. Another is that a young adult may find it difficult to demand proof of age or refuse to sell liquor to a minor. They may indeed often be called on to serve their friends, which puts them under particular pressure. Although this situation can now arise in other licensed premises, it is compounded in a supermarket or other shop by the fact that the minor may be buying a quantity of lawful products and the liquor is overlooked, and by the fact that there may be other customers waiting in line to be served who are intolerant of delay while proof of age is checked or the sale is disallowed.

Also, because of the rapid turnover of young staff, it may be difficult to ensure that sales staff have proper training.

(b) the risk of impulse-buying of liquor. Impulse-buying is known to occur in supermarkets, and indeed sales strategies such as the placement of product on shelves, the promotion of special prices or offers, the offering of samples, etc, may be designed to encourage impulse purchases. Arguably, anything that encourages the impulse-buying of liquor when the customer came in to look for something else and had no intention of buying alcohol, could be harmful.

(c) the buying of liquor in substitution for staples. This is linked to the risk of impulse-buying. The customer may go to the shop intending to buy essential groceries or other necessities but be influenced to buy liquor instead. This might be a particular problem in areas of lower socio-economic status, where the customer has a limited budget and cannot afford both staples and liquor, or in communities where liquor presents a special problem.

Related to this, in a specialist store there is also no risk that liquor would be confused with other product, such as non-alcoholic wines or soft drinks, and purchased inadvertently.

(d) the normalisation of liquor, to the detriment of its status as a product to be handled with special care. One effect of selling liquor in dedicated premises, even if they are only divided by a partition and turnstile, is that people must go into them deliberately to look for liquor. Thus, customers are reminded that society regards liquor as a special product with particular risks, not an ordinary comestible.

(e) reduced effectiveness of sanctions against the licensee. There is a risk that, because liquor sales may be only a small part of overall business revenue, the licensee may not be motivated to adhere to legal requirements, because the loss or suspension of the licence represents only an inconvenience and not a serious threat. Where the premises are dedicated to the sale of liquor, the threat of suspension or loss of licence is more serious, and even the risk of having additional licence conditions imposed may carry considerable weight. For smaller businesses, the risk of a fine, which can be up to \$15 000, is also powerful. These possibilities may be of less concern to a supermarket or department store, whose trade would be little affected by such sanctions.

(e) the difficulty of adequately supervising such premises. One of the benefits of a dedicated store or area is that the responsible person can maintain proper supervision. There is no problem of distinguishing liquor purchasers from other shoppers and little difficulty in detecting minors or intoxicated persons. It may be more difficult to maintain

the required supervision over a store that is much larger and contains many more product lines. Related to this are additional inspection and law enforcement difficulties if liquor sales are not confined to an identified area.

3.5.3 Can cigarette sales provide a model?

One argument that arises in the context of harm minimization is the possible analogy between cigarettes and liquor, both being potentially hazardous but lawful products restricted to adult purchasers. The law currently permits cigarettes to be sold in a wide range of retail outlets, including supermarkets, delicatessens, newsagencies and other shops. Retailers are entitled to require proof of age and are obliged by law to refuse to sell cigarettes to minors. Comment was therefore sought as to whether an analogy could be made between liquor and cigarette sales in this context.

Some submissions argued that they are distinguishable, chiefly because cigarettes do only long-term harm, whereas liquor can lead to immediate intoxication. Some also argued that because of the comparative size of the product, the area needed to display liquor meant that there can be no comparison in practice with the sale of cigarettes, which do not need to be displayed to or examined by the customer. The panel saw some force in this argument.

On the other hand, some submissions saw an analogy in that the requirement to sell from a dedicated area, and the restraints on sale to minors, could provide a model for control of liquor sales in supermarkets.

3.5.4 Other benefits

There may also be benefits associated with specialist stores. Specialist stores allow for the provision of product information and advice to consumers and in this way may promote the object of responsible consumption. They may also contribute to the object of furthering the interests of the tourism industry, in that they enable the consumer to appreciate the diversity of the product and understand its regional origins, for example by offering comparative tastings, meetings with wine-makers, etc. There may be an interface between the retailing of liquor and the promotion of tourism of wine-producing regions that would be less likely to occur if liquor retailed in other stores. Of course, permitting liquor to be sold in other shops would not preclude its sale in specialist stores. Neither would it prevent more general retailers from offering specialist services.

On balance, the panel considered that restricting the sale of liquor to premises dedicated to the purposes may serve harm-minimisation purposes. It accepted that there may be practical problems in adapting the cigarette-sales model to liquor products.

3.6 Alternatives

3.6.1 Relevant interstate provisions

Note that the interstate provisions discussed in the following paragraphs are in some cases under review or subject to competition policy review in the future. It should not therefore be assumed that they would necessarily survive competition policy scrutiny.

In Victoria and New South Wales, packaged liquor can be sold in stores that are not dedicated to the purpose, provided that it is sold in a separate area predominantly used for liquor sales. However, there are certain types of premises that cannot be licensed to sell packaged liquor, other than in exceptional circumstances. There is no requirement that the premises be 'physically separate', although the requirement for an area set aside as the licensed premises may amount to much the same thing.

Section 11(3)(aa) of the Victorian *Liquor Control Reform Act* provides that packaged liquor licences are subject to a condition that:

'the predominant activity carried on in the area set aside as the licensed premises is the sale by retail of liquor for consumption off the licensed premises';

Further, the Act identifies certain premises that cannot generally be licensed:

'(1)The Director must not grant a licence or BYO permit in respect of-

(a)premises used primarily as a drive-in cinema; or

(b)premises used primarily as a petrol station; or

(c)premises that, in the opinion of the Director, are used primarily as a milk bar, convenience store or mixed business; or

(d)premises in a class of premises prescribed for the purposes of this section.

(2)The Director, with the approval of the Minister, may grant a licence in respect of premises referred to in sub-section (1)(c) if the Minister is satisfied that the area in which the premises are situated is a tourist area or an area with special needs and that there are not adequate existing facilities or arrangements for the supply of liquor in the area.'

Section 24 provides:

'The Director must not grant a packaged liquor licence unless satisfied that the predominant activity to be carried on in the area set aside as the licensed premises is the sale by retail of liquor for consumption off the licensed premises.'

The effect of the Victorian law is that packaged liquor can be sold in a wide range of outlets, but only in an area set aside for this purpose. For instance, in a supermarket, packaged liquor cannot simply be arranged on the shelves of the drinks aisle along with soft drinks. This does not prevent other activities in the packaged liquor area, as long as the sale of packaged liquor remains the predominant activity.

New South Wales has taken a similar approach to Victoria. Under an off-licence to sell liquor by retail, packaged liquor may be sold in stores not dedicated to liquor sales if certain requirements are met. The *Liquor Act* provides by s. 49C that:

'(1) An application for, or to remove, an off-licence to sell liquor by retail that relates to a business whose primary purpose is not the sale of liquor may only be granted if the court is satisfied that:

(a) the sale of liquor under the licence will take place in an area of the premises (the liquor sales area) that is adequately separated from other areas of the premises in which other activities are carried on, and

(b) the principal activity to be carried on in the liquor sales area will be the sale of liquor.

(2) An application for, or to remove, an off-licence to sell liquor by retail that relates to a convenience store or service station may not be granted unless the court is satisfied that:

(a) in the neighbourhood of the premises to which the application relates, no other take-away liquor service is reasonably available to the public, and

(b) the grant of the licence would not encourage drink-driving or other liquor-related harm.'

New South Wales is in the process of reviewing its liquor licensing legislation for national competition policy purposes. A discussion paper has been released which identifies the above restrictions for consideration, however, the review is yet to be completed and it is not clear whether these restrictions will be found to be justified under national competition policy principles.

Under the Queensland *Liquor Act 1992*, there is a requirement that sellers of packaged liquor to the public hold a hotel licence limited to operating a maximum number of bottle shops (of restricted size) within a limited radius of the main licensed premises. Queensland has completed and implemented a national competition policy review of its legislation, which retained these restrictions, albeit relaxing the restrictions on the location (radius increased from 5 to 10 km) and size (increased from 100 square metres to 150 square metres) of the bottle shops operated by the hotel licensee.

Tasmanian legislation prohibits non-hotel sellers of packaged liquor from selling liquor in quantities of less than 9 litres in any one sale (except for Tasmanian wine, which may be sold in any quantity) and prohibits sales of liquor by supermarkets. It is understood that Tasmania has not yet completed a review of its legislation.

In Western Australia, there do not appear to be restrictions on the types of premises where packaged liquor may be sold under a liquor store licence, apart from a general prohibition on the sale of packaged liquor from petrol stations.

The Australian Capital Territory imposes no restrictions in the type of premises which may hold an off-licence, above and beyond the general requirements for premises prescribed by the Licensing Standards Manual. In the ACT, therefore, liquor can be sold in supermarkets or other stores without a separate area being constructed. However, petrol must not be sold at licensed premises (s. 134).

In the Northern Territory, supermarkets and corner stores (delicatessens) are permitted to sell liquor subject to requirements to display liquor in a dedicated, lockable storage area on the premises.

In New Zealand, certain supermarkets can hold off-licences. Other businesses can also sell liquor if the licensing authority is satisfied that the sale of liquor is an 'appropriate complement' to the kinds of goods sold in the business. The *Sale of Liquor Act* provides:

36. Types of premises in respect of which off-licences may be granted—

(1) Except as provided in subsections (2) to (5) of this section, an off-licence shall be granted only---

(a) To the holder of an on-licence in respect of a hotel or tavern, in respect of the premises conducted pursuant to that licence; or

(b) To the holder of a club licence, being a club that is entitled under paragraph (i) or paragraph (j) of section 30 (1) of this Act to hold an off-licence, in respect of the premises conducted pursuant to that licence; or

(c) In respect of premises in which the principal business is the manufacture or sale of liquor; or

(d) In respect of---

(i) Any supermarket having a floor area of at least 1000 square metres (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or

(ii) Any grocery store, where the Licensing Authority is satisfied that the principal business of the store is the sale of main order household foodstuff requirements.

(2) The Licensing Authority may grant an off-licence in respect of any other premises if the Licensing Authority is satisfied, in a particular case,---

(a) That, in the area in which the premises are situated, the sale of liquor in premises of a kind described in paragraph (c) or paragraph (d) of subsection (1) of this section would not be economic; or

(b) That the sale of liquor would be an appropriate complement to the kind of goods sold in the premises.

(3) Nothing in subsection (1) or subsection (2) of this section shall authorise the grant of an off-licence in respect of---

(a) Any service station or other premises in which the principal business is the sale of petrol or other automotive fuels; or

(b) Any shop of a kind commonly known as a dairy.

(4) Nothing in subsection (2) (b) of this section shall authorise the grant of an off-licence in respect of any supermarket or grocery store, or any other premises on which the principal business is the sale of food or groceries.

(5) An off-licence may be granted in respect of premises in which the business of a caterer is conducted by the person to whom the licence is granted, in which case section 51 of this Act shall apply.

(6) An off-licence may be granted to the holder of an auctioneer's licence under the Auctioneers Act 1928, in which case section 52 of this Act shall apply.

The panel asked for comment on whether deregulated liquor sales in other jurisdictions had been associated with increased harm. Evidence was presented to show that there has been an increase in the number of liquor licences in Victoria since deregulation, and that

this has resulted in increased competition, including some businesses being lost. No evidence was presented, however, of increased liquor-related harm.

No evidence was offered to the panel about the experience of other States or Territories or of New Zealand.

The panel therefore made its own inquiries to try to establish whether deregulation elsewhere has been associated with increased harm. The Victorian and New Zealand deregulations are examined in Chapter 6.

3.6.2 Repeal

One alternative would be to repeal sub-section 37(2). This would permit liquor sales in any store that could obtain a retail liquor merchant's licence. The applicant would still need to meet the usual requirements, for example, he or she must be a "fit and proper person" and the premises must be suitable. Sales would be subject to existing controls, such as proper supervision of the premises by a responsible person at all times, records of all transactions, and no sales to minors or intoxicated persons.

