



LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

**INQUIRY INTO THE VOLUNTARY CODES OF PRACTICE FOR LIQUOR  
LICENSEES**

**Report No. 5 of the Standing Committee on Legal Affairs**

**September 1997**



## **Resolution of Appointment**

[That] a Standing Committee on Legal Affairs [be established] to examine matters related to administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, and consumer affairs.

Legislative Assembly for the A.C.T., *Minutes of Proceedings*, 1995, No. 1, 9 March 1995, p7

### **Terms of Reference for the Inquiry that is the Subject of this Report**

In view of breaches of the voluntary Codes of Practices for 'Clubs, On-licensees in the Civic area' and 'Off-licensees in the Civic Area', those Codes of Practices be referred to the Standing Committee on Legal Affairs for inquiry and report - with particular reference to whether the Codes should be given legislative effect throughout the A.C.T.

Legislative Assembly for the A.C.T., *Minutes of Proceedings*, 1995-96-97, No. 79, 20 February 1997, p 592

### **Committee Membership**

Mr Paul Osborne, MLA (Chair)

Mr Harold Hird, MLA (Deputy Chair)

Mr Bill Wood, MLA

Secretary: Ms Beth Irvin

Administrative Officer: Mrs Kim Blackburn

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## **Summary of Recommendations**

### **9.20. Recommendation 1.**

**The Committee recommends that some of the material in the voluntary Codes of Practice be included in the Standards Manual with accompanying penalties for non-compliance.**

### **9.21. Recommendation 2.**

**The Committee recommends that a group of people be formed to advise the Government on what should be included in the Standards Manual. The group should include representatives from the community (for example the Civic Safety Committee and/or Manuka Safety Committee and a youth representative); Government (for example Attorney-General's Department, Department of Health, Australian Federal Police and the A.C.T. Liquor Licensing Board); and industry (for example Australian Hotels Association (A.C.T. Region), A.C.T. Restaurant and Catering Association, Licensed Clubs Association of the A.C.T. and Liquor Stores Association of NSW).**

### **9.25. Recommendation 3.**

**The Committee recommends that, in consultation with the liquor industry, the Government introduce mandatory responsible service training for liquor industry staff in the A.C.T. The Committee further recommends that the introduction be staged over a period of one year.**

### **9.33. Recommendation 4.**

**The Committee recommends that, in consultation with the liquor industry and the Australian Federal Police, the Government introduce a licensing or accreditation scheme (which includes education) for security staff employed in the liquor industry. The Committee also recommends that the introduction be staged over a period of one year.**

### **9.40. Recommendation 5.**

**The Committee recommends that the Government educate the consumer in the responsible consumption of alcohol. In doing this the Government may wish to undertake an awareness raising campaign similar to the "Alcohol Go Easy" and "No More Its the Law" campaigns.**

### **9.41. Recommendation 6.**

**The Committee recommends that the Government direct the Department of Education to review their programs about the responsible consumption of alcohol.**

**9.45. Recommendation 7.**

**The Committee recommends that the Government undertake a review of the operation of the Pub Card.**

**9.50. Recommendation 8.**

**The Committee recommends that the Government review the effectiveness of the *Liquor Act 1975*.**

**9.57. Recommendation 9.**

**The Committee recommends that the Government monitor Prohibition Evenings and include guidelines for them in the Standards Manual.**

**9.63. Recommendation 10.**

**The Committee recommends that the Government establish a Liquor Industry Advisory Council. The Council should consist of at least a representative from the:**

- **Australian Hotels Association (A.C.T. Region);**
- **A.C.T. Restaurant and Catering Association;**
- **Licensed Clubs Association of the A.C.T.;**
- **Liquor Stores Association of NSW;**
- **Australian Federal Police;**
- **a community representative;**
- **a youth representative (18 to 26 years); and**
- **the Chairperson of the A.C.T. Liquor Licensing Board.**

**The Liquor Advisory Council should met regularly (but not less than quarterly) and report to the Government through the Attorney-General.**

**9.66. Recommendation 11.**

**The Committee recommends that the Government review the trading hours for Off Licences.**

**9.72. Recommendation 12.**

**The Committee recommends that the Government investigate whether judicial notice should be given in the identification of alcohol for the offence of consumption of liquor in certain public places.**

### **9.76. Recommendation 13.**

**The Committee recommends that the Government consider the following suggestions made in the course of the inquiry:**

- **people under the age of 18 should not be able to sell alcohol;**
- **Off Licensees with supermarket/grocery store/convenience store should have a separate secure area for selling alcohol;**
- **one outlet in a corporation licence be penalised for breaches rather than the whole corporation; and**
- **whether special licences (at a premium) be introduced for late-night traders.**



## **Chapter 1. Introduction**

### ***Conduct of the Inquiry***

1.1. On 20 February 1997, on the motion of Mr Paul Osborne, MLA, the Assembly asked the Committee to inquire into and report on the voluntary Codes of Practices for:

- Off-Licensees in the Civic Area; and
- Club and On-Licensees in the Civic Area.

1.2. The Committee was specifically asked to inquiry into whether the Codes should be given legislative effect throughout the A.C.T.

1.3. The Committee advertised the inquiry in *The Canberra Times, Chronicle* and *Valley View* and asked for public comment to be lodged by 30 April 1997. Twenty one submissions were received by the Committee. A list of submissions is at Appendix A.

1.4. In an effort to consult as widely as possible the Committee wrote to every liquor licensee in the Territory (approximately 545) as well as industry and community bodies such as the A.C.T. Council of Social Services, Canberra Business Council, Law Society of the A.C.T., A.C.T. Council for Civil Liberties, Aerial Taxi, Victims of Crime and Australian Hotels Association.

1.5. The Committee was pleased with the response to its mail out which generated an enormous amount of interest - with the Committee receiving numerous telephone queries from licensees over several weeks. However, this degree of interest was not reflected in the number of submissions from licensees.

1.6. The Committee held a public hearing on 19 August 1997. The persons and organisations who appeared at the hearing are listed in Appendix B. The Committee was disappointed that a representative from the Licensed Clubs Association was unable to attend the hearing. Also, a representative from the Liquor Stores Association of NSW (which represents Off Licence retailers in the A.C.T.) was unable to attend the public hearing because of urgent meetings concerning the recent High Court challenge to State and Territory liquor licence fees.

### ***Acknowledgement***

1.7. The Committee records its appreciation to all the people and organisations who contacted the Committee and especially to those who took the time to submit written material. The Committee particularly would like to thank the NSW, Victorian, Queensland, South Australian, Tasmanian and Northern Territory Governments for their detailed and helpful submissions.

### ***Layout of the Report***

1.8. Following this Introductory Chapter, Chapter 2 provides background information about the existing licensing scheme, including the need for the Inquiry; the Liquor Summit; the *Liquor Act 1975*; and classes of licence.

1.9. Chapter 3 summarises the Code of Practice for Off-Licensees in the Civic Area and Code of Practice for Club and On-Licensees in the Civic Area.

1.10. Chapters 4, 5, 6, 7 and 8 summarise the submissions received by the Committee. Chapter 4 gives an overview of the A.C.T. Government and A.C.T. Liquor Licensing Board's positions; Chapter 5 provides information concerning the use of Codes of Practice in the liquor industry around Australia; Chapter 6 contains the view of A.C.T. industry bodies; Chapter 7 summarises six submissions received from the A.C.T. liquor industry; and Chapter 8 summarises the submissions from the taxi industry and the Australian Federal Police Association, ACT Police Branch.

1.11. The final Chapter of the report analyses the information provided to the Committee. It contains findings and makes a number of recommendations.

### ***Submissions***

1.12. The summaries of the submissions contained in chapters 4, 5, 6, 7 and 8 include the main points of each submission. Members of the Committee find the summaries useful in coming to terms with the issues raised by submitters. The Committee does not claim that the summaries are exhaustive. They simply pick out the main points as the Committee sees them. Occasionally, the summaries contain quotations from the submissions.

1.13. The Committee received 21 submissions. Six submissions were received from A.C.T. licensees; six from other Australian Government liquor licensing bodies; three from peak organisations in the liquor industry; two from the taxi industry; one from the Territory Liquor Licensing Board; one from the A.C.T. Government; and one from the Australian Federal Police Association, A.C.T. Police Branch.

## **Chapter 2. Background to the Existing Licensing Scheme**

### ***The Need for the Inquiry***

2.1. In moving the motion asking the Assembly to refer this matter to the Committee, Mr Osborne, MLA commented that:

It was pleasing to know that the licensees in Civic agreed some time ago, in conjunction with the A.C.T. Community Safety Committee, to operate under two voluntary Codes of Practice - one applying to clubs and on-licensees and the other to off-licensees. These Codes of Practice voluntarily take licensees beyond the letter of the law and, when complied with, promote the responsible use of alcohol, while helping members of the public to enjoy their nights out in Civic's nightclubs and bars in safety.

...The message that we legislators should be sending out, especially to our young people, is that there ought to be limits and a higher level of responsibility on all sides. While it has been good to see the vast majority of Civic licensees honouring their commitment to a Code of Practice, there are still a few, a very small few, who do not seem to want to play by the rules. The most recent irresponsible act was the 10c drinks promotion.<sup>1</sup>

2.2. In closing the debate Mr Osborne remarked that:

Alcohol, potentially, is a killer. Alcohol is causing a vast majority of the problems that are related to late night crime around Canberra.

2.3. In supporting Mr Osborne's motion, Mr Humphries, MLA (Attorney-General) stated that:

I believe it is time for us to look again at the effectiveness of the Code of Practice and the way in which we, as a community, might ensure that high standards are adopted at all times and in all venues where alcoholic beverages are served.

... I think it is most important that this Assembly continue as it has begun by sending a clear message to the hotel sector in this community, and, indeed, all those who sell alcohol, including the clubs industry in Canberra, that the standards that we impose in our liquor legislation are ... viewed by the community and the Assembly ... as rules ... to be respected and honoured in ... all cases but with very few exceptions where breaches are unavoidable or are the result of some breakdown in the system of enforcement.

The provisions, for example, about serving intoxicated people are not meant to be there as a sort of dead letter or some sort of ancient piece of legislation which is no longer observed. It is there, and it is meant to be there, to prevent people from becoming heavily intoxicated and inflicting all sorts of other problems on the rest of the community. The provisions about overloading premises are not there as a kind of

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<sup>1</sup> Mr Paul Osborne, MLA, *Hansard*, 20 February 1997, p 196

formality. They are there to be observed and to be obeyed. I would say that much of the same onus falls on licensees because of the obligations they have voluntarily undertaken with the Codes of Practice. Those Codes were prepared and signed while Mr Connolly was Attorney-General and Minister for Police. The industry as a whole embraced the Codes at the time, and I believe that at least all licensees in Civic were signatories to those Codes; so it is distressing to see some of those very same licensees, or at least one of them, being in breach of the terms of that Code.

...I think it is time we sent a clear message to licensees that the Codes are there and are meant to be enforced. If the Codes are not going to be enforced, then their effectiveness should be reconsidered, and obviously an alternative to a Code is legislation. Therefore, I look forward with interest to the standing committee's inquiry. If the result of the inquiry is that further stronger action should be taken, let me indicate from the Government's point of view that we would be willing to consider that.<sup>2</sup>

### ***Liquor Summit***

2.4. On 11 July 1997 the Attorney-General chaired a "Liquor Summit" attended by representatives from the community, Government and industry. Mr Osborne, as Chair of this Committee, was invited to speak.

2.5. The purpose of the Summit was to "discuss possible reforms to the law and practices which relate to the service of liquor".<sup>3</sup> The Summit followed the passage of legislation in the Assembly allowing the continuation of 4 am trading restrictions on the sale of alcohol.

