STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Inquiry into Liquor Fees and Subordinate Legislation

MAY 2012

Report 11

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Resolution of appointment

On 9 December 2008 the Legislative Assembly appointed a Standing Committee on Justice and Community Safety to perform the duties of a scrutiny of bills and subordinate legislation committee and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.[1]

[1] Legislative Assembly for the ACT, *Minutes of Proceedings*, 9 December 2008, pp.12–18.

Terms of reference

Inquiry into Liquor Licensing Fees Review and Subordinate Legislation

On 17 November 2011, the Assembly agreed to the motion:

That this Assembly:

(1) notes:

  (a) the motion of 18 November 2010 calling for a review of liquor licensing fees;

  (b) the Government's Review of Liquor Licensing Fees—Final Report tabled on 22 September 2011;

  (c) the Liquor Amendment Regulation 2011 (No 2)—SL2011-29 and the Liquor (Fees) Determination (No 1)—DI2011-295 came into effect on 11 November 2011; and

  (d) the public concern about the new liquor licensing fees;

(2) refers the Review of Liquor Licensing Fees—Final Report, the Liquor Amendment Regulation 2011 (No 2)—SL2011-29 and the Liquor (Fees) Determination (No 1)—DI2011-295 to the Standing Committee on Justice and Community Safety for inquiry and report by the first sitting day in March 2012; and

(3) calls on the Government to:

  (a) provide its response to the Committee report within three months; and

  (b) if the Assembly is not sitting when the Government provides its response, send the report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its publishing and circulation.[2]

Amendments

At its meeting of Tuesday 20 March 2012, the Assembly agreed that the resolution be amended by omitting the words 'by the first sitting day in March 2012' and substituting "by the last sitting day in May 2012" and inserting a new paragraph '(2A) If the Assembly is not sitting when the report is completed the Speaker, or, in the absence for the speaker, the Deputy Speaker, is authorised to give directions for its printing, publication and circulation'.[3]

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[2] *Debates*, Legislative Assembly for the ACT, 17 November, 2011, p.5599.

[3] *Debates*, Legislative Assembly of the ACT, 20 March 2012, p.843.

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RECOMMENDATIONS

RECOMMENDATION 1

4.78 The Committee recommends that the Government consider the balance in numbers between on and off licences in the ACT. It should, if it is found that a disproportionate number of off licence vendors is contributing to alcohol-related crime, seek to reduce numbers of off licences or otherwise mitigate the risk associated with these businesses.

RECOMMENDATION 2

4.79 The Committee recommends that in view of the contribution of preloading to alcohol-related incidents, that the Government consider placing a greater financial burden on off licence alcohol vendors. In particular it should consider whether discounts currently given to small vendors should be reduced under the liquor fees framework.

RECOMMENDATION 3

4.87 The Committee recommends that the Government increase educational campaigns designed to modify the culture of alcohol use in the ACT so that alcohol use creates fewer harms.

RECOMMENDATION 4

5.86 The Committee recommends that the Government support the Liquor Amendment Bill 2012, would require it to give licensees a prescribed period of notice before new liquor fees and licensing arrangements were introduced.

RECOMMENDATION 5

5.88 The Committee recommends that if the Liquor Amendment Bill 2012 should not be successful in the Assembly, the Government should introduce legislation with similar effect.

RECOMMENDATION 6

5.90 The Committee recommends that the Government consider making it a requirement that licensees serve liquor in glasses marked with standard drink servings, and that pouring standard drinks be considered in the context of Responsible Service of Alcohol (RSA) training.

RECOMMENDATION 7

5.91 The Committee recommends that the Government consider working toward a consistent framework for Responsible Service of Alcohol (RSA) training with other Australian jurisdictions.

RECOMMENDATION 8

5.94 The Committee recommends that the Government seek means to foster cooperative arrangements between on licence venues so that patrons identified as having been involved in alcohol-related incidents may be excluded from venues engaged in those cooperative arrangements. Government should consider examples in Australia and overseas to establish the practicability of fostering similar arrangements in the ACT.

1 INTRODUCTION

1.1 This report considers the *Review of Liquor Licensing Fees—Final Report;* the *Liquor Amendment Regulation 2011 (No 2);* and the *Liquor (Fees) Determination 2011 (No 1)*.[4]

1.2 The sale and consumption of alcohol in the ACT is governed by the *Liquor Act 2010*, and the regulations and fees determinations made under it.

1.3 The ACT Government makes regulations under Section 229 of the Act, currently in the form of the *Liquor Regulation 2010*. The *Liquor Amendment Regulation 2011 (No 2)* amends the *Liquor Regulation 2010*.

1.4 The Government sets fees under Section 227 of the Act. The *Liquor (Fees) Determination 2011 (No 1)* superseded to the *Liquor (Fees) Determination 2010 (No 1)* which commenced at the same time as the *Liquor Act 2010*.[5]

Background

1.5 The review of liquor fees stemmed from a motion for disallowance moved by Mrs Dunne MLA with respect to the *Liquor (Fees) Determination 2010 (No 1)*.[6]

1.6 Determinations are 'disallowable instruments', under which the Executive is authorised to create legislation by an Act. Disallowable instruments do not require a vote in the Assembly in order to become law, but can be vetoed by the Assembly.

1.7 Amendments to the motion were proposed by Mr Rattenbury MLA, seeking to change the disallowance motion to a motion requiring a review.[7] When this

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[4] SL2011-29 and DI2011-295.

[5] That is, on 1 December 2010.

[6] *Debates*, Legislative Assembly of the ACT, 18 November 2010, pp.5651-5652. Determinations are 'disallowable instruments', which the Executive is authorised to create by an Act. Disallowable instruments do not require a vote in the Assembly in order to become law, but can be vetoed by the Assembly.

[7] *Debates*, Legislative Assembly of the ACT, 18 November 2010, pp.5659-5660.

question was put to the Assembly it was resolved in the affirmative.[8] After further debate, a vote on the original motion as amended was resolved in the affirmative, thus creating the requirement for a review. [9]

1.8 The *Liquor (Fees) Determination 2011 (No 1)* and the *Liquor Amendment Regulation 2011(No 2)* both issued on 9 November 2011 and, as a result, neither of were considered by the review, which was tabled in the Assembly on 22 September 2011. They are considered below.

Conduct of the inquiry

1.9 The present inquiry was referred to the Committee by the Assembly on 17 November 2011.[10]

1.10 In the original resolution, the Committee was to report by the first sitting day of March 2012. On 20 March 2012 the Chair of the Committee moved a motion amending the resolution so that the Committee would report by the last sitting day in May 2012, and providing that the report could be tabled out of session, if the Committee wish to do so, before that time.[11]

1.11 The Committee wrote to licensees, inviting them to make a submission, on 9 December 2011. A list of submissions is presented in Appendix A of this report.

1.12 The Committee held a public hearing on March 7, 2012 at which the Attorney-General and his officers, representatives of the liquor industry, and licensees appeared. A list of witnesses is present in Appendix B of this report.

1.13 The Committee deliberated on the inquiry in 11 of its private meetings.

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[8] *Debates*, Legislative Assembly of the ACT, 18 November 2010, p.5668.

[9] *Debates*, Legislative Assembly of the ACT, 18 November 2010, p.5671.

[10] Motion proposed (Mrs Dunne MLA) in *Debates*, Legislative Assembly of the ACT, 18 November 2010, p.5592; amended (Mr Rattenbury MLA) pp.5596—5598. The amended motion was resolved in the affirmative, p.5599.

[11] *Debates*, Legislative Assembly of the ACT, 20 March 2012, p.843.

Structure of the report

1.14 The structure of this report is as follows:

- This first chapter, Chapter 1, which is an introduction to the report;
- Chapter 2, which describes the *Review of Liquor Licensing Fees—Final Report*; the *Liquor Amendment Regulation 2011 (No 2)*; and the *Liquor (Fees) Determination 2011 (No 1)*;
- Chapter 3, which describes the ACT Government's position on liquor licensing fees, and the administration of current arrangements, as presented in its submission and testimony at the Committee's public hearing;
- Chapter 4, which describes comments on the fees structure presented in other submissions and by other witnesses; and
- Chapter 5, which describes proposals for change and development presented by other submissions and witnesses.

1.15 Appendix A provides a list of witnesses who appeared at the Committee's public hearing for the inquiry.

1.16 Appendix B provides a list of submissions to the inquiry.

2 THE FINAL REPORT, *REGULATION* AND *DETERMINATION*

Final Report - Review of Liquor Licensing Fees

Terms of Reference

2.1 The terms of reference for the review of liquor licensing fees stated that it would provide:

- an analysis of the effect the 2010 fees determination has had on the number of licensed venues operating in the ACT and trading hours they adopt;
- an evaluation of impact of continuing to use $100 000 as the threshold test for the 'annual liquor purchase', noting it has not been reviewed for at least 10 years;
- an analysis of impacts of expanding the 2010 fees determination to take account of the full list of seven risk factors listed in section 229(2)(b) of the Liquor Act 2010; and
- an analysis of the current fee structure for liquor permits.[12]

Structure of the *Final report*

2.2 The *Final report* begins in Chapter 1 with a description of the licensing fee structure of the time; guiding principles for the review; and a description of the then-current fees determination, the *Liquor (Fees) Determination 2010 (No 1)*.[13]

2.3 In Chapter 2 the report describes the consultation process conducted for the review before presenting, in Chapter 3, a literature review of Australian

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[12] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.14-15.

[13] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.14-16.

research on the causes of alcohol harms and a description risk-based licensing fee models adopted in two other Australian jurisdictions: Victoria and Queensland.[14]

2.4 Chapter 4 presents data on the effect of the new liquor fees on the ACT liquor market, including analyses of the market by licence classes; by size; by size and trading hours; and considering off licences. Chapter 5 considers market participation in the liquor market, and deals with the underlying question of whether the new fees regime has been a disincentive for business in this area of activity.[15]

2.5 Chapter 6 presents data on 'alcohol-related incidents', matching incidents to the differentiations in the market established in Chapter 4.[16]

2.6 Chapter 7 considers the $100,000 threshold which at that time was used to differentiate categories of risk for licensed premises based on whether the particular business in question purchased alcohol each year to a total of less or more than this sum. [17]

2.7 At the time the review report was tabled in the Assembly, the threshold was created in law by the then-current liquor fees determination, the *Liquor (Fees) Determination 2010 (No 1)*. It was removed when this was superseded by the *Liquor (Fees) Determination 2011 (No 1)*. As a result, the threshold is not considered in this present report to the same degree as it was in the review.

2.8 Chapter 8 of the review report considers risk factors for alcohol harms, including the type of licence; trading hours; occupancy loading and compliance history, together with how these factors are dealt with in Victoria, Queensland and the ACT.[18]

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[14] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.17, 21-22.

[15] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.24-28, 29-31.

[16] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.32-35.

[17] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.36-37.

[18] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.38-42.

