

Attachment 1: Public interest and community interest liquor licence tests in Western Australia, Northern Territory and South Australia

Jurisdiction	Western Australia	Northern Territory	South Australia
Legislation	<i>Liquor Control Act 1988</i>	<i>Liquor Act</i>	<i>Liquor Licensing (Liquor Review) Amendment Act 2017, amending Liquor Licensing Act 1997.</i>
Key legislative provision	Section 38	Section 6	Sections 35 and 36 of the <i>Liquor Licensing (Liquor Review) Amendment Act 2017</i> , (not yet in effect), inserting new sections 53, 53A and 53B of <i>Liquor Licensing Act 1997</i> .
Onus of proof	On applicant - the Applicant must satisfy the licensing authority that granting the application is in the public interest (section 38(2). (However, licensing authority has discretion to grant or refuse on any grounds in the public interest – see below.)	On applicant - the applicant must satisfy the Commission that the approval of the application meets the public interest and community impact test set out in section 6(2) (section 6B).	On applicant – the licensing authority must be satisfied that a designated application is in the community interest to grant a designated application (new section 53(1)).
Decision maker's discretion to grant or refuse	The licensing authority has absolute discretion to grant or refuse an application on any grounds, or for any reason, that the licensing authority considers in the public interest (section 33(1)).	After considering an application, the Commission must, having regard to the objects of the Act, issue a licence (subject to any conditions) or refuse the application (section 29).	The licensing authority may only grant a designated application if satisfied that granting the application is in the community interest (new section 53A(1))
Test for grant or refusal of licence application	Section 38(2): the Applicant must satisfy the licensing authority that granting the application is in the public interest. Section 5(2): In carrying out its functions the Licensing Authority must have regard to the primary and secondary objects of the Act.	Section 6(1): When a decision maker has regard to the objects of the Act in considering or determining an application in respect of a licence, or determining conditions of a licence, the decision maker must apply the community impact and public interest test.	New section 53A(1): the licensing authority must be satisfied that granting the designated application is in the community interest.
Factors the decision maker	Section 38(4): the matters the licensing authority may have regard to in	Section 6(2): sets out objectives that the community impact and public interest test	New section 53A(2)(a): factors that the licensing authority may have regard to in

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<p>may/must have regard to</p>	<p>determining whether an application is in the public interest:</p> <ul style="list-style-type: none"> a) Harm or ill-health that may be caused to people, or any group of people b) Impact on amenity of the locality c) Whether offence, annoyance, disturbance or inconvenience may be caused to people who live or work in the area d) Any other prescribed matter. 	<p>requires the decision maker to consider, including:</p> <ul style="list-style-type: none"> a) Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised. b) Liquor is to be sold and/or consumed on licensed premises in a responsible manner. c) Public order and safety must not be jeopardised. d) Safety, health and welfare of people who use licensed premises must not be put at risk. e) Noise emanations from licensed premises must not be excessive f) Business conducted must not cause undue offence, disturbance, annoyance, inconvenience g) ... j) practices which encourage excessive consumption must be prohibited. <p>...</p> <p>(l)-(n) It may be necessary/desirable to limit/prohibit – number of persons on licensed premises, type of entertainment, promotional activities in which drinks are offered free or at reduced prices.</p> <p>Section 6(3): The decision maker must:</p> <ul style="list-style-type: none"> (a) consider the potential impact on the community [of the decision], in doing 	<p>determining whether a designated application is in the community interest:</p> <ul style="list-style-type: none"> • Harm that might be caused (to community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor • Cultural, recreational, employment or tourism impacts • Social impact in, and the impact of the amenity of, the locality of the premises • Any other prescribed matter.
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		<p>so, must have regard to:</p> <ul style="list-style-type: none"> (i) the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and (ii) the cultural, recreational, employment or tourism impacts; and (iii) the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and (iv) the density of existing liquor licences within the community area; and (v) the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and (vi) any other prescribed matter. 	
<p>Application to licence/application types</p>	<p>Applies to applications for grant or removal of a licence, prescribed permits, or any application the Director considers appropriate (section 38(1)). It is up to the applicant to determine how much information to include in their Public Impact Assessment (PIA). The PIA guidelines note that because each</p>	<p>Applies to all licences. The Community Impact Assessment Guidelines state that the level of detail provided to the Commission is subject to the complexity of the application and the impact the premises/proposed premises will have on the surrounding community. The Guidelines recommend that applicants</p>	<p>Applies to designated licences. Designated licences are general liquor licences and on-premises licences (exceptions for public conveyance, major sporting venue, accommodation), club licences, packaged liquor licences. The draft Community Impact Assessment</p>