2.6. Mr Osborne addressed the Summit and reported on this Committee's work on this inquiry. Mr Brown, Registrar of Liquor Licences, provided a synopsis of the Liquor Act and related initiatives in the 1990's. A report on health initiatives in relation to liquor completed the formal proceedings. Several topics were discussed in an open forum. These topics included:

- codes of conduct/responsible service of liquor;
- late night transport;
- trading hours for licensed premises/late night permits;
- enforcement issues; and
- consultative mechanisms.

2.7. The Chair found the Summit to be very informative and worthwhile. He was impressed by the willingness of all participants to work together to resolve alcohol

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<sup>2</sup> Mr Gary Humphries, MLA, *Hansard*, 20 February 1997, pp 197 - 198

<sup>3</sup> Letter from Mr Gary Humphries, MLA (Attorney-General) to Mr Paul Osborne, MLA, undated

related problems. The Summit also gave the Chair an opportunity to discuss the issues informally with stakeholders.

2.8. There seemed to be broad support by those attending the Summit for Codes of Practice to be legislated by regulation, but only on the condition that the industry was involved in the consultation process and in the development of the Codes.

### ***Liquor Act 1975***

2.9. The current A.C.T. liquor licensing scheme was established by the *Liquor Act 1975*. The object of the Act is to:

promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licences and permits.<sup>4</sup>

2.10. The Act established the Liquor Licensing Board, Registrar of Licenses, Deputy Registrar of Liquor Licenses and Inspectors of Licensed Premises.

2.11. The Liquor Licensing Board's main functions are to assess license applications; conduct inquiries or hearings concerning applications or other matters referred to it under the Liquor Act; and advise the Minister on matters of policy and administration.

2.12. The Act provides the framework for the administration of liquor licenses including their issue, renewal, transfer, surrender, termination, cancellation and suspension; the preparation, dissemination and amendment of the Licensing Standards Manual; a complaints mechanism; closure of licensed premises; permits to sell liquor; offences against the Act; evidentiary requirements; inquiries and hearings by the Board; reviews to decisions; proof of age cards; and regulations.

### ***Classes of Licence***

2.13. There are five types of licences available in the A.C.T., namely:

- General Licences, which allow the sale of alcohol for consumption both on the premises and off the premises. Off the premises sales must be sold through a separate outlet which has a separate entry. As at 30 June 1997 there were 12 General Licences in the Territory. Examples of General Licences include the Statesman Hotel Motel, Jamison Inn, Kingston Hotel and Kambah Inn;
- On Licences, which allow the sale of alcohol for consumption on the premises. As at 30 June 1997 there were 276 On Licences in the A.C.T. Examples include restaurants, taverns, nightclubs and hotels;

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<sup>4</sup> *Liquor Act 1975*, reprinted as at 5 March 1997, p 1

- Off Licences, which allow the sale of alcohol for consumption off the premises. As at 30 June 1997 there were 155 Off Licences in the A.C.T. Examples include bottle shops and supermarkets;
- Club Licences, which allow the sale of alcohol for consumption both on the premises and off the premises of a club. As at 30 June 1977 there were 77 Club Licences in the Territory; and
- Special Licences, which allow the sale of alcohol under special conditions. As at 30 June 1997 there were 24 Special Licences in the Territory. Examples include Exhibition Park In Canberra, A.C.T. Racing Club, Australian Pizza Kitchen (brewed alcohol on the premises) and Sinsations (table top dancing venue).<sup>5</sup>

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<sup>5</sup> *ibid*, pp 28 - 29

## **Chapter 3. Voluntary Codes of Practice**

### ***Introduction***

3.1. There are two voluntary Codes of Practice:

- Off-Licensees in the Civic Area; and
- Club and On-Licensees in the Civic Area.<sup>6</sup>

### ***Code of Practice for Off-Licensees in the Civic Area***

3.2. The Code notes that it:

goes well beyond the legal requirements of off-licensees in the Civic area. We [the signatories to the Code] are committed to the spirit and philosophies of this Code of Practice to ensure that our customers and staff are, and feel, safe in and around our premises. The Code has the full support of the Liquor Licensing Board.<sup>7</sup>

3.3. The signatories undertake to:

- sell alcohol in a responsible and caring manner; and
- in a safe and secure environment for customers, staff and the neighbourhood.

3.4. The Code notes that:

- it is an offence to sell alcohol to intoxicated people or people under the age of 18 and that photographic identification is required as proof of age;
- disorderly people will be removed from the premises; and
- it is an offence to drink alcohol on the premises unless it is for sampling;

and suggests that licensees display notices about these matters.

3.5. The Code suggests that:

- staff be aware of their responsibilities and strictly enforce them. If customers do not comply with the Code or reasonable requests of staff they be asked to leave;
- staff offer to call a relative, or a friend if it is not safe for a customer to drive;

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<sup>6</sup> Even though only three of the five classes of licences are specified, the Committee has assumed that the Codes were intended to cover all classes of licences in the Civic Area.

<sup>7</sup> Code of Practice for Off-Licensees in the Civic Area, Australian Capital Territory, 1994

- Police be called immediately in any serious case of violence, threat or harassment;
- any vandalism and “nuisance” be reported to the Police;
- customers report any unsafe area in the neighbourhood to staff (which will be reported to the Police or the Monitoring Group);
- a notice detailing the location of telephones and a list of emergency telephone numbers be prominently displayed; and
- bus timetables and taxi numbers be prominently displayed.

3.6. Signatories to the Code also agree to:

- make the Code easily available to customers with clear procedures to get help or make complaints; and
- ensure that all staff are aware of the strategies in the Code and ensure that they comply with them.

3.7. The Code asks that any non compliance be reported to the Monitoring Group.

### ***Code of Practice for Club and On-Licensees in the Civic Area***

3.8. There are a number of similarities between the Code of Practice for Club and On-Licensees, and Code of Practice for Off-Licensees. However, the Code of Practice for Club and On-Licensees is more detailed.

3.9. The Code notes that it:

goes well beyond the legal requirements of club and on-licensees in the Civic area. We [the signatories to the Code] are committed to the spirit and philosophies of this Code of Practice to ensure that our patrons and staff are, and feel, safe in and around our premises. The Code has the full support of the Liquor Licensing Board.<sup>8</sup>

3.10. The Code has seven main headings: security; safety; staff responsibilities; responsible use of alcohol; quality service and entertainment; honest and accurate advertising; and how to use the Code of Practice. Each heading has several strategies to help achieve the goal.

3.11. The signatories to the Code agree to provide quality entertainment in a safe and enjoyable environment for patrons, staff and the neighbourhood; employ trained professional staff; support the principles set out in the “National Guidelines for the Responsible Serving of Alcohol”; provide excellent service and entertainment; and provide honest and accurate advertising.

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<sup>8</sup> Code of Practice for Club and On-Licensees in the Civic Area, Australian Capital Territory, 1994



3.12. The Code advises that in the event of violence, threat or harassment, Police should be called; crowd controllers should not have a criminal record, wear a identification number provided by the Registrar of Liquor Licensing, be aware of and comply with the Code and use minimal force with non-violent and conflict mediation being used first; disruptive patrons should be asked to leave; and procedures for reporting threats or harassment should be prominently displayed.

3.13. The strategies suggested under the heading of safety include the reporting of any vandalism and “nuisance” or unsafe features of the neighbourhood; training of staff in emergency procedures and first aid; prominent display of a list of public telephones and emergency numbers; staff awareness of their responsibilities under health, fire and licensing regulations; and the provision of clean air and ventilation.

3.14. The Code suggests that the supervisor and staff be easily identifiable; staff and management be aware of the responsibilities and the Code of Practice; staff be well trained, courteous and professional; door staff be hospitable and inform customers of their likely length of any wait; and any complaints about staff be made to the licensee.

3.15. Licensees are asked to ensure that alcohol is not sold to anyone who appears to be intoxicated or under the age of 18 and that photographic identification be required as proof of age; patrons who do not comply with these requirements be asked to leave (or any other reasonable request made by staff); a good range of non-alcoholic drinks are available; practices which encourage the irresponsible consumption of alcohol or an environment which focuses on alcohol consumption are not used; staff call a relative, or a friend, when it is not safe for a person to drive; information about the responsible use of alcohol is available; and the venue supports drinking and not driving campaigns.

3.16. The Code suggests that licensees adequately staff bar and food areas; provide quiet areas for rest and conversation; promote local videos and music; and provide entertainment that does not encourage violence, aggression or harassment.

3.17. Licensees undertake to ensure that their advertising reflects the esprit of the Code of Practice; does not humiliate or exploit any community group, encourage alcohol abuse or emphasise violence; and conditions of entry are clearly posted.

3.18. Licensees also agree to make information about the Code easily available with procedures to get help or make complaints; and ensure that all staff are aware of the Code and comply with it.



## **Chapter 4. The View of the A.C.T. Government and A.C.T. Liquor Licensing Board**

4.1. The A.C.T. Government and A.C.T. Liquor Licensing Board provided submissions to the inquiry. These submissions are summarised below.

### ***A.C.T. Government***

4.2. The Government submission addressed the following matters: background to the Codes; the role of the Monitoring Group; effectiveness of the Codes; other jurisdictions; Australian Federal Police views; Liquor Act; and Department of Health views.

### **Background to the Codes**

4.3. The Codes were developed and implemented by the Community Safety Committee which was established in 1993 to identify and address alcohol related problems in Civic. The Committee studied the Westend Forum in Melbourne, which is a community safety program which incorporates a Code of Practice for liquor licensees.

4.4. In developing the Civic Codes of Practice, the Community Safety Committee attempted to consult with liquor licensees in Civic, the Australian Hotels Association and the Licensed Clubs' Association.

4.5. The Community Safety Committee was disappointed with the participation of the Australian Hotels Association. The Association announced that it was developing its own Code of Practice and ceased participating in the process.

4.6. The Licensed Clubs' Association also decided not to participate in the development of the Codes because "clubs have enough house rules and constitutional provisions to deal with unacceptable behaviour inside their premises". This resulted in the Codes being developed by interested licensees without the input of these peak industry bodies.

4.7. The Codes were launched in August 1994 with the majority of Civic licensees as signatories.

### **The Role of the Monitoring Group**

4.8. A Monitoring Group was established to:

- oversee the implementation of the Codes;
- provide a conciliation and mediation forum for complaints from patrons and the community; and
- monitor ongoing compliance with the Codes.

4.9. In an attempt to foster self-regulation the membership of the Group was evenly balanced between licensees and other people. The Group met regularly but was ineffective at monitoring compliance with the Codes. The membership of the Group was broadened in an unsuccessful attempt to improve the monitoring role.

4.10. The Group changed its name to the Civic Safety Committee in March 1996 and broadened its objective to a wider crime prevention focus.

### **Effectiveness of the Codes**

4.11. The submission commented that the Codes have clearly not been effective.

### **Other Jurisdictions**

4.12. The Government notes that, although the Codes were modelled on similar Codes in operation in other jurisdictions, the A.C.T. Codes have not been as successful. The submission states that the Codes in other jurisdictions have been more enthusiastically embraced because licensees seem to understand the problems confronting the industry and the commercial benefits in complying with the Codes. The submission said that:

ACT licensees, on the other hand, adopted a position of denial or non recognition of the seriousness of the problems sought to be addressed by the Codes. Claiming instead, that the problems were exaggerated by the media and authorities. That situation did not lend itself readily to licensees recognising the commercial benefits associated with implementing Codes of Practice. Nevertheless, a common trend that appears to have emerged in most projects is a difficulty to maintain the focus of the industry for the projects after an initial flurry of enthusiasm.