2.9 Chapter 9 of the report considers the cost of regulating liquor in the ACT. Chapter 10 considers different licensing fee models.[19]

2.10 Chapter 11 considers liquor permits, which are temporary authorities to serve and sell liquor outside of permanent licensed premises.[20]

2.11 The first of the appendices for the review report presents options for different license fees structures in detail, with an assessment for each of their strengths and weaknesses. [21]

Findings of the *Review report*

Characteristics of the ACT liquor market

2.12 The *Review report* found, in relation to the characteristics of the ACT liquor market, among other things:

- that the number of applications for license renewals in December 2010 had increased over previous years and that the 'market trend tends to suggest that there are more licensees staying in the liquor industry' under the new regime;
- that 'a large majority of the ACT liquor market is made up of small to medium sized businesses (82 per cent) of which nine per cent trade late past midnight and large businesses (18 per cent) of which 11 per cent trade late past midnight';
- that 'more than half (58 per cent) of reported alcohol-related incidents occurred at nightclubs (34 per cent) and clubs (24 per cent) and nearly 80 per cent of incidents occurred at premises trading to 4am or 5am';
- that '61 per cent of alcohol-related incidents occurred at larger venues with an occupancy loading of 351 patrons or more'.[22]

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[19] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.43, 44-45.

[20] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.46-52.

[21] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.53-72.

[22] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.8.

The $100,000 threshold

2.13 In relation to the $100,000 threshold that then existed in law, the *Review report* found:

- that in general the threshold had 'served the industry well' because 55 per cent of businesses fell below the threshold;
- that some high volume off license businesses, trading considerably over the threshold, may have attracted an unfair benefit from the threshold arrangement because they paid the same license fees as those trading just over the threshold;
- that the threshold was a useful indicator for risks generated by the sale of alcohol, in that it differentiated between low and high volume vendors.[23]

Expansion of the role of risk factors in licensing fees

2.14 The *Review report* also considered the anticipated effects of expanding, in fees determinations, of the use of the seven risk factors listed in section 229(2)(b) of the *Liquor Act 2010*. On this matter it noted that information collection processes had, for the first time, been co-ordinated across ACT Government agencies, providing 'confirmation of the relationship between liquor consumption, trading hours, occupancy loadings and alcohol-related incidents'.[24]

2.15 The *report* expressed reservations about 'using compliance history as a risk factor in a small jurisdiction like the ACT'. This was largely because the authors of the review felt 'unable to test the impact on the market if licences had to pay significantly higher renewal fees from poor compliance'', and that the 'six month period of the review was too short a period of time for this analysis to occur.[25]

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[23] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.9.

[24] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.10.

[25] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.10.

2.16 In light of this, the *report* found that:

> the market analyses clearly demonstrate that the small size and concentration of the ACT liquor market requires financial responsibility be spread across the entire industry in the ACT to create a sustainable market for everyone. A fee model which takes into account some additional risk factors, but at the same time, considers the complexities of a smaller market, and rewards less risky businesses is optimal.[26]

Cost recovery

2.17 In relation to the Government's objective of costs recovery for the licensing scheme, the *Review report* found that the scheme was likely to meet this requirement:

> Currently, the cost of directly regulating the ACT liquor industry is approximately $2.9 million per year. Based on actual cash received to 24 June 2011 ($2.66 million) and predicted revenue from final quarterly payments ($244,000), ORS expects to receive approximately $2.9 million this licence period (1 December 2010 – 30 November 2011) which is on target to meet the total regulatory costs. The current licensing scheme recoups the annual expenditure costs.[27]

Liquor Amendment Regulation 2011 (No 2)

2.18 The *Liquor (Fees) Determination 2011 (No 1)* amends *Liquor Regulation 2010* with respect to new structures for 'Licensed times and permitted times' determined in the *Regulations* under section 229(2)(a) of the *Liquor Act*.

2.19 In essence, the amendments define a schedule of closing times for licensed premises, reflecting the new framework set out in the *Determination*, discussed below.

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[26] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.10-11.

[27] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.7.

Liquor (Fees) Determination 2011 (No 1)

2.20 Fees detailed in the *Liquor (Fees) Determination 2011 (No 1)* are made under section 227 of the *Liquor Act 2010*.

2.21 The *Determination* provides, among other things:

- a formula for 'Determination of annual fees' (s 3);
- a direction on which fee to pay where there are multiple license subclasses on one premises (s 4);
- directions on the determination of other fees (s 6), payment of annual fees (s 7) and payment of hourly fees (s 8); and
- the repeal of the *Liquor (Fees) Determination 2010 (No 1)* (s 10), which it supplants.

2.22 Schedule 1 of the *Determination*, 'Annual fees' provides definitions of key terms, such as 'gross liquor purchase value', 'new fee' and 'old fee'.

2.23 Importantly, Schedule 1 provides, in tabular form, the fee structure for the various licence types, which are subject to different fees, with increasing increments for each type of licence for later hours of trading and higher occupancy loading.

2.24 This schedule also sets a fee structure for licenses providing alcohol on an off license basis, where there is only provision made for sale of liquor in 'standard licensed times'. In this context, 'gross liquor purchase value' becomes the chief variable in determining a range of license fees on a rising scale, depending on purchase value. As of this *Determination*, this becomes one of two contexts in which the value of liquor purchased or provided by licensees is a determinant for licence fees.

2.25 Schedule 2 sets an hourly fee for the preparation of an occupancy loading recommendation by the ACT Fire Brigade.

2.26 Schedule 3 sets a number of 'other fees', including fees for applications to amend licences, floor plans, issue replacement licences or transfer licences, and various other fees for matters relating to liquor permits, Risk Assessment Plans (RAMPs), and Responsible Service of Alcohol (RSA) training courses.

2.27 This schedule also sets fees for liquor permits for both commercial and non-commercial applications. This is the second context in which the value of liquor, in this case 'liquor retail value', is a determinant in a sliding scale from lowest to highest of applicable liquor permit fees.

Committee comment

2.28 In the Committee's view, the liquor fees framework currently in place in the ACT appears, on the face of it, to be consistent with the Government's stated intention to reflect an evidence-based assessment of the causes of alcohol related risk. The characteristics of licensed premises which in the framework attract higher fees, such as later trading hours, higher numbers of patrons in a premises and the type of activity—for example, nightclubs as a higher source of risk than clubs—appear to reflect the evidence on alcohol related risk presented in Chapters 3, 6 and 8 of the *Review report*.[28]

2.29 What may be open to question is:

- whether the policy objective is clear;
- whether there are causal factors that are not addressed in the framework;
- whether the current fees framework represents an unduly unfavourable environment for businesses engaged in the liquor trade; and
- whether the framework may produce unintended consequences which may harms from alcohol while penalising businesses engaged in legitimate activities.

2.30 These matters are considered below.

[28] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, pp.21-23; 32-35; 38-42.

3 ACT GOVERNMENT VIEW

ACT Government submission

3.1 The ACT Government lodged a submission to the inquiry, in which the Acting Attorney-General advised the Committee that:

> The Government's decision to levy additional liquor licensing fees had a number of objectives. Its primary purpose was to satisfy the community's concerns about the increase in violence around licensed premises, particularly in the early hours of the morning. The fee structure encourages the liquor industry to partner with the community in dealing with the harm caused by irresponsible drinking, particularly by being more responsible with the service of alcohol.[29]

3.2 The Acting Attorney-General suggested 'that the setting of liquor fees is a difficult area to reconcile and that there is no perfect formula' and that:

> Decreases to fees for some will inevitably lead to increased fees for others. In the interests of fairness, the Government has used an evidence-based approach to determine a risk fee formula which favours licensees who choose to close earlier and operate at less risk. There is now evidence to show where the police resources are most needed and the licence fees reflect this risk profile. Where adjustments are made to fee levels based on risk, there will always be some industry sectors which will benefit less than others.[30]

3.3 However, he suggested, benefits were evident from the fees structure:

> The positive community safety outcomes and strong compliance we have witnessed since the new laws took effect are directly related to the liquor fees. These outcomes are only achievable because of the current

[29] ACT Government, Submission No.1, p.1.

[30] ACT Government, Submission No.1, p.1.

> additional police and Office of Regulatory Services' resources which are the consequence of the fees.[31]

3.4 The submission went on to provide greater detail about these benefits:

> In comparison with last year, the number of alcohol-related arrests has fallen by 18 per cent, the number of assaults has fallen by 12 per cent and the number of people taken into protective custody has fallen by 19.2 per cent. ACT Policing has issued 514 liquor criminal infringement notices. 79 notices were issued for the new offence of failing to leave a licensed venue when requested to do so, and five notices were issued for the new offence of abusing, intimidating, or threatening staff exercising the mandatory responsible service of alcohol principles.[32]

3.5 The *Review report* was provided as an attachment to the submission, and was published by the Committee as an exhibit.

Testimony to the Committee

3.6 The Attorney-General appeared before the Committee at its public hearing of 7 March 2012.[33]

3.7 In his opening statement, the Attorney spoke about the intention behind the changes in fee structure for liquor licenses. He told the Committee that:

> The introduction of new liquor fees was aimed squarely at tackling community concerns about alcohol related crime and violence and antisocial behaviour, particularly during the night-time hours in our city.[34]

3.8 The Government had conducted 'extensive consultation with all parties' and that as a result the Government had implemented:

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[31] ACT Government, Submission No.1, p.1.

[32] ACT Government, Submission No.1, p.2.

[33] *Transcript of Evidence*, 7 March 2012, available at http://www.hansard.act.gov.au/hansard/2009/comms/justice32.pdf

[34] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.

> a fairer, more equitable liquor fee structure which finances additional police on the beat, new regulatory effort and a safer community for all.[35]

3.9 The new fee structure, he told the Committee places:

> a regulatory onus on the industry through a risk-based fee strategy which is set out in the final report on the review of liquor licensing fees which I tabled in the Assembly last year.[36]

3.10 The result, he suggested, was a fee structure which, in the Government's view, was 'the fairest way to apportion risk and fees in the marketplace'.[37] Confirmation of the wisdom of the policy was provided by new information:

> We now have access to statistical information on the risk factors cited in the Liquor Act, which we have never had access to before — information like the actual trading hours of venues, the size of venues and police statistics on alcohol-related incidents at individual premises. This information has confirmed the appropriateness of the existing policy settings.[38]

3.11 The Attorney told the Committee that the new fee structure was 'not designed to increase government revenue as some sort of profit'. Rather, it was designed 'to recover the costs of the new regulatory efforts that are required of our police and the Office of Regulatory Services'. The Government's 'current direct annual expenditure for regulating the industry' was $2.9 million.[39]

3.12 The Attorney suggested that 'appropriate question to ask during this inquiry is: are these reforms working?' The answer to this 'unequivocally' was 'yes':

> We have more police on the beat. Where police are patrolling, there has been a reduction in the number of incidents, and let me cite some of those to you. Last year ACT Policing reported a 17.16 per cent reduction in alcohol-related arrests in comparison to 2010. They reported a 6.02 per cent reduction in the number of alcohol-related incidents for assault and

[35] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.
[36] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.
[37] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.
[38] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.
[39] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.1.