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	<p>community is different, the level of detail required in a PIA will be different for individual applications. In this regard, the required level of detail is subject to the complexity of the application and the impact the premises/proposed premises will have on the surrounding community.</p> <p>The PIA guidelines indicate that complex applications (Hotels, Taverns Nightclubs, Liquor Stores, Taverns, ongoing extended trading permits) will be expected to address the matters outlined in sections 5 (objects) and section 38(4) of the Act.</p>	<p>discuss their application with the Commission to determine what level of detail is expected, and the definition of 'community area'.</p>	<p>guidelines set out a tiered level of assessment:</p> <p>Tier 1 applications:</p> <ul style="list-style-type: none"> • On-premises Licences (other than those excluded from designated applications definition) • Club Licences authorised to sell liquor for off-premises consumption • Other applications determined by licensing authority to require a CIA (intended to be: applications to vary/revoke a condition that significantly changes the way liquor is sold (e.g. trading hours); and short-term licences for longer than one-year with significant impact on surrounding community.) <p>Tier 2 applications:</p> <ul style="list-style-type: none"> • General Licences • Packaged Liquor Sale Licences • On-Premises Licences trading after 2am (other than those excluded from designated applications definition) • Other applications determined by licensing authority to require a CIA (intended to be applications where capacity and operating model is likely to have a significant impact on the surrounding community). <p>Tier 2 applications are expected to supply a greater level of supporting information and conduct consultation, and to provide</p>
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			information about any negative impacts and how they will be mitigated.
Public/Community Impact Assessment requirement?	Public Interest Assessment guidance published by WA Government (not pursuant to any legislative requirement).	<p>Section 6A(1): Requires the Minister to publish Community Impact Assessment guidelines for the purpose of determining whether an application satisfies the community impact and public interest test.</p> <p>Section 6(3)(b): The Commission must apply the community impact assessment guidelines.</p> <p>Section 6(4): The applicant must comply with the community impact assessment guidelines, and any other requirements specified by the Commission for this section</p>	<p>New section 53B(1): The Commissioner must publish guidelines for the purposes of determining whether an application is a designated application, and whether a designated application is in the community interest.</p> <p>New section 53B(3): The guidelines may provide for matters relevant to assessment of the likely impacts of a designated application on the community (and any other appropriate matters).</p> <p>New section 53A(2)(b): The licensing authority must apply the community impact assessment guidelines in determining whether a designated application is in the community interest. Applicants for designated applications must complete form or prepare submission following Community Impact Assessment guidelines.</p>
Public/Community Impact Assessment criteria and guidance	<p>Public Interest Assessment (PIA) guidance</p> <p>Type of evidence</p> <p>The PIA guidance notes that precedent decisions of the Liquor Commission suggest the PIA must be supported by objective evidence. Assumptions,</p>	<p>Community Impact Assessment Guidelines</p> <p>1. Potential harm and health impacts that may be caused to people, or any group of people, due to the availability and accessibility of an additional liquor outlet.</p> <p>Considerations:</p>	<p>Draft Community Impact Assessment Guidelines – information to be provided by applicants:</p> <p>1. The harm that might be caused due to the excessive or inappropriate consumption of liquor</p> <ul style="list-style-type: none"> • At risk' groups or sub-