4.13. The Government argues that self regulation through the use of voluntary Codes has been successful in increasing the awareness in the industry and the community to the problems associated with the irresponsible service of alcohol. However, anecdotal evidence:

suggests that self regulation has not been effective and that Government imposed regulation and enforcement remains the most effective way to regulate the liquor industry. The continual updating and tightening of legislation regulating the liquor industry by State and Territory Governments and the continuing imposition of strong disciplinary penalties on licensees is further evidence that self regulation has largely been rejected by other jurisdictions in favour of a formal regulatory approach. For example, some jurisdictions have introduced “on the spot fines” to address a wide range of offences and are imposing conditions on licences such as the installation of video surveillance equipment at the entrance of premises.

### **Australian Federal Police Views**

4.14. The AFP stated that it:

fully supports the incorporation of the Codes in legislation, provided that compliance is adequately monitored by regulatory authorities and police.

4.15. The AFP expressed concern that although licensees have strategies in place to detect underage drinkers other parts of the Codes are not being complied with.

### **Liquor Act 1975**

4.16. The Government submission suggested that:

if the Committee considers it appropriate to give legislative effect to aspects of the Codes of Practice, I would recommend that that may be best achieved by the use of a modified Standards Manual. The Liquor Act provides for the keeping of a Standards Manual by the Registrar of Liquor Licences.

... As the Liquor Act has evolved to address emerging trends within the industry and been tightened to provide greater regulation in certain areas, it may now be an opportune time to amend the Standards Manual to reflect more accurately the object of the Liquor Act. The clear objective of the Liquor Act is to promote and encourage the responsible sale and consumption of alcohol. The Standards Manual should set standards to achieve that objective as well as retaining standards related to the construction of buildings and the standard of fitments which have specific applicability to licensed premises.

4.17. The submission suggested that the Standards Manual should include information concerning toilet facilities, fitments of bars, lighting, outside areas and beer gardens, notices, responsible service of alcohol and venue safety.

4.18. The submission noted that information concerning security staff/crowd controllers/bouncers does not need to be included in the modified Standards Manual because a mandatory Code of Practice is being developed under the Fair Trading Act.

### **Department of Health Views**

4.19. The ACT Department of Health stated that:

given the current uncertainty relating to the monitoring and evaluation of the Codes of Practice, the Department would support their inclusion in legislation. Such an inclusion should be supported by comprehensive and accountable monitoring mechanisms. Further work should also be undertaken on the factors which contribute to excessive alcohol consumption, in financial, environmental and social terms.

### ***Australian Capital Territory Liquor Licensing Board***

4.20. Mrs Gibson, Chairman, submitted that:

the Board would be supportive of the inclusion of some of the matters addressed in the Codes of Practice being incorporated in an amended Standards Manual under the Liquor Act.

4.21. She noted that:

the use of a document such as the Standards Manual would mean that as the industry changes and new practices emerge that the parameters under which licensees are

operating can be quickly modified to keep pace with the changes in the industry. If the standards were set in the Act themselves it is likely that the necessary changes would not be able to move quickly enough to address issues of concern in a timely fashion. The approach of setting out these types of standards in subordinate legislation was adopted by Queensland when it introduced its responsible serving guidelines in its Liquor Act in 1995.

4.22. The Standards Manual sets out in statute “the standards to be met in relation to the construction of premises in respect of which licences are sought”.<sup>9</sup> These matters include the materials to be used for floors, walls and ceilings; heating, cooking, ventilating and lighting arrangements; toilet facilities; cutlery, crockery and glassware; and furnishings. The Manual and any amendments to it are disallowable instruments.

4.23. Mrs Gibson suggested that:

the changes that the Board would recommend be made to the Standards Manual would result in it changing to a document that dealt largely with issues associated with the control and conduct of premises.

...However, the matters that would be more directly dealt with would include the majority of those issues addressed in the Codes of Practice, such as the responsible service of alcohol, irresponsible alcohol promotions, advertisements and signage in licensed premises, safety within a venue, staff training etc. An amended Standards Manual would also address issues associated with emergency evacuation procedures and training; delineation, control and conduct permitted in outside areas; entry procedures; control and conduct of underage parties on licensed premises; information for patrons about transport options; adequate provision of facilities such as telephones; and responsible host type initiatives such as designated driver programs.

4.24. Mrs Gibson noted that these changes would allow the Board to deal more effectively with some difficult matters which currently come before it. She commented that these matters are difficult because they are either not addressed in the Act or only in a vague way. The submission notes that the Board’s powers have been undermined in the past because of its inability to effectively deal with some matters such as irresponsible alcohol promotions and the link to the licensee’s fitness to hold a licence.

4.25. Mrs Gibson explained that at the time the Civic Voluntary Codes of Conduct were being developed, the Board was familiar with the Westend Forum in Melbourne and the Surfers Paradise study.

4.26. The Board was aware that the success of these projects was impeded because of problems keeping licensees committed to the objectives and not all licensees in the area participated. This created an “uneven playing field” which resulted in licensees dropping out of the process.

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<sup>9</sup> *Liquor Act 1975*, reprinted as at 5 March 1997, p 23

4.27. These issues were addressed during the development and implementation of the Civic Voluntary Codes of Conduct by the Board publicly supporting the Code. The Board also took the position that the Codes were industry standards and that it would take compliance with them into account when considering whether a “licensee was a ‘fit and proper person’ to hold a licence”.

4.28. The Board had hoped that these strategies would encourage licensees to actively support the Codes. However, the Board’s powers to enforce the Codes were limited because not all the matters contained in the Codes were covered in the Liquor Act.

4.29. Maintaining the ongoing support and participation of licensees proved difficult because of the problems experienced by the monitoring group in effectively dealing with breaches to the Codes. This difficulty was also experienced in the Westend Forum in Melbourne and the Surfers Paradise study.

4.30. The Board concluded that:

licensees participation in the Codes was driven by the need to publicly address the issues of concern that were being raised by the Community Safety Committee rather than a desire to make fundamental, and beneficial, changes to the way in which they operated their licensed premises.

4.31. Mrs Gibson noted that during the development and operation of the Codes the Liquor Act was amended to better regulate the industry through the Liquor Licensing Board and the courts. During 1994 to 1996 the Board’s powers were increased in relation to direction and suspension; the provisions dealing with the sale of liquor to intoxicated people were clarified; a proof of age card scheme was introduced and the defence in relation to the sale of liquor to minors was tightened; provisions covering occupancies for outside areas was introduced; and an object was included in the Act which built on the underlying objectives of the original Act.

### ***Conclusion***

4.32. *The Committee notes the Government’s and Board’s:*

- *unsuccessful efforts in trying to make the voluntary Codes of Practice effective; and*
- *support for some of the material contained in the voluntary Codes of Practice to be regulated through inclusion in the Standards Manual.*

4.33. *The Committee further notes that both the Government and Board argue that using the Standards Manual rather than the Liquor Act means that changes can be implemented quicker to keep abreast of any changes in the industry.*

4.34. *The Committee is aware that the Standards Manual is a disallowable instrument. This means that any amendments to it come before the Assembly where Members can disallow all or part of the amendment/s. This approach gives the*

*Voluntary Codes of Practice legislative effect in a quick and easy manner rather than the slower and more cumbersome process of amending the Liquor Act.*



## **Chapter 5. Submissions: The View of Other Australian Governments**

5.1. The Chair of this Committee wrote to all State and the Northern Territory Governments requesting information which may be helpful to this inquiry. All Governments responded to that request except Western Australia. The replies are summarised in this Chapter.

### ***NSW Department of Gaming and Racing***

5.2. The Director-General of the NSW Department of Gaming and Racing submitted that the Department:

has been actively pursuing a range of responsible serving and responsible drinking programs in the last two years which are a direct response to concerns about alcohol-related violence and anti-social behaviour associated with licensed venues. This action is also based on a range of recent research findings documenting the relationship between alcohol, crime and violence - and the links with licensed venues.

The development and encouragement of industry Codes of Practice across the liquor industry is a complementary part of the wider efforts and overall programs to address alcohol-related crime, violence and anti-social behaviour. That is an important point because it is the Department's view that industry Codes of Practice are ineffective without education, and regulatory and enforcement measures to ensure compliance.

5.3. The Liquor Industry Consultative Council (LICC) is a body which advises the Minister on liquor industry issues and includes the 10 peak liquor associations. It has supported and developed a number of industry Codes of Practice. As a result of the Harm Minimisation Legislation (see paragraph 5.7) those Codes are now being revised and consolidated into one summary Code.

5.4. Prior to the Harm Minimisation Legislation the LICC implemented the liquor industry Drink Promotions Code several years ago. The Code targeted irresponsible drink promotions and included a monitoring system and caution letters from the Director of Liquor and Gaming. The Department noted that the Code was successful for approximately one year. Licensees then challenged the "legality" of the Code, developing the attitude of "when it's a legal requirement - I'll comply".

5.5. The Director-General commented that other problems with the Code were that it was not relevant to all industry sectors and that it was difficult to express clearly.

5.6. The Department's experience is that voluntary Codes have been a useful step in providing leadership opportunities for industry associations in the responsible serving of alcohol.

5.7. The Harm Minimisation Legislation was implemented in October 1996. Its principal object is to minimise harm associated with misuse and abuse of liquor (such as alcohol related violence and other anti-social behaviour). The Act also provides for "responsible practices in the sale, supply, service and promotion of liquor";

introduces mandatory responsible service training; increases penalties; and introduces “regulation making powers concerning the responsible service of alcohol”.

5.8. The regulation making power enables:

industry Codes to be adopted and applied by regulation - and therefore will enable penalties to apply for non-compliance. In that sense the industry code becomes compulsory.

5.9. The Licensing Court is a judicial court headed by magistrates. It is the liquor licensing body for NSW. The Court has developed a Practice Direction entitled Harm Minimisation and Responsible Service of Alcohol. The Direction “covers a wide range of obligations which the Court is imposing in relation to harm minimisation and responsible service of alcohol”.

5.10. The Department has introduced a number of other initiatives to reduce alcohol-related violence in and around licensed venues including:

- \* **Enforcement legislation** - passed by the Parliament in June and implemented on 1 October. Introduces new measures and tightens some existing enforcement measures, including bigger penalties for intoxicated disorderly patrons.
- \* **Nightclub legislation** - implemented from 1 March this year. By providing for a new category of nightclub licence, addresses compliance and enforcement problems. Probity of nightclub operators is also addressed.
- \* **Development of regulations to introduce mandatory responsible service of liquor training across the liquor industry** - action is being taken now to develop the details of the scheme which will see all liquor servers and related staff required to undertake responsible service training. Department has sought industry and agency submissions on the details of the scheme.
- \* **Development of new regulations - indicators of intoxication** - to assist servers in identifying intoxication in their patrons. Draft regulations released to industry and others for comment. Being finalised in 1997.
- \* **No More It's the Law** patron education program to encourage responsible drinking - program launched in December 1996. The program is a “point-of-sale” campaign centred on obligations of serving staff not to serve drunks. Stage 2 was an Easter program run with the Police Service. Further stages are planned.
- \* **Underage Program** - range of new legislative and other measures to ensure minors do not have access to alcohol. A key part of that is the new Minors' Entertainment legislation - implemented from 1 October.
- \* **Review of late trading** - established to address the violence and anti-social behaviour that can occur with late night/early morning drinking. Invitation for submissions extended because of positive response. In progress.