> the number of people taken into protective custody for being intoxicated decreased by 9.67 per cent.[40]

3.13 These, he suggested, were:

> real and meaningful improvements on the ground that are reducing the level of alcohol-related crime and violence in our community. They indicate that the new regulatory regime and the fee structure that supports additional police effort are working.[41]

3.14 The Attorney went on to observe that these were 'telling' signs of the effectiveness of the policy:

> From my perspective the statistics indicate cause and effect: more police on patrol, more inspections, more education by regulatory officers equals less violence. Take this effort away, reduce the amount of expenditure on this effort and we will be back to where we started. For that reason, the government remains committed to the existing effort in this regard.[42]

3.15 During the hearing the Committee asked the Attorney about one of the 'new elements' in the fees structure, in that it would be designed to cover not only the cost of licence registration and compliance, but also 'the cost of police on the beat'.[43]

3.16 In response, the Attorney told the Committee that this should be viewed in the context that:

> the taxpayer is already picking up the very significant majority of the cost for the general policing effort — that is, it is not just the 10 police in the alcohol crime targeting team who are enforcing the Liquor Act. There are the general duties teams that are policing Civic and other nightspot areas, for example, on Friday and Saturday nights. They are not financed by liquor licensing fees. The ambulance crews that are attending incidents that are alcohol related are not financed by liquor licensing fees. The emergency department specialists who are responding to people who

[40] Mr Corbell, *Transcript of Evidence*, 7 March 2012, pp.1-2.

[41] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.2.

[42] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.2.

[43] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.

> have suffered injury as a result of alcohol-related crime are not funded through the liquor licensing fees, and then we have the flow-on costs through the criminal justice system as well, as a consequence of alcohol-related crime and violence. None of that is funded by the liquor licensing fees.[44]

3.17 In light of this, the Attorney told the Committee that:

> The point the government would make is that this is a relatively small contribution to the cost of managing and addressing alcohol-related crime and violence. We think it is a proportionate and reasonable expectation to ask of those to pay for the privilege of selling alcohol in our community.[45]

Administration of new arrangements

3.18 In the hearing, the Committee asked the Attorney-General to describe the relationship, and interactions, between ACT Policing's Alcohol Crime Targeting Team and the Office of Regulatory Services under the new arrangements.

3.19 The Attorney told the Committee that:

> the new regime was designed to shift much greater focus regarding the front-line regulatory effort in terms of compliance of premises whilst trading to the police. That was a change from the previous arrangements where civilian inspectors had a very much more significant role in enforcing premises' compliance during trading hours.[46]

3.20 Previous arrangements had 'presented a whole range of problems':

> such as civilian inspectors having to work for extended hours into the evening, on weekends and so on to do that enforcement, and also the practicalities of them being able to enter a licensed premises without police. In effect, they really did have to enter licensed premises during

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[44] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.
[45] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.
[46] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.

> trading hours, particularly late at night, with police for their own safety, for their own capacity to enforce the law.[47]

3.21 'As a result', he suggested the Government:

> took the decision that much more of that effort would be undertaken by police, and the civilian inspectorate would have much more of a focus on the administrative end of the activities, the assessment of risk assessment management plans and so on.[48]

3.22 The Executive Director and Commissioner for Fair Trading, Office of Regulatory Services added to this description. He told the Committee that:

> At the present time there is—and there has been since the Liquor Act was amended—a very close working relationship between the ACT Policing alcohol team response and the Office of Regulatory Services. There is a relatively informal structure, but it deals with enforcement compliance issues. It comprises the relevant senior officers who are involved in the Liquor Act on our side and from the police side. They meet fortnightly, talk about the policing roles, what police have done, talk about the ORS role and what ORS has done, discuss those matters where there are compliance issues, discuss matters that might be taken further by Policing or might be referred to the commissioner.[49]

3.23 He also confirmed the Minister's description of the changes in-practice:

> the role of the police has moved to one of compliance with the patrons and with the inspectorial roles in the high volume trade on Friday and Saturday nights and whatever. The police also undertake, I think, quite a useful educative function. My understanding is that they go and assist people and licensees when they are required to. The Office of Regulatory Services still undertakes its inspectorial functions. It has allowed us to free up our staff from the night-time work, to actually go right across the gamut of licensed premises. So now everyone has had an inspection—all

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[47] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.
[48] Mr Corbell, *Transcript of Evidence*, 7 March 2012, p.3.
[49] Mr Phillips, *Transcript of Evidence*, 7 March 2012, pp.3-4.

the off-licences, all the on-licences, the restaurants and whatever. We have moved our focus to actually ensuring that there is compliance with the licence conditions of licensees.[50]

[50] Mr Phillips, *Transcript of Evidence*, 7 March 2012, p.4.

4 OTHER VIEWS ON THE FEES STRUCTURE

Introduction

4.1 As noted, contributors to the inquiry raised views and concerns from a range of positions, including government; industry (both hotels and clubs); licensees; and small clubs.

4.2 Contributors on behalf of the Government advised the Committee of the rationale for the approach taken in the amendments to Liquor Regulations and the Fees Determination, as noted above.

4.3 Other contributors commented on aspects of the current fees regime for liquor licensing, including:

- the object of the approach taken in the regime, and its relationship to the present culture of alcohol use in the ACT;
- the role of preloading and drug use in alcohol-related incidents;
- whether the regime raises an appropriate total impost on liquor licensees;
- whether the regime achieves a successful distribution of the burden of liquor licence fees across the retail liquor industry; and
- the particular concerns of nightclub operators.

4.4 Contributors also considered administrative aspects of the present regime, including:

- the preparation, compliance with, and significance of Risk Assessment Master Plans (RAMPS) under the present regime;
- determinations of 'predominant activity' in setting licence fees;
- the potential for compliance history to be a determinant of liquor fees for individual businesses;
- the degree to which businesses are advised of changes to liquor licence fees in a timely fashion;

- arrangements for Responsible Service of Alcohol (RSA) training and practice; and
- means to exclude patrons habitually involved in alcohol-related incidents.

4.5 These are considered below.

Objects

4.6 Contributors to the inquiry raised questions about the objectives of the present liquor licence fees regime.

Mr Lochlan McOmish

4.7 Mr Lochlan McOmish, proprietor of the Wig and Pen, advised the Committee in relation to the object of the present scheme that is was 'vital when governments impose a tax or charge that they be very clear as to the purpose of the charge'.[51]

4.8 There were, he said, 'three obvious purposes which could apply here', to apply a tax or charge to either:

- 'raise revenue for the ordinary annual services of government';
- 'cope with a social cost'; or to
- 'create a "price signal" for behaviour modification'.[52]

4.9 None of these objectives, Mr McOmish suggested, had been served by the current arrangements.

4.10 First, if 'general revenue was the purpose here':

> a sensible government response would have been to examine the various classes of businesses to determine their financial viability and thus their ability to pay. Charges could have been set accordingly. You shear the sheep not slaughter them. This Act slaughtered some venues while barely giving others a beard trim.[53]

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[51] Mr Lochlan McOmish, Submission No.6, p.2.

[52] Mr Lochlan McOmish, Submission No.6, p.2.

[53] Mr Lochlan McOmish, Submission No.6, p.2.

4.11 Second, if 'user pays was the issue', then:

> venues closing early, midnight or before, and venues outside Civic should not have been taxed at all. If a handful of venues in Civic are really causing the problem, which I do not believe, they should be shut down. Then the problem would be solved! [54]

4.12 Third, if price [signalling] was intended:

> the result has been to shut early the small venues where there are no problems to send the crowds into harm's way in queues outside the large venues or taxi ranks. The opposite to what was intended I imagine.[55]

Culture

4.13 In speaking to the Committee, Mr McOmish expressed the view that a better objective for policy on liquor licence fees would be to change the culture of the liquor and hospitality industry:

> whether in fact perhaps what we should be concentrating on is not how to manage the existing culture of incompetence in the hospitality and liquor industry but how to change it so that we can have a vibrant and useful hospitality industry which does not cause the sorts of problems which require the policing which we presently have.[56]

4.14 In the view of Mr McOmish, the present regime did not 'exist in isolation'. Rather, it was 'part of a web of economic drivers, taxes, charges and regulations which combine to drive the hospitality industry in this country.' [57]

4.15 These factors were significant in creating alcohol-related harms. In fact, Mr McOmish suggested, 'our present alcohol problem has been caused by government regulation and taxation':

> In other words, our present problems have been caused by government policy, not mitigated by it. In my view, if we are going to have any solution to the present problems that we face, we need to address that.[58]

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[54] Mr Lochlan McOmish, Submission No.6, p.2.

[55] Mr Lochlan McOmish, Submission No.6, p.3.

[56] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.20.

[57] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.20.

4.16 These factors, Mr McOmish suggested, had resulted in considerable pressures on smaller on-license liquor businesses such as his own, which resulted in even successfully-run businesses operating at a 'marginal' level of business viability:

> We are highly successful and we do everything exactly by the book; that is to say, we sell a lot of product. We have a very low staffing level and we are on reasonable rent. The staff are all paid at slightly better than the award wages. However, we are just barely marginal, to the point that the current building which we are in is likely to be demolished and it is line-ball as to whether it is actually worth spending the money to even bother relocating.[59]

4.17 He went on to suggest that:

> If we can just manage to tick over with lowish rent, with a high volume of sales in a high-priced market, I do not for the life of me understand how some of the others can do it. [60]

4.18 This was, Mr McOmish suggested, 'part and parcel of the culture' in the liquor industry, which drove proprietors to 'cut their costs'.[61] This could 'collapse most if not all of the small venues', resulting in a situation similar to one he described in Britain where, he told the Committee:

> Alcohol is extraordinarily cheap in bottle shops, and yet the venues are shut. So people stay at home. They go to the parks. There is no social control.[62]

4.19 In view of this, Mr McOmish told the Committee:

> Governments, especially the federal government, need to address the impact that their taxes and charges have on this industry and work to try to achieve better outcomes for society.[63]

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[58] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.21.

[59] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.25.

[60] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.25.

[61] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.25.

[62] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.26.

[63] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.21.

Mr Mark Ryan

4.20 Mr Mark Ryan, proprietor of Krave Nightclub, also raised concerns about clarity in the objectives of the current fees regime.

4.21 In particular, Mr Ryan suggested that the scheme was informed by conflicting imperatives:

> The first scenario … is that they want to recover their fee structure, for the cost of putting this on. The second way they are rationalising that is that they have based it on a fee-for-incident basis: "If there is a high risk of fights, incidents, we will charge those people more".[64]

4.22 This, Mr Ryan suggested, was 'wrong'. A more rational basis for the calculation of fees would be a per-head charge:

> Raising the revenue is like raising the revenue for any professional association body. They usually charge every person a fee. Everyone who has a fee to practise whatever they practise is charged a certain fee. The scenario in this case may be that each and every individual who has a licence gets charged a similar fee, whatever that is. [65]

4.23 These calculations could be done 'based on a ratio of the number of people in their venues':

> So if you have a venue for a thousand people, you would charge that by the total amount that you want to raise for the licensed venue, as compared to how much the government should pay to be put into coffers.[66]

Preloading and drug use

4.24 Mr McOmish and Mr Ryan raised questions about the link, between the sale of liquor at on-license premises and alcohol-related crime in public spaces in the ACT. In particular they were concerned that the role of 'preloading' and drug

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[64] Mr Ryan, *Transcript of Evidence*, 7 March 2012, p.29.
[65] Mr Ryan, *Transcript of Evidence*, 7 March 2012, p.29.
[66] Mr Ryan, *Transcript of Evidence*, 7 March 2012, p.29.

use had not properly been taken into account under the current liquor licensing framework.