The issue is whether this would deliver the required public benefits. It might be argued that, to some extent at least, these are independently delivered by other safeguards in the Act, such as the law against minors selling or buying liquor, and the requirement for a responsible person to be in charge of the premises.

3.6.3 Apply the New South Wales/Victorian model

Another alternative would be to allow packaged liquor sales in stores that sell other goods, but in a separate area. In this way, it would be possible to ensure that staff under 18 were not employed in selling liquor and that customers under 18 did not purchase it. It would also be possible for the responsible person to keep the area under adequate supervision.

It would be possible to provide that liquor could not be sold by certain outlets where the risk of harm might be increased, such as petrol stations, drive-through fast-food outlets, and drive-in cinemas.

This alternative may preserve the public benefits required, while removing the anti-competitive restriction. Arguably, however, this is little different from the effect of the present law, as it has been applied.

3.6.4 Selected stores

A further alternative might be to follow New Zealand and permit packaged liquor sales in certain types of stores, such as food stores, or stores selling complementary products, but not in other outlets. This might be supportable on the basis that if the liquor is being bought together with food, this is in keeping with the responsible consumption objects of the Act. It can also be seen as a development of the present law, which allows the sale of cheeses, pates and other goods associated with liquor consumption, in a retail liquor store.

However, this alternative in itself may be considered to impose restrictions on competition, in that retailers who might otherwise be able to sell liquor in conformity with the objects of the Act would be excluded from the market.

3.6.5 Licence conditions

A further alternative might be to remove the restriction, but deliver the required public benefits through licence conditions. Any retailer could apply for a licence and the authority would consider in each case what conditions were required to achieve the objects of the Act. For example, depending on the nature of the premises, it might impose a condition that liquor must be sold in a separate area of the premises, that the liquor section be marked by signage, that the area must be under video surveillance, etc. This might, however, prove in practice to be no less restrictive than the present law.

3.6.6 Code of Practice

It may be possible to meet the objects of the Act by a set of generic conditions which could be incorporated into a code of practice. It is a mandatory condition of any licence that the licensee must comply with any prescribed or approved code of practice (s. 42). This would be a less flexible method than the fixing of individual licence conditions, but would give applicants greater certainty as to how they would be required to operate the business.

The panel invited comment on less regulatory alternatives to the current law. All alternatives raised by the panel were rejected by those submissions that commented on them. No others were advanced.

3.7 Preliminary conclusion on s. 37(3)

Section 37(2) is an **intermediate** restriction of competition. It is not a serious restriction because a) it has not prevented new entrants such as supermarkets entering the market and competing directly with other retailers, and b) a retailer can without undue expense or difficulty meet the requirement for separate premises, as interpreted by the authority. It is not trivial because it requires either additional premises or building works to devise separate premises, and also requires that a responsible person be in charge of the dedicated premises at all times.

The restriction delivers **harm-minimisation** benefits. The corresponding costs, which submissions argued are not substantial, are outweighed by these benefits. It may be possible to deliver some of these benefits in other ways. For example, sales to minors could be discouraged and detected by staff training and by video surveillance. Some other benefits, however, may not be able to be delivered in any less restrictive manner. For example, the 'normalisation' of liquor as a grocery product like all others is difficult to avoid unless a liquor sales area is set aside.

The panel considers that s. 37(2), as it has been interpreted by the authority, has only a limited impact on competition in the packaged liquor market. By all accounts, competition in that market is already fierce, and supermarkets in particular compete directly with other retailers. The section also has only minimal impact on the liquor trade or the economy as a whole. It appears to deliver public benefits in terms of harm minimisation, in particular, reducing the risk of sales to minors and contributing to the effectiveness of enforcement

processes. It should be retained because it delivers a public benefit that cannot be otherwise delivered.

4. SECTIONS 58 & 61 - NEED TEST

4.1 Operation of the need test

The applicant for a hotel or retail liquor merchant's licence bears the burden of proving the relevant need.

Broadly speaking, this means proof not of a general shortage of liquor, or even of a shortage in the particular locality, but of a gap in the market in that locality. For hotels, this means showing that they will deliver some service that is not already available in the locality (for instance, a themed Irish pub offering Irish liquor or Irish music might be permitted if there is nothing similar nearby). For liquor stores, this may mean offering some product line that is not on sale elsewhere in the locality, or otherwise providing for unmet demand. Only outlets in the locality are considered, so the fact that the service or product is available outside the locality will not stop the applicant meeting the need test.

The application must be advertised, and there may be an objection to the application on the ground that the need test is not satisfied. Objections may be made by the police, the local council, local residents or others. In practice, many objections on the ground of need are brought by business competitors of the applicant, although it also happens that local residents make need objections, often in conjunction with objection on other grounds, such as amenity.

The party asserting need will commonly call evidence from persons who frequent the locality, as to services or products which they find are missing and which they would like to be able to purchase within the locality. For example, evidence may be called from local residents who wish to purchase a particular type of liquor that is not available elsewhere in the locality, or who wish to attend a particular type of hotel, such as a 'themed' hotel, that is not found elsewhere in the locality. These witnesses will be cross-examined to test the genuineness of their evidence, for example by questioning as to their knowledge of the types of liquor they say they require, or of the products and facilities offered by other licensees in the locality.

An appeal lies to the Supreme Court by leave. The Act fixes no criteria for a grant of leave, so it is a matter of satisfying the Court that the case merits its attention. Leave appears to be fairly readily obtained.

4.2 Statistics on the operation of the need test

In practice, there is a high rate of objection to the grant or removal of both hotel and retail liquor merchants' licences on the ground of need. From statistics provided by the Liquor and Gambling Commissioner, over the five complete years of operation of the Act, there has been a total of 64 such applications. Of these, 63 attracted objections on the ground of need. There was one application in the first year that did not attract an objection. Since then, every application that could attract a need objection has done so. Appendix III tabulates the outcomes of need objections as recorded by the Liquor and Gambling Commissioner over the life of the present Act.

Most received more than one such objection. Only 10 of the 63 cases attracted more than 10 objections. Most commonly, an application attracted between two and 10 objections. In 1997/8, there were six applications and 37 objections, ranging from zero to 11 per application. In 1998/9, there were 122 objections to 12 applications, objections ranging from one to 70. In 1999/2000, there were 94 objections to 18 applications, ranging from one to 15. In 2000/2001, there were 234 objections to 12 applications, ranging from three to 108 objections. In 2001/2002, there were 483 objections to 16 applications, but most of these were accounted for by the 427 objections to one application, in which the licensed premises were to be located close to a school. That application was ultimately withdrawn. Leaving that aside, other applications in that year attracted between one and nine objections each.

Conciliation of need objections is rarely successful. In total, over this five year period, three conciliations have succeeded. Further, the parties rarely agree to have the Commissioner determine a need objection. Only five such objections have been so determined (though five others initially referred to the Commissioner were later withdrawn). In most cases, that is, 53 out of 63, the matter has proceeded to Court.

Of the matters determined by the Licensing Court, 24 were granted and 22 refused (seven applications were withdrawn before determination). Thirteen of the matters determined by the Licensing Court went on appeal to the Supreme Court. Of these, six appeals were upheld and seven dismissed.¹

Conclusions that may be drawn from these figures include:

- if there can be a need objection to an application, there will be
- probably, there will be between two and 10 objections
- the case will not settle by conciliation
- the case will be determined by the Court, not the Commissioner
- there is a 25% chance of an appeal to the Supreme Court
- there is a roughly equal chance of a need objection succeeding or failing.

The panel asked if these conclusions could fairly be drawn. In general, submissions agreed that they could, although one was at pains to point out that no inference should be drawn that need objections are not made seriously and properly.

Comments that might be made on the basis of these statistics include:

- The need test creates uncertainty. New entrants to the market cannot easily tell whether they will succeed in an application for the grant of a licence, nor can existing licensees tell whether they are likely to succeed in removing the licence to a new locality. Conversely, it may be difficult for an objector to decide whether it is worthwhile objecting or not.
- There is considerable cost for applicants. They can expect that an objection will be taken and that they will have to go through a court hearing to resolve it. They can

¹ These figures are derived from the records of the Liquor and Gambling Commissioner. Somewhat different results are however obtained if different systems of counting are applied. However, the overall picture, that is, roughly a 50% success rate of these applications before the Court, and a roughly even result on appeal, is similar.

anticipate that there is a moderate chance of defending a Supreme Court appeal if they succeed before the Licensing Court. Conversely, there are cost considerations for the objector, although as there is usually more than one objector, they may be able to share costs.

- Objections are more likely to come from competitors than from the general public. General public objections are more likely to be reflected in the rare cases that attract more than ten objections. Competitors may be better placed than members of the public to pursue their objections through the courts, and this may explain the low rate of successful conciliation and of determinations by the Commissioner.

Together, these factors could discourage new entrants from attempting to get licences, and discourage existing licensees from seeking to move their licences to new premises. At the same time, the need test does not stop the proliferation of licenses. Around half of these applications are eventually granted. What cannot be known is the number of applications that would be made, were it not for the need test.

The panel invited comment on the conclusions to be drawn from these statistics. One submission commented that there is no research to support the claim that the test may discourage new applications or may result in a significant number of these applications being refused. This submission argued that these conclusions are without foundation. If this submission is correct, then it follows that the abolition of the need test would make little difference to the number of licences, but some submissions argued otherwise, pointing to increased licence numbers in jurisdictions that have deregulated.

Another submission noted that leave to appeal to the Supreme Court is harder to get than the figures might suggest. This submission also argued that the panel's discussion incorrectly implies that need objections are made frivolously. Rather, it argued, when there is an application for a new licence in the locality, this impugns the adequacy of existing businesses to meet the public need or demand in the locality. Hence, licensees must object in order to defend their businesses.

This submission also took issue with the suggestion that there is an equal chance of a need objection succeeding or failing. Although it agreed that this is statistically true, in the case of a particular application, it was argued that research into the existing facilities can inform an intending applicant to a high degree about his or her chances of success in a particular locality. That is, it is possible to make reasonable predictions about the prospects of success of a particular application.

4.3 Restrictions of competition

Section 58 imposes a barrier to entry into the hotel and liquor store market. It restricts entry to applicants who can satisfy the licensing authority that there is an unmet need or demand in the locality that can be met by the new licence. This restriction affects the market for packaged liquor by retail and the market for bar and dining room sales of liquor, and other facilities associated with hotels.

The need test may tend to restrict the number of hotels or liquor stores in any given locality and thus restrain competition. It may discourage new applications in the first place, and/or it may result in a significant number of such applications being refused.

Section 61 applies a need test to applications to remove a hotel or retail liquor merchant's licence into a new locality, again restricting the number of hotels or liquor stores in the locality and potentially discouraging applications for removal. Again, this is a barrier to entry into that locality. This may also have effects on the value of a licence, in that there is no certainty that the licence will remain valuable should trade in the original locality decline. Other businesses can close unprofitable premises and open others in more prosperous localities. Greater portability may enhance competition.

4.4 Objectives of the need test

The need test may be argued to be related to the objects in s. 3(a), in that it may minimise harm associated with liquor consumption, and 3(d) in that it may enhance the amenity of the locality by maintaining standards. For example, Anderson said that one possible justification for the need test was that *'the high standards of premises and service which prevail should not be compromised'* (p. 3) He noted that *'from my own inspections and discussions within the industry throughout Australia ... the standard of hotels and bottle shops in South Australia is the highest in Australia. I am concerned that an immediate and total deregulation by removing the 'need' concept and allowing the sale of liquor in supermarkets and elsewhere may not be in the interests of the government's economic development strategy and tourism development'* (page 19). However, it may be considered to conflict with the object set out in s. 3(e), that of encouraging a competitive market for the supply of liquor.

The panel invited comment on the objectives of the need test, and in what ways the test promotes or works against the objects of the Act. Several submissions argued that the test promotes objects 3(a) (harm minimisation and responsible consumption), 3(c) (the liquor industry develops in accordance with the needs and aspirations of the community) and 3(d) (advancing the interests of the liquor industry).