- \* **Industry education and compliance program** - targeting responsible serving and responsible drinking, with priority given to the intoxication provisions of the law.
- \* **Work with industry** (including the Liquor Industry Consultative Council) on matters such as responsible drink promotions and codes of practice.
- \* **Support to industry** in implementing “house policies” to ensure responsible serving and responsible drinking on premises.
- \* **Low alcohol beer pricing** - publication of ABS data and encouragement to industry to ensure a significant price differential in high and low strength beer.
- \* **Liquor and Premises Compliance Program** - covers priority action in relation to individual premises and covert operations (such as at Kings Cross).
- \* **Work with other agencies** such as Police, Health, RTA and Crime Statistics.

### ***Liquor Licensing Commission, Victoria***

5.11. Mr Kearney, Chief Executive Officer of the Liquor Licensing Commission, submitted that:

self-regulation is an often discussed but elusive concept. Forums and accords are a demonstration that “more and more” liquor laws are not the answer. Rather, licensees committing to standards of operation and performance which take into account the interests of the community is the way forward.

5.12. He commented that Victoria has not legislated voluntary codes of practice. Rather, licensees are expected to comply with the minimum standards as set out in the *Liquor Control Act 1987*. Police are responsible for enforcing those laws.

5.13. Mr Kearney stated that:

the concept of forums of licenses, local police, residents and other interested parties coming together to discuss issues has evolved in recent times as an effective means of “nipping problems in the bud”. The opportunities for exchanging views and information has been beneficial to all parties.

Successful forums are operating across Victoria. They usually operate on a reasonably formal basis with an agenda under the control of the Chair.

In a number of instances licensees have entered into accords committing to standards of operation which will advance their businesses whilst having appropriate regard to the interests of the other forum members and the communities generally.

5.14. Mr Kearney commented that there were three major issues arising from the forum/code model. These are:

- maintaining the interest and commitment of the stakeholders over a long period of time;

- the need for decisive leadership; and
- the need for effective sanctioning if an accord member breaches the code of practice.

5.15. Mr Kearney considers that if “compliance with a code of practice becomes an element of liquor law, the benefits of the code ... [are] significantly diminished”.

### ***Liquor Licensing, Queensland***

5.16. Mr Longland, Executive Director of Liquor Licensing, submitted that:

the Queensland liquor legislation does not provide for the compulsory establishment of codes of practice for liquor licensees. The establishment and use of voluntary codes of practice has been supported by Liquor Licensing. Various Safety Action Project groups and Licensed Venues Associations which have been established in some key centres throughout Queensland have been active in promoting voluntary codes of practice.

5.17. Mr Longland commented that voluntary codes varied in their success because not all licensees participated in their development and some licensees did not comply with them. It was also difficult to maintain ongoing commitment even if the codes had been successfully established.

5.18. The Responsible Service of Alcohol Regulation was introduced in 1995. The regulation:

legislates the responsibilities of licensees with regard to restricting practices which encourage rapid or excessive consumption of liquor in favour of those practices which encourage responsible consumption of alcohol and licensee responsibilities for providing a safe environment in and near licensed premises.

5.19. The regulation was widely publicised throughout the industry and licensees were informed of their responsibilities. Licensing investigation staff take action against licensees breaching the regulation.

### ***Liquor Licensing and Administration, South Australia***

5.20. Mr Pryor, Liquor Licensing Commissioner, submitted that:

the backbone of measures taken by this Office in relation to ensuring that acceptable practices are maintained by licensees revolves around the imposition of appropriate conditions on liquor licences. This may involve blanket conditions which apply to a region or locality or to one licence depending on the activity which is sought to be addressed.

By way of illustration, specific problems sought to be addressed by imposition of agreed licence conditions have included restrictions on carry off liquor sales to aboriginals from licensed premises situated on the West Coast of South Australia.

Another example of this approach, has been the imposition of agreed licence conditions restricting noise levels which may otherwise disturb the amenity of the area surrounding licensed premises. The Hindley Street precinct of Adelaide has been the subject of this approach which has proved to be successful.

In my view, imposition of licence conditions with the agreement of the licensee in question provides a more effective tool in regulating undesirable conduct as effective measures can be taken in the event of non-compliance.

5.21. Mr Pryor also advised the Committee that a number of voluntary licensing accords exist in South Australia. These accords have not been evaluated and include:

- City of Adelaide Licensing Accord;
- Mt Gambier Licensing Accord;
- Port Pirie Licensing Accord;
- City of Glenelg Licensing Accord; and
- Licensed Bus Operators Voluntary Code of Conduct.

5.22. The South Australian Office of the Liquor Licensing Commissioner has developed Guidelines for Raves, Dance Parties and Similar Events. The Guidelines include information about licensing issues.

5.23. Mr Pryor commented that a voluntary code of conduct for underage venues has been drafted but not implemented.

5.24. Mr Jarvis from the Office of the Liquor Licensing Commissioner advised the Committee that the Liquor Licensing Amendment Bill 1997 was recently passed by both Houses of Parliament. Amongst other things the Bill sets the framework for industry codes of practice to be legislated by way of regulation. Meetings are now underway with peak industry bodies and community groups to develop the code of practice.

### ***Commissioner for Licensing, Tasmania***

5.25. The Commissioner commented that:

The Licensing Commission has developed Codes of Practice in the past in conjunction with Licensees, Police, Local Government and industry groups with varying levels of success.

...The agreements through peer pressure and raising the level of awareness in the industry and the general public have been relatively effective. There has been a marked decrease in irresponsible practices and advertising by licensees. The bringing together of relevant stakeholders to develop these agreements has some benefits in increasing communication and understanding.

Since these last agreements were reached the Responsible Serving of Alcohol Program has had a significant impact on licensed premises reducing irresponsible practices together with the banning of opened containers of alcohol in public streets under our Police Offences Act.

5.26. The Commissioner also commented that:

It is more likely if the need arises in future that legislation will be introduced to assist in enforcing responsible behaviour and practices than resorting to voluntary codes of conduct which are difficult and time consuming to administer.

We have found the most effective way of dealing with these issues has been by direct negotiation with the licensee and/or complainants to achieve a mutual outcome. Failure to reach a desired result, the relevant penal sections of our Liquor and Accommodation can be enforced.

### ***Northern Territory Liquor Commission***

5.27. Mr Rice, Registrar, submitted that:

the Northern Territory has no single comprehensive Code of Practice which related to all areas of responsible hospitality. However, there is no doubt that such a comprehensive Code of Practice would significantly assist to develop a safer industry.

The Territory has a Code of Practice that relates specifically to the responsible promotion of alcohol, which has legislative support and has recently been prosecuted through the Liquor Commission. This Code appears to be controlling industry promotions effectively. Many licensees seek advice directly from the Commission regarding proposed promotions, which occasionally require modification to comply with the Code of Practice.

5.28. He said that there were no Codes of Practice covering security, staff responsibilities, safety, responsible use of alcohol, or quality service and entertainment. However, the Commission does encourage the industry to address these issues through a brochure.

5.29. Mr Rice commented that the Commission:

is also considering a strategy to further industry education with regard to responsible hospitality. The strategy is to have a more extensive description of licensee and staff responsibilities included in every full licence throughout the Territory. For example, minimum staff training requirements, guidelines for responsible alcohol promotions, minimum security requirements specific to the venue, availability of meals, entertainment guidelines, and a map of the boundaries of the licensed premises could possibly feature in all licences. The licence document would then be a useful tool for all stakeholders in the venue, including the licensee, staff, patrons, police and Liquor Commission.

## **Conclusion**

*5.30. The Committee notes the trend in other jurisdictions towards legislating Voluntary Codes of Practice through regulation. Four jurisdictions (NSW, Queensland, South Australia and the Northern Territory) have followed this course of action.*

*5.31. NSW regulates industry Codes through its Harm Minimisation Legislation; Queensland introduced the Responsible Service of Alcohol Regulation in 1995 and has several active groups promoting voluntary codes of practice; South Australia imposes special conditions on licences and has just passed legislation which legislates industry Codes of Practice through regulation; and the Northern Territory Government introduced a Code of Practice for the responsible promotion of alcohol which has legislative support.*

*5.32. The Committee also notes the Victorian Government's reliance on self regulation and a number of successful forums/accords; and the Tasmanian Government's dependence on voluntary Codes of Practice, Responsible Serving of Alcohol Program and the banning of unopened containers of alcohol in public places. The Committee further notes that the Tasmanian Government would consider legislation in the future if the need arose because voluntary Codes are "difficult and time consuming to administer".*





## **Chapter 6. Submissions: The View of A.C.T. Industry Bodies**

6.1. The Committee received three submissions from liquor industry bodies, namely the Liquor Stores Association of New South Wales, Australian Hotels Association (A.C.T. Region) and the Licensed Clubs' Association. These submissions are summarised in this Chapter.

### ***Liquor Stores Association of New South Wales (Represents Off-Licence Retailers in the A.C.T.)***

6.2. Mr Bovis, Executive Director, submitted that the Liquor Stores Association:

strongly believes that a Code of Practice is an indication that the licensees accept that the product they provide can lead to harm and anti-social behaviour when abused. It is an indication of their good will in trying to avoid the harm and anti-social behaviour caused by abuse of the product, by not providing alcohol irresponsibly and attempting to look after their customers.

6.3. He noted that it is not always easy to determine the age of young people because people can look older or younger than their age, proof of age cards can be fraudulently used or reproduced, and drivers' licences borrowed. Mr Bovis commented that intoxicated people can also be difficult to identify because of different tolerances to alcohol and medical problems.

6.4. However, Mr Bovis expressed concern that:

a Code of Practice is even being considered for legislation and suggests that it would be more beneficial to look at the existing legislation to determine where it is not fulfilling its obligation rather than creating more legislation.

6.5. Rather than legislating a Code, Mr Bovis suggested house policies which are individual to the premise and company policies (as well as a procedural manual) be adopted by licensees.

6.6. Mr Bovis also suggested that people under the age of 18 should not be able to sell alcohol; off-licensees with supermarket/grocery store/convenience store should have a separate secure area for selling alcohol; trading hours be reduced; one outlet in a corporation licence be penalised for breaches rather than the whole corporation; and training courses be mandatory for all people who sell or supply alcohol.

6.7. He made the point that "problems with alcohol abuse can also be reduced by carefully planned consumer training programmes". He cited the television campaign "Alcohol Go Easy" and commended the Queensland and NSW "No More Its the Law" campaigns.

6.8. Mr Bovis submitted that "training of patrons should not only be up to licensees" and suggested that:

the community, the Government, Health officials, industry bodies and education authorities need to all become involved to train the public in the responsibilities licensees have and responsible drinking.

6.9. Mr Bovis saw value in such bodies as the NSW Liquor Industry Consultative Committee in that they provide a forum for two way communication.

***Australian Hotels Association (ACT Region)***

6.10. Mr Smith, General Manager, submitted that “the AHA [Australian Hotels Association] does not support the legislating of the Civic Code of Practice” because:

the key points of the Voluntary Code of Practice are already covered by the Liquor Act.

According to the Liquor Act, severe penalties are imposed to those licensees and managers of licensed clubs who breach the Act. This ensures that not only is the Liquor Act adhered to, but in turn the Voluntary Code of Practice also.

The suggestion that the Voluntary Codes of Practice be given a legislative effect, would simply be a duplication of which is already in place under the Liquor Act.

6.11. Mr Smith was particularly concerned whether some of the points in the Voluntary Code of Practice could be included in legislation.

6.12. He provided a copy of the Australian Hotels Association Code of Practice which included information on the following issues: Spirit of the Code; Business Conduct; Staff Development and Training; Underage Persons; Advertising and Promotion; Health and Community; Road Safety; Gaming and Waging; Employment Conditions; and Legislation Requirements.