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	<p>opinions, speculation and generalised statements alone will not demonstrate that the application is in the public interest. Applicants should ensure that they provide sufficient supporting evidence that is objective, accurate and relevant to their application.</p> <p>Locality The PIA guidelines state that as part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises and any amenity issues in the locality.</p> <p>‘Locality’ means the area surrounding the proposed licensed premises that is most likely to be affected by amenity issues related to granting an application. This will generally be as specified in ‘<i>Specification of Locality</i>’ guidance (localities of 2km-3km radius are specified). However, the licensing authority may determine a broader locality depending on the nature of the application.</p> <p>However, the PIA guidelines note that in terms of addressing objects 5(1)(b) (harm minimisation) and 5(1)(c) (consumer requirements and industry development) an applicant may need to consider a much broader area than for amenity issues.</p>	<ul style="list-style-type: none"> • At-risk groups or sub-communities within locality • Community buildings, facilities, areas within locality • Policies/procedures of applicant to minimise harm to at-risk groups or sub-communities. <ol style="list-style-type: none"> 2. Information about the location and area so as to assess social impact on the community, including density of licensed premises. E.g. crime statistics, social profile information, location of licensed premises, traffic and pedestrian impacts, any plans to address. 3. Volume: projected sales volume, marketing analysis, liquor type, customer demographic. The Commission will consider available information about consumption rates in the area. 4. Any cultural, recreational, employment or tourism benefits for the local community area. 5. Why the application is in the public interest and how the additional liquor outlet will benefit the local and broader community. <ul style="list-style-type: none"> • What additional services (other than alcohol sale) will be provided? • Will it provide additional 	<p>communities within the locality (e.g. children and young people, aboriginal people and communities, people from regional, rural and remote communities, migrant groups, families, people in low socio-economic areas)</p> <ul style="list-style-type: none"> • Community buildings, facilities and areas within the community (e.g. schools and educational institutions, hospitals, drug and alcohol treatment centres, dry areas) • Applicant’s operating policies and procedures to minimise harm to these groups <ol style="list-style-type: none"> 2. Social impact in, and impact on the amenity of, the locality <ul style="list-style-type: none"> • Character or nature of locality of the area (including crime statistics and social profile information) • Existing licensed premises within the locality • Tier 2 applications – potential impact on vandalism, litter, criminal acts in vicinity, and strategies to minimise impact • Tier 2 applicants – details of public transport available to patrons (other than for
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	<p>Guidance on section 38(4) matters</p> <ul style="list-style-type: none"> • Harm or ill-health <ul style="list-style-type: none"> ○ ‘At risk’ groups or sub-communities within the locality (e.g. children and young people, aboriginal people and communities, people from regional, rural and remote communities, migrant groups, families, people in low socio-economic areas) ○ Groups or sub communities in the locality that may be affected ○ Social health indicators within the locality (e.g. incidence of alcohol-related crime in area, rates/trends in hospital presentations/admissions) ○ Licensee harm minimisation strategies • Impact on amenity <p>E.g:</p> <ul style="list-style-type: none"> ○ Nature and character of local community (e.g. identity, quality of life, type of residents and workers, age, income and employment status of residents, population numbers and projections) ○ Facilities and services of proposed premises 	<p>choice or products and services not currently available in the area?</p> <ul style="list-style-type: none"> • Will it provide liquor in a safe manner and minimise adverse impacts? • Existing premises, improvement/addition to existing premises, or new premises? 	<p>packaged liquor)</p> <ol style="list-style-type: none"> 3. Cultural, recreational, employment or tourism benefits for the local community area <ul style="list-style-type: none"> • Will the proposed premises provide these benefits and to what level? 4. Nature of services or trade <ul style="list-style-type: none"> • Nature of services or trade and intended client base • How will this differ from other existing licensed premises in the locality? • What additional services will be provided? • Existing, improved/added to, or new premises? • Tier 2 applicants should provide evidence of support from members of the community. 5. Consultation <ul style="list-style-type: none"> • Tier 2 applicants will be required to provide a notice of the application to occupiers within a 200m radius. <p>Locality: applicant may need to consider a wider geographical area depending on nature and location of business (e.g. in remote areas, more complex applications).</p>
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	<ul style="list-style-type: none"> ○ How premises will fit into amenity of locality (e.g. public transport and parking facilities, contribution to streetscape and atmosphere, noise and anti-social activities) ○ Positive recreational, cultural, employment or tourism benefits ○ Has consultation with local government been taken into account in establishing a business plan? ○ Information about proposed premises, including map of locality, description of facilities (including floorplan and layout), maximum patrons ○ Outlet density information, including: <ul style="list-style-type: none"> ▪ for packaged liquor applications, the location of all existing licensed premises in the locality; ▪ for other applications, the location of existing licensed premises within 500 metres; ▪ nature of services provided by other licensed premises; ▪ level of access to and 		
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	<p>diversity of services.</p> <ul style="list-style-type: none"> • Offence, annoyance, disturbance or inconvenience <ul style="list-style-type: none"> ○ Impact that may be caused to people who reside or work in the vicinity of the premises ○ If high risk factors exist, applicants must provide a Business Management Plan with strategies to address. 		
Consultation requirements	<p>No legislative requirement to consult the community. However, the PIA guidance encourages applicants to liaise with relevant key stakeholders and interest groups in the community.</p> <p>The guidance also states that evidence to support an application being in the public interest may include:</p> <ul style="list-style-type: none"> • petitions; • survey results; and • letters of support and statements, of consumers having a requirement for the type of liquor to be sold and supplied under the licence sought. 	No requirement or guidance.	Draft Community Impact Assessment Guidelines state that Tier 2 applicants are expected to provide a notice of the application to occupiers within a 200m radius, conduct consultation, and provide evidence of support from members of the community (e.g. survey results, petitions or letters of support).
Powers to intervene	<p>Section 69: Commissioner of Police, Local Government, Chief Health Officer and Director may intervene in proceedings to introduce evidence or make representations on relevant matters set out in the Act. The Chief Health Officer must provide a report on the relevant</p>	No powers	<p><i>Liquor Licensing (Liquor Review) Amendment Act 2017</i>, section 19, inserting new Part 2 Division 5A.</p> <p>New section 28AA: the Commissioner of Police may intervene in licence application proceedings on the question of whether a person is a fit and proper person, whether</p>