4.25 As noted, the framework is predicated on the view that alcohol-related harms can be traced back to on-licence venues at which problematic drinkers have consumed alcohol. If a greater role for preloading and intake of other drugs

4.26 'Preloading' refers to a known practice of imbibing cheaper alcohol obtained from off-license vendors, often in a domestic setting, before leaving to attend on-license entertainment venues such as nightclubs.

4.27 If the extent of preloading and other drug in generating public disorder were accepted, this would challenge one of the primary assumptions in the present liquor licensing regime: that alcohol-related crime is attributable to intake of alcohol on-license venues at which people were drinking immediately prior.

4.28 In public hearings, Mr Lachlan McOmish told the Committee that preloading was 'a particular problem' and that this was 'generally accepted by the police and by the regulatory authorities'. He also suggested that changes to the alcohol licensing framework under consideration in the inquiry had 'increased preloading', and also noted, 'disturbingly', the role of mixtures of alcohol and other drugs in generating alcohol-related crime.[67]

4.29 Mr Mark Ryan also told the Committee that preloading and the use of other drugs was a significant cause of alcohol-related crime. In his submission he advised the Committee that off licence traders did 'a brisk trade between 6-11pm' and that many people were 'preloading before going out to late night venues at a later time', noting that this was 'cheaper for consumers'.[68]

4.30 Mr Ryan went on to say that:

> The use of party drugs should be recognised as part contributor to anti social behaviour and recognised as a social problem and fees distributed appropriately, not hitting the late time night venues with the burden of the costs. [69]

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[67] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.21.

[68] Mr Mark Ryan, Submission No.4.

[69] Mr Mark Ryan, Submission No.4.

4.31 In relation to the statistics presented in favour of the present liquor licence fees regime, Mr Ryan presented a different interpretation to that of the Attorney-General:

> the fact that, based on the statistics here, 30 per cent of those who have been drinking have been on licensed premises. So that is only a third of the total—it is less than a third, actually—of the total incidents..[70]

4.32 Mr Ryan went on to say that:

> The model that I see, based on Mr Corbell's submission, is that 30 per cent of incidents are effectively because they are in the venues. Fifty per cent at least are preloading.

4.33 In Mr Ryan's view these incidents were therefore attributable to 'venues with off-licences'. However, the burden created by the present liquor licence fees regime felt on '[on-licence] venues, and all licensed venues in general'. In particular, the burden fell most heavily 'on smaller venues', because 'per capita, for the licensed venues, the number of people that we can have on the floor is less than for larger venues'. As a result smaller on-licence venues were 'paying higher fees per person—up to three times', and this represented a significant imbalance 'within the structure itself'.[71]

Overall burden

4.34 As noted above, the licensing regime costs the ACT Government $2.9 million, and its recovery is a key imperative of the scheme. [72]

ClubsACT

4.35 ClubsACT advised the Committee that this was a large amount, and that it should be reduced in coming years:

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[70] Mr Ryan, *Transcript of Evidence*, 7 March 2012, p.29.

[71] Mr Ryan, *Transcript of Evidence*, 7 March 2012, p.30.

[72] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.7.

> The current level of fees should in no way become the baseline for further increases in years to come. Rather, the government's [objective] should be to gradually reduce fees and to lessen the burden on industry as compliance improves and the number of incidents reduces.[73]

4.36 ClubsACT told the Committee that:

> The Acting Attorney-General's submission indicated that the number of alcohol-related arrests has fallen by 18 per cent, the number of [assaults] has fallen by 12 per cent and the number of people taken into protective custody has fallen by 19.2 per cent.
>
> While it would be a very useful exercise to [ascertain] what measures or circumstances are directly responsible for this reduction, as a matter of [principle], if the ACT is witnessing a sizeable reduction in incidents and a consequent reduction in the call on police resources, then the government should be investigating ways to reduce the fees levied on industry.[74]

Australian Hotels Association (AHA)

4.37 This view was also put by the AHA in its submission to the inquiry. It told the Committee that '2.9 million recovery cost in a market of 6341 licensees is exceedingly high when compared to other states'. It also suggested that this 'increase in the fees levied in the ACT occurs against the backdrop of Victoria deciding to reduce liquor fees'. With this in view, a 'reduction of $300,000 would provide appropriate relief to industry and would assist in [levelling] the severe impost on a number of venues by the recent fee determination'.[75]

4.38 With regard to this, the AHA stated that the '$2.9 million quantum recovered by the ACT government is too high' and 'given recent reductions in alcohol-related incidents, crime and increases in compliance, this quantum must be reduced'.[76]

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[73] ClubsACT, Submission No.2, p.3.

[74] ClubsACT, Submission No.2, p.3.

[75] AHA, Submission No.3, p.3.

[76] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.10. See also AHA, Submission No.3, p.4.

4.39 Given the nature of the scheme and the rationale provided for its design, the AHA suggested that lower rates of alcohol-related crime should result in a lower impost overall:

> The ACT Government has repeatedly described the fee structure as a 'user-pays' system. It seems clear that less resources are being used and therefore the fees should be reduced accordingly.[77]

4.40 In any case, the AHA suggested:

> More broadly, whilst recognising that there is a need to address anti-social behaviour as a result of excessive alcohol misuse, the AHA ACT submits that the higher level of liquor license fees should be regarded as a temporary response to the problem.[78]

Distribution of burden

4.41 A number of contributors to the inquiry voiced the view that the fees burden under the current liquor licence regime was poorly distributed across the retail liquor industry.

4.42 The AHA made a statement in this regard when it said that while it 'supported the move to a risk-based licensing regime', it believed that the present fee determination still lacked 'sophistication' and that 'placed an unfair burden on venues, causing disparity between fees paid in the ACT and other states'.[79]

4.43 In particular, the AHA advised the Committee, it was:

> unreasonable to apply a four tiered size system to the on-licence structure as it provides a heavy and unreasonable impost on a number of on-licences whilst 'giving away' licences in the off-licence sector.[80]

4.44 The AHA suggested that the issuing of 'discount licences' to vendors with a smaller turnover in liquor was 'in complete opposition to the harm minimisation principles of the [Liquor] Act':

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[77] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.10. See also AHA, Submission No.3, p.4.

[78] AHA, Submission No.3, p.2.

[79] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.10.

[80] AHA, Submission No.3, p.3.

> The encouragement of a micro business category in the off-licence fee structure presents an unfair market advantage and erodes business from legitimate operators.[81]

4.45 Industry representatives and licensees spoke to the Committee about these, and related matters, from the perspective of nightclubs and clubs in particular. These are discussed below.

Nightclubs' concerns

4.46 The *Review report* stated that there was an association between nightclubs and higher risks of alcohol-related harm, particularly in terms of violent incidents. This, the *Review report* suggested, arose from a combination of later trading hours, larger numbers of patrons and the types of activity undertaken on the premises. [82]

4.47 Based on this, within the current risk-based, cost recovery model put in place by the Government, nightclubs are perceived to make a higher contribution to risk and to the burden of policing, and thus pay higher fees liquor licences.

4.48 Witnesses speaking on behalf of nightclubs raised concerns over the degree to which nightclubs were asked to pay higher liquor licence fees. These concerns are considered below.

Disproportionate impost

4.49 In public hearings the General Manager of the Australian Hotels Association told the Committee that the impost on nightclubs under the liquor licence fees regime was disproportionate. First, he told the Committee:

> With regard to venue size and capacity, there is a lot of anecdotal talk of large venues and finger pointing with regard to who should bear the cost

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[81] AHA, Submission No.3, p.3.

[82] Justice and Community Safety Directorate, *Final Report – Review of Liquor Licensing Fees*, September 2011, p.8.

> of the licensing regime. However, the fact remains that there are actually very few large venues.[83]

4.50 Because there were 'very few' of these venues, an impost on them based on size and type of activity resulted in a high burden:

> Eighty two per cent of the market is small to medium, so any push to divide these venues means that there are a few that are unfairly penalised for that size relative to other venues. I would indicate that the vast majority of clubs would fall into this category, some 60 venues.[84]

4.51 For large venues, he suggested:

> We are talking about a small portion of hotels with large function space, the convention centre, casino and a smaller number of bars and nightclubs. With this last group, predominantly situated in the city, there is simply a handful.[85]

4.52 As a result, he told the Committee:

> Approximately six of these venues that I represent are now responsible for supplying, I would estimate, about $130,000 to the licensing regime; another three venues that I represent supply an additional $65,000. It seems completely unreasonable for nine venues to carry nearly $200,000 of the $2.9 million recovery cost required by the ACT government.[86]

Effect of discounts

4.53 This effect was, the General Manager suggested, exacerbated by 'discounts' (that is, reduced liquor licence fees) that had been given elsewhere. This amounted to a picture in which 'licence types … at the nightclub end' were 'bearing the brunt' of liquor licence fees:

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[83] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

[84] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

[85] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

[86] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

> that is where you are getting this massive quantum just in that sector, where these licensees are carrying a couple of hundred thousand dollars, as opposed to discounts being offered elsewhere.[87]

4.54 These 'large discounts across 287 licences', he told the Committee, equated 'to a lot of money', which had 'been pushed on to this small number of [nightclub] licensees on the other end'.[88]

Shrinkage of market

4.55 This was particularly the case because, the General Manager suggested, 'night-time venues [were] simply disappearing'. Areas such as Kingston and Manuka were now 'difficult to describe … any longer as entertainment precincts', and were more accurately described as 'dining precincts', as they were 'less and less relevant where entertainment is concerned'. Under these conditions, he told the Committee, 'it seems obvious that the regulatory environment is threatening the viability of late-night venues'.[89]

4.56 This sense of risk to nightclubs was, he suggested, intensified by the fact that nightclubs tend only to trade on three nights of the week. The General Manager told the Committee that they had 'a very short time frame to capture trade compared with other licensed businesses' in order to maintain their viability. As a result, he suggested, it was:

> important that licensing beyond 3 am be shared whilst protecting businesses competitively, because they choose to trade in this space.[90]

Competitive disadvantage

4.57 The General Manager also expressed concern over what he described as the 'competitive disadvantage' faced by nightclubs with respect to other on-license businesses:

> At the moment you are looking at a 350-capacity venue, and some of these nightclubs are paying $23½ thousand. At the moment, a pub of the

[87] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.13.
[88] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.13.
[89] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.
[90] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

> same size would pay, I think, $16,000. So there is quite a competitive disadvantage in being determined as a nightclub in that instance.[91]

4.58 The General Manager suggested that while nightclubs were readily identified in that their 'predominant trade is dance and entertainment', that they would open on Thursday, Friday and Saturday nights and would not 'really do any other type of trade', and were therefore properly classified as nightclubs, there was:

> really nothing stopping six bars opening around them and threatening that trade at a significantly reduced licensing price.[92]

4.59 The logical response to this dilemma was, he told the Committee, to place an equal burden on late-night businesses selling liquor. There was 'now data available' to indicate that 'nearly 80 per cent of incidents occur at premises trading to 4 am or 5 am', and on the basis of this, 'the licensing regime should reflect this irrespective of licence type'.[93]

Occupancy loading not reflected

4.60 The owner / operator of Krave nightclub, Mr Mark Ryan voiced particular concerns about the proportionality of licence fees for smaller nightclubs.