6.13. The Association advised the Committee at its public hearing that it had changed its position since writing its submission. The Association subsequently wrote to the Committee stating:

the AHA has changed its view on the legislating of the Code of Practice since our submission of the 30 April 1997.

Our new position is that the AHA supports some clauses of the Codes of Practice to be legislated, on the condition that we, the AHA, and other stake holders contribute to the formation of the new regulations.

6.14. The Association also asked that a “Liquor Advisory Council” be established to “determine issues such as legislating of the Code and/or any other industry related concern”. The Liquor Stores Association of NSW, the A.C.T. Restaurant and Catering Association and the Registered Clubs Association also supported the AHA’s suggestion that a Liquor Advisory Council be established.

6.15. The Association suggested that the Liquor Advisory Council meet at least quarterly, be a consultation mechanism between the Attorney-General and the liquor industry and consist of representatives from:

- Australian Hotels Association (A.C.T. Region);
- A.C.T. Restaurant and Catering Association;
- Licensed Clubs Association of the A.C.T.;
- Liquor Stores Association of NSW;
- Australian Federal Police;
- a community representative;
- a youth representative (18 to 26 years); and
- the Chairperson of the A.C.T. Liquor Licensing Board.

***Licensed Clubs Association of the A.C.T. Inc.***

6.16. Mr Bialkowski, Executive Director, submitted that:

following the meeting of industry and other representatives on 11 July 1997 which was chaired by the Attorney-General, Mr Gary Humphries, I was left with the impression that the delegates representing hotels and night clubs in particular, and the Police were clearly of the view that the voluntary Codes had not worked effectively. It is my recollection from that meeting that there was broad support to regulate the Codes provided there was industry consultation on the content of any new legislation. In the context of the inquiry, the Licensed Clubs Association endorses that approach.

6.17. He suggested that:

a process be established to enable all groups in the liquor industry, the Police and the Government to regularly consult on relevant issues.

***Conclusion***

6.18. *The Committee notes that both the Australian Hotels Association (A.C.T. Region) and the Licensed Clubs Association of the A.C.T. support the inclusion of some of the material contained in the current Voluntary Codes of Practice in legislation. The Liquor Stores Association of NSW did not support this proposal.*

6.19. *The Committee also notes that the three peak industry bodies all support the establishment of a Council to provide a mechanism for regular consultation on issues involving the liquor industry.*

6.20. *The Committee takes careful note of the suggestions by the Liquor Stores Association of NSW contained in paragraphs 6.6, 6.7 and 6.8.*

## **Chapter 7. Submissions: The View of the A.C.T. Liquor Industry**

7.1. The Committee received six submissions from A.C.T. licensees (five On Licensees and one Off Licensee (Jim Murphy's Market Cellars). These submissions are summarised in this Chapter.

### ***Pete's Bar & Tavern***

7.2. Mr Collins, proprietor, submitted that it was "necessary to include all Belconnen and outer suburb Taverns in this Code of Practice". He is concerned that "there are a number of establishments that are not even bothering to adhere to even the basic rules of good business" and requested that the Committee expand its inquiry to include:

- (1) certain places who continue to flaunt the rules, regarding overloading, and underage drinkers; and
- (2) people who are constantly beaten by staff members who are supposed to ensure safety.

7.3. Mr Collins suggested that "the full weight of the law" should be applied to "those persons holding liquor licences who continue to break the rules". He also suggested that it may be worthwhile to look at the reasons the rules are being broken.

### ***The Shanty Steak and Ale***

7.4. Mr Press submitted that:

both the licensed clubs and the hotels are adequately covered by the current A.C.T. Liquor Act. Breaches of the Act attract severe penalties which in themselves ensure that licensees adhere to the law.

7.5. Mr Press added that it is "insulting and unnecessary" to:

give legislative effect to what is now a voluntary code of practice regarding the operating of taverns and hotels and the responsible serving of alcohol.

### ***Zorro's Tapas Bar***

7.6. Mr Williams, proprietor, submitted that:

there are already laws which cover the under-age drinking, responsible serving of alcohol etc, so why do we need more expensive legislation when most people already adhere to the Codes of Practice.

7.7. He argued that the Codes, Police and the Liquor Authority have worked well together to help licensees understand their responsibilities and the situation continues to improve; that legislating the Codes will not improve the situation any faster; "prohibitive" legislation such as 4 am closing and smoking bans damage the Territory

economy; and that the legislated Code “would be so subjective that the DPP would have to spend a fortune to prove any breach”.

7.8. Mr Williams considers the suggestion to include the voluntary codes in legislation “as being political stunts because the situation five years ago was much worse and it continues to improve”. He also expressed concern that the Assembly was responding to:

media ‘beat ups’, in particular the stabbing that occurred in Civic which had nothing to do with Civic; it had to do with the bus interchange, accessibility to a happening area and drugs. They were also underage and nowhere near licensed premises. Do not be so quick to enforce more restrictions on licensees to solve the problems of Civic when most of these problems stem from much deeper underlying issues of family values and peer group pressure.

### ***The Commonwealth Club***

7.9. Mr Stowell, General Manager and Club Manager, submitted that licensees are:

at the mercy of their own supervisors and staff who are the ones often left to enforce and police the Liquor Act. Currently there is no requirement in the A.C.T. for anyone employed as a barperson or bar supervisor to have any formal qualifications or knowledge of the Liquor Act.

I regard this a bit like allowing someone to drive a bus without having obtained a license. You would not permit passengers on a bus unless you were sure the driver knew how to ensure their safety. Every night in Civic people are being put in charge of outlets for liquor and for the serving of liquor without any screening process that they are proper and fit to do so.

7.10. He suggested that all staff in the industry be required to satisfactorily complete a certificate course with an accredited agency in the responsible service of liquor. Mr Stowell states that staff in NSW are required to complete a program which includes information about the Liquor Act, responsible service of alcohol, limitations of the number of patrons within certain areas and how to deal with intoxicated or disorderly people. On completion of the program students agree to adhere to the Code of Practice. Mr Stowell felt that this process helped make staff as well as the licensee more accountable.

### ***Jim Murphy’s Market Cellars***

7.11. Mr Murphy, proprietor, submitted that:

if compliance with the voluntary Codes of Practice can not be properly monitored and controlled, the Legislative Assembly has little choice but to incorporate the agreed Codes into legislation.

7.12. He expressed concern that Canberra be seen as a safe city and to this end commented that:

serious consideration must be given to restricting the access to alcohol without being too prohibitive. It is my view that the matter of trading hours needs examination and revision.

It is of considerable concern that alcohol can be obtained through Off Licence facilities very late into the night, particularly in the Civic area. I suggest that it would be preferable to have compulsory closure of Off Licence premises at 10.00 pm although this will probably meet with strong resistance. In any event, I believe that there should be no Off Licence sales after 11.00 pm.

7.13. Mr Murphy was very concerned about the practice of nightclubs offering cheap drinks to attract customers and suggested that this practice be stopped.

7.14. Mr Murphy suggested that “all clubs, nightclubs and taverns close at 2.00 am, that is, no alcohol be sold in the A.C.T. after that time”.

### ***Canberra Southern Cross Club Limited***

7.15. Mr Head, General Manager, assumed that:

breaches that occur are due to the anti-social behaviour of some patrons during late trading periods and we are of the opinion that if the licensees have contributed to the problem they should also contribute to the solutions.

7.16. Mr Head suggested that the problems may be overcome by the introduction of strict laws governing the sale of alcohol to intoxicated people or the provision of additional security measures; the introduction of a special levy on alcohol sales to fund an advertising campaign on responsible consumption of alcohol; and the introduction of special licences (at a premium) for late night traders.

### ***Conclusion***

7.17. *The Committee notes that, out of the six submissions received from A.C.T. licensees: two support the legislation of the Voluntary Codes of Practice (Pete’s Bar & Tavern and Jim Murphy’s Market Cellars); two do not support the proposal (The Shanty Steak and Ale and Zorro’s Tapas Bar); and two did not comment on the Voluntary Codes of Practice but made other suggestions instead (The Commonwealth Club and Canberra Southern Cross Club Limited).*

7.18. *The Committee also notes the other suggestions contained in the submissions from Pete’s Bar & Tavern, The Commonwealth Club, Jim Murphy’s Market Cellars and the Canberra Southern Cross Club Limited.*



## **Chapter 8. Submissions: Other**

8.1. The Committee received three submissions from “other” organisations, namely the Canberra Taxi Proprietor’s Association Limited, Aerial Taxi Cabs Co-Operative Society Ltd and the Australian Federal Police Association, A.C.T. Police Branch. These submissions are summarised below.

### ***Canberra Taxi Proprietor’s Association Limited***

8.2. Mr McKeough, Chairman, submitted that the taxi service “can be significantly enhanced by the introduction of a legislated Code of Practice”. He commented that the violence in Civic is alcohol related noting that:

it is clear to any observer that a combination of an immature attitude to the use of alcohol and unlimited access to alcohol will result in unsociable behaviour. It is this unsociable behaviour that also leads to taxi drivers being denied their rightful fare for service at the end of a hiring.

8.3. Mr McKeough acknowledged the efforts of responsible licensees in Civic but noted that a legislated code would be more effective. He also suggested that improving the effectiveness of the code and educating the public in the responsible use of alcohol would significantly reduce violence and anti-social behaviour.

### ***Aerial Taxi Cabs Co-Operative Society Limited***

8.4. Mr Muir, Chief Executive, noted that:

Aerial was part of the Monitoring Group for the Voluntary Code and enthusiastically supports the Code. Aerial’s drivers are the immediate recipients of a poorly implemented Code or of no Code at all when they have to deal with passengers who are heavily intoxicated. In the past twelve months it is Aerial’s observation that alcohol related violence in Civic has diminished and that the implementation of the Voluntary Code has contributed significantly to this reduction.

8.5. However, Mr Muir expressed concern that:

the Code has either been ignored by a licensee or the persons concerned have obtained alcohol from places other than a club or an off licence establishment. As it only takes one establishment to ignore the Code it is imperative that all establishments be bound by it.

8.6. Therefore, Mr Muir recommended that penalties for breaches of the Code be introduced and the Code be legislated.

### ***Australian Federal Police Association, A.C.T. Police Branch***

8.7. The submission commented that:



the Association supports the legislation of aspects of the current Codes of Practice. Such a move would be a positive contribution to the continual strategy by relevant authorities to prevent occurrences of alcohol-related anti-social behaviour in the Territory. This strategy has three aspects:

**Legislation:** That establishes clear expectations and responsibilities to the community, liquor industry, enforcement agencies and the government. Included in this is early closing.

**Education:** Continually reinforced to all elements to society, from young children onwards. Responsibility for this must primarily lay with Government, with appropriate and active support from other groups and the liquor industry.

**Enforcement:** Active and sustained enforcement by Police and related regulatory bodies. Sufficient resources need to be expended to allow continual reactive and, more importantly, pro-active operations.

8.8. The Association “supports the legislation of aspects of the current Codes of Practice”. The Association favours the inclusion of the following suggestions in legislation:

- mandatory training/accreditation of bar and security staff;
- compulsory identification of staff (including bar, food, security and management) through the use of numerical badges maintained on a central registry at the premises;
- security staff wearing uniforms (for example black pants and white shirt);
- each premises providing a public telephone for customers; and
- responsible advertising and promotion practices.

8.9. The Association argued that introducing a mandatory training scheme would increase the level of professionalism in the industry as well as being essential for the successful prosecution of offences under the Liquor Act. The Association suggested that all bar staff should successfully complete a course which included information concerning the:

signs and stages of intoxication, their legal responsibilities in relation to serving intoxicated people, and how to deal with such people.

