



AUSTRALIAN HOTELS ASSOCIATION

ACT BRANCH

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Committee Secretary
Standing Committee on Public Accounts
C/- ACT Legislative Assembly
Via E-mail: committees@act.gov.au.

RE: Public Accounts Committee Inquiry into the Regulation of ACT Liquor Licences

Thank you for your advice in relation to the Committee's inquiry in relation to the Auditor-General's 2007 report titled *Regulation of ACT Liquor Licences*.

The Australian Hotels Association is the leading organisation representing the interests of the licensed hospitality industry in the ACT. Its members include licensed accommodation hotels, bars, nightclubs, restaurants and cafes.

The AHA expects that all of the issues raised in the Audit will be addressed as part of the review of the *Liquor Act 1975* currently being undertaken by the Department of Justice and Community Safety, yet thanks the Committee for its interest in this matter.

INSPECTIONS

Bars and nightclubs have always been the focus of the OFT's compliance activities. Although the Auditor-General's report found that the overall number of inspections made by the OFT had declined in recent years, the report did mention that OFT inspections had specifically targeted 'higher risk' premises, such as nightclubs or pubs in the major entertainment precincts¹, and that these premises were selected for inspection according to the experience of the particular inspector, licensee track record and lessons learnt on previous visits.² This appears to indicate a move away from a random inspection regime to a targeted one, where fewer inspections could lead to higher recorded incidences of regulatory breaches.

The report also raised concern with the frequency of after-hours inspections by OFT inspectors. The AHA believes responsibility for upholding liquor laws,

¹ ACT Auditor-General (2007) *Regulation of ACT Liquor Licences*, p27

² ACT Auditor-General (2007) *Regulation of ACT Liquor Licences*, p39

particularly in bar and nightclub type venues, should be in the hands of ACT Policing.

In addition to the fact that police maintain a presence around licensed venues after hours, they are also able to assist licensees in handling difficult patrons and deal with people causing disturbance in public areas outside licensed premises. The AHA also supports ACT Policing's calls for powers to issue on the spot fines for people who refuse to vacate a premise when directed by the licensee.

The AHA also believes heavy retail discounting contributes significantly to anti-social behaviour. The rise in popularity of discount liquor stores has encouraged people to drink packaged liquor at home before venturing into pubs and nightclubs at night. In many cases alcohol is brought from liquor stores and consumed in public areas such as Garema Place. Another part of the AHA's national strategy will be to explore the feasibility of addressing aggressive price discounting strategies with the ACCC and state/territory licensing bodies.

The Auditor-General's report makes no comment on how many OFT inspections were carried out on retail outlets, and it appears almost all of the Government's compliance activity is geared towards those venues that sell alcohol for consumption on-premise despite a national trend that is seeing an increasing majority of all alcohol (industry estimates put this figure at around 70%) now being purchased from retail outlets for consumption away from licensed premises. It is a curious phenomenon that as more and more alcohol is consumed off-premise, an increasing desire to 'crack down' on the conduct of bars and nightclubs. According to a 2005 study, 88% of minors who reported consuming alcohol indicated it was obtained from an adult while only 1% obtained their alcohol directly from a bar or pub.³ This data supports the view that underage drinking is not a major problem in licensed premises because minors are unable to get inside the venues in order to purchase a drink.

These figures indicate that the effective regulation of the liquor industry requires more than simply cracking down on pubs and nightclubs and justifies an increase in compliance activity by ORS in retail liquor outlets.

CONSULTATION & COMMUNICATION

The report states:

Audit considers that there is merit for JACS to actively work with the industry to promote and ensure an appropriate level of self-regulation by the industry. IN particular, it would be useful to encourage a collaborative approach with the industry to jointly develop and promote a Code of Conduct for the liquor and licensed hospitality industries, and to implement other initiatives at the licensed premises to minimise harm

³ White, V. & Hayman, J. (2006): *Australian Secondary School Students' Use of Alcohol in 2005*, Department of Health and Ageing, p15

*arising from the misuse and abuse of alcohol. For example, a higher level of cooperation between the industry and JACS could lead to a higher level of licensees and key staff attending relevant training to ensure a sound understanding of the licensees' obligation under the Liquor Act.*⁴

The AHA would welcome such an opportunity and encourages the Government to explore this recommendation. Codes of Conduct have been successfully implemented in other states across the country helping to reduce alcohol-related harm and address compliance issues. Alcohol management in licensed premises is an issue currently being addressed by the AHA at a national level through the development of an industry strategy to encourage the responsible consumption of alcohol. Part of this strategy will be the introduction of a 'Charter of Rights & Responsibilities' for patrons that outlines the standards of behaviour expected within licensed premises.

The AHA also believes there is merit in keeping the industry informed of decisions made by the Liquor Licensing Board in relation to individual licences. The register of liquor licences is not published in the ACT but has been made available to the AHA on request. There is merit in providing the industry with regular updates on decisions taken with regard to licence applications, licence transfers, directions and decisions of the Board and Registrar, and we note that ORS has begun distributing a regular newsletter containing this kind of information to the industry.