4.5 Scope of restriction

The restriction imposed by s. 58 may be considered **serious**. The need test is a barrier to entry. Its effect may be to exclude from the market potential licence applicants who doubt that they can satisfy the need test. The test may be unpredictable in its operation, in that it may be difficult to say in a locality that already has some liquor outlets whether the test will exclude the particular licensed operation proposed. In the metropolitan area, there are already licensed premises in or near most shopping precincts, and on most main roads. The point may be reached, or may already have been reached, where either it becomes impossible to open a new hotel or liquor store, or else the need test becomes meaningless.

The restriction imposed by s. 61 may be considered **intermediate**. It is less severe than the restriction imposed by s. 58 in that it does not prevent entry into the market. However, it restricts entry into the market within a particular locality, that to which the licensee would wish to remove the licence.

As a matter of logic, however, the two stand or fall together.

The panel asked for comment on the restrictions flowing from the need test, how serious they are, and how important the test is. Submissions generally agreed that the test is a barrier to entry that restricts competition and is either intermediate or serious. Two

submissions argued that the demand test for liquor stores is a serious restriction whereas the need test for hotels is intermediate. There were those, however, who argued that the need test does not restrict competition.

4.6 Effects and costs

The need test may impose additional costs on new entrants to the market, or on persons wishing to remove a licence to a new locality. They may have to deal with an objection before the licensing authority, with the possibility of a Supreme Court appeal. These costs could include the cost of gathering evidence to establish need, and the cost of legal representation. There is also the risk of bearing the other party's costs in the Supreme Court. One effect of the restriction may be to discourage new entrants into the market.

By restricting the number of licensed premises, the provision may also have the effect of reducing competition, with consequent higher product and service costs to the public.

Comment was sought as to the costs of the need test. Several submissions argued that although this cost was not insignificant, it should be assessed in comparison with the overall costs of establishing the new business, including planning approval, which was said to be more costly. Some submissions argued that the need test is unfairly burdensome on small operators as compared with big business.

Only one submission offered any indication of the cost to an applicant of meeting the requirements of the need test. That submission argued that the cost, although not negligible, was not unduly burdensome when considered in the context of all the other costs of a new hotel or liquor store. This submission said:

'Set up costs for new business operators are not insubstantial. ... advice may be sought from accountants and lawyers as to appropriate tax effective vehicles, such as partnerships, companies and trusts. Business names, terms of a lease or franchise agreements are other matters where advice may be sought. It is not inconceivable for a person to expend between \$5 000 and \$25 000 in such fees.'

Planning approval needs to be obtained for shop and hotel premises and again solicitors, planners and others often assist applicants with applications to Councils and Environment, Resource and Development Court appeals. Costs in these instances will be at least \$3 000 to \$5 000 to assist, and can be as much as \$15 000 to \$25 000 for an Environment Resource and Development Court appeal, and as much again if the appeal goes to the Supreme Court (at which stage the unsuccessful litigant needs to bear the fees of the other side).....The fees associated with obtaining a retail liquor merchant's licence or a hotel licence are not dissimilar to an Environment Resource and Development Court appeal and will often be in the order of \$15 000 to \$25 000.'

On this evidence, it would seem that the most expensive legal/regulatory cost associated with establishing a new licensed business is development approval, the cost of which can range from \$33 000 up to \$55 000, perhaps in addition to the other party's legal costs. The cost of general business-structure advice is a lesser component, and the cost of obtaining the liquor licence falls in the middle.

Another submission, on behalf of small business, argued that it is also necessary to take account of the cost of gathering the evidence to prove the required need or demand for products. This submission argued that for a national chain of stores there may already be ample evidence from within their own operations about such matters as trading patterns for product lines, or about measured demand from comparable socio-economic areas in the State. This information can be assembled without great expense. A small business, on the other hand, would probably have pay for market research, the cost of which is considerable. On this argument, the need test imposes a disproportionate cost on small business compared with big business. Another submission on behalf of smaller retailers said *'the costs of applying for a liquor licence favour big business and certainly the writer knows of retailers who couldn't afford the financial risks of applying for a licence let alone fighting an appeal'*.

It is fair to say that cost of the need test should be considered in the context of other set-up costs such as the purchase, construction or lease of premises, and also in the context of the expected return for the investment. Nonetheless, a cost of around \$15 000 to \$25 000 on top of the other costs is by no means negligible, and may be particularly burdensome on small business. It would need to be justified by clear public benefits.

4.7 Public benefits

The panel invited comment on public benefits delivered by the need test. Most of the submissions supporting the need test identified harm minimisation as its major benefit. Harm minimisation is of course an object of the Act. It was agreed by all commentators that it remains an important object. Several arguments were advanced as to how the test reduces liquor-related harm.

4.7.1 Availability/outlet density argument

The principal argument was that the need test has the effect of limiting the number of liquor outlets in a locality or of slowing the rate of increase in outlets. Since availability of liquor is related to harm, the test serves a harm-minimisation function. The particular harms identified were sales to minors, public intoxication, violence and traffic accidents.

The panel considered that, to the extent that there is a broad statistical relationship between the availability of liquor, and liquor-related harm, the relationship is not simple. It is mediated by factors such as outlet type, outlet density, hours of trading, beverage types, age-group of customers and other factors. It is because of this complex relationship that the Act controls the availability of liquor by licensing, by restrictions on trading hours, by prohibiting sales to minors, by mandating responsible service, and other means.

The panel noted the findings of the Laking report in New Zealand. At para 1.24, the report said:

We find the evidence of a direct relationship between the level of consumption on the one hand and the number of outlets and other elements of availability such as trading hours on the other, unconvincing. In making this judgement we acknowledge the possibility, as does the Victorian report, that there are some specific situations where restrictions on availability can have an impact on some forms of abuse. However, these are most likely to respond to control measures specially designed for and directed to them. They do not

justify the maintenance of an overall policy of restriction on availability. In short the present requirement that every applicant for a licence should satisfy the licensing authority that the establishment of a liquor outlet is 'necessary or desirable' is no longer justifiable'.²

The panel was not convinced that the need test has a major impact in minimising harm caused by availability. First, about half of all applications succeed, so there is in fact a steady increase in the number of hotels and liquor stores. Second, the need test only applies to hotels and liquor stores. It does not restrict the opening of other liquor outlets, such as entertainment venues or clubs, that may be equally associated with harm. Third, consumers are not restricted to buying liquor from outlets in the locality in which they live or work. They may buy from any outlet. As a result, there is in practice little or no restriction on the access of most adult consumers to liquor.

In practice, it is likely that consumers are highly mobile, particularly around the metropolitan area. Shoppers buying packaged liquor are likely to travel by car, both because they may be doing so as part of their weekly shopping or other errands, and also because packaged liquor is heavy and awkward to carry about on foot or on public transport. (Indeed, most hotel bottle shops are constructed as 'drive throughs', that is, on the assumption that customers will arrive and leave by car, and many liquor stores have car-parking space adjacent.) Thus, although customers may attend a liquor store in their locality, they may equally choose one that is on their way to some other destination, such as a social event to which they are taking the liquor, or one near which it is easy to park. Possibly, they may be attracted to a particular store outside the locality because of its advertised price on a desired product, or other attractions such as loyalty points or giveaways with purchase. Press advertisements suggest that liquor stores try to attract custom from beyond the locality, competing essentially on price. (For example, many chains advertise Statewide.)

Likewise with hotels, many consumers may travel outside their locality. Public transport or taxi services may be used, particularly with the increasing availability of after-hours services and taxi links. Alternatively, arrangements may be made to travel by private vehicle with a designated driver, a practice encouraged by responsible service practices such as offering free or low-priced soft drinks to designated drivers. It is unlikely that many customers limit their patronage to hotels in their locality. To some extent, people are attracted to hotels by their reputation, standard of food and service, special features such as themes, and by entertainment offered there. They may also enjoy novelty and prefer to try new or different venues, or may follow fashions for particular venues. They may be prepared to leave their locality for these benefits. For example, young people may travel to different venues each weekend to follow a particular band, or they may have a group of friends that gathers for a while in one fashionable venue, and then after a few weeks, changes its focus to another.

Limiting the number of new licences in a particular locality therefore does not necessarily restrict liquor access by consumers who live there. Added to this, of course, most liquor stores and many hotels will deliver packaged liquor to a customer's home in response to a telephone call, so there is no longer a need for the customer to visit licensed premises to obtain liquor.

² Report of the Working Party on Liquor, 'The Sale of Liquor in New Zealand', October 1986.

Another consideration is the advent of internet liquor sales and the direct sales licence. In 2000, Parliament amended the Act to create the direct sales licence, which allows the licensee to sell packaged liquor by dispatching it directly to consumers who place orders by telephone, fax, internet or other electronic communications, without visiting a store. At the same time, this facility became an automatic corollary of a hotel, retail liquor merchant's, wholesale liquor merchant's or producer's licence.

In practice, many liquor suppliers throughout Australia now advertise on the internet and take orders by means of their internet sites. The sites offer details of a wide range of products, together with price information and ordering facilities, as well as, in many cases, tasting notes, review articles, special offers, prizes and relevant links. Although freight charges apply to such orders, this may to some extent be offset by discounted prices or special offers. There may be economies derived from not having to maintain a shopfront (though many chains of course use both shops and internet sites). As a result of this development in liquor sales, consumers no longer need to leave home to order a wide range of liquor from suppliers both here and interstate.

This development necessarily reduces still further the relevance of the locality. The need test is based on the assumption that liquor sales take place at physical premises visited by the customer, and therefore that regulation of supply can be achieved by regulating the number and location of licensed premises. This assumption was once generally true but is arguably no longer so for packaged liquor sales. The question whether there is unmet demand for packaged liquor in a given locality could be answered by saying that a person in any locality can order almost any kind of liquor over the internet, so that there can no longer be such unmet demand.

At present, the licensing authority arguably cannot consider evidence about availability of liquor in the locality by means of such orders, because the Act directs the authority to consider other licences 'already existing in the locality'. The licences held by the retailers who advertise on the internet will not necessarily be in the locality and if not, cannot be considered. (Indeed, the concept of locality has no relevance to direct sales licence.) Thus, the need test as it presently stands does not acknowledge the effect of e-commerce on the packaged liquor market. If it were amended to do so, the need test as regards packaged liquor would arguably operate to prevent the granting of almost any new retail liquor merchant's licence, and might amount to a cap.

The panel therefore considered that the need test exercises no real restraint over the access of customers to as much liquor as they care to buy. Several submissions argued that no-one in South Australia has any difficulty in obtaining all the alcohol they want. One liquor store chain said *'We think it is unlikely that many South Australians would suggest that they are unable to obtain liquor be it dispensed or packaged, with any degree of difficulty'*, *'we do not hear from members of the public complaining about the availability of liquor in any part of the State'* and *'it is hard to imagine that liquor could be more available or more keenly priced than in South Australia'*. Likewise, two other submissions (in substantially the same terms) said *'it is rare to hear a person say that they cannot obtain the liquor that they want without difficulty'*.

If this is wrong, however, and the need test does enforce moderation, the panel considered that the harm minimisation benefits delivered by this test could be delivered in other, less restrictive ways.

Many of these already exist in the Act. These include:

- the requirement for a licence (s. 29), which may only be granted to a fit and proper person, and then only proper enquiry into the merits of the application (s. 53(2)).
- the right of any person to object to the grant of a licence on the ground that the proposed licence would conflict with the objects of the Act (s. 77). If the authority is persuaded that the grant of the licence would conflict with the object of minimising liquor-related harm (s. 3(a), the licence will not be granted. Likewise, if it is persuaded that the grant of the licence would detract from the amenity of community life (s. 3(d), or would be inconsistent with the needs and aspirations of the community (s. 3(c)), the licence will be refused. This provision therefore allows harm and amenity questions to be fully considered before a licence is granted.
- the power for police and local councils to intervene in these proceedings and present evidence (s. 76).
- the power to attach conditions to a licence (s. 43), including conditions to protect the health and safety of customers, and other conditions to ensure compliance with the objects of the Act.
- the requirement for a properly-qualified responsible person to supervise the premises at all times (s. 97).
- laws that ensure that neither minors nor intoxicated persons can be sold or served alcohol in licensed premises (s. 108 and 110).
- the requirement that licensees must comply with prescribed codes of practice to minimize the harmful or hazardous use of liquor (s. 42). Codes of practice can be used, for example to guide licensees on responsible service practices to minimise harm, such as offering water and soft drinks at reasonable prices, offering bar food, posting details of taxi services, and so on.
- laws restricting the carrying-off of liquor from licensed premises (ss. 102 and 103).
- the power to declare short or long term dry areas (s. 131).