8.10. On the subject of security staff, the Association recommended that they should successfully complete a similar course to that suggested for bar staff but expanded to include information on the “use of force and other related legal issues”. The Association also commented that:

security staff should not be allowed to work if they have criminal convictions for violent offences.

8.11. The Association also suggested that “an effective ‘drink in a public place’ offence [would help] produce tangible benefits for the community”.

***Conclusion***

*8.12. The Committee notes that the Canberra Taxi Proprietor’s Association Limited, Aerial Taxi Cabs Co-Operative Society Limited and Australian Federal Police Association, A.C.T. Police Branch all support the inclusion of all, or parts of, the Voluntary Codes of Practice in legislation.*

*8.13. The Committee further notes the suggestions contained in the submissions from the Canberra Taxi Proprietor’s Association Limited and the Australian Federal Police Association, A.C.T. Police Branch concerning consumer education; bar and security staff; public telephones; and advertising and promotion practices.*



## **Chapter 9. Conclusion**

### ***Introduction***

9.1. In reading the submissions and hearing the evidence at the public hearing several key issues emerged, namely:

- should the Voluntary Codes of Practice be given legislative effect throughout the A.C.T. and, if so, how?;
- should mandatory education and accreditation of bar staff be introduced?;
- should mandatory education and accreditation of security staff be introduced?;
- should a patrons education program be introduced, for example the “No More It’s the Law” program in NSW;
- should the “Pub Card” be reviewed?;
- should the Liquor Act be reviewed?;
- should prohibition evenings in nightclubs be banned?;
- should an advisory body be established along the lines of the NSW Liquor Industry Consultative Council?;
- should trading hours be reduced for off-licences?;
- should a “container purporting to contain alcohol” be deemed to be containing alcohol?;
- should people under the age of 18 years be able to sell alcohol?;
- should off-licensees with supermarket/grocery store/convenience store have a separate secure area for selling alcohol?; and
- should special licences for late-night traders be introduced?.

9.2. These issues are addressed in this Chapter.

9.3. The Committee notes in passing that three submissions raised the issue of 4 am trading restrictions on the sale of alcohol.<sup>10</sup> This issue was also raised during the public hearing. In the Committee’s view, this is an issue that deserves attention in its own right - and Members understand that the Government is separately dealing with it. Therefore, the Committee does not address this issue in this report.

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<sup>10</sup> *Submissions 5, 7 and 15*

***Legislation of the Voluntary Codes of Practice***

9.4. The Committee accepts the evidence from some of the submissions and the public hearing that the Voluntary Codes of Practice have not been effective.

9.5. Mr Brown, Director of Liquor and Adult Services Regulation Section of the Attorney-General's Department, commented that the Government:

have come to that position [of favouring the inclusion of the Codes in legislation] after a period of attempting to have those sorts of issues which were dealt with in the Civic Codes of Practice addressed by way of self-regulation and self-monitoring, largely by the industry. Basically, they came to the conclusion that that had proved ineffectual as a tool to address the problems which the Government sought to address through the process of the Codes.<sup>11</sup>

9.6. In responding to a question as to whether the Codes were ever effective, Mr Brown stated that:

I guess on balance it was never effective. That was always the challenge. Even the experience in the other jurisdictions indicated that there might have been an initial flush of enthusiasm for the concepts which were enshrined in the Code and self-regulation and so forth, but the difficult task was always to ensure an ongoing commitment to the philosophy which was in the Codes. It was a philosophy which was necessarily broader than the black-letter law that is contained in the Liquor Act. That required a bit of a different mind-set by licensees. It was difficult. It certainly was not obvious in the early discussions and the consultation phase that that particular mind-set and that enthusiasm for the Code philosophy were necessarily apparent in the licensees in the Civic area.<sup>12</sup>

9.7. Commander McDermott of the Australian Federal Police went further and commented that:

when we looked at the voluntary Code of Practice ...most of the licensees just paid lip-service to the fact that they were trying to bring some control to the way in which they ran their businesses.<sup>13</sup>

9.8. Mr Brown provided the following example of an attempt to get the industry to self regulate:

A number of years ago, along with the police and licensing board, we had some concerns about end-of-year school formals which were being conducted in licensed premises. We contacted most of the licensees we knew were involved in that sort of activity, organised a meeting and endeavoured to strike, by way of agreement, a set of rules which might apply to the organisation of those events so that the police and the licensing inspectors were informed about the fact that they were on; that there were

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<sup>11</sup> Transcript (Mr Brown), p 1

<sup>12</sup> *ibid*, p 3

<sup>13</sup> Transcript (Commander McDermott), p 4

responsible adults involved in the organisation and control of the event; that there were appropriate procedures put in place in relation to door control and all those sorts of issues.

... it was at best lip-service, after the event was played, to the conditions which were then promulgated by the board. There was no formal direction. ... I think that they [the liquor industry] have been given opportunities to show their bona fides to get on board in relation to these sorts of low level self-help programs as opposed to having things imposed by way of legislation or by way of action before the licensing board, and it has not always worked.

9.9. The Committee was shocked to hear about the damage in Manuka caused by excessive consumption of alcohol. The Committee heard that:

there has been an enormous amount of damage. I do not know ... about residential damage, but there is no question that the shop fronts facing Franklin Street have had huge amounts of money - I mean, the shop that I particularly run we have had our windows broken three times now, the big plate glass windows; drunks being thrown through them. One of them were two ladies, would you believe, that came out of a nightclub and had a big brawl and went straight through the window doing maybe \$10,000 worth of damage that time. The two fellows that came through the big front plate glass window and there was blood everywhere and broken - broke something like \$30,000 worth of merchandise.

There is not small damage. This is huge. Abels have had their window broken I cannot tell you how many times, maybe three. The florist just recently. It just goes on and on and on.<sup>14</sup>

9.10. The witness went on to explain that:

we clean up vomit out of the doorways before we can start business. It is not a lot of fun.<sup>15</sup>

9.11. Another witness added that:

we used to do a similar thing before we started church, cleaning up.<sup>16</sup>

9.12. The Committee was also very concerned to hear evidence concerning serious assaults on police officers. A senior Australian Federal Policeman told the Committee that:

the past two weekends we have had serious assaults on young police officers. I have a policewoman with spinal injuries, and another one last weekend as a result of quite serious assaults on police officers by people apparently leaving licensed premises.<sup>17</sup>

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<sup>14</sup> Transcript (Mrs Drijver), p 32

<sup>15</sup> *ibid*, p 32

<sup>16</sup> Transcript (Father Heffernan), p 32

<sup>17</sup> Transcript (Superintendent Curtis), pp 11 - 12

9.13. The witness went to add that:

there is nothing unusual in what happened these last two Saturday nights. We have police on the beat injured every Saturday night. Every Monday morning I walk in expecting an incident report in relation to an injury to an officer. It is a regular occurrence.<sup>18</sup>

9.14. The Committee notes that legislating the voluntary Codes of Practice is supported by the Government, Licensing Board, Australian Hotels Association (A.C.T. Region), Licensed Clubs Association of the A.C.T., Canberra Taxi Proprietor's Association Limited, Aerial Taxi Cabs Co-Operative Society Limited, Australian Federal Police Association, A.C.T. Police Branch, Pete's Bar & Tavern and Jim Murphy's Market Cellars.

9.15. The Committee further notes the trend in other jurisdictions away from self regulation to regulation of industry Codes of Practice.

9.16. The Committee is sympathetic to the arguments against the use of voluntary Codes such as:

- the major flaw in voluntary Codes is that they are unenforceable, instead relying on goodwill;
- it is difficult to maintain the interest and commitment of stakeholders over a long period;
- compliance with the voluntary Codes relies on peer monitoring which experience shows is difficult to achieve;
- not all licensees participate in the development of voluntary Codes; and
- not all licensees comply with the voluntary Codes and this creates an "uneven playing field".

9.17. However, the Committee agrees with the comment advanced by some submitters<sup>19</sup> that self regulation through the use of voluntary Codes has been a useful step in increasing the awareness in the industry and the community to the problems associated with the irresponsible service of alcohol.

9.18. Taking into account this background, the Committee supports incorporating some of the material included in the voluntary Codes of Practice in the Standards Manual. The Committee strongly considers that penalties for non-compliance be included in the Manual.

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<sup>18</sup> *ibid*, p 14

<sup>19</sup> For example *Submissions* 4 and 18.

9.19. The Committee agrees with the Government and A.C.T. Liquor Licensing Board that using the Standards Manual rather than the Liquor Act would allow changes to be implemented quicker to keep abreast of any changes in the industry.

9.20. The Committee understands that the Standards Manual is a disallowable instrument. This means that any amendments to it come before the Assembly where Members can disallow all or part of the amendment/s. This approach gives legislative effect to the Voluntary Codes of Practice in a quicker and easier manner than is possible by amending the Liquor Act.

9.21. Further, the Committee considers that the best result will be achieved by a co-operative approach between the community, Government and industry. The Committee supports the development of the Code by representatives from the community (for example the Civic Safety Committee or Manuka Safety Committee and a youth representative); Government (for example Attorney-General's Department, Department of Health, Australian Federal Police and the A.C.T. Liquor Licensing Board); and industry (for example Australian Hotels Association (A.C.T. Region), A.C.T. Restaurant and Catering Association, Licensed Clubs Association of the A.C.T. and Liquor Stores Association of NSW).

#### **9.22. Recommendation 1.**

**The Committee recommends that some of the material in the voluntary Codes of Practice be included in the Standards Manual with accompanying penalties for non-compliance.**

#### **9.23. Recommendation 2.**

**The Committee recommends that a group of people be formed to advise the Government on what should be included in the Standards Manual. The group should include representatives from the community (for example the Civic Safety Committee and/or Manuka Safety Committee and a youth representative); Government (for example Attorney-General's Department, Department of Health, Australian Federal Police and the A.C.T. Liquor Licensing Board); and industry (for example Australian Hotels Association (A.C.T. Region), A.C.T. Restaurant and Catering Association, Licensed Clubs Association of the A.C.T. and Liquor Stores Association of NSW).**

#### ***Mandatory Education and Accreditation of Bar Staff***

9.24. The Committee was interested in the staged introduction of mandatory responsible service training for liquor industry staff in NSW through approved providers. The approved providers are TAFE, Australian Hotels Association (NSW Region), Licensed Clubs Association of NSW and Tourism Training Australia.



9.25. Three submissions<sup>20</sup> supported the introduction of mandatory training for people who sell or supply alcohol in the A.C.T. The Liquor Licensing Board advised the Committee during the public hearing that it supported mandatory training.

9.26. The Committee can see merit in this initiative. A course which covered the key points in the Liquor Act, how to responsibly serve alcohol and how to recognise (and deal with) patrons who had consumed too much alcohol, would help employees understand their responsibilities. It would also enhance the individual's, and the industry's, professionalism.

### **9.27. Recommendation 3.**

**The Committee recommends that, in consultation with the liquor industry, the Government introduce mandatory responsible service training for liquor industry staff in the A.C.T. The Committee further recommends that the introduction be staged over a period of one year.**

#### ***Mandatory Education and Accreditation of Security Staff***

9.28. The Australian Federal Police Association suggested in its submission that all security staff should undertake mandatory education as part of an accreditation process. The submission also stated that:

security staff should not be allowed to work if they have criminal convictions for violent offences. The current situation of criminals moving from one club to another, in the wake of charges, can not continue.<sup>21</sup>

9.29. Indeed the Committee was concerned to learn at the public hearing that:

there has certainly been evidence on a number of occasions of bouncers or people engaged in security work within licensed premises being instrumental in what occurred outside in relation to a fracas or assaults or whatever. From recollection, over the last two years there have been incidents where people engaged in security functions have partaken in assaults on police and they have been prosecuted. What concerns me is that some of these people are still employed as security personnel in licensed premises after being convicted of assaults on police.<sup>22</sup>

9.30. All witnesses at the public hearing supported the introduction of a licensing system similar to that operating in Victoria for security staff. A representative from the Australian Hotels Association stated that:

the AHA view is that we support licensing of security personnel. I think when it was talked about a couple of years back we came out publicly and commented on that. We also suggested that if it was mandatory for security personnel to be licensed as of, say,

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<sup>20</sup> For example *Submissions* 6, 7, and 19

<sup>21</sup> Australian Federal Police Association, A.C.T. Police Branch, *Submission*, p 3.