PUBLIC AWARENESS & INDIVIDUAL RESPONSIBILITY

The Discussion Paper focuses entirely on measures designed to restrict the sale and supply of alcohol. While the regulation of licensees is a necessary function of government, any discussion of alcohol-related issues should include a commitment from Government to address the root cause of risky drinking – a desire by certain people to drink excessively.

Industry experience is that the amount of liquor being consumed by Australians is dropping year-on-year, and the percentage of consumption in licensed premises is also reducing as a proportion of this wider reduction. This anecdotal evidence is supported by ABS data showing a decline in per capital alcohol consumption in Australia since the 1980s.⁵ It is therefore not the quantity of the consumption that requires addressing, or the general nature of opening hours, but the nature of that consumption and the patrons doing the consuming. In short, a cultural and educational issue is at the heart of community concerns about alcohol, not availability, licence restrictions or trading hours.

Today more than 70 per cent of liquor consumption in Australia occurs away from licensed premises, typically at home, at private parties, and in sporting environs. This pattern of consumption demands that harm minimisation

⁴ ACT Auditor-General (2007) *Regulation of ACT Liquor Licences*, p46

⁵ Distilled Spirits Industry Council of Australia (2008): *Pre-budget Submission 2008-09*, p17

strategies extend beyond licensed premises and into the homes and recreational venues where the majority of alcohol is consumed. The ACT needs a holistic approach to responsibility that targets individual behaviours and awareness, not just another crack down on the licensed industry.

The AHA recommends the Government investigate ways to assist a shift to more responsible drinking practices in the ACT through the promotion of a culture of shared responsibility, where the obligations of the licensee are complemented by the responsibilities of the individual within a responsible practice framework.

The National Alcohol Strategy 2006-2009 states that in order to reduce “the acceptability of intoxicated behaviour and alcohol-related harm, there needs to be a strong promotion of awareness of the Australian Alcohol Guidelines and education about standard drink measures amongst all Australian drinkers.”⁶

The AHA believes part of the ACT Government’s response to community concern about alcohol consumption must be to partner with the Commonwealth to promote the Australian Alcohol Guidelines and the standard drink concept. The messages from this campaign should target people’s attitudes towards the acceptability of drunkenness. Reform measures that merely add more rules and costs for the industry, raising fees and penalties and ignoring the need to promote patron responsibility, will simply invite a sceptical response and fail to achieve the cultural change required.

The Queensland Government has embraced the concept of shared responsibility with the Treasurer the Hon. Andrew Fraser MP announcing funding for a state-wide campaign targeting young binge drinkers and parents who supply alcohol to minors, and reminding patrons of their responsibilities for how they conduct themselves in licensed premises. Mr Fraser indicated his Government’s understanding of this concept when he stated that “responsibility for harm minimisation is not just the domain of the licensee – entering a pub or club or any licensed venue does not give a punter the right to exit society.”⁷

Addressing the cultural factors that lead to binge drinking will assist the licensed industry in its endeavours to minimise the harms associated with alcohol consumption and the AHA recommends the ACT Government engage in a similar campaign with the input of industry.

The AHA recommends the ACT Government provide support for a public awareness campaign designed to raise people’s awareness of the standard drink concept and the dangers of excessive alcohol consumption. The National Alcohol Strategy states that “as a parallel approach to reducing the acceptability of intoxicated behaviour and alcohol-related harm, there needs to be a strong promotion of awareness of the Australian Alcohol Guidelines and

⁶ Ministerial Council on Drug Strategy (2006): *National Alcohol Strategy 2006-2009*, p27

⁷ Fraser MP, The Hon. A. (2008): *Liquor Reforms* [published in the May 2008 edition of *QHA Review*]

education about standard drink measures amongst all Australian drinkers.”⁸ Such a campaign should involve Commonwealth and ACT Governments, the liquor industry and ACT Policing, and send a message that misbehaviour as a result of intoxication will not be tolerated.

LIQUOR LICENSING BOARD

The review of tribunals undertaken by the ACT Government has potential ramifications for the effective regulation of the liquor industry. Abolishing the Liquor Licensing Board (LLB) in favour of a multi-purpose tribunal responsible for a series of administrative functions bearing no relation to the liquor industry carries a significant risk and should be avoided.

The *ACT Civil and Administrative Tribunal Bill 2008* is currently being considered by the Legislative Assembly and proposes to establish the ACT Civil and Administrative Appeals Tribunal, which will consolidate the functions of the following bodies:

- Administrative Appeals Tribunal;
- Architects Board;
- Chief Surveyor (when acting as a tribunal);
- Commissioner for Fair Trading (when acting as a tribunal in relation to motor vehicle dealers, tobacco and finance brokers);
- Construction Occupations Registrar (when acting as a tribunal);
- Consumer and Trader Tribunal;
- Credit Tribunal;
- Discrimination Tribunal;
- Essential Services Consumer Council;
- Guardianship and Management of Property Tribunal;
- Health Professionals Tribunal;
- Legal Profession Disciplinary Tribunal;
- Liquor Licensing Board of the ACT;
- Mental Health Tribunal;
- Residential Tenancies Tribunal; and
- Small Claims jurisdiction.

