

DISCUSSION PAPER

Victoria and New South Wales: Liquor Law Comparisons

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In this paper, the background and principles of the Victorian liquor licensing reforms, and their relevance for New South Wales are discussed. This paper was commissioned by the Westfield Group.

The Victorian Experience 1987 – 2007

Legislation reforming Victoria's liquor laws has now been in operation for twenty years. During that time, the number of licences has increased from around 3200 to 17000, without much change in average per capita alcohol consumption. There remain in 2007, as in 1987, problems of binge drinking, especially among teenagers. But over the last twenty years, there has been a transformation of the industry. In particular, the growth of small scale premises, including a new bar culture and scene, has been remarkable, and is now the subject of a vigorous debate in Sydney, with proponents of the Melbourne style opposed by hotel interests.

The 1986 Victorian Review

The Review of the (1968) Victorian Liquor Control Act, which I chaired was published in 1986, and formed the basis for the reforming Liquor Licensing Act, which was promulgated in May 1988. The review asked a basic question: what is the object of liquor legislation, and what are the best means of attaining that object? It noted that:

- alcohol abusers impose costs on society in general: road accidents, community cost subsidy for treatment, and for dealing with drunk behaviour, as well as many others
- but the majority in Australian society do not misuse alcohol
- policy should not deny these access to a flexible and varied set of public facilities for the purchase, enjoyment and consumption of alcohol
- liquor legislation should not inhibit the free responses of industry to legitimate consumer desires
- instruments of alcohol abuse policy should be related to targets (e.g. fiscal policy; proper planning; licence cancellation and suspension; and penalties)

The review concluded, however, that much of the legislation had little if any relevance to the pursuit of these objects by appropriate means. It found instead that the laws, which should have been designed to obtain the public good of limiting alcohol abuse, had been captured by vested interest groups in the industry, and converted to operate to their benefit. The licence system was in effect a highly complicated device for sharing out business privileges between existing participants in the industry. Consequently, the Review proposed successfully to the Victorian Government a three part strategy:

- a set of concerted policies designed to counter the abuse of alcohol with appropriate measures inside and beyond a licensing Act, including education
- a less economically and otherwise intrusive and overlapping licensing Act, with greater flexibility for the business of licence holders
- administrative reform of liquor licensing, and a clear separation of judicial and administrative functions.

Relevance of the Victorian Liquor System for NSW

The second and third aspects of the proposals in Victoria have undoubtedly proved successful, in ways that point to deficiencies in the current NSW licensing regime. This is so for the following reasons:

- the greater flexibility in Victoria for licence holders and lowered entry barriers have created not only a far larger number of industry participants, but also an enormous increase in the diversity of premises. In particular the average size of businesses has declined, whether measured by turnover, physical scale or employment numbers. Owners have been able to cater for legitimate consumer demand under regulations that permit far greater freedom than the restrictive licence boxes of the earlier 1968 Act. The consequence has been the burgeoning of new establishments with activity that blends the previously demarcated functions permitted in former days. Of particular importance has been the ability of a far greater number of establishments to serve alcohol with or without food, a privilege in the previous licence system confined to hotels

- Traditional style hotels and other licensed businesses continued to be established under the reforming Act. But the new arrangements have fostered the creation of cafes, bars and restaurants of a size and style, and in locations that had not previously been seen in Victoria.
- the administrative simplicity of the new processes has effectively saved both time and expense and reduced the barriers to entry represented by earlier complexities. The separation of judicial and administrative functions has assisted the smooth operation and flow of applications enormously. Liquor licensing decisions are no longer weighed down at the licensing authority by the need to deal with issues which are now dealt with where they belong, namely the appropriate authority, such as health or planning. And appeals against liquor licensing decisions are heard at the Victorian Civil and Administrative Tribunal
- while the number of licensed establishments has risen by more than five fold over the last twenty years, there remain nonetheless serious problems stemming partly from size, such as night clubs, especially where there are several of these in one vicinity. There is a strong mood in public and government opinion to act against abuse, public nuisance and disturbance of amenity arising from such premises, and it is entirely within the Liquor Review's philosophy that such behaviour should be firmly tackled
- on employment, the allegation was made before the passage of the Victorian Act that the rise of new businesses, for example restaurants, would reduce employment. However, based on State employment data (table 7 of the 1998-99 ABS publication, Café and Restaurants Industry, Cat No 8655, and table 8 of the 2003-4 same publication – latest available) the following emerges:
 - o over the period end June 1999 – end June 2004, restaurant employment in Victoria grew by 24.6%, compared with 17.7% for restaurant employment in NSW.