4.61 In his view the present fees regime did not properly reflect the different occupancy loadings for small and large venues:

> The current fee structure for [liquor] licenses … [do] not take into consideration the different loading capacities of venues and unfairly discriminates against smaller venues, by penalising late hour trading.[94]

4.62 Mr Ryan provided details of occupancy loadings for different nightclub venues.[95] Most of the larger nightclubs, Mr Ryan suggested, had loadings 'approximately three times larger than the smaller venues as listed' and paid '[approximately] $24,000' in liquor licence fees. This equated to '[only

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[91] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.12.
[92] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.12.
[93] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.
[94] Mr Mark Ryan, Submission No.4.
[95] Mr Mark Ryan, Submission No.4.

approximately $3000 more than the smaller venues'. The result was, he suggested, that '[smaller] venues have to find nearly 3 times the amount from each potential customer (per loading) to pay the current Licensing fee'.[96]

4.63 Commenting on this, Mr Ryan advised the Committee that:

> With the imposition of such high fees, smaller venues face increased difficulties in meeting trading costs. Such money could be better spent on developing more effective internal systems such as increasing security or just paying for their fixed or variable overheads.[97]

4.64 Instead of this, '[the] system should give incentives to smaller traders rather than penalise them'. Smaller nightclubs were 'being penalised when the likelihood of anti-social behaviour occurring is minimal, compared to larger venues'.[98]

4.65 Mr Ryan advised the Committee that it was often the largest venues which posed 'the most significant risk as they are the ones that attract the high number of young adolescent drinkers and tablet consumers'. In light of this, '[allocative] efficiency would … mean that these venues who impose the greatest regulatory effort [should] bear commensurate costs'.[99]

4.66 A number of the observations made by Mr Ryan about occupancy loadings and liquor licence fees were endorsed in another submission by Dominic Barbero, Frank Barbero and Caterina Pochi.[100]

Continuing viability

4.67 The General Manager of the AHA noted that under Australian competition policy 'governments are required to remove regulatory obstacles to competition, including for alcohol'. As a result, he suggested, nightclubs 'therefore, should be afforded some concession to allow them to remain viable and competitive'. In support of this he indicated that 'Victorian licensing laws

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[96] Mr Mark Ryan, Submission No.4.
[97] Mr Mark Ryan, Submission No.4.
[98] Mr Mark Ryan, Submission No.4.
[99] Mr Mark Ryan, Submission No.4.
[100] Mr Dominic Barbaro, Mr Frank Barbaro, Ms Caterina Pochi, Submission No.5.

specifically include as one of their goals the building of a diverse alcohol industry'.[101]

4.68 In light of this, the General Manager told the Committee that 'the government should decrease the recovery cost and help to ease the burden for all licensees'.[102]

4.69 Moreover:

> The nature of a night economy should be balanced and encourage other licence types to stay open. However, nightclubs, for example, have and should continue to have surety in this space, and young people must be afforded the same rites of passage that many of us have enjoyed.[103]

Committee comment

4.70 In the Committee's view, contributors to the inquiry raised a number of important matters in relation to the current liquor licensing regime.

Premise of framework

4.71 Some of these are related to the fundamental premise of the regime: that is, that the risks of alcohol-related crime are attributable to on-license premises with longer trading hours, in particular nightclubs. While there is an evident correlation, reflected in accepted statistical evidence, between late-night trading, nightclubs and alcohol-related crime this may not, in light of certain cultural aspects of alcohol and drug use, constitute a cause and effect relationship.

Distribution of burden

4.72 Certainly a number of contributors raised questions over setting reduced licence fees for smaller off-license vendors while raising the burden on selected on-license venues. If, as seems likely in the Committee's opinion, there is a

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[101] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.
[102] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.
[103] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

significant role for preloading and other drug use in causing the alcohol-related crime which the present framework is designed to reduce, then this constitutes an important basis on which to question fundamental assumptions.

4.73 In particular the Committee is concerned as to whether an appropriate balance has been struck, in two senses.

4.74 First, it is open to question as to whether there is an optimum balance in the number of on licences compared with off licences. The current framework appears to underestimate the contribution of off licence vendors to alcohol-related incidents.

4.75 Second, in view of the contribution to alcohol-related incidents by off licence vendors, it is open to question as to whether those businesses should shoulder a greater degree of the financial burden for the regulation than they do under the current regime.

4.76 In relation to both of these questions, the Committee takes the view that an appropriate balance has not been struck at present, and that it is incumbent upon Government to seek to achieve such a balance.

4.77 In light of this, the Committee makes the following recommendations.

RECOMMENDATION 1

4.78 **The Committee recommends that the Government consider the balance in numbers between on and off licences in the ACT. It should, if it is found that a disproportionate number of off licence vendors is contributing to alcohol-related crime, seek to reduce numbers of off licences or otherwise mitigate the risk associated with these businesses.**

RECOMMENDATION 2

4.79 **The Committee recommends that in view of the contribution of preloading to alcohol-related incidents, that the Government consider placing a greater financial burden on off licence alcohol vendors. In particular it should consider whether discounts currently given to small vendors should be reduced under the liquor fees framework.**

Culture of alcohol use

4.80 Some contributors indicated that there was value in taking a wider view of the problems of alcohol use and that, in particular, the cultural aspects of alcohol use should be taken into account. The role of preloading and other drug use would seem to encourage that approach. In the Committee's view, the common cultural factor running through all of these phenomena is the contemporary, widespread practice of drinking to get drunk, or 'binge drinking'.

4.81 As contributors have told the Committee during the course of the inquiry, there is room for doubt as to whether the present regime is sufficiently tailored to present conditions to make inroads on this cultural practice, which is generally proven to have a range of ill-effects in an individual, social and systemic sense.

4.82 The present regime appears to have a clear logic in providing disincentives for liquor businesses which are associated, in statistical information, with alcohol harms. Conceivably, this could form part of a wider approach which challenged binge drinking. However, on its own, and so long the role of off-license alcohol sales is not sufficiently factored-in to policy, the present regime is unlikely to have much of an effect.

4.83 In the Committee's view, there needs to be a more thorough-going attempt to change social attitudes to drinking to maximise the benefits of alcohol, for those who choose to drink, while minimising its costs, both social and financial. That this last are considerable has been widely known for some time, including absenteeism, lost productivity and health effects, in addition to the alcohol-related crime targeted by the present liquor licence fees regime.

4.84 There are two areas where the Committee believes that new initiatives are warranted in order to start to make these changes.

Need for education campaigns

4.85 First, there must be new, more creative and more sustained education campaigns to directly engage populations vulnerable to binge drinking, with the specific intent of modifying behaviour over time, promoting 'healthy enjoyment of alcohol' in preference to 'drinking to get drunk'.

4.86 Despite the well-establish profile of alcohol harms in Australia, the Committee believes that there is much more to do to make the community aware of the nature and extent of alcohol harms. Many in the community continue to associate alcohol harms with chronic heavy alcohol use (such as cirrhosis of the liver), whereas contemporary data shows that the highest component of alcohol-related harms are in fact due to acute (that is, episodic) alcohol use, which produces high levels of admissions to hospitals for accidental harms and other health effects from acute alcohol use. These can, in essence, be linked back to binge drinking rather than the older, but still influential, stereotypes of 'alcoholism' as the most prevalent single cost of alcohol use. While chronic harms are also important, their prominence in the community's view of the overall burden of disease attributable to alcohol masks the true profile of harms done by the misuse of alcohol. This is an important obstacle to a better awareness of how to use alcohol in the community.

RECOMMENDATION 3

4.87 **The Committee recommends that the Government increase educational campaigns designed to modify the culture of alcohol use in the ACT so that alcohol use creates fewer harms.**

Increased emphasis on personal responsibility

4.88 Second, part of the cultural change which needs to take place must be a re-balancing of responsibilities for alcohol harms. As contributors told the Committee during the course of the inquiry, while the liquor licensing regime holds on-licence vendors accountable, in particular, for alcohol harms, there appears to be little responsibility borne by the drinkers themselves. At times the view was put that the sanctions occur where it is necessary for drinkers to attract the attention of police are insufficient to provide much of a deterrent or signal to drinkers to adopt a moderate pattern of drinking. In the Committee's view, it makes more sense to adopt a system where there is balance within the overall apportioning of responsibility. In simple terms, this means that penalties for alcohol-related offences must be increased sufficiently to provide that deterrent.

Possibility of unintended consequences

4.89 In addition, the Committee considers that a third area must be considered if the liquor regime is to evolve into an effective and embracing system which fosters responsible alcohol use. A number of contributors to the inquiry put forward 'public good' arguments as to why nightclubs should not be faced with an undue burden under the liquor license fees regime. As noted, one contributor put forward such arguments when he stated that nightclubs provided a 'rite of passage' for young people, and that this should continue to be available to them, as it had for previous generations.[104] While the Committee would not be certain that it would be persuaded by such arguments if it were indeed proven that nightclubs were inherently harmful, there was another line of argument presented which deserved closer consideration.

4.90 This argument asked the Committee to consider the unintended consequences of providing too great a distinctive for late-night trading by on-licence venues, saying that this may have the effect of pushing heavier drinking out of public places where it could be under the scrutiny of police, licensees and other members of the public. The witness putting forward this argument stated that this had in fact occurred in Britain, where it had raised concerns to the extent that new policy was being considered to counter an alcohol culture that placed too great a reliance on off-licence sales, reportedly to be consumed in private dwellings, public parks and so on.[105]

4.91 Given that the present liquor licence fees regime appears to have the effect of providing clear disincentives for large venues, late-night trading and trading as a nightclub, and to apparently be designed to create a setting dominated by smaller off and on-license venues trading for shorter hours, it seems that the possibility of unintended consequences should come under careful consideration if liquor policy is to achieve its stated objective of reducing harms while supporting active dining-out and entertainment industries, which obvious flow-on benefits for tourism and the like.

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[104] Mr Rees, *Transcript of Evidence*, 7 March 2012, p.11.

[105] Mr McOmish, *Transcript of Evidence*, 7 March 2012, pp.25-26.

4.92 Again, the common factor running through this line of inquiry is that the alcohol culture must be transformed from one in which alcohol is abused to one in which alcohol, taken in moderation, makes a genuinely positive contribution to private and public life in the ACT. There is no doubting the challenges which making this change presents, but the Committee is firmly of the view that this is an inescapable area of policy effort that must be progressed if the ACT Government is to achieve to stated objects of the *Liquor Act* and the implicit goals of the present liquor licensing regime.