The AHA calls for greater openness and accountability from the Liquor Licensing Board and it is the view of the Association that this body is vital to the effective regulation of the industry. Members of the Board are appointed by the Minister in recognition of their experience, abilities and aptitude for the type of decision-making required under the Act. The requirement for the Board to decide whether to issue reprimands, directions, suspensions or cancellations in relation to breaches of the Act is a function best performed by a body dedicated exclusively to this purpose.

The AHA fears that allowing a multi-purpose tribunal to absorb the functions of the Board would result in decisions on technical or specific alcohol issues being made by individuals without an appropriate level of experience or

⁸ *National Alcohol Strategy 2006-2009*, p27

knowledge. Another issue of concern would be the additional discretionary powers that a consolidated tribunal might grant the Registrar to exercise without the same level of scrutiny and review that is currently applied. The AHA's recommendations for the Board to play a greater role in liquor regulation are consistent with an evidence-based policy approach dedicated to harm minimisation.

There is also concern that the number of matters required to be heard by the proposed ACT Civil and Administrative Appeals Tribunal could result in untimely delays.

The AHA submits that the Liquor Licensing Board retain its status as an autonomous body of individuals dedicated exclusively to liquor licensing administration matters.

On a separate issue relating to the Liquor Licensing Board, AHA members have reported concerns with the amount of time taken for the Board to notify licensees that they will be required to attend hearings. In one case, a licensee was not informed of a breach alleged to have occurred in September 2007 until late February 2008, by which time all CCTV footage from the night in question had been erased. The AHA submits that there is no reason why licensees should not be notified by the following business day if they are to be charged with a breach as the result of an inspection. Certainly five months is an unacceptable delay and potentially impedes the ability of the licensee to defend the charge.

OUTDOOR CAFÉ AREAS

The introduction of indoor smoking bans from 1 December 2006 has exacerbated a longstanding problem for licensees in the regulation of outdoor café areas. Currently the Act states that alfresco dining areas must only be used for sit down dining or drinking⁹, which creates an unnecessary burden of enforcement on the licensee.

This regulation was introduced to prevent overcrowding of outdoor areas but is excessive and unnecessary because each outdoor area already has its own occupancy loading.

The regulation becomes problematic because it does not apply to all outdoor areas where alcohol is consumed, only in those which are leased from the ACT Government. Venues that have a beer garden as part of their own land are not bound by the 'sit-down rule'. Patrons generally do not understand the reasons why in some venues they are required to sit down, while in others they are free to sit or stand at their leisure. With the burden of compliance falling on the licensee this becomes the cause of unnecessary agitation.

Since the introduction of indoor smoking bans, patrons are now seeking to move from the indoor area of a premise to the outdoor area with greater

⁹ *Licensing Standards Manual 2004*, p7

frequency than previously, meaning the task of ensuring all patrons are seated is a practical impossibility. There is a risk that licensees will be forced to focus too much attention on what, in the broader context of providing a safe and secure drinking environment, is really an area of relative insignificance at the expense of monitoring potentially higher security risk areas throughout the rest of the venue.

The AHA supports the continued application of occupancy loadings in outdoor areas to ensure patron safety and public amenity are maintained, but submits that the requirement for patrons to be seated at all times in these areas is an anomaly in the legislation and should be removed. This would create a level playing field for all operators in the industry and ease the burden of enforcement on both the industry and the regulator.

NEED FOR EFFECTIVE DETERRENTS TO ANTI-SOCIAL BEHAVIOUR

This review should not be limited to the regulation of liquor licences but should take a holistic approach to harm minimisation in the ACT. Licensees would be assisted in their endeavours to reduce the harms associated with alcohol consumption by legislation allowing for tough penalties to be issued for secondary supply of alcohol to minors and intoxicated people.

When a patron becomes intoxicated and is refused service in a venue, it is difficult for licensees to immediately notice if that patron has alcohol purchased on their behalf. Penalties for secondary supply would help to deter this practice and provide licensees with the assistance necessary to maintain a safe and secure drinking environment.

Secondary supply on behalf of minors generally occurs in retail liquor outlets, but occurrences would be reduced by introducing penalties as a deterrent.

The AHA supports the recent legislation allowing police to issue on-spot fines for a range of minor offences including using offensive language, damaging property and urinating in public. These measures provide ACT Policing with the powers necessary to deter anti-social behaviour in an effective manner. The AHA submits that the list of offences covered by the infringement scheme be extended to include involvement in melees (where no assault charge is otherwise made), intimidating behaviour, and failure to leave the area surrounding a licensed premise when directed by the licensee.

Yours sincerely



Steven Fanner
General Manager