These figures are obviously limited both as to period and to coverage but indicate that the rise in establishment numbers in Victoria has been in the context of more rapid employment growth than in NSW. Explanations of why jobs in restaurants in Victoria grow faster than NSW are also, of course, due to a variety of causes, of which the influence of differing liquor licensing regimes is one.

- the vigour, expansion and increased relative flexibility, as well as the shift to smaller scale of premises in Victoria is indicated by the following comparison of the growth of full club, general and on-premises licenses in Victoria and NSW between 1998 – 2006:

Victoria	1998	2006	increase	%
Full Club	789	793	4	1
General	1830	1967	137	7
On-premises	2853	5589	2736	96

NSW	1998	2006	increase	%
Full Club	1512	1539	27	2
General	2031	2071	40	2
On-premises	3267	4362	1095	34

Source: Victorian Department of Justice Annual Report (Licensing Branch 2006/2007)

Attention is drawn particularly to the near doubling (a 96% increase) in Victoria of the number of on-premises licenses between 1998 – 2006, compared with a 34% increase in the number of these licenses in NSW.

- The consequences of a much higher number of licensed liquor outlets in Victoria compared with NSW has not been reflected in differing per capita alcohol consumption levels between the States. It has instead been the far greater choice of premises style and type in Victoria; the growth of smaller premises in which drinking is associated with food; and the emergence in the Melbourne CBD especially but elsewhere too of concentrated smaller outlets in lanes creating a new living space of great public popularity.

The relevance of the Victorian experience for NSW is thus clear. The effective restrictions in the NSW Act resemble in several ways those which applied under the 1968 Act in Victoria. For example:

- the processes of gaining a licence are far more complex in NSW than Victoria today, entailing greater cost and time;
- the restrictions of conditions on licence types (e.g. the “30 per cent rule” on restaurants, enabling liquor to be served without food in only 30 per cent of the floor area) limit flexibility and scope for experimentation by businesses in seeking to cater for changing consumer demand
- the mixture of judicial and administrative functions in the administration of licensing in NSW appears to create the confusion that was characteristic of the 1968 Act’s operation in Victoria
- the reasons for the NSW restrictions appear to have little or no relevance for the principal object of liquor law namely containment of alcohol abuse, and seem more concerned with apportioning business to vested interests, in particular hotels
- the AHA in Sydney in 2007 is a clear echo of the AHA in Victoria in the past, namely by claiming to know what the public wants and lobbying to prevent those conditions of legitimate competition which would allow the market to work and the public preference to be revealed. For example, the President of the AHA, NSW has said:

“Melbourne is Melbourne, Sydney has a different outlook ... we aren’t barbarians but we don’t want to sit in a hole and drink chardonnay and read a book. People can sit down, talk about history, chew the fat and gaze into each others eyes and all this sort of baloney but that’s pie in the sky stuff that’s not what Sydney wants. Sydneysiders – outdoorsy types, fit, who enjoy the fresh air – are more likely to want alfresco”. (Sydney Morning Herald, August 10, 2007).

It should not be for the AHA, however, to dictate what Sydney establishments should be – that is a matter for revealed consumer preference, through the market.

The Special Case of the Sydney CBD

Satisfactory reform of the NSW liquor licensing system requires attention to the overall impediments to flexibility listed above. Were a special CBD zone to be created in which relaxation of restrictions were permitted for the CBD alone for the specific purpose of allowing versatile small scale bars, cafes and Victorian (European) style restaurant licenses, the following liberties would be essential:

- freedom from the “30 per cent rule” in restaurants, i.e. a drink without food could be served at the discretion of the proprietor; but the Victorian qualification of a minimum area of floor space for tables and chairs could be inserted to distinguish these premises from bars
- freedom from the “genuine meal” requirement in service of food with alcohol, enabling the growth of tapas style facilities
- easing of or special CBD exemption from the extremely time consuming processes attending licence granting. (Though it must be emphasised that this is an inferior solution to the root and branch reform of the entire system)
- reduction for the CBD licences of the cost of acquiring a licence
- increasing the opportunity for applicants to gain licences through the provision of planned laneway and other precincts (such as Hardware Lane off Bourke St in Melbourne and shopping mall interiors) where diversity and concentration of small scale outlets, including licensed cafes, can thrive
- moving away from the traditional hierarchy of box like licence privileges, and permitting CBD outlets the scope to be as flexible as possible through making it as easy as planning requirements justify to cater for legitimate public consumer demand, i.e. general licences in which drinking with or without food is allowed, and there is scope too for sale of liquor for off-premises consumption
- were laws such as those in Victoria to be applied in Sydney’s CBD, scope would be increased for new highly successful developments that have proved of lasting popularity with Melbourne’s public such as the Southgate Restaurant precinct, established in 1998/90. This is a collection of many restaurant and café businesses reflecting different types and styles of food and liquor service, ranging from formal dining to more casual food court style service-all in a purpose built precinct and which was [then] one of Melbourne’s most innovative commercial re-developments. As in Melbourne, it is likely that the liberalisation of the NSW liquor laws. or those of the CBD alone

would empower licensees, more than ever before, to create businesses with a trading profile to capture with commercial success the excitement of and spirit of the market.

- as in Melbourne, so in Sydney liberalisation of the law would enable licensees to identify and deliver business profiles responding to and satisfying the changing and maturing expectations of the market. As in Melbourne, so in Sydney this business empowerment and freedom could well prove to be a most influential force for change and expansion in the industry, with its central driver a café/restaurant/bar expansion that would cater for a changing lifestyle preference for city dwellers in new, cosmopolitan, diverse Australia.
- as in Melbourne, in the years following 1988 and the enormous expansion of industry numbers, so in Sydney it is likely with liberalisation that licensees would be able to realize and benefit from the décor, size, trading profile and ambience of European style cafes bars and restaurants. In Melbourne, as could occur in Sydney with liberalisation, restaurants, cafes and bars were able to break away from their previous stereotypical format under the new laws.
- the lifestyle driven profile of Melbourne's licensed businesses is now reflected in: a diverse range and size of restaurants and cafes in the CBD as well as suburban shopping precincts such as Docklands; and bar/lounge businesses in the CBD and suburbia which are located at ground floor main street level, in small basements or upper level tenancies; or in hidden out of the way locations, laneways or sites providing a marketing edge or point of difference.
- it is also important that Victoria's successful reform rested on the principle that the liquor licensing authority was but one agency with responsibility for the establishment and operation of licensed businesses and it complemented the role of other agencies with ambits in planning, health requirements, building compliance, and fire control measures
- in addition it is relevant to any Sydney CBD reforms that the City of Melbourne's Planning Scheme provides that no further planning approval is required for the use of premises as a licensed restaurant in the Capital City Precinct area referred to in that Scheme. The City of Melbourne's approach to planning approvals for licensed cafes and small/medium sized bars has also facilitated the development of these businesses.
- instead of the NSW State and or Local Government and licensing authorities taking a restrictive attitude to the growth of premises, there should be a positive approach to emulate the Victorian experience, described by the Director of Tourism, Victoria, Greg Hywood, in The Age (September 24, 2006) as follows:

"Australia tends to be branded as beaches, reefs, rocks and outback – we don't easily fit into that ... but we have this dominant city called Melbourne, which over time has really moved from a conservative, institutionalised place, which had a reputation for dowdiness, to really quite vibrant and young and easily the best city, given the laneways and the clubs and the bars. If you look back, it was the deregulation or big reform of the licensing laws back in the 1980s in the Cain government – the Nieuwenhuysen report. That absolutely revitalised the place, because basically it allowed the development of a street culture, which hasn't occurred in the other capital cities of Australia to anything like the extent. More than just tourism, it's about making Melbourne the sort of place where people want to come and live, visit, invest, study – the quality urban experience."

One of the great strengths of the Victorian liquor and hospitality industry, which could be emulated in NSW, is its diversity, and the ability of licensees to identify and respond to the changing needs and expectations of the market-whether as a traditional pub/hotel; as a vibrant gaming venue with a range of associated dining, lounge, entertainment or bar facilities; or as a café/ bar or lounge responding to more eclectic market opportunities. The concentration of European style facilities is especially evident in the CBD and its cosmopolitan street culture, which has proved so popular with Melburnians and made it a mecca for tourists and visitors. It remains to be seen if NSW will make the changes necessary to secure the reforms required.

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