5 VIEWS ON THE ADMINISTRATION OF THE SCHEME

Introduction

5.1 Contributors to the inquiry raised a number of concerns regarding elements of the administration of the liquor licence fees regime. These included:

- the role, design and significance of Risk Assessment Management Plans (RAMPs);
- definitions and determinations of 'Predominant Activity' for the purposes of setting liquor licence fees;
- the potential role of a business's compliance history in determining the liquor licence fees that should apply for that business; and
- the timeliness of liquor licence fee determinations.

5.2 These are considered below.

RAMPs

Legislative provision for RAMPs

5.3 Section 25 (2)(f) of the *Liquor Act 2010* requires that an application for a liquor licence be accompanied by a Risk Assessment Management Plan (RAMP). RAMPs and the obligations of licensees in relation to them, is set out in Part 6 of the Act, sections 88-92.

5.4 More detailed specifications of RAMPs are set out in section 16 of the *Liquor Regulation 2010*:

(a) the kind of business to be operated under the licence or permit;

(b) the licensed times or permitted times proposed for the premises;

(c) the times and days proposed for the premises to be open to the public;

(d) the kinds of liquor to be supplied at the premises;

(e) the measures to be taken by the licensee or permit-holder to ensure responsible service of liquor at the premises;

(f) whether electronic video surveillance equipment or other monitoring devices are used at the premises;

(g) how the licensee or permit-holder will ensure employees provide for the responsible service of liquor at the premises;

(h) how staff members at the premises will undertake an approved RSA training course;

(i) procedures for ensuring compliance with the occupancy loading for each public area at the premises, including—

(i) how the number of people in each public area at the premises is to be counted; and

(ii) how the people in each public area at the premises may be evacuated; and

(iii) which staff members at the premises are trained to implement the procedures mentioned in subparagraphs (i) and (ii);

(j) how and where water is to be made available for consumption free of charge;

(k) the kind of food service to be provided at the premises;

(l) procedures for—

(i) ensuring that children and young people are not in adults-only areas at the premises in contravention of the Act; and

(ii) removal of children and young people from adults-only areas at the premises if they are in the areas in contravention of the Act;

(m) the number of crowd controllers to be employed to work at the premises and what they will be doing;

(n) how entry to the premises will be managed;

(o) how the premises will be lit when open to the public;

(p) how intoxicated people at the premises will be dealt with;

(q) how disorderly people at the premises will be dealt with;

(r) the transport options available to people leaving the premises …

(s) how noise from the premises will be mitigated;

(t) how the impact of the operation of the premises on the amenity

of the area surrounding the premises will be mitigated;

(u) a description of each liquor accord to which the licensee or permit-holder is a party.

Preparing RAMPs

5.5 A witness to the inquiry commented on the complexity of preparing a RAMP.

5.6 In public hearings, Mr Lochlan McOmish told the Committee that his 'great concern' was that:

> like many Canberrans, I very much enjoy the ethnic restaurants, and I am charmed to see that many of them are run by people who do not speak a lot of English. I frankly wonder how they manage to fill it out. Do they understand what they are writing?[106]

5.7 He went on to suggest that, as 'a general principle, with government', 'unless there is an absolute requirement to put something into legislation, you are way better off leaving it out'. In particular for restaurants, he suggested, he 'would have thought that … a RAMP was something that you really do not need', as it was something that could 'only cause problems for them, not solutions'.[107]

5.8 Another witness, Ms Parkinson of the Canberra Wine and Food Club also told the Committee that RAMPs were onerous and disproportionate to the risks generated by the business of the Club :

> It is the preparation. The preparation has to be done by our secretary, who, again, works full time and does this in her spare time. So it is quite an onerous process to go through for us. As I said, we have not had an incident of any kind in 60 years.[108]

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[106] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.26.

[107] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.26.

[108] Ms Parkinson, *Transcript of Evidence*, 7 March 2012, p.36.

Complying with RAMPs

5.9 Mr McOmish also spoke about difficulties in complying with RAMPs, and the consequences of not complying.

5.10 Mr McOmish advised the Committee that one of the main flaws of the present regime was that:

> it foolishly placed far too much of the detail of running a licensed premise into legislation; either directly, through regulations made under the Act, or through to requirement of a legally binding Risk Assessment Management Plan (RAMP).[109]

5.11 He advised the Committee that he expected that this was done 'to "tie down" the few irresponsible venues', however 'the detail of compliance required makes it likely that all venues [would] at some stage in their trading day, be in breach of the law'.[110]

5.12 Mr McOmish gave an hypothetical example of how this were so:

> if a venue's RAMP agreed that an intoxicated person would be escorted to the door by two staff. Should only one be available to do such escort duties and a violent incident occur, say the intoxicated patron attacked a bystander on the way to the door, the RAMP would be breached and the venue would, thus, be in breach of the law.[111]

5.13 He outlined the potential significance of this breach, not so much in terms of law enforcement, but for insurance coverage:

> Now while Liquor Licensing and the police would be unlikely to take any action for such an inadvertent breach, the venue's insurer would not have to meet any resulting damages claim as the venue was acting outside the law. Company director's liability limitation may not apply for the same reason.[112]

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[109] Mr Lochlan McOmish, Submission No.6, p.2.
[110] Mr Lochlan McOmish, Submission No.6, p.2.
[111] Mr Lochlan McOmish, Submission No.6, p.2.
[112] Mr Lochlan McOmish, Submission No.6, p.2.

5.14 Mr McOmish went on to suggest that in 'other words':

> this legislation has placed the industry at the mercy of the big insurers and, in my view, they will not pay if a legal way out exists. Of course, the chance of such an incident is rare but there are many possible loopholes and a large number of venues so the chance of such a problem is not inconsiderable.[113]

5.15 He provided another example:

> To give another example, if a venue RAMP states that in the event of a fire staff will cry fire three times then immediately leave the building themselves (reasonable [behaviour] on OHS grounds), what if the venue has a number of deaf or disabled patrons on the premises at that time who need special assistance? [114]

5.16 Mr McOmish suggested, on the basis of this example, that to 'provide assistance here, required by common sense', would 'require staff to break the terms of the RAMP and thus the law'. 'This', he said, was 'not good public policy'.[115]

5.17 In public hearings, Mr McOmish told the Committee that for '99 per cent of the time, that is not going to matter', but:

> if there was injury or property damage an insurance company might turn around and say, "No, you were acting outside the law."

5.18 Mr McOmish told the Committee that he did not 'see why the insurance companies should be given a leg-up by government like this' and that he thought this was 'highly undesirable'.[116]

Unintended consequences of RAMPs

5.19 Mr McOmish also told the Committee that RAMPs had provided 'an opportunity for venues to step outside other useful existing areas of the

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[113] Mr Lochlan McOmish, Submission No.6, p.2.
[114] Mr Lochlan McOmish, Submission No.6, p.2.
[115] Mr Lochlan McOmish, Submission No.6, p.2.
[116] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.27.

Canberra legislative compliance scene', and that he himself 'had been the beneficiary of that':

> We have, as an example, an ACT Human Rights Act, which requires that individuals with disabilities be treated with dignity. The problem with human rights has always been that if we were to expel someone from the Wig & Pen on the basis that we believe them to be intoxicated, if their intoxication was as a result of treatment for a medical disability we would be in breach of the law. Happily, my RAMP allowed me to circumvent that by simply saying that intoxication of any form will be treated as intoxication due to alcohol. As a result we have stepped outside the ACT Human Rights Act. It was a necessary thing to do, or a useful thing to do, but it probably was not the best thing to do from the point of view of people with a disability.[117]

5.20 Mr McOmish provided another example of how things could be tailored in RAMPs in ways that were perhaps not anticipated when the legal arrangements for RAMPs were framed:

> with the RAMP for the Wig & Pen, I inserted a clause at the very end which said that if, in the opinion of any staff member, any matter could be dealt with more efficiently with a better outcome for compliance or with a better outcome for safety, the RAMP would be varied. Liquor licensing, with a bit of persuasion, agreed to sign off on it. I guess that is because of our good record on compliance. That basically means we have the flexibility that is necessary to deal with it.[118]

5.21 These matters are considered in the *Committee comment* below.

Predominant activity

5.22 Under the present liquor licence fees framework, the so-called 'predominant activity' is used to determine the applicable licence fee for a licensed premises,

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[117] Mr McOmish, *Transcript of Evidence*, 7 March 2012, p.22.
[118] Mr McOmish, *Transcript of Evidence*, 7 March 2012, pp.26.

where there may be more than one time of activity taking place at those premises.

5.23 The *Liquor Act 2010* makes reference to predominant activity in three instances: in section 22, 'What is a *bar licence?'*; section 23, 'What is a *nightclub licence*?'; and section 24, 'What is a *restaurant and cafe licence*?' However, predominant activity is not defined in the Dictionary indicated in section 3 of the Act, and is not defined in the *Liquor Regulation 2010* or the *Liquor Fees Determination (No.1) 2011*.

5.24 In public hearings the Attorney-General was asked by the Committee clarify the meaning of predominant activity and its significance in determining the liquor licence fee for a particular business. The Attorney told the Committee that:

> The legislation requires that the licence category be in accordance with the predominant activity. There are, as you say, a number of premises that morph from one type of activity to the other, depending on what time of the day or which day of the week it is. But that predominant activity identification has been undertaken by the licensee themselves, so they self-select.[119]

5.25 The Attorney told the Committee that some problems had emerged with this concept because:

> There were a small number of licensees that were identified in November last year—18—that appear, from ORS's view, to have self-classified into a cheaper licence category. For example, there were a number of licensees—and I will not name the premises—that most people here would regard as a pub that were self-classifying as a restaurant and paying a lower fee as a result, because they did, as you say, offer food.[120]

5.26 The Attorney went on to tell the Committee that:

> Following the concerns raised by a number of licensees last year—and I have to acknowledge that I think there are many licensees who are

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[119] Mr Simon Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.4.
[120] Mr Simon Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.4.

> genuinely confused and just honestly do not know which way they should go, so they are acting in good faith. I am not suggesting that all licensees in this circumstance are not acting in good faith.[121]

5.27 In that instance, the Attorney told the Committee:

> ORS chose to accept what the self-classification was for the purposes of this renewal period, this licence period, but that work would be done with those licensees and, indeed, with ORS's own internal processes, to clarify that for future license periods.[122]

5.28 In public hearings, the Executive Director of the Office of Regulatory Services, which has carriage of liquor licensing, was also asked by the Committee as to the meaning of 'predominant use'. The Executive director told the Committee that:

> We are in the position currently of preparing guidance material for industry that will run through the Liquor Advisory Board and also out to relevant stakeholders in relation to a consultation process that will actually set out guidelines for what we consider to be a predominant activity.[123]

5.29 In relation to this, he told the Committee, there were 'a range of views and a range of possibilities':

> For example, if an activity is being run as a restaurant for seven days for lunch and dinner but predominantly makes its money or profits from a bar operation, there is an argument that it is a restaurant and there is an argument that its predominant activity is a bar. It is an issue that we will work through with industry to provide a series of guidelines to industry for their comment so that we can work further in relation to that.[124]

5.30 Other contributors to the inquiry were firmly of the view that there should not be 'dual classification' of venues, for which a licence fee should be set based on one principle activity. The AHA and ClubsACT both expressed this view, and

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[121] Mr Simon Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.5.