In combination, all these measures can be used to protect the public from liquor-related harm. These measures are backed up by disciplinary processes including the sanctions of loss or suspension of a licence, and by criminal sanctions.

In addition, other laws help to reduce liquor-related harm. Examples include laws against drink-driving, laws permitting random breath-testing of drivers, and the *Public Intoxication Act*, which permits police to detain persons intoxicated in public and take them to their home or to a sobering-up centre.

The panel considers that the needs test, in itself, adds little to the already strong harm-minimisation regime embodied in the Act, and supplemented by other laws.

It can also be argued that, regardless of the need test, there will be an effective restraint on the number of outlets through the planning process, because development plans will generally require such outlets to be located in centre zones and local shopping areas, rather than residential areas. There will be a limited number of locations available to a new licence in any given centre zone. Thus, the spectre of licensed premises on every street corner, as adverted to in many submissions, is illusory. They would be non-complying

developments and, as several submissions pointed out, the public does not want them. It would therefore object, possibly resulting in refusal of development approval.

Other measures could no doubt be devised. One example is a last drink survey (as used in New Zealand). This is a measure whereby, if police arrest a person for any offence, and the person appears to be under the influence of liquor, police are entitled to ask where the person was served his or her last drink. This can disclose patterns of irresponsible service, which can be the target for disciplinary or police intervention. Other measures might include a requirement for ongoing training or examination of responsible persons, higher penalties for disciplinary or criminal breaches, and so on. Any of these would be less restrictive of competition than the need test.

4.7.2 Price discounting

Some submissions argued that the need test helps to minimize harm because, by restricting competition, it restricts price-discounting. Discounting was argued to be of concern, because it encourages people to consume large quantities of liquor, with attendant health and safety risks. These submissions could be using the term 'discounting' to refer to ordinary competition between outlets on price, or to the promotion of dispensed-liquor outlets by offering cheap or free drinks for short periods to draw customers in, or both. In summary, the panel considered that the need test is of minimal assistance in controlling such practices, and that other measures could be more effective.

a) Price competition

Some submissions pointed out that price competition between liquor stores is already intense. Reference was made to advertisements regularly appearing in the press, which show the same or substitutable products advertised at competitive prices. The panel noted that, for example, four or five litre casks of wine can be bought for around \$10 to \$15, cartons of 24 cans of full-strength beer can be bought for around \$25 to \$30, and premixed spirit drinks can be bought for around \$2.50 each. This means that per-drink prices for packaged liquor range from around 30 cents to 50 cents for cask wine to about \$1 to \$1.50 per can for beer, and about double that for spirits. Thus, it appears that alcohol is already selling in a price range where it would be available to everyone, in some form or another. Although not everyone can afford premium wines and spirits, probably everyone can afford to buy cask wine or beer in quantities that could lead to intoxication, or to harms from long-term misuse.

Figures showing high alcohol consumption in young age groups, including teenagers and young adults who are not yet working suggest that price levels have already fallen to the point where price does not effectively protect against alcohol-related harm. (For example, statistical information on the National Drug Strategy website shows that overall consumption and binge-drinking are highest in the 18-24 age group.) That is, at least for packaged liquor, price competition has already reached the stage where price alone is not an effective protection against harm. In order to use price effectively as a protection against harm, it would be necessary to increase prices substantially, presumably through Commonwealth taxation. That is beyond the scope of this review.

It may well be that deregulation would have little effect on packaged liquor prices. For example, one submission argued that price discounting has been going on since the 1970s.

It claimed that comparison with Victorian prices does not disclose much difference, and argues that deregulation will not necessarily bring about cheaper prices.

As to hotels, no evidence about competition in the price of dispensed liquor was provided. The panel considers, however, that prices are not generally at a level where the public is unable to afford to buy dispensed liquor, or is forced to restrict intake. Further, the panel doubted whether the market was very price-sensitive, in the sense that patrons would shop around among hotels looking for the cheapest price, say, for a glass of beer. They would be influenced to choose the hotel by other factors such as ambience, novelty, service, entertainment, etc, more so than drink prices, unless a particular hotel gains a reputation as unjustifiably expensive.

b) Special promotions

There is, of course, an issue of harm related to special promotions that encourage over-consumption or rapid consumption of dispensed liquor. Examples include happy hours in which drinks are free or half-price for a short period, or the provision of free drinks to female customers on particular nights. Clearly such promotions could encourage patrons to drink too much, putting them and others at risk of accidents or violence. Evidently, though, such promotions are not prevented by the need test.

The panel was not persuaded that the need test has prevented price-competition between liquor stores, nor that it has maintained the price of dispensed liquor at a level that prevents harm. However, if the need test is delivering a public benefit in this respect, the same benefit could be delivered by other measures that are less restrictive of competition.

For example, the responsible service principles should counteract the risk of promotions focused on price. A licensee may not serve an intoxicated person, so cheap drinks may result in a person drinking more alcohol than they otherwise might, but should not lead to a person being served alcohol while intoxicated. If the licensee is keeping the law, the person is only able to drink beyond the point of intoxication on private premises (for instance, at home or at a party). In those situations, price is not a factor.

The Code of Practice can also address this. It already cautions licensees against irresponsible promotions. It indicates that if licensees provide free or discounted dispensed liquor, they should take counter-measures like providing water and low cost soft drinks, limiting the number of free or discounted drinks per customer, putting up signs giving the numbers of taxi companies, avoiding giving drinks names that encourage rapid consumption, and so on. The Code could be strengthened to require other measures. Alternatively, such promotions could be outlawed or limited by statute.

4.7.3 Standard of premises

Some submissions argued that the need test delivers a public benefit in that it maintains a high standard of premises. It was argued that in Victoria, where full deregulation has applied since 1998, cut-throat competition has caused standards to drop, particularly outside Melbourne. No specific examples were given and the panel is not in a position to evaluate the standards of premises in Victoria. One commentator, which operated liquor stores in both Victoria and South Australia, claimed that its stores in both jurisdictions were of high standards. Also, the argument about reduction in standards was to some

extent undermined by comments in some submissions that the market here is already strongly competitive, yet standards are second to none.

There appear to be two arguments under this head. One is that because the licensing authority will consider the standard of existing premises when assessing whether public need is met, a relaxation of standards may open a gap in the market through which a new licensee could enter. Licensees are therefore vigilant to keep up high standards. If the need test is removed, this incentive will be lost. The other is that if too many licences are granted, competition will reduce profit margins to the point where licensees cannot afford to keep up standards.

As to the first, it seems unlikely that the only reason hoteliers maintain attractive premises is because they fear the grant of new licences. Other factors that might operate include meeting the expectations of existing customers and attracting new ones. Certain customer groups, such as tourists, may elect not to patronize shabby premises. Certain types of trade, such as a lunch or dinner trade, function trade or followers of entertainment may expect premises that meet certain standards. To the extent that a hotel fails to meet these expectations, it will lose this trade to others that can. That is, even if the need test were removed, there would remain an incentive to keep up standards.

As to the second argument, in the case of hotels, this assumes that the money to keep up premises is derived from liquor sales. However, some submissions argued that poker machines provide a substantial or perhaps the main revenue source for many hotels. (Two submissions claimed that many hotels struggled to make a profit before poker machines were permitted.) That revenue would be unaffected by the abolition of the need test.

The case may be different for liquor stores, since these rely entirely on liquor sales revenue. However, new entrants will still need to consider whether they can make a profit. Evidence suggests that the market is already highly competitive. Packaged liquor appears to be widely available, with at least one liquor store to be found in or near most metropolitan shopping centres, as well as bottle shops located in many hotels, and the opportunity to buy packaged liquor also through direct sales, or from cellar doors. The market may already be near saturation, in which case there may be no explosion in licence numbers if the need test is removed.

The panel was inclined to the view that it does not follow that standards of licensed premises will necessarily fall if the need test is removed. For one thing, the law requires applicants to prove that the premises are of sufficient standard for the proposed business (s. 57) and provides for disciplinary sanctions if standards are not maintained (s. 119). The panel noted that there is no need test for restaurants or entertainment venues, yet standards of these premises appear to be maintained, presumably, by a combination of the present legal requirements, and competitive pressures. The panel noted comments by some submissions that standards remain high in South Australia at present. Most submissions also agreed that the present market is highly competitive. There may therefore be no change if the need test is removed.

Assuming, however, that the need test works to maintain standards, and that neither competition nor the existing legal requirements can do so, the panel considered that the same result can be achieved through less restrictive means. New legal requirements for the standard of premises could be devised if this becomes necessary.

4.7.4 Viability test

Some submissions argued that the need test confers a public benefit by making intending entrants check carefully before entering the market whether their business can survive. This avoids business failures.

The panel thought that intending entrants would probably assess viability before entering the industry in any event. Evidence about set-up costs suggested that the cost of establishing a new hotel or liquor store is substantial. Regulatory and legal costs alone (such as obtaining necessary advice, setting up business vehicles, securing planning approval and the liquor licence) were said to range up to \$100 000. This is over and above the cost of premises, fit-out and stock. It seems unlikely that a person of business would expend such costs without having first assessed the profitability of the project. It is therefore unlikely that the applicant learns much about viability from the application process. If it does, however, the panel thought that conducting its own feasibility studies and market research may be a more cost-effective way for the new entrant to test viability, than being required to respond to need objections.

The panel was not persuaded by this argument. If valid, it would indicate that there should be a need test for all new businesses, or all over a certain size. No-one argued this.

4.7.5 Industry protection

Some submissions argued that the need test is justified because it protects a valuable industry. The test is said to maintain the value of existing licences, avoiding bankruptcies and unemployment.

The panel noted that the protection of a particular industry is not necessarily a public benefit in competition-policy terms. The benefit must flow to the public as a whole. It can be argued that the public both benefits and suffers from the liquor trade. Some members of the public (such as minors and abstainers) do not benefit at all.

Further, the panel thought that, while there is a freeze on the number of gaming machines, hotels that have gaming machine licences are unlikely to require the protection of the need test. Gaming machine revenue may exceed revenue from liquor sales. Later entrants to the industry may not be able to secure such licences and will be at a competitive disadvantage irrespective of the need test.

These arguments tended to assume that, if the need test is removed, there will be a large increase in the number of hotel and retail liquor merchants' licences. The Victorian experience was referred to in several submissions as evidence of this. The panel thought, however, that the Victorian experience can be distinguished in several respects, as discussed in Chapter 6. One is that Victoria has both removed the needs test and permitted liquor sales in non-dedicated premises. The two deregulations may well have interacted. Many of the more recently-granted packaged liquor licences relate not to new dedicated liquor stores but to the licensing of other existing businesses to sell liquor as a sideline. If the need test is removed in isolation, this may not occur.

Another is that the Victorian market may not have been saturated. Victoria has about three times the population of South Australia in a smaller geographical area, yet the ratio of liquor licences to population as at December 2001 was very similar. This may mean that the deregulation allowed the Victorian market to catch up to the already licence-rich South Australian market. It should be noted that during the late 1990s, the market in both States was affected by the entry of two major supermarket chains, which are now said to hold about 30% of the market and to have expansion plans. Independently of the need test, that development may have been relevant to the viability of independent liquor stores in Victoria.

The supermarket-owned chains are already well-established in South Australia. If existing South Australian outlets already meet the public demand, market forces may tend to discourage new entrants, irrespective of the need test. As Clubs SA put it, 'a business that is not needed will fail'.

4.7.6 Harm to the wine industry

One submission argued that deregulation will harm not only liquor stores but also wine producers, and that the Wine State should be especially mindful of this. It is said that outlets will stock fewer products, to the detriment of producers. It appears that this argument may be intended to be made more in the context of the s. 37(2) restriction, that is, the restriction on a retail liquor merchant's licence that the liquor must be sold in separate premises dedicated to the purpose.