<sup>22</sup> Transcript (Superintendent Curtis), pp 14 - 15

tomorrow, we would like to see perhaps a 12-month honeymoon period for those people working in the industry today. If they did not do a course or become licensed within that 12-month period they would have to leave the industry.<sup>23</sup>

9.31. The Committee agreed with the following opinion expressed by a Territory licensee at the public hearing:

I am in favour of some sort of certification for doormen. How involved and heavy it should be is probably up to debate, but I think that all doormen should be able to be tracked down and held responsible. You see, one thing that the liquor industry or the hospitality industry in general has that other industries probably do not have is very itinerate workers. You might have a bar person or a doorman who might do only one night a week, and if the proprietor of the business has to fork out the money to train these people it becomes a bit unviable in lots of ways. Probably the employee should pay to get accredited.<sup>24</sup>

9.32. The Government advised the Committee that a:

mandatory Code of Practice developed under the Fair Trading Act in consultation with the industry is expected to be finalised by the end of June 1997.<sup>25</sup>

9.33. The Government's submission included a copy of the draft document.

9.34. The Committee is very concerned that security staff in the liquor industry have not been licensed or accredited in any way. Security staff should be professional, held accountable for their actions and easily located. For these reasons the Committee agrees that some form of licensing or accreditation (which includes education) should be introduced into the Territory.

#### **9.35. Recommendation 4.**

**The Committee recommends that, in consultation with the liquor industry and the Australian Federal Police, the Government introduce a licensing or accreditation scheme (which includes education) for security staff employed in the liquor industry. The Committee also recommends that the introduction be staged over a period of one year.**

#### ***Consumer Education Programs***

9.36. Several submissions suggested that the public be educated in the responsible consumption of alcohol.<sup>26</sup> Also, a number of witnesses made the same suggestion. Mr Helm stated that:

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<sup>23</sup> Transcript (Mr Smith), p 55

<sup>24</sup> Transcript (Mr Williams), p 58

<sup>25</sup> A.C.T. Government, *Submission*, p 5

<sup>26</sup> For example *Submissions* 7, 9, 16 and 19

we have the consumer, the supplier and the regulator. Unless those three work together, we will never solve it. But if we just take the consumer out and we just put the regulator and the supplier, fine. We can sit on the board. We can take away licences. We can regulate more. We can close them at 10 o'clock. We can close them at 6 o'clock. At the end of the day it will not work.

... Why are we getting people from New Zealand putting on the market alcoholic beverages to attract the young kids? Why have we got Two Dogs lemonade? Why have we got XLR8? Why have we got Throwbacks? There is something there which we are not talking to the consumer about. That is where the problem is. If we can get the consumer to drink responsibly, we are there. If we can get the licensees to make sure they drink responsibly, we are there. Then we have the regulators to look over the lot.

... I do not believe that you can take an 18-year-old child and give them the keys to a car that can do 160 kilometres an hour and say, "Here I have not taught you to drive but you should be able to". We do the same with 18-year-olds in relation to drink ... Since I have been on this [Liquor Licensing] Board I see as the single most important thing education of the consumer and taking the kids away from, "I am 18. Let us go out and get drunk".<sup>27</sup>

9.37. The Secretary of the A.C.T. Police Branch of the Australian Federal Police stated that:

children from the age of six or seven onwards, in both primary school and high school, and it should go on accordingly. I think instances have shown, and certainly our experience verifies it - for the record, we both are serving police officers and have both spent considerable time at City beat squad and other areas - that under age drinking is a rampant problem, and down to the ages of nine and above. So we think that education has to get in very early in the child's life and be continued from that point on.<sup>28</sup>

9.38. Another witness added that:

I think that starts with the family, but you have to remember that the general public do not really believe that liquor or alcohol is a drug as such, and they do not understand the influence it has on crime, on our society, and the cost to our society. It is probably, I would say, the most abused drug that we have in our society.<sup>29</sup>

9.39. The Committee is aware that both the NSW and Queensland Governments have run successful consumer education campaigns such as "Alcohol Go Easy" and "No More Its the Law".

9.40. The Committee agrees that the consumer should take responsibility for his or her consumption of alcohol and that the "consumer, the supplier and the regulator" need to work together. The Committee believes that the Government should take

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<sup>27</sup> Transcript (Mr Helm), pp 22 - 23

<sup>28</sup> Transcript (Mr Byrnes), p 63

<sup>29</sup> Transcript (Mr Le Lievre) p 64

responsibility for ensuring this co-ordination takes place. Perhaps the Government could undertake an awareness raising campaign similar to the “Alcohol Go Easy” and “No More Its the Law” campaigns.

9.41. The Committee understands that the Department of Education runs programs at schools about responsible consumption of alcohol. The Committee considers that the Department might like to review their programs in view of the evidence from the Australian Federal Police Association, A.C.T Police Branch.

#### **9.42. Recommendation 5.**

**The Committee recommends that the Government educate the consumer in the responsible consumption of alcohol. In doing this the Government may wish to undertake an awareness raising campaign similar to the “Alcohol Go Easy” and “No More Its the Law” campaigns.**

#### **9.43. Recommendation 6.**

**The Committee recommends that the Government direct the Department of Education to review their programs about the responsible consumption of alcohol.**

#### ***“Pubcard”***

9.44. A senior representative from the Australian Federal Police commented at the public hearing that:

the other point of concern in the whole process is the pubcard issue ... I do not think that is working as well as it should. That is just a general view.<sup>30</sup>

9.45. “Pub Card” is the colloquial term used for the proof of age card. The proof of age card scheme was introduced following extensive consultation. It is a voluntary scheme where people aged 18 and over can obtain a card which confirms their age so they can enter licensed premises and purchase alcohol. The card is issued by the Motor Vehicle Registry.

9.46. Whilst the Committee did not continue this line of questioning it is concerned that a senior member of the Australian Federal Police has this view. The Committee considers that the Government should undertake a review of the operation of the Pub Card.

#### **9.47. Recommendation 7.**

**The Committee recommends that the Government undertake a review of the operation of the Pub Card.**

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<sup>30</sup> Transcript (Commander McDermott), p 4

## **Liquor Act**

9.48. The Committee was concerned to hear from a senior policeman during the public hearing that:

many of the licensees pay lip-service to the Code of Practice, but I think I would go beyond that and say that some licensees pay lip-service to the provisions of the Liquor Act as well. I think that is evidenced by the fact that a number of matters are referred by us to Mr Brown's area for the [Liquor Licensing] Board to deal with.

I think repeated breaches of the provisions of the Liquor Act by some premises are probably the most frustrating thing for the police involved in actual operational policing of the provisions of the Act. I guess it would not matter how many police we put on the beat to look after these premises, you would not have enough if we were to do the job properly. At the moment we might put a dozen police into the city on Thursday, Friday and Saturday nights, and it is part of their duties or responsibilities to visit licensed premises and to do counts of the number of patrons in those premises. Often enough, it is just a fire fighting exercise. They load the van up and go back to the station. The 12 people involved in policing put anything up to 30 people through the watch-house a night. That is not uncommon on a bad night. They just do not have the time to get into the actual policing of the provisions of the Liquor Act on the premises.<sup>31</sup>

9.49. The witness went on to give the following illustration:

to support the statement that they [licensees] are paying lip-service to the provisions of the Liquor Act an example would be that in April of this year we had the opportunity of having some members of the Australian Federal Police from interstate present in the A.C.T. and conducted a covert surveillance operation in licensed premises by utilising video surveillance. I think Mr Brown has probably had the opportunity to have a look at some of that footage. Without naming the premises involved, it probably demonstrated what in fact happens when there are no police there.<sup>32</sup>

9.50. The Chairperson of the A.C.T. Liquor Licensing Board advised the Committee that:

some of the people around town have held seminars for licensees about how they can get out of any charge because all they have to do is show due diligence. One of our inspectors caught a licensee in the act of selling to an under-age person without checking, and the licensee said, "Oh, but we exercise due diligence". Off. No problem. We just did not get a chance to do anything about it. We try, when we get the information, for example, from the police, which we do not get very often. When we do we could have a situation like this morning where the matter is brought to us but a member of the police has told the only witness that we could really use, "You will hear no more about this". They gave an undertaking. We cannot do any more.<sup>33</sup>

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<sup>31</sup> Transcript (Superintendent Curtis), pp 6 - 7

<sup>32</sup> *ibid*, p 12

<sup>33</sup> Transcript (Mrs Gibson), p 20

9.51. The Committee was very concerned with this evidence from a senior member of the Australian Federal Police and the Chairperson of the A.C.T. Liquor Licensing Board and considers that the Government should instigate a review of the effectiveness of the Liquor Act.

### **9.52. Recommendation 8.**

**The Committee recommends that the Government review the effectiveness of the Liquor Act 1975.**

#### ***Prohibition Evenings***

9.53. A senior member of the Australian Federal Police mentioned his concerns about prohibition evenings<sup>34</sup> during the public hearing. The policeman said that:

for some time there has been a push for under-age discos on licensed premises. In the voluntary Code of Practice there has to be some sort of control on that. Again, four years ago, we started arguing about the apprenticeship, the young people going onto licensed premises. I think that is a major concern, particularly with Manuka. If we allow the trend of what I saw a few weeks ago to continue, Manuka will finish up another Civic.<sup>35</sup>

9.54. The witness added that:

in fairness, I have seen some [prohibition evenings] that have been extremely well run, but I will take a step back. Years ago in some areas Blue Light discos were most popular in the age group to about 17. In some areas they were not so popular. Then there was one particular premise in the city that started running them and there was the thrill part of going to the licensed premises. I am talking from experience of young people ... It was better to go to those sorts of entertainment areas where in some cases the music might have been better but there was a bit of liberty in what they could do. I am using the comparison of Blue Light discos. There was some control at Blue Light discos. You were not allowed outside, you were not allowed to smoke in the hall and your bags were searched as you came through the door. Really, the bottom line of it is the opportunity for a bit more freedom, and it encourages young people to partake of intoxicating liquor before they go to them. There is evidence of young people going into these premises with liquor planted in their socks to get it through the door.

... Quite seriously, it is an apprenticeship for them. Whatever way you look at it, if you get 400 young people into licensed premises, the licensees do the right thing in covering up, as is a requirement, the liquor outlet aspect of it, but it is still encouraging the psychology of young people.<sup>36</sup>

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<sup>34</sup> A prohibition evening is a disco organised by a licensed nightclub for underage children. The nightclub serves non-alcoholic beverages.

<sup>35</sup> Transcript (Commander McDermott), p 4

<sup>36</sup> *ibid*, pp 5 - 6

9.55. The Manuka Safety Committee also discussed prohibition evenings at the public hearing. The following discussion occurred:

The Chairman: Commander McDermott, who was in earlier, was talking about these prohibition nights. He said that he would prefer not to have them at all because he feels that they expose kids to nightclubs younger than they need to be exposed to them.