[122] Mr Simon Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.5.

[123] Mr Phillips, *Transcript of Evidence*, 7 March 2012, p.5.

[124] Mr Phillips, *Transcript of Evidence*, 7 March 2012, p.5.

proposed that the present section 4 of the *Fees Determination 2011* should be removed 'so that each venue has certainty over what sub-class they are in and therefore the fees that they're required to pay'.[125]

5.31 When asked by the Committee to define 'predominant use', the Attorney-General told the Committee that there had been a degree of confusion within the liquor industry, on the part of licensees, in correctly identifying this for the purposes of their licence application or renewal.[126]

5.32 The Executive Director told the Committee that the ORS were responding to this through a consultative process which had as its objective the production of 'guidance material' for licensees which would address the matter. He went on to say that:

> It is an issue that we will work through with industry to provide a series of guidelines to industry for their comment so that we can work further in relation to that.[127]

Compliance history

5.33 Contributors to the inquiry made submissions to the Committee about the wisdom of factoring-in compliance history when determining a licence fee for a licensed business. 'Compliance history' refers to the record of the business complying with legislation which their licence requires them to observe.

Government position

5.34 When the Attorney-General appeared before the Committee in public hearings, he expressed reservations about linking liquor licence fees to the history of a license business. There had been early discussion of this as a possible facet of the liquor fees regime. He told the Committee:

> I have indicated the government's willingness to consider compliance history as a factor in setting fees. It is, in fact, indicated as a factor I can

[125] ClubsACT, Submission No.2, p.3; AHA, Submission No.3, p.4.
[126] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, pp.4-5.
[127] Mr Phillips, *Transcript of Evidence*, 7 March 2012, p.5.

> have regard to in the act. The government's position to date, however, has been that, for the reasons I mentioned in my opening statement, we are only really now starting to get a much more detailed picture of the operations of licensees across the territory. Because of the new reporting requirements, because of the new regulatory regime, we get a much more accurate picture of incidents, compliance; we have got the resources on the ground to follow those things through.[128]

5.35 This aspect of the matter was largely to do with timing in the context of the introduction of the new liquor regime:

> The government has been reluctant, as I have stated on many occasions previously, to implement a completely compliance-based framework early on in the implementation of the new regime. The reason for that is about fairness. There will inevitably be instances in the first 12 to 18 months of the operation of the scheme where, particularly in the first year, licensees could have been found to have been in breach of their obligations simply because they are becoming familiar with their new additional obligations. We thought it would be unreasonable to impose compliance based fee structures in that regard.[129]

5.36 The Attorney told the Committee that:

> We are now getting more data, and the government remains committed to looking at how it may be possible to implement more of a compliance-based fee structure.[130]

5.37 However he voiced concerns that increasing liquor licence fees for businesses which had a poor record of compliance could have a negative effect on so small a market as the ACT:

> we do have to be cautious on this matter, and the reason for that is that we have a relatively small number of licensees in total.[131]

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[128] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.6.

[129] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.7.

[130] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.7.

[131] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.7.

Perverse incentives

5.38 Along with other reservations, the Attorney-General had voiced concerns over whether factoring-in compliance history would serve to create 'perverse incentives' which would discourage licensees from contacting police when they had cause to do so:

> If you see premises not willing to engage with police, not willing to report breaches or problems because they are concerned about their fees going up, that is obviously a problem. We want a cooperative regime; we do not want a regime where licensees feel they have to hide what is going on in their premises from the regulatory authorities, because the common outcome is about improving safety and making it more enjoyable for everyone when they go out.[132]

Establishing a link between an incident and a venue

5.39 The Committee engaged the Attorney on the influence which preloading may have on the perceived connection between an alcohol-related incident and a particular venue, during which the Attorney agreed that preloading could be a significant factor for incidents:

> The behaviour known as preloading is of concern. Certainly the police advise me that it is of concern to them. Preloading can occur in a range of ways. People can fuel up, as you say, at home. In those instances they are probably buying alcohol from off-licences …[133]

5.40 The Attorney agreed that in such scenarios 'the sale of alcohol from off-licences can actually contribute to problems with behaviour around on-licences'.[134] As a result, he suggested, 'the fee structure has to recognise that'.[135]

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[132] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.7.
[133] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.8.
[134] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, pp.8-9.
[135] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, pp.8-9.

5.41 With these issues in mind, the Committee asked the Attorney about how incidents were recorded by police, and whether they were linked to specific venues.

5.42 The Attorney responded, saying that:

> I think it depends on the circumstances … police would make an assessment of whether there was a direct correlation between a matter and someone's attendance at a licensed premises. For example, if someone was arrested outside a licensed premises, having just been required to leave those premises, which is, of course, a direction that can be given now under the act, there would be a correlation. Whether that would be a negative or a positive correlation is another matter. Nevertheless, in some circumstances police could correlate offences that occur on the street with licensed premises and with others they may not.[136]

5.43 The Attorney went on to say that:

> in terms of attributing blame, I do not believe there is any policy or approach by police or our regulatory authorities that seeks to attribute blame where someone is arrested on the footpath, having been drinking all night in a number of licensed premises. But police will seek to identify a pattern, if they see a pattern of behaviour at particular licensed premises that may cause them concern. For example, if there are a large number of arrests outside a particular licensed premises, they will certainly seek to ascertain whether there is any issue with the conduct of trading at that particular licensed premises. But, as I say, it depends on the circumstances of the individual offence.[137]

5.44 These matters are considered further in *Committee comment* below.

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[136] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.8.

[137] Mr Corbell MLA, *Transcript of Evidence*, 7 March 2012, p.9.

Penalty or reward

5.45 During his appearance before the Committee, the Attorney made it clear that the Government envisaged any future linkage between fees and compliance history as one involving of penalties on poor compliance.[138]

5.46 This model was rejected by the AHA, which stated that it opposed any:

> provision that allows for financial penalties to be applied in areas of non-compliance. [Licensees] found to be operating in breach of the Act are already subject to a range of penalties, including criminal and financial penalties. These are sufficient in [deterring] non-compliance and any further [penalties] in terms of licence fees would be excessive and unlikely to result in improved compliance.[139]

5.47 On the other hand the AHA stated that it would support 'reducing a [venue's] fees where a licensee has a record of very few or no breaches of the Act'.[140] Other witnesses also envisaged compliance history being considered as a factor in reducing licence fees, rather than the creation of new penalties.

5.48 The Canberra Wine and Food Club was one witness that spoke in favour of a model in which a good compliance history resulted in a discount on licence fees. The President of the Club told the Committee that the Club generated very little risk of alcohol-related incidents and that in view of this 'some kind of no-claim bonus' would be appropriate.[141]

5.49 The AHA also spoke in support of this model. When its General Manager appeared before the Committee in public hearings he told the Committee that:

> We believe there should be some incentive and reward for venues doing the right thing, and not just over the last two years. I think there is enough relevant information about the way venues have been complying with not just the current legislation but the previous act such that that could inform reasonable decision making in terms of coming up with a

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138 *Transcript of Evidence*, 7 March 2012, pp.6-7.

139 AHA, Submission No.3, p.2.

140 AHA, Submission No.3, p.2.

141 Ms Parkinson, *Transcript of Evidence*, 7 March 2012, p.37.

> scheme that would provide some form of rebate to venues that have good compliance history.[142]

5.50 In the AHA's view, such a plan was also consistent with the 'user pays' nature of the framework as a whole:

> if this is a user-pays system— [and] the data suggest that they are calling on those resources far less or not at all compared to other venues— then under a user-pays scheme those venues should pay less, and not just in terms of the fee that they are charged both in terms of the base and the add-ons but in terms of rebates that they should receive because they have a good compliance history, whether they are in this particular category of licence fee or another.[143]

5.51 ClubsACT adopted a similar position. In public hearings the Chief Executive told the Committee that:

> On the basis that we have always been told this is a user-pays, risk-based system. If you can demonstrate that you pose little to no risk, if you have not called on the resources of the city in terms of police or other resources, I believe you should get a discount on your fees.[144]

5.52 Moreover, the Chief Executive told the Committee, he was not proposing that incidents of 'any kind' would have an impact on a business' compliance history:

> What I am proposing is that there would be an impact on compliance history only for incidents of a certain type. If an inspector has come along and said, "You've got an exit blocked," or something like that, that is not what I would consider an issue of compliance that would be germane to the fee setting.[145]

5.53 It was the view of ClubsACT that factoring-in compliance history as grounds for a discount on licence fees was particularly applicable to its constituency,

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142 Mr Rees, *Transcript of Evidence*, 7 March 2012, p.15.
143 Mr Rees, *Transcript of Evidence*, 7 March 2012, p.15.
144 Mr House, *Transcript of Evidence*, 7 March 2012, p.18.
145 Mr House, *Transcript of Evidence*, 7 March 2012, p.18.

many of which were 'large venues with high occupancies'. These were distinctive:

> inasmuch as those maximum occupancies are rarely reached; they rarely even get to two-thirds of it. They are big venues, so they pay because of that, but they are rarely jam-packed with people, and that obviously relates to the risk that they pose in terms of alcohol.[146]

5.54 He went on to say that one of the venues he represents paid 'a lot of money because they are a large venue and they open late'. However '[you] could fire a gun and not hit anyone at that time of night'. In this particular case the club had not 'had an incident of any sort in the last eight years'.[147]

5.55 For such venues, the Chief Executive went on to say:

> On the basis that we have always been told this is a user-pays, risk-based system. If you can demonstrate that you pose little to no risk, if you have not called on the resources of the city in terms of police or other resources, I believe you should get a discount on your fees.[148]

5.56 In its submission to the inquiry ClubsACT suggested that this:

> could be done via a rebate or as part of the renewal fee process where a venue may be classified according to their compliance record. Each different classification would relate to a pre-determined rebate level.[149]

5.57 These matters are considered further in *Committee comment* below.

Timeliness

5.58 A number of witnesses expressed concern over the notice given to licences regarding changes in liquor licence fees.

5.59 The AHA and ClubsACT both made comment on this matter in their submissions to the inquiry, advising the Committee that:

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[146] Mr House, *Transcript of Evidence*, 7 March 2012, p.18.

[147] Mr House, *Transcript of Evidence*, 7 March 2012, p.18.

[148] Mr House, *Transcript of Evidence*, 7 March 2012, p.18.

[149] ClubsACT, Submission No.2, p.2.