SA Wine and Brandy, representing producers, does not make this argument but says that it would have no objection to the Victorian model being used in South Australia. The panel thinks that if the wine industry were at risk from the abolition of the need test, it is likely producers would have raised this argument. Much of the wine produced in South Australia is of course sold elsewhere.

It may well be that the range of products stocked by liquor stores would be reduced if liquor could be sold in supermarkets, as discussed above, but this is a separate issue from the need test.

4.7.7 Protection from monopolies

Some argued that the need test is pro-competitive because it prevents monopolies, in that a retailer that would otherwise enter a market and flood it cannot do so because there must be a separate application for each new locality that the monopoly wishes to enter.

A new entrant who wishes to become a monopoly can do so only by sending competitors out of business or taking them over. The requirement for evidence of a gap in the market does not prevent a monopoly result. Several submissions referred to the increasing market share owned by two major supermarket chains (said to be about 30% at present) and their plans for expansion. One predicted that eventually they will have 80% of the market between them. No-one suggested that the need test could prevent this. One submission commented that 90% of new entrants to the industry enter by buying an existing licence, not by securing the grant of a new one. The need test is therefore unlikely to be an effective guard against monopolies.

Further, the *Trade Practices Act* already operates to discourage monopolies. As part of its statutory mandate, under s. 50 the ACCC would take an interest in any proposed acquisition that would be likely to have the effect of substantially lessening competition in a market. As an example, the ACCC recently examined the proposed acquisition of Theo's Liquor in NSW by Liquorland Pty Ltd (a subsidiary of Coles Myer Limited). Information obtained from the market indicated that the removal of Theo's Liquor outlets as an independent force was not likely to lead to a substantial lessening of competition in either wholesale or retail markets. The ACCC took the view that, as Woolworths Ltd remains Coles Myer's largest competitor, and as a substantial proportion of retail sales of liquor for off-premises consumption in NSW remains in the hands of independent merchants this sector and Woolworths will continue to act as a competitive constraint on the merged entity.

4.7.8 Other considerations

Another factor casting doubt on the value and effectiveness of the need test in delivering the objects of the Act is the absence of any requirement to continue to meet the identified need. The need test is a once-and-for-all test at the point of application for the licence. Once the licence is granted, there is no continuing obligation to meet the identified need.

For example, a retail liquor merchant's licence might be granted on evidence that there is demand in the locality for a particular range of wines, say, from an overseas region that is the place of origin of some local residents. Once the licence is granted, however, the merchant is under no obligation to continue to sell those wines, whether or not the demand for them continues. Likewise, a hotel licence might be granted on the basis that the hotel will provide particular services or have particular features not available elsewhere in the locality. It can, however, discontinue them at any time.

Similarly, there is no obligation on the purchaser of an existing licence to continue to provide the products or services offered by the former licensee to meet the need. For example, a supermarket might acquire a specialist liquor store that was licensed because it provided a particular group of liquor products not on sale elsewhere. The supermarket may revise the product range to remove low volume lines. As a result, there may be no product on the shelves that is not available in all the other liquor stores in the locality. The licence is not affected.

Thus, any argument that the need test provides a benefit by encouraging a diversity of liquor products and services, or promoting innovation, tends to be undermined.

Overall, the panel was not persuaded that the need test effectively delivers any of the claimed benefits listed above. To the extent that it does, however, they can be delivered by other means already existing.

4.8 Alternatives

4.8.1 Interstate provisions

In considering alternatives to the need test, it is useful to consider interstate provisions, and particularly the experience in those jurisdictions that do not use the need test. However, as

mentioned earlier, caution is needed because it is not clear whether these provisions necessarily meet national competition policy requirements.

New South Wales, Western Australia and the Northern Territory retain the need test for certain licence types. For example, in New South Wales, an objection to an application for a new hotelier's licence, or an off-licence to sell liquor by retail, can be taken by 'a person who satisfies the court that his or her interests, financial or other, are likely to be adversely affected by the grant of the application' (s. 44(1)(f)). Objection can be made on the ground that 'the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood' (s. 45(2)), among other grounds. Objection can also be made on the ground that, for this reason, 'it would not be in the public interest to grant the application' (s. 45(1)(c)). Any direct or indirect pecuniary interest of an objector must be disclosed.

It is noted that New South Wales is yet to complete its national competition policy review of these provisions.

Queensland amended its legislation in 2001, after a national competition policy review, to replace the need test with a public interest test. The number and condition of licensed premises already existing in the locality may be taken into account but only in the context of assessing the public interest (s. 116).

Similarly, Western Australia has completed a review of its liquor licensing legislation that recommended that the needs test be replaced with a public interest assessment that does not involve consideration of the competitive effect on existing licensees. Western Australia is yet to implement these recommendations.

Victoria, the ACT and Tasmania have abolished the need test for all licence types. Under the Victorian laws, it is specifically provided that, although objection can be made that the grant or removal of a licence would detract from the amenity of the area, there is no objection on any of the following grounds:

- that the business carried on under the licence would or would not be successful;
- that the business of another licensee or permittee (including the objector) may be adversely affected by the grant, variation or relocation;
- that there is insufficient need or demand to justify the grant, variation or relocation.
(*Liquor Control Reform Act*, s. 38(3))

The Victorian Act further permits the Director to reject an objection on the ground of amenity if the objector is not affected by the application (s. 42).

The Anderson review referred specifically to the Victorian experience as a relevant comparison for South Australia. The panel therefore expressed interest in any comment on what has happened in Victoria since the *Liquor Control Reform Act 1998* has been in operation.

Several submissions commented on the Victorian experience. Comment focused mainly on the effect of deregulation on the holders of packaged liquor licences and general (hotel) licences, rather than on harm to the community as a whole. No evidence was presented to

show an increase in liquor-related harms such as public intoxication, drink driving, or the service of alcohol to minors in Victoria. Rather, it was suggested that pressure had been placed on many licensees by the new laws, because of the increase in the number of new packaged liquor licences and limited licences particularly. It was said that this has led to the surrender of licences and the domination of the industry by supermarket chains. The Victorian experience is discussed in more detail in Ch 6.

The position is similar in the Australian Capital Territory and in Tasmania. For example, in Tasmania, the Commissioner and the Board in deciding whether to grant an application are required to:

'make a decision which, in the opinion of the Commissioner or the Board, will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State' (s. 219(1)).

The authority *'may have regard to any legitimate interests and concerns of any section of the community'* but *'shall have greater regard for the legitimate interests and concerns of the community as a whole'* (s. 216(2)).

The Northern Territory adopts a rather different approach and requires the consideration, both in deciding whether to grant the application and in fixing licence conditions, of *'the location and conditions of any licensed premises in the vicinity of the premises which are the subject of an application for a licence'* and *'needs and wishes of the community'* when granting a licence. This seems to be a general consideration and does not require specific assessment of whether existing outlets in the locality already adequately provide for public need or demand. However, the Northern Territory Act specifically provides that:

'An objection to an application for the grant of a licence under subsection (1) shall not be made if the ground or substance of the objection is that the grant of the licence may or will adversely affect the business carried on at any other licensed premises' (s. 48(1A)).

Any comment on the effects of the absence of a need test on the industry or the community in other Australian jurisdictions in addition to Victoria was invited by the panel, but submissions were generally silent on this matter.

Another relevant comparator may be New Zealand. The *Sale of Liquor Act 1989* does not prescribe any 'need' test. It sets certain limits to objections, as follows:

'13. Criteria for on-licences—

(1) In considering any application for an on-licence, the Licensing Authority shall have regard to the following matters:

(a) The suitability of the applicant:

(b) The days on which and the hours during which the applicant proposes to sell liquor:

(c) The areas of the premises or conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas:

(d) The steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed:

(e) The applicant's proposals relating to the sale and supply of non-alcoholic refreshments and food:

(f) Whether the applicant is engaged, or proposes to engage, in—

- (i) The sale or supply of any other goods besides liquor and food; or*
- (ii) The provision of any services other than those directly related to the sale or supply of liquor and food,—
and, if so, the nature of those goods or services:*
- (g) Any matters dealt with in any report made under section 11 of this Act.'*

In particular, by ss. 13(2) the licensing authority cannot take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.

Similar rules apply to off licences by ss. 32 and 35 of the Act.

This has been the law in New Zealand since 1990. The panel invited comment on the New Zealand experience. In particular, it asked for any evidence that the absence of a need test has had adverse effects on the responsible consumption of liquor in New Zealand, or has been damaging to the amenity of community life, or to the liquor and related industries.

Submissions did not offer any detailed comment on the New Zealand experience. One submission argued that it is not valid to compare New Zealand and Australia, or South Australia, because they are culturally too dissimilar, but did not go into detail. The results of the panel's enquiries about the New Zealand experience are discussed in Chapter 6.

4.8.2 Repeal

One alternative would be to repeal the restriction. This would abolish the need test for hotels and retail liquor stores. In that case, applicants for these licences would only have to meet the ordinary requirements met by all licensees, for example, the 'fit and proper person' test, and the suitability of the premises for the licence. Trade would take place under the existing constraints, for example, the presence of the responsible person whenever the premises are open, the prohibition on sales to intoxicated persons and minors, records of transactions, requirement for entertainment consents, etc.

Abolition of the need test would be likely to reduce the number of objections to the grant of new licences and thus to result in cost savings to applicants. It may or may not lead to an increase in the number of hotels and retail liquor stores depending on whether the intending entrant believes the proposed business will be viable. Any increase in competition may have effects on the standards of premises, as well as on the price of products and services offered there. As the number of poker machine licences is currently limited by law, it may also lead to an increase in the number of hotels that trade without poker machines, and might lead to some hotels relying for trade on other attractions, such as live music. This might be in keeping with the object of advancing the interests of the tourism, hospitality and live music industries.

The section 61 restriction stands or falls with that in s. 58. If the need test for entry into the market is abolished, it would not be relevant to the removal of a licence to a new locality. That is, it would not be rational that someone intending to move an existing licence into the locality should be in a worse position than someone seeking a new licence for that locality. If there is a variation in the test, or in the onus of proof, this should apply in the same way to removal applications.

4.8.3 Reduce the test

A further alternative might be to reduce the test, for example, to a test requiring the applicant to show that the likely viability of the business has been properly considered. That is, the applicant's efforts would not be directed so much to establishing evidence of unmet public need or demand, but rather to establishing that feasibility considerations have been addressed. If in reality there are already more than adequate liquor supplies in the locality, perhaps the business will not survive. If on the other hand it has something novel or special to offer, it may. However, it is difficult to say whether this would be different in reality from the need test as it now operates. Also, in general, competition principles would suggest that it is for the person intending to set up business to satisfy himself or herself as to viability, and that this is not the role of the law.

Of course, this alternative might require applicants to disclose commercially sensitive information to the court and arrangements would be needed to protect this information from public disclosure.

4.8.4 Reverse onus of proof

Another alternative might be to reverse the onus of proof, so that rather than the applicant having to prove a need, the objector would have to show that the new licence is not needed because there is no unmet public demand or need to be met by the proposed licence. However, once again, it may be that this is not much different from the test as it now operates and would therefore still be offensive to competition principles.

4.8.5 Restrict range of objectors

It may be that objections on the ground of need are more commonly taken by competitors who already hold licences in the locality, than by local residents, councils or the police. One alternative may be to provide that competitors cannot object on the ground of need, but local residents and councils can. (It would of course be necessary to provide that competitors cannot sponsor such objections and that commercial competitive interests must be disclosed. As an example, the New South Wales *Liquor Act* requires such disclosure.) It would also be necessary to ensure that competitors could not achieve similar results through the use of other grounds, such as the amenity ground, where they did not have a proper interest. This has been achieved in Victoria through s. 42, see above.

This alternative could also be combined with the previous.