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	<p>matter if requested by the Licensing Authority. For the Chief Health Officer, the relevant matter is the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health. For Local Government, the relevant matters include whether granting the application would cause undue offence, annoyance or disturbance to persons who work, reside or worship in the vicinity.</p>		<p>public disorder or disturbance would be likely to result from the grant of the application, or whether it would be contrary to the public interest to grant the application.</p>
<p>Objection or submission rights and grounds</p>	<p>Section 73(2): Any person may object to an advertised application. Section 73(1): A person authorised to intervene in proceedings relating to an application may object instead or in addition. Section 74(1): Grounds for objection: (a) the grant of the application would not be in the public interest (b) the grant of the application would cause undue harm or ill-health to people or any group of people, due to the use of liquor (g)(i) undue offence, annoyance, disturbance or inconvenience to people in the area would be likely to occur (g)(ii) the amenity, quiet or good order of the locality in which the premises are/are to be situated would in some other manner be lessened</p>	<p>Section 47F(3): People, organisations and groups who may object:</p> <ul style="list-style-type: none"> • residents, workers, land owners and lease holders in the neighbourhood • police, and fire and rescue service • agency or public authority that performs functions relating to public amenity, including health, education and public safety • a community-based organisation or group (e.g. a local action group or a charity). <p>Section 47F(1): Objections may be made to an application for the grant of a licence, for variation of licence conditions, for the substitution of other premises for the premises specified in a licence, or for approval to make a material alteration to a licence.</p>	<p><i>Liquor Licensing (Liquor Review) Amendment Act 2017</i>, section 56 (not yet in effect): Inserting new section 76: the Commissioner of Police may make a written submission to the Commissioner with respect to an application. Inserting new section 77: general right for any person to make written submissions to the Commissioner with respect to an application on one or more grounds: (a) grant of application would not be consistent with objects of Act or would be contrary to Act (b) in case of a designated application, grant is not in the public interest (c)-(d) person/person occupying position of authority in entity of bad reputation or character, or not a fit and proper person to be licensed (f) that if the application were granted:</p>

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	<p>(j) the grant of the application would otherwise be contrary to the Act.</p>	<p>Section 47F(2): Grounds for objection: the grant of application may or will adversely affect:</p> <ul style="list-style-type: none"> (a) the amenity of the neighbourhood where the premises are or will be located, or (b) health, education, public safety or social conditions in the community. 	<ul style="list-style-type: none"> (i) undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises would be likely to result (ii) the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises would be likely to be prejudiced (iii) the amenity of the locality in which the premises or proposed premises would be adversely affected in some other way. <p>Note: submission rights will replace current objection rights when amendments come into effect.</p>
<p>Other requirements</p>	<p>Section 38(5): If an application is not granted because the licensing authority is not satisfied it is in the public interest, a new application for the same land/premises cannot be made within 3 years of decision (unless Director decides new application is sufficiently different).</p>		