> The ACT Government has twice now waited until shortly before the fees are due to be paid to [release] each new fee structure. This has created a significant degree of uncertainty and unease amongst venues and which has been totally [unnecessary].[150]

5.60 In public hearings the Chief Executive of ClubsACT told the Committee that this had had 'a significant impact':

> particularly for those licensees, which occurred last year, that were classified under a different subclass. It is generally known that there are a number of venues in the ACT that were informed, I think within 24 hours of the fee structure being released or publicly announced, that they were being classified under a different subclass, which meant an increase in their fees. Very quickly, once that became known, ORS back pedalled on that. So it has a huge impact. I am still yet to understand why it takes the time that it has taken for the government, for the minister, to sign off on that fee structure two years in a row. There has been consultation almost constantly for that period. To release the fees within weeks of the renewal period I think is appalling—and to do it twice. I still do not know why we had to go through that ….[151]

5.61 Both organisations advised the Committee that they supported 'any reasonable initiative that requires the ACT Government to release the fee structure well ahead of the licence renewal period'.[152] The Chief Executive of ClubsACT told the Committee that he was 'very supportive of the Speaker's legislation on that matter'.[153]

5.62 In this instance he was referring to the Liquor Amendment Bill 2012, a Private Members' Bill presented in the Legislative Assembly on 22 February 2012 by Mr Rattenbury MLA. Clause 4 of the Bill seeks to amend section 227 (1A) of the *Liquor Act 2010* so that it would read, if the Bill is passed into law:

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[150] ClubsACT, Submission No.2, p.3; AHA, Submission No.3, p.4.

[151] Mr House, *Transcript of Evidence*, 7 March 2012, p.17

[152] ClubsACT, Submission No.2, p.4; AHA, Submission No.3, p.4..

[153] Mr House, *Transcript of Evidence*, 7 March 2012, p.17

(1A) A fee determination for section 42 (Licence—application for 13 renewal) commences—

(a) 3 months after its notification day; or

(b) if the determination provides for a later date or time—on that date or that time.

Responsible service of alcohol

5.63 Comments were made to the Committee in hearings regarding Responsible Service of Alcohol (RSA).

5.64 First, the proprietor of Il Covo told the Committee that there would be a benefit in mandating markings on glasses used for serving alcohol to guide staff in pouring a standard drink. He said that a variety of shapes of glass made it difficult for staff to pour a standard drink serving. This had implications for Responsible Service of Alcohol (RSA) obligations on the part of licensees and staff, and also made it difficult for patrons to assess, correctly, their intake of alcohol.[154]

5.65 He also told the Committee that there would be a benefit if states and territories were able to establish a consistent framework for RSA requirements and training, as staff trained in one jurisdiction were currently obliged to undertake training again if they moved to another jurisdiction.[155]

5.66 In relation to this recommendation, the Committee notes that a consistent framework on RSA training across jurisdictions would also require a convergence of legislative requirements for 'responsible service of alcohol'.

Exclusion of troublesome patrons

5.67 In hearings, the Committee considered methodologies that had been adopted elsewhere, such as in the UK, whereby patrons of licensed venues who had

[154] Mr De Zillo, *Transcript of Evidence*, 7 March 2012, p.32.

[155] Mr De Zillo, *Transcript of Evidence*, 7 March 2012, p.32.

been identified as consistently involved in alcohol-related incidents would be excluded from licensed venues in a collective sense for a period of time.[156]

5.68 As far as the Committee is aware, this is usually the result of a cooperative agreement between venues rather than something that results from legislative requirements. However the Committee considers that the concept has merit and that it should be considered within the Government's effort to mitigate risk arising from alcohol use.

Committee comment

5.69 In the Committee's view, a number of important matters were raised during the inquiry regarding the administration of the present liquor licence fees structure.

RAMPs

5.70 Regarding RAMPs, the Committee appreciates that the intention was to produce a high level of compliance across licensed venues, with regard to protecting against and managing alcohol-related incidents, and other safety matters. However, there appear to be unintended consequences which have arisen, which require further consideration and response.

5.71 As the Committee heard, the first of these is that RAMPs are a bureaucratic and rigid instrument which would be difficult for a number of licensees to compile on their own behalf.

5.72 The second and very important consequence is that RAMPs put licensees in an invidious position with respect to their insurance coverage. RAMPs appear to have altered the balance of responsibility and risk between insurer and insured, to the detriment of licensees, and this should be addressed by Government as a matter of priority.

5.73 Third, it appears that RAMPs may allow licensees to skirt ACT Human Rights legislation. This too should be addressed by Government with some urgency.

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[156] *Transcript of Evidence*, 7 March 2012, pp.18-19.

In the first instance, Government should ask the ACT Human Rights Commission to report on the implications of RAMPs for compliance with the ACT's legislative framework on human rights and anti-discrimination.

5.74 In consideration of the perceptions of RAMPs as a complex and rigid mechanism, the Committee is of the view that Government should explore ways to make them less so. If done effectively, this may address a number concerns, including the impost on the time of licensees for preparation and the reported negative consequences of minor breaches of RAMPs for insurance coverage. In the Committee's view, this would appear to be a constructive place to begin to reduce some of the unintended and negative consequences of the present liquor fees regime.

Predominant activity

5.75 In the Committee's view it is clear that concepts of predominant activity have remained ill-defined and have been a source of confusion in the liquor industry since the introduction of the new framework. The Committee hopes that clarifications of predominant activity, of which it was advised, proceed with appropriate speed. If so, and if these are effective, it would have a salutary effect in decreasing uncertainty throughout the retail liquor industry. This is in general considered to be a favourable influence on business activity and should be considered a significant imperative.

Compliance history

5.76 The Committee notes the very different model of compliance history considered by the ACT Government, which envisaged this as a penalty provision, and other witnesses to the inquiry, who saw it most productively construed as a reward or incentive for good rates of compliance.

5.77 The Committee notes that adopting the second of these approaches would be likely to have the effect of moderating the Government's concern that a stronger role for compliance history in setting licence fees would have a negative impact in so small a market as the ACT.

5.78 Clearly, if this were to be expressed as a factor for setting fees, there would need to be some formula or filter on incidents reported by a venue, if the

Attorney-General's valid concerns about perverse incentives were to be addressed. One possibility would be to express compliance history as an average over a number of years, so that individual incidents would not have an undue impact on a venue's licence fees. It is, in the Committee's view, important that there be little or no disincentive for licensees to contact police where it is warranted.

5.79 A more constructive approach may be to make this calculation rely solely on compliance with the liquor framework, rather than to establish a relationship between reported incidents and liquor licence fees for individual establishments. This would mean, in effect, that compliance data would flow from the inspectorate rather than police, except where police attending an incident became aware of a breach of the framework. In the case, the focus of compliance should remain with the ORS, and police reports of infringements should be channelled back to the ORS so that these calculations can take place.

5.80 In fact, the liquor fees framework should wherever possible foster a cooperative relationship between police and licensees, as this will enhance the capacity of both either to prevent or respond to liquor-related incidents.

5.81 In general, the Committee considers that it would have a significantly positive influence if compliance history were expressed as a reward or incentive for licensees to observe the legislative framework on liquor in the ACT.

5.82 This said, the Committee also considers that the question of establishing a linkage between an alcohol-related incident and a particular venue, in any instance, appears to be quite uncertain. As noted, the influence of preloading and other drug use makes this difficult to establish, and this in significant ways goes to the heart of the basis for the policy framework.

5.83 As noted above, the long-term and inescapable conclusion to be drawn from this is that there must be a concerted, persistent, and effective campaign by Government to change the culture of drinking away from 'drinking to get drunk' and toward a concept of the 'healthy and moderate enjoyment of alcohol'.

Timeliness

5.84 The Committee considers that the concerns raised by industry, regarding timeliness in being advised of changes to liquor licence fees and related matters, are valid and significant concerns for business. It considers that the requirement, contained in the Liquor Amendment Bill 2012, that licensees be given three months notice prior to new fee determinations coming into effect, is a reasonable and warranted measure that will increase business confidence in the liquor sector.

5.85 This would strike a more effective balance between the Government's need to make fees determinations and industry's need for certainty on business costs and conditions.

RECOMMENDATION 4

5.86 **The Committee recommends that the Government support the Liquor Amendment Bill 2012, would require it to give licensees a prescribed period of notice before new liquor fees and licensing arrangements were introduced.**

5.87 Aware that the passage of this Bill relies on the decision of the Assembly, the Committee believes that, should the Bill not be successful in the Assembly, the Government should introduce legislation with similar effect.

RECOMMENDATION 5

5.88 **The Committee recommends that if the Liquor Amendment Bill 2012 should not be successful in the Assembly, the Government should introduce legislation with similar effect.**

Responsible Service of Alcohol

5.89 In relation to Responsible Service of Alcohol (RSA), including considerations of supporting staff to pour standard servings of alcohol, and establishing a more consistent framework for RSA training across Australia, the Committee makes the following recommendations.

RECOMMENDATION 6

5.90 **The Committee recommends that the Government consider making it a requirement that licensees serve liquor in glasses marked with standard drink servings, and that pouring standard drinks be considered in the context of Responsible Service of Alcohol (RSA) training.**

RECOMMENDATION 7

5.91 **The Committee recommends that the Government consider working toward a consistent framework for Responsible Service of Alcohol (RSA) training with other Australian jurisdictions.**

5.92 In relation to this recommendation, the Committee notes that a consistent framework on RSA training across jurisdictions would also require a convergence of legislative requirements for 'responsible service of alcohol'.

Exclusion of troublesome patrons

5.93 As noted, the Committee considers that arrangements to reduce alcohol-related incidents by excluding certain known patrons, across a cohort of venues, are most often the result of cooperative effort between those venues. However it considers that this is an approach worth exploring within the wider effort to reduce alcohol-related harms. Accordingly it makes the following recommendation.

RECOMMENDATION 8

5.94 **The Committee recommends that the Government seek means to foster cooperative arrangements between on licence venues so that patrons identified as having been involved in alcohol-related incidents may be excluded from venues engaged in those cooperative arrangements. Government should consider examples in Australia and overseas to establish the practicability of fostering similar arrangements in the ACT.**

John Hargreaves MLA

Deputy Chair

APPENDIX A: Witnesses

The following witnesses appeared before the Committee at public hearings of 7 March 2012:

- Mr Simon Corbell MLA, Attorney-General, Minister for Police and Emergency Services and Minister for the Environment and Sustainable Development;
- Mr Luca Di Zillo, Proprietor, Il Covo Cafe;
- Mr Jeff House, Chief Executive, ClubsACT;
- Mr Lachlan McOmish, Proprietor, Wig & Pen Tavern and Brewery;
- Ms Suzanne Parkinson, President, Canberra Wine and Food Club;
- Mr Brett Phillips, Executive Director and Commissioner for Fair Trading, Office of Regulatory Services;
- Mr Gwyn Rees, General Manager, Australian Hotels Association; and
- Mr Mark Ryan, Proprietor, Krave Nightclub.

APPENDIX B: Submissions

The following submissions were received by the Committee:

- Submission No.1—ACT Government ;
- Submission No.2—ClubsACT;
- Submission No.3—Australian Hotels Association;
- Submission No.4—Dr Mark Ryan;
- Submission No.5—Dominic and Frank Barbero, Caterina Pochi; and
- Submission No.6—Mr Lochlan McOmish.