4.8.6 Licence conditions

To the extent that the need test is intended to promote a high standard of hotels and liquor stores, it may be possible to deliver this benefit by licence conditions. There is already a general requirement that premises must be 'of sufficient standard for the purpose of properly carrying out the business under the licence' (s 57). Licence conditions could impose more specific requirements, for example as to repair and maintenance, as to the reporting of service complaints, the time in which to resolve them, and so on.

Comment was invited on whether the desired public benefits could be delivered by any of these alternative means. Submissions argued that all these alternatives were unacceptable.

One submission claimed that a desirable and less regulatory alternative to the needs test would be a public interest test. This would involve assessing whether the proposed new licence would benefit the community. Public interest considerations would include the 'interests and concerns of the local community, the economic and social growth of the State, and the viability of existing public benefit organisations' such as clubs. The submission further suggested that in case of a choice between a community benefit and a private hotel or retail interest, the community benefit should prevail. Hotels should not be allowed to rob a community club of its base.

The panel has considered this alternative, but doubts that such a test would add anything to the matters already required to be considered by the licensing authority. The authority must have regard to the merits of the application (s. 53(2)). This involves considering how the application sits with the objects of the Act, and weighing objections to the licence on grounds such as possible harm, effect on amenity, effect on persons who work, reside or worship nearby, effect on children attending school nearby, and the like (s. 77). The authority can impose conditions to prevent harm (s. 43). By these means, the authority is already able to take into account the public interest.

Apart from this, all submissions agreed that these alternative measures were undesirable.

4.9 Preliminary conclusion on the need test

The need test is a serious restriction of competition because:

- a) it excludes some entrants from the market entirely. Statistics suggest that about one in two applications succeeds. Although in some cases the refused applicant may reapply with a different proposal, there must still be a number of entrants who would establish new businesses if it were not for this test; and
- b) the costs imposed on intending entrants by the restriction are by no means negligible and may be particularly onerous for small business; and
- c) it tends to limit the overall number of liquor businesses. For example, if there is an established liquor store within reasonable proximity to a shopping centre, and that store carries an adequate product range to meet local demand, it may be impossible to open a liquor store within the shopping centre.

The need test does not deliver any public benefits that could not be delivered by other, less restrictive means. Although the panel accepts evidence that a large part of the trade of a hotel or liquor store is local, claims that the need test minimises harm by restricting the availability of liquor are undermined by the fact that, although a new licence is granted on the basis of unmet need or demand in the particular locality, the licensed premises can then sell or serve liquor to all comers (whether or not they are from the locality) in unlimited quantities.

Harm-minimisation can in any case be achieved by the licensing authority's consideration of any objection on this ground, and by the many other provisions of the Act, such as the

responsible service principles, as well as by adherence to the Code of Practice. Maintaining the standard of premises can be achieved through competition and the demands of the market.

There was no support in submissions for any of the less regulatory alternatives proposed by the panel as a half-way solution between retention and abolition of the needs test. In particular, a public interest test would add nothing new to the matters already required to be considered under the Act.

The need test should be abolished.

5. ADMINISTRATIVE BURDENS

The Terms of Reference require consideration of whether the sections impose any licensing, reporting or administrative procedures that are unnecessary or are unduly burdensome. Apart from the requirement to overcome an objection on the ground that the need test is not met, discussed above, no such procedures have been identified. Comment was invited as to any such unnecessary or burdensome procedures arising from these sections.

No submission identified any additional administrative burdens arising from the sections under review, over and above the matters discussed earlier.

6. COMPARISONS WITH VICTORIA AND WITH NEW ZEALAND

6.1 Victoria

Several submissions made comparisons with the effects of recent legislative changes in Victoria. In essence, these submissions argued that the results of these supposedly pro-competitive changes have disastrously affected the liquor industry, leading to licence surrenders and bankruptcies, as well as poor standards of premises and other harms. These were said to be principally harms to the industry, especially liquor stores and to a lesser extent country hotels. No evidence was presented of an increase in liquor-related harms such as public intoxication, drink-driving or sales to minors. These submissions urged the Government not to amend the provisions under review.

The panel has therefore considered the situation in Victoria to try to ascertain whether the deregulation there has been associated with an increase in liquor-related harm or other adverse consequences to the public that might be repeated here.

Before 1987, Victoria had comparatively restrictive liquor laws. Under the *Liquor Control Act 1968*, on an application for any licence, a petition of fifty or more local electors could require the taking of a local opinion poll, and if a majority objected to the new licence, it would be refused. In addition, in the case of a hotelkeeper's licence, an objection could be made by three or more local electors, or by the holder of any licence (whether or not in the locality), on the ground that the licensed premises were not required in the neighbourhood, or that the premises were in the immediate vicinity of a place of worship, hospital or school (s. 55). Further, licences had to be renewed every year, and on each occasion there was further opportunity to object if the premises were not suitably maintained, or the applicant had breached the Act or was of bad character. Objections could be allowed by the Commission on any other grounds (s. 57). Further, a hotelkeeper's licence could not be transferred unless it had been held for at least 24 months (s.66).

Following the Nieuwenhuysen review, the *Liquor Control Act* was enacted in 1987. This considerably liberalized the Victorian liquor laws and in particular removed the old local opinion polling and modified the need test. It did not, however, remove the need test altogether. Rather, the authority was required to consider, among other things '*the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant*' (s. 76(2)(a)). It was also required to consider any adverse effect on the community interest. However, it was not to take into account any adverse effect on the business of another licensee, or whether the business proposed to be carried on under the licence would be successful (s. 76(d) and (e)).

That Act also liberalized the licensing of restaurants: previously many restaurants had had BYO licences only.

The 1987 Act was followed by an increase in the overall number of licences. This was most marked in the case of restaurants, many of which took the opportunity to become fully licensed. Packaged liquor licences, hotel licences and full club licences also increased significantly in number, but not to the same extent as on-premises (restaurant) licences.

The 1987 Act also introduced limited licences, which permit the sale of liquor for a limited purpose when no other form of licence is appropriate (s. 52), subject to conditions. This form of licence came to be used, particularly after the 1998 Act, to allow many kinds of small businesses to sell or serve liquor as a sideline.

The 1987 Act was reviewed in 1998. The review found that the increase in the number of licences had not been accompanied by any increase in liquor consumption. Between 1990/91 and 1995/6, per capita alcohol consumption in Victoria fell by 0.5 litres or about 5%. It did not find evidence of an increase in harm. Over the period 1989 to 1998, for example, the Victorian annual road toll fell from 777 to 377, no doubt for reasons connected with road traffic laws, such as seatbelt laws, speed cameras and random breath-testing.

The 1998 *Liquor Control Reform Act* further liberalized the liquor laws. It removed the remaining need criteria, extended the trading hours of liquor stores, permitted restaurants to serve drinks separately from meals, and removed some restrictions on the types of businesses that could apply for licences.

The number of licences continued to increase following the 1998 Act, rising from 11 497 to 13 800 over four years. The largest increase was in limited licences, that is, licences authorizing the supply of liquor where the scale and scope of the supply is limited, for example at sporting events, social functions, fund-raisers or festivals, or by bed-and-breakfast facilities, caravan parks, confectionery, butcher, gift or florist businesses, and the like. These licences rose from 350 to 1 350 (about 386%).

On-premises licences, authorizing the sale of liquor for consumption on the premises, e.g. restaurants, bars and some bookshops, hairdressers and the like also continued to increase, from about 2 800 to over 4 000. The single factor most likely to account for the increase in on-premises licence numbers was the removal of the 'primary purpose' requirement, which allowed the issue of licences to premises such as hairdressers, laundromats, bookshops and other businesses that do not predominantly sell liquor.

The number of packaged liquor licences also increased, from 1 158 to 1 366. The 1998 Act was not followed by any notable increase in the number of general (hotel) licences³.

6.2 Evidence of harm

The panel has not been presented with, and has not been able to find, any evidence that the deregulation in Victoria has led to an increase in liquor-related harm to the public. It notes that liquor consumption in Victoria has generally fallen over the last decade, as it has elsewhere in Australia⁴ and in New Zealand, despite deregulation. Relative to other Australian States, Victoria had in 1995/6 the lowest per capita alcohol consumption in Australia⁵.

³ Statistics supplied by Liquor Licensing Victoria, Feb 2003.

⁴ Figures derived from the website of the Australian Institute of Criminology show that per capita alcohol consumption in Australia rose steadily from 6.4 litres in 1961/2 to a peak of 9.8 litres in 1981/2 and has since tended to decline, reaching 7.5 litres in 1996/7, although rising to 7.8 litres in 1999/2000.

⁵ Catalano, P., Chikritzhs, T., Stockwell, T., Webb, M., Rohlin, C-J., and Dietze, P. Trends in Per Capita Alcohol Consumption in Australia, 1990/91-1989/99. This publication shows the Victorian per capita consumption as 7.5 litres of pure alcohol per adult in 1995/6, compared with South Australia (8.5 litres),

The panel invites anyone who has evidence that deregulation in Victoria has been associated with an increase in liquor-related harm to provide it. In the absence of such evidence, the panel's recommendations will be made on the assumption that liquor-related harm has not increased appreciably in Victoria as a result of deregulation.

6.3 Applicability to South Australia

Some submissions argued that deregulation in Victoria has led to undesirable results that will be repeated in South Australia if the s. 37(2), s. 58 and s. 61 restrictions are removed. The chief fear is that there will be a large increase in the number of licences, especially retail liquor merchants' licences.

The panel considered that there are some factors that suggest that the Victorian experience of a large increase in overall licence numbers is unlikely to be repeated in South Australia. These are:

1. The greatest growth has been in on-premises (restaurant) licences. This reflects the fact that before the amendments, it was difficult for smaller restaurants and cafes to secure licences and many were limited to BYO licences. There is no comparable restriction on the licensing of South Australian restaurants. They would not be directly affected by amendments to ss. 37(2), 58 or 61. Therefore no such increase in restaurant licence numbers would be caused by any change canvassed in this report.
2. The other major growth area has been in limited licences, which allow diverse organizations and businesses to sell liquor as a sideline, subject to strict limitations on the scope and scale of the supply. Such licences allow both the sale of packaged liquor (for example, a pizza shop with an on-premises licence may obtain an extended limited licence to permit delivery of packaged beer with pizza) and the sale of dispensed liquor (for example at festivals and sporting events). This has no parallel in what is being recommended here.
3. Growth in general (hotel) licences in Victoria since 1987 has been only moderate. From just under 1 500 such licences in 1986, the number has risen to 2 000 in 2002, about a three per cent annual growth rate. Further, growth has plateaued since the 1998 Act removed the need test.
4. Growth in packaged liquor licences increased in Victoria in the early 1990s, but appears to have plateaued in the mid-1990s and then risen again after 1998. This may have arisen from a combination of the reduction in the need test in 1987, and the entry of supermarket chains into this market. In South Australia, it appears that supermarket chains have entered at about the same time that they entered in Victoria. In many cases they have met the requirements of s. 37(2) by the establishment of separate stores in close proximity to supermarkets. To the extent that supermarkets are already a force in South Australia, we might not see the same growth in the case of deregulation that has been seen in Victoria.
5. It appears to be generally agreed that in enacting the 1987 Act, Victoria moved from a highly regulated to a comparatively deregulated environment. Because the earlier

Tasmania (8.7 litres), New South Wales (9.5 litres), Queensland (9.7 litres) Western Australia (10 litres) the ACT (10.2 litres) and the Northern Territory (13.6 litres).

environment had been so highly regulated, it is possible that there was considerable unmet demand. As at 30 June 1984, as noted by the Nieuwenhuysen report, there was one liquor licence per 1 200 Victorians. At the same time, in South Australia, there was one licence per 850 people. This would suggest that there was substantial unmet demand in Victoria at the time. Currently, in both States, there is one licence to about 400 people⁶. This may suggest that remaining unmet demand is not substantial, and hence that an explosion in new licences is improbable.

Likewise, market developments that took place in Victoria in a less regulated liquor market, such as the entry of supermarkets and the advent of gaming machines, have occurred during the same period in South Australia, though in a more regulated market. That is, Victoria may have had to deal with the impact of deregulation and these other factors at the same time. South Australia will not.