Father Heffernan: There is a sense in which they do. We discussed this at our meetings, and Sergeant Geoff Brown initially had similar reservations. I suppose it picks up a point the other group were making about education, that if it is done positively it can actually have a value.<sup>37</sup>

9.56. Another witnesses commented that businesses in Manuka have changed:

We have lost the ordinary cafes and the ordinary fish and chip shops and all those sorts of things where young people had a place to go, where I as a teenager had a place to go. Manuka is now a very different place, and it is still changing dramatically. There are applications to alter lease purpose clauses in Manuka even now, for more drinking establishments and eating places. They will be upmarket and young people will not be welcome in them. We have actually taken away a lot of places where our young people could comfortably gather and be safe. We have replaced places where they did congregate and we have enabled wine bars and things to go in on the pavement outside.

Even though I agree with Commander McDermott that there is that problem, where do our young teenagers go? I do not want my teenagers getting on a bus and coming to Civic and possibly, at the end of the day, drinking some alcohol or getting hold of some other drug and being a long way from home. I would prefer them to be close by.<sup>38</sup>

9.57. Another witnesses stated that:

I was just going to say that I have observed that young people's night on a Friday night and although I can see that it could have adverse effects in that it teaches them to go to nightclubs, if you like, they have to have somewhere to go. He [the proprietor of the prohibition venue] says that his takings have been equally good in soft drink and that they [youth] have had a wonderful night dancing themselves silly until two in the morning or whatever. They have swallowed large amounts of liquid but it has not caused them to be destructive and so forth. I think perhaps it has more pluses than minuses; probably we need another one [prohibition venue]. The queue is nearly up to the newsagent, and some of the kids say, "If we do not get there early we will not get in". I think he may be doing something quite good, but we need more of it or something different as Anne says. I listened to what Ken [Helm] was saying, and I think he is right. A lot of it is education.<sup>39</sup>

9.58. The Committee understands the concern expressed by the Australian Federal Police as well as the arguments advanced by the Manuka Safety Committee. The

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<sup>37</sup> Transcript, p 34

<sup>38</sup> Transcript (Mrs Forrest), p 35

<sup>39</sup> Transcript (Mrs Drijver), p 35

Committee believes that prohibition evenings fill a need in the community but that they need to be well planned and run. The Committee believes that the Government should monitor the running of these evenings and include guidelines for them in the Standards Manual.

**9.59. Recommendation 9.**

**The Committee recommends that the Government monitor Prohibition Evenings and include guidelines for them in the Standards Manual.**

***Advisory Body***

9.60. Mr Smith from the Australian Hotels Association suggested that a Liquor Industry Advisory Council be established to “determine issues such as legislating of the Code and/or any other industry related concern”.<sup>40</sup> He noted in his submission that the Liquor Stores Association of NSW, the A.C.T. Restaurant and Catering Association and the Licensed Clubs Association of the A.C.T. also supported this initiative.

9.61. Mr Smith suggested that the Council consist of representatives from the:

- Australian Hotels Association (A.C.T. Region);
- A.C.T. Restaurant and Catering Association;
- Licensed Clubs Association of the A.C.T.;
- Liquor Stores Association of NSW;
- Australian Federal Police;
- a community representative;
- a youth representative (18 to 26 years); and
- the Chairperson of the A.C.T. Liquor Licensing Board.

9.62. Representatives from the Australian Hotels Association offered the following comments at the public hearing:

Mr Capezio [Vice President]: ... I think this [proposal] gives the A.C.T. a very important opportunity to be very progressive in terms of the liquor industry in the A.C.T. I think that having a consultative group discussing these issues is paramount for our industry in order to finally bed down issues which have been going on for the last three to four years. I think it gives us a very good opportunity to work together with the Government and other bodies to ensure that we finally get a very progressive

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<sup>40</sup> Mr Smith, Australian Hotels Association, ACT Region, *Submission*



and proactive Code of Conduct and to cover the whole range of issues that affect our industry. I think this is the opportunity to do it. I personally would like to see that progressing and a resolution soon to all these issues that have come about as opposed to waiting another couple of years and so forth. I think we must resolve these issues very quickly.

Mr McHarg [President]: May I add that the liquor summit which we just had here in the A.C.T., which Mr Humphries put together, was probably one of the most successful meetings we have had in licensing direction and community input ever in the A.C.T. There were a couple of shortcomings with the meeting. There were no official notes taken by the Government at the meeting, but I think the community input, the police input, our input, liquor licensing's input, brought everyone together with a better understanding of the different problems that everybody has on the issue. I think it was a very good meeting. Maybe, if that was condensed down to a smaller group in future, that could work as a stepping stone getting this legislation working in the right direction.<sup>41</sup>

9.63. The Committee is aware of the NSW Liquor Industry Consultative Council (LICC). The Council was established by the Minister, includes the 10 peak liquor associations and advises the Minister on liquor industry issues. Mr Helm (a member of the A.C.T. Liquor Licensing Board) advised the Committee that he served on the Council as a representative for the NSW Wine Industry Association.

9.64. The Committee understands that the NSW Liquor Industry Consultative Council works very well. The Committee agrees with the Australian Hotels Association that establishing such a body in the A.C.T. could be very beneficial to the community, Government and industry. The Government may wish to seek the view of the advisory council on a number of the recommendations in this report.

#### **9.65. Recommendation 10.**

**The Committee recommends that the Government establish a Liquor Industry Advisory Council. The Council should consist of at least a representative from the:**

- **Australian Hotels Association (A.C.T. Region);**
- **A.C.T. Restaurant and Catering Association;**
- **Licensed Clubs Association of the A.C.T.;**
- **Liquor Stores Association of NSW;**
- **Australian Federal Police;**
- **a community representative;**

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<sup>41</sup> Transcript, p 51

- a youth representative (18 to 26 years); and
- the Chairperson of the A.C.T. Liquor Licensing Board.

**The Liquor Advisory Council should met regularly (but not less than quarterly) and report to the Government through the Attorney-General.**

### *Trading Hours for Off-Licences*

9.66. Mr Murphy, the proprietor of Jim Murphy's Market Cellars, submitted that:

it is of considerable concern that alcohol can be obtained through Off Licence facilities very late into the night, particularly in the Civic area. I suggest that it would be preferable to have compulsory closure of Off Licence premises at 10 pm although this will probably meet with strong resistance. In any event, I believe that there should be no Off Licence sales after 11 pm.<sup>42</sup>

9.67. The Chair advised the Committee that a representative from the Liquor Stores Association of New South Wales (which also represents stores in the A.C.T.) suggested that trading hours for off licences be reduced at the recent Liquor Summit. The Committee considers that this issue needs further examination.

### **9.68. Recommendation 11.**

**The Committee recommends that the Government review the trading hours for Off Licences.**

### *Judicial Notice Given in the Identification of Alcohol*

9.69. The President of the ACT Police Branch of the Australian Federal Police Association stated that:

part of our whole submission is also based on the Liquor Act and the fact that we find, as police officers, and from what our members are also saying, that it is unenforceable. Quite basically, it is true. The problem is that to prove that someone is consuming alcohol in a public place is very difficult and time consuming. So what our members are doing is turning a blind eye, or using a bit of bluff - tip it out; it is an offence to drink in a public place. To try to prove that offence is very difficult.<sup>43</sup>

9.70. The witness went on to comment that:

but look at Victoria and the fact that their legislation covers that. If a container purports, that is it. If a container purports to hold alcohol, that is all the proof you need. It would then be an offence even if there be no alcohol in that container. It makes a police officer's job or any enforcement job so much easier if that is the case, rather than to prove that there is alcohol in the container. How ludicrous.

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<sup>42</sup> Mr James Murphy, Jim Murphy's Market Cellars, *Submission*

<sup>43</sup> Transcript (Mr Le Lievre), p 68

9.71. The Australian Federal Police Association is asking for judicial notice to be given in the identification of alcohol. At the moment, if Police charge a person with drinking in a public place, they need to get the substance analysed. This is costly and time consuming. Under the proposed system, if a person is drinking in a public place from a receptacle that purports to contain alcohol (for example a beer can or stubby) the magistrate can accept that the receptacle contained an alcoholic beverage.

9.72. A similar principle is in the application of the Motor Traffic Act in that magistrates will accept Police evidence stating that a road is fact a public road under the Act.

9.73. The Committee is aware that Victorian magistrates can take judicial notice in the identification of alcohol. The Committee did not pursue this issue during the inquiry but considers that the Government should investigate this matter.

#### **9.74. Recommendation 12.**

**The Committee recommends that the Government investigate whether judicial notice should be given in the identification of alcohol for the offence of consumption of liquor in certain public places.**

#### *Other Suggestions*

9.75. Mr Bovis, Executive Director, Liquor Stores Association of New South Wales, made the following suggestions in his submission to the inquiry:

- people under the age of 18 should not be able to sell alcohol;
- Off Licensees with supermarket/grocery store/convenience store should have a separate secure area for selling alcohol; and
- one outlet in a corporation licence be penalised for breaches rather than the whole corporation;

9.76. Mr Head, General Manager, Canberra Southern Cross Club Limited suggested in his submission that consideration should be given to the introduction of special licences (at a premium) for late-night traders.

9.77. The Committee did not investigate these suggestions during this inquiry. However, the Committee believes that the Government should examine these issues.

#### **9.78. Recommendation 13.**

**The Committee recommends that the Government consider the following suggestions made in the course of the inquiry:**

- **people under the age of 18 should not be able to sell alcohol;**

- **Off Licensees with supermarket/grocery store/convenience store should have a separate secure area for selling alcohol;**
- **one outlet in a corporation licence be penalised for breaches rather than the whole corporation; and**
- **whether special licences (at a premium) be introduced for late-night traders.**

Paul Osborne, MLA  
Chair

12 September 1997

## **Appendix A: Submissions<sup>44</sup>**

1. Pete's Bar and Tavern.
2. Commissioner of Licensing, Tasmania.
3. The Shanty Steak and Ale.
4. Director-General, Department of Gaming and racing, NSW.
5. Zorro's Tapas Bar.
6. The Commonwealth Club.
7. Liquor Stores Association of NSW.
8. Australian Hotels Association, A.C.T. Region.
9. Canberra Taxi Proprietor's Association Limited.
10. Aerial Taxi Cabs Co-Operative Society Limited.
11. Liquor Licensing Commission, Victoria.
12. Liquor Licensing Commissioner, South Australia.
13. Registrar, Northern Territory Liquor Commission.
14. Liquor Licensing Division, Department of Tourism, Small Business and Industry, Queensland.
15. Jim Murphy's Market Cellars.
16. Canberra Southern Cross Club Limited.
17. Australian Capital Territory Liquor Licensing Board.
18. Mr Gary Humphries, MLA, Attorney-General.
19. Australian Federal Police Association, A.C.T. Police Branch.
20. Licensed Clubs Association of the A.C.T. Inc.
21. Australian Hotels Association, A.C.T. Region (second submission).

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<sup>44</sup> Listed by the number of submission as received in the Committee Office

## **Appendix B: Public Hearings**

**Tuesday, 19 August 1997**

### **A.C.T. Government**

Mr Anthony Brown, Registrar of Liquor Licences and Director of Liquor and Adult Services Section

Commander Denis McDermott, ACT Region of the Australian Federal Police

Superintendent Tony Curtis, ACT Region of the Australian Federal Police

### **A.C.T. Liquor Licensing Board**

Mrs Robin Gibson, Chairman

Mr Ken Helm, Member

Mr Anthony Brown, Registrar of Liquor Licences and Director of Liquor and Adult Services Section

### **Manuka Safety Committee**

Father Ken Heffernan, Chairman

Mrs June Driyver, Member

Mrs Anne Forrest, Member

### **Canberra Taxi Proprietor's Association Limited and Aerial Taxi Cabs Co-Operative