6.4 Competition policy

All of these issues, however, concern effects of deregulation on the liquor trade, rather than on the public. While this is a matter to be considered in legislating, national competition policy concerns itself with the impact on the public as a whole. Small business impact is part of this, but, in competition policy terms, deregulation cannot be resisted on the ground that it will increase competition, because that is its purpose.

6.5 Preliminary conclusion on the Victorian experience

The panel's preliminary conclusion is that the Victorian experience does not indicate that deregulation is necessarily accompanied by any increase in alcohol consumption or in liquor-related harm to the public.

6.6 New Zealand

No submission offered any comment on the effects of deregulation in New Zealand. New Zealand deregulated in 1989, and further deregulated in 1999. It has no need test and it permits liquor sales in supermarkets. Despite comment in one submission, the panel considers New Zealand to be reasonably comparable with Australian States and Territories. New Zealand research on alcohol-related harm often refers to Australia as a comparable jurisdiction. For example, a publication of the New Zealand Alcohol and Public Health Unit quotes two researchers who argue for comparability between Australian and New Zealand research on the ground of similarities of dominant culture, including drinking culture, liquor licensing laws and public health approaches⁷. Evidence of the effects of deregulation there is considered relevant by the panel.

The panel's researches suggest that, before 1989, liquor licensing was dominated by a 'tied house' system in which the brewers were also the retailers of the product. Typically, liquor

⁶ This is an approximate figure, and excludes producers/vignerons' licences and wholesale liquor merchants' licences.

⁷ Advice for Purchasing Strategy on Public Health Issues: Alcohol Harm Reduction, Alcohol and Public Health Research Unit, August 1999, quoting articles by Stewart (1997) and Stockwell (1993).

was sold by a few large houses patronized by male customers after work. Premises were often poorly maintained, and offered limited food service and few alternative beverages.⁸

The 1989 *Sale of Liquor Act* followed the review of the former Act by the Laking committee⁹. The committee propounded a set of principles to guide future liquor laws in New Zealand. These included the principle that any licensing system should impose the minimum level of control necessary to achieve the objects of the licensing laws, and that it should not impose unnecessary restrictions on the drinking of alcohol. The Act was therefore focused on responsibility, rather than control. The new Act was also accompanied by the development of accords among licensees and law enforcement directed at protecting customers and minimizing disturbance to neighbours.

The new Act permitted, among other things, the sale of wine in some supermarkets.

The number of new licences increased substantially under the new Act. On-premises licences increased from 2 423 to 6 210, and off-premises licences increased from 1 676 to 3 842 as at 2000. At the same time, however, liquor consumption fell. According to the Beer Wine and Spirits Council of New Zealand, per capita consumption fell by around 15% to 20% in the decade to 1997. This is despite the introduction of television advertising of alcohol in 1992. It is difficult to prove the reasons for this fall in consumption. The Council argues that it resulted from the normalization of alcohol and the reduction of its 'forbidden fruit' appeal.¹⁰ Another explanation may be steady annual price increases of one to three per cent, resulting in an overall 22% price increase from June 1990 to June 2000.¹¹ In particular, statistics suggest that liquor abuse declined - for example, reported liquor offences declined.

Although consumption fell, the overall proportion of drinkers in the population remained steady at around 85 to 88% throughout the 1990s.

Consumption of wine increased by about 16 or 17% when supermarkets were permitted to sell wine, and the increase has been maintained. By 1997, supermarkets sold 45% of all wine.¹² There appears to have been a corresponding fall in the sale of other liquor types.

It is interesting to note the comments of the Liquor Licensing Authority in its annual reports following the 1989 legislation. In the report for the 15 months to 30 June 1991, the Authority said:

'The Authority has no evidence to indicate an increase in alcohol consumption or any increase in alcohol related problems since the coming into force of the 1989 Act' (page 3).

Again, in its 1992 report, the Authority said:

⁸ The New Zealand Paradox, an address by Jennifer Harris, Communications Manager, Alcohol Advisory Board of New Zealand at the May 2000 Hospitality Resource Panel Training Institute, San Diego.

⁹ Report of the Working Party on Liquor, 'The Sale of Liquor in New Zealand', October 1986.

¹⁰ Submission to the Justice and Law Reform Committee by the Beer, Wine and Spirits Council of New Zealand, 1999.

¹¹ New Zealand Drug Statistics, Ministry of Health, New Zealand, 2001

¹² Wagenaar A and Langley J, Alcohol Licensing System Changes & Alcohol Consumption: Introduction of Wine into New Zealand Grocery Stores. *Addiction* 90: 773-783, 1995, quoted by New Zealand Drug Forum in a Fact Sheet

'Many of the District Licensing Agency Reports covering the 12 months ended 30 June 1992 commented that the more liberal licensing regime under the 1989 Act has not resulted in increased community problems associated with liquor consumption' (page 6).

Again, in its 1993 report, the Authority said:

'The more liberal liquor licensing regime having been in operation for over three years, it is pleasing to note that statistics from the Alcohol Advisory Council and other sources all confirm that the increased number of liquor outlets and more relaxed trading hours have not resulted in an increase in the per head consumption of alcohol' (page 3).

Thereafter, its annual reports do not advert to the question of an increase in harm following deregulation.

Under-age drinking continues to be a serious problem in New Zealand, as elsewhere, but it is not clear whether this has any direct relationship with changes in the licensing laws. Following the *Sale of Liquor Act*, during the years 1990 to 1996, the proportion of drinkers among those aged 14 to 19 years fell from 82% to 66%. It rose, however, over the years 1996 to 1999, reaching 77%¹³. Frequency of drinking has fluctuated in all age groups, but for under-20s declined between 1990 and 1992, rose between 1992 and 1995, and declined from 1996 to 1999. For adults, the typical amount consumed increased only slightly during the 1990s, but for children¹⁴, it rose markedly. Whether these figures can be linked to the sale of wine in supermarkets is not clear. There is some evidence to suggest that refusal of service to minors is less reliable in supermarkets than other outlets. However, evidence suggests that under-age drinkers prefer beer or spirits to wine, and the increase appears to coincide with the introduction of spirit-based premixed drinks into the New Zealand markets. Spirits cannot be lawfully sold in supermarkets in New Zealand. Also, some of the increase is accounted for by sales in nightclubs. There may also have been an effect on underage drinking from the practice of advertising alcohol on television. For example, the New Zealand Drug Foundation states that:

*'New Zealand research has found that advertisements do appeal to young children and young people. Most found the advertisements strongly appealing. Young people often felt that drinking the product would result in them having more fun, being stronger, or having other qualities portrayed in the advertisement. Not only did young people say that they found the advertisements appealing, many were also saying they felt encouraged to drink after watching the ads.'*¹⁵

An Advice on Purchasing Strategies on Public Health Issues: Alcohol Harm Reduction prepared in 1999 by the Alcohol and Public Health Research Unit suggests also that there had been reduced enforcement of the drinking age, perhaps partly in anticipation of 1999 legislation that would reduce the age from 20 to 18.

¹³ New Zealand Health Information Service, Ministry of Health, 2001, New Zealand Drug Statistics

¹⁴ The legal drinking age in New Zealand was, until 1 December 1999, 20 years. It is now 18.

¹⁵ Alcohol and Public Health Research Unit, *Response of children and young persons to alcohol and host responsibility advertising on television*. April 1994.

Comparison between a 1995 national telephone survey about drug use and one in 1998 suggested an increase in the proportion of young drinkers who reported drunkenness. Although in general alcohol use in New Zealand was found to be similar to that in Australia, there was some evidence that more New Zealand girls in the age group 15-17 had used alcohol in the preceding 12 months.¹⁶

There does not appear to be evidence of an increase in alcohol-related crime, although of course alcohol consumption measures are not necessarily recorded in respect of all crimes. Apprehensions and convictions under the *Sale of Liquor Act* have fluctuated over the years 1994 to 1999, but without any trend to increase. Males and persons under 20 are over-represented in these figures. As these figures are mediated by police enforcement practices, it is difficult to draw direct conclusions about harm.

Alcohol-related traffic offences have not increased following the *Sale of Liquor Act*. In 1987, alcohol was involved in 55% of all fatal accidents, whereas the figure in 1997 was 27%. The number of injuries resulting from motor accidents where driver alcohol consumption was a contributing factor fell from 3 681 in 1980 to 1 904 in 1999, a 48% decline. In 1990, there were 151 prosecutions for the offence of causing death by dangerous driving, where alcohol was involved. This figure declined steadily over the 1990s, reaching 26 in 1998. Prosecutions for the offence of causing injury declined from 257 in 1990 to 199 in 1998. Prosecutions for driving with excess blood alcohol trended lower during the 1990s but seem to have plateaued in the late 1990s. The exception is a marked increase in 1991. In the 20-24 age group, alcohol-related traffic offences increased from 5 786 in 1990 to 6 681 in 1991, but thereafter declined significantly from 5 655 in 1992 to 3 687 in 1998.

Population figures for alcohol-related mortality have generally declined since 1990, although broken down by gender, the rate has declined for males and increased for females over the period 1990 to 1996. Deaths due to external causes (such as accidents) where alcohol was involved have fluctuated with no clear trend up or down. Known alcohol-related drownings have fluctuated but on average were more common in the 1980s (average 34 per year) than the 1990s (average 26 per year), but note that most drowning victims are not tested for blood alcohol concentration.

Figures showing hospital admissions for an alcohol-related condition or poisoning suggest an increase in the mid-1990s, but it should be noted that these include recording harm related to consumption of methanol and methylated spirits, and could also reflect increased reporting of alcohol dependence and abuse as secondary diagnoses. Hospitalisations where the principal diagnosis was an alcohol-related condition have remained steady.¹⁷

The 1995 national survey showed that supermarkets scored the lowest rate of reported refusals to sell liquor to under-age customers. However, Dunedin longitudinal research showed that in the 18-20 age group, the largest sources of liquor were bottle stores, taverns and pubs. Further, research by the Alcohol Advisory Council in 2001 suggested that most under-age drinkers obtain their liquor from their parents or adult friends. As off-licences are less likely to come to police attention than hotels, entertainment venues and clubs, regulation relies heavily on the licensee complying with legal requirements or on customer complaint.

¹⁶ Field, A and Casswell, S, *The Drugs in New Zealand National Survey*, 1998

¹⁷ See footnote 11 for the source of these figures.

New Zealand reviewed its laws in 1999, resulting in further deregulation. The new laws reduced the drinking age from 20 to 18, permitted supermarkets to sell beer as well as wine, and allowed seven-day trading. Presumably, these further relaxations of restrictions on access to liquor would not have passed the Parliament if there had been clear evidence of increased harm resulting from the 1989 law. (For example, the Alcohol Advisory Council, a body established to reduce alcohol-related harm, made a submission to the Select Committee supporting the expansion of the range of liquor products able to be sold in supermarkets.) On the other hand, the Bill's original proposal to allow liquor sales in any outlet other than a petrol station was not acceptable to the Parliament.

6.7 Preliminary conclusions on the New Zealand experience

It is difficult to make direct comparisons between the New Zealand deregulation and the possible effects of removing the need test. For one thing, the abolition of the need test in New Zealand was accompanied by a narrowing of the grounds of objection to a new licence so that effects on the amenity of the locality, or conflict with the objects of the Act, were not valid grounds. (These are valid grounds in South Australia and are not under review here.) As a result, the scope for community objection to a new licence was much reduced. There is also less scope for the licensing authority to impose tailored licence conditions in New Zealand than in South Australia. The increase in television advertising of liquor (according to one source, fourfold) in New Zealand in the early 1990s could also have had an effect on liquor-related harm.¹⁸ The increase in trading hours associated with 24 hour licences (which have no parallel in South Australia) may also be relevant.

In summary, however, the following effects appear to have followed deregulation in New Zealand:

1. An increase in licence numbers.
2. A decrease in alcohol consumption.
3. A persisting problem with underage drinking, possibly associated with liquor sales in supermarkets, television advertising and, paradoxically, the lowering of the drinking age
4. No increase in other liquor-related harms such as drink-driving, accidental deaths or hospitalizations.

6.8 Preliminary conclusion

The panel's preliminary conclusion is that neither the Victorian nor the New Zealand experience provides evidence of an increase in alcohol-related harm resulting from abolition of the need test. There is some evidence for an increased risk of sales to minors if alcohol is sold in supermarkets, although it is difficult to evaluate the contribution of this source to overall consumption by minors.

¹⁸ Dr Hill of the Alcohol and Public Health Research Unit of the University of Auckland, as reported in The Globe magazine 2000, Issue 1.

7. SUMMARY OF PRELIMINARY CONCLUSIONS

7.1 Requirement for packaged liquor sales in dedicated premises

1. This requirement is an intermediate restriction of competition. It is not a serious restriction because it has not prevented other retailers such as supermarkets from entering the liquor market, for example by establishing separate premises (in some cases, adjoining the supermarket). Also, the restriction only applies to sales under retail liquor merchants' licences, not sales under other licence types such as hotel licences (in the case of a bottle shop), producers', wholesalers' or special circumstances licences. The restriction is only minimally inconvenient to consumers.

2. It delivers some public benefits, for example, it reduces the risk of liquor sales to minors and makes enforcement easier. It may also help to ensure that liquor is not bought on impulse or in substitution for staples.

3. There is some cost associated with these benefits. There is the cost of construction or rental of the separate premises. Also, economies that might be possible if one person were able to supervise the whole shop, are lost.

4. These benefits cannot readily be delivered in a less restrictive manner. Allowing liquor to be sold together with other products increases the risks listed above. To overcome them, other costly measures such as increased inspections and enforcement, training of a larger number of staff or the like would be needed. Measures such as selling the liquor under similar restrictions to cigarettes are unlikely to be practical because of the size of the product, requiring more storage space, and because customers will wish to examine liquor products.

5. On balance, the benefits outweigh the costs.

6. This requirement should be retained.

7.2 Need test

1. The need test for hotel and retail liquor merchants' licences is a serious restriction of competition.

2. It delivers only modest public benefits.

3. The benefits are that the restriction may somewhat reduce the availability of liquor in the community by restraining the number of new hotel and retail liquor licences, and, in the case of liquor stores particularly, may help to maintain standards. The effect of the first benefit is weak because:

a) other outlets such as clubs, entertainment venues and direct sales providers do not have to meet a need test

b) once a licence is granted, there is no limit on the quantity of liquor that can be sold or bought and liquor is in fact freely available

- c) despite the test, about half of all new applications succeed and there is steady growth in the overall number of licences, and
- d) availability of liquor by internet order is not taken into account in assessing unmet need or demand in a locality.

4. The benefits come at a cost. They increase the cost of the licence application process both to the parties and the public. This particularly disadvantages small business applicants. There is also a reduction in the number and choice of outlets available to the public, although, in view of the existing wide choice, this cost is minor.

5. These benefits could be delivered in less restrictive ways.

6. The Act already provides less restrictive mechanisms by which these benefits can be delivered. For example, restraint on the proliferation of licences can be exercised by community, council or police objections to a licence on the ground that it will be contrary to the objects of the Act, one of which is harm minimization, or on other grounds such as amenity. It can also be exercised by the licensing authority, which has an absolute discretion in the grant or refusal of a licence and is bound to consider harm among other things. Other legislation may also exercise restraining effects. For example, planning laws that require these outlets to be located mainly in centre zones will tend to prevent the proliferation of outlets outside these areas. Standards can be maintained by the inspection process and the power to order improvement of premises.

7. Accordingly, the need test should be abolished.

8. INVITATION TO COMMENT

Comment is invited on the panel's analysis and preliminary conclusions. Comment on any aspect is welcome but submissions may wish to address the following questions:

1. Is there any evidence of harm resulting from the abolition of the need test in other jurisdictions?
2. What will be the effects on the liquor industry in South Australia if the need test is abolished?
3. What will be the effects on the South Australian public if the need test is abolished?
4. Do these effects require any and what management?

Confidential material should not be included in any submission. This is because submissions may be available for public inspection under the *Freedom of Information Act*. Commentators may however choose to disclose information in anonymised form, for example by removing reference to specific individuals, companies or situations.

As with the earlier Issues Paper, this draft report should **not** be taken to represent the views or intentions of the Government. These will be formulated after consideration of the final report. Any action taken in anticipation of the outcomes of the review is at the actor's own risk.

Next steps

The period for comment on this draft closes on 30 June, 2003. Comment will be considered and a final report prepared for Cabinet as soon as possible. After Cabinet has considered the report, the Government will publish a response indicating its intentions. Whether legislation follows and when it takes effect is a matter for the Government.

Process for submissions

Submissions may be sent to the following address, fax number or email address and should be received no later than 30 June, 2003.

Liquor Licensing Act Review
c/o Policy and Legislation Section
Attorney-General's Department
GPO Box 464
ADELAIDE SA 5000

fax 8204 1337

e-mail agd@agd.sa.gov.au

Appendix I: Terms of Reference

Preamble

Under the *Competition Principles Agreement* (“the Agreement”) the State is required to review and, where appropriate, reform legislation which restricts competition. In accordance with the State’s legislation review timetable, sections 37(2), 58 and 61 of the *Liquor Licensing Act 1997* are to be reviewed. The review will therefore complete the process begun by the Anderson Report in 1996, by addressing those issues not covered there but reserved for future consideration.

These sections will be examined during the legislation review in accordance with the obligation contained in clause 5 of the Agreement.

Review Panel

The review of the relevant sections will be undertaken by staff from the Crown Solicitor’s Office, the Office of Business and Consumer Affairs and the Attorney-General’s Policy and Legislation section. The avenue for public comment, including comment from the industry and its legal representatives, will be the publication of the Issues Paper, allowing a period of at least 6 weeks.

Objectives of the Review

When considering the appropriate form of regulation, the Review Panel will consider the following objectives:

1. Regulation should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
2. Pursuant to clause 1(3) of the Agreement, in assessing the benefits of regulation regard shall be had, where relevant to:
 - (a) effects on the environment and ecologically sustainable development;
 - (b) social welfare and equity, including community service obligations;
 - (c) occupational health and safety, industrial relations and access equity;
 - (d) economic and regional development, including employment and investment growth;
 - (e) consumer interests;
 - (f) the competitiveness of Australian business, including small business; and
 - (g) efficient allocation of resources.

3. Compliance costs and the paperwork burden on small business should be reduced where feasible.

Issues to be Addressed

Issues to be addressed by the Review Panel include:

1. Clarify the objectives of the three sections under review, including the identification of the public benefits of the Act, and provide an assessment of the importance of these objectives to the community.
2. Identify the restrictions of competition contained in these sections:
 - (a) describe the theoretical nature of each restriction (eg. barrier to entry, restriction on conduct etc);
 - (b) identify the markets upon which each restriction impacts; and
 - (c) provide an initial categorisation of each restriction (ie “trivial”, “intermediate” or “serious”).
3. Analyse and describe the likely effects of the restrictions on competition in the relevant markets, and on the economy generally:
 - (a) what are the practical effects of each restriction on the market;
 - (b) assign a weighting to the effect of each restriction in the market; and
 - (c) assess what is the relative importance of each restriction in a particular market to the economy as a whole.
4. Assess and balance the costs and benefits of the restriction.
5. Where the restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means for achieving the objectives of the sections, including non-legislative approaches.
6. Consider whether any licensing, reporting, or other administrative procedures are unnecessary or impose an unwarranted burden on any person.

Consultation

The consultation list for this Review appears as Appendix II.

Report

The Review Panel will present to the Attorney General, a report detailing:

- (a) the Terms of Reference for the review;

- (b) the stakeholders consulted during the review;
- (c) the analysis of the sections in accordance with these Terms of Reference; and
- (d) the recommendations of the Review Panel.

The Report is expected to be presented by February 2003.

Appendix II: Consultation List

Aboriginal Drug and Alcohol Board
Aboriginal Sobriety Group
Adelaide Business and Real Estate Agents
Adelaide Business Sales Pty Ltd
Adelaide Fuel Distributors
Alcoholics Anonymous
Austwide Business Brokers SA
Mr Tim Anderson QC
Australian Hotels Association
Australian Liquor Hospitality & Miscellaneous Workers Union
Mr Barry Beazley, Barrister
Baily and Baily Liquor Stores
Bonnins Lawyers
Booze Brothers
BP Australia Ltd
Clelands
Coles-Myer Limited
Consumers Association of SA Inc
Courts
Duncan Basheer Hannon
Drug and Alcohol Services Council
Mr John Firth, Barrister
Fisher Jeffries
F J Moller and Associates
Foodland Supermarkets
Griffins Lawyers
Mr Brian Hayes QC
Hunt and Hunt Lawyers
IGA Everyday Supermarkets
John Murphy Hospitality Consultant and Broker
Judge of the Licensing Court
Kelly and Co Lawyers
Law Society of SA
Licensed Clubs Association of SA
Liquor and Gambling Commissioner
Liquor Stores Association of Victoria
Liquorland
Liquorsmart Pty Ltd
Local Government Association
Mac's Liquor
Malcolm Steele Hotel Brokers
Mason Gray Strange
Mobil Oil (Australia) Pty Ltd
Motor Trade Association
National Competition Council
Negotiators (Real Estate) Pty Ltd

Neighbourhood Watch
Office of Consumer and Business Affairs
Office of the Small Business Advocate
Office of Local Government
Pearce Gordon and Co
Philip David Smith Pty Ltd
Planning SA
Porter's Liquor Management
Power ABA
Real Estate Institute of SA
Retail Liquor Stores Association
Retail Traders Association
Ron Johnson Hotel Brokers and Consultants
SA Council of Churches
SA Restaurant and Catering
SA Tourism Commission
SA Wine and Brandy Industry Association
Salvation Army
SAPOL
Sander and Associates
Schwartz E
Sip'N'Save Liquor Marketing Group
Skorpis, Mick
Super Cellars
Vintage Cellars
Wallmans Lawyers
David Watts and Associates Liquor Licensing Consultants
Whan Holdings Pty Ltd
Winall and Co
Women's Christian Temperance Union
Woolworths (SA) Pty Ltd

Appendix III: 'Need' Objections Under Present Act

	1997 - 1998	1998 - 1999	1999 - 2000	2000 - 2001	2001 - 2002	TOTAL
Applications for the grant (g) or removal (r) of a licence	7	12	18	12	15	64
Those that attracted objections or interventions on the ground of need, objections attached:						
- Number of applications receiving objections	6	12	18	12	15	63
- Number of objections	37	122	94	234	483	970
- How many objected to applications were conciliated?	0	1	0	1	1	3
How many contested need applications were heard by the Commissioner?	1	0	0	2	2	5
How many contested need applications were heard by the Court?	6	10	17	10	10	53
How many heard by the Commissioner were:						
- granted	1	0	0	2	2	5
- refused	0	0	0	0	0	0
- withdrawn	0	1	2	0	2	5
How many heard by the Court were:						
- granted	3	6	5	4	6	24
- refused/dismissed	2	4	9	4	3	22
How many heard by the Court were withdrawn:	1	0	3	2	1	7
How many heard by the Commissioner were						

	1997 - 1998	1998 - 1999	1999 - 2000	2000 - 2001	2001 - 2002	TOTAL
on appeal to the Court and what was the decision?	-	-	-	-	-	-
How many matters heard by the Court went on appeal to the Supreme Court:						
- Number	0	5	6	1	1	13
- Appeal upheld		1	1	1	1	4
- Appeal dismissed	0	5	6	1	1	13
Licensing Court Decision varied	0	1	0	1	0	2

Appendix IV: Submissions Received

Submissions were received from:

Australian Hotels Association South Australia

Clubs SA

Drug and Alcohol Services Council

Duke Group of Companies

Gordon A Pearce and Co Hotel Brokers

Law Society

Liquor Smart

Liquor Stores Association of South Australia

Liquor Stores Association of Victoria

Mr Tim Anderson QC

OCBA

Office of the Small Business Advocate

SA Wine and Brandy

SAPOL

South Australian Tourism Commission

State Retailers Association

Super Cellars

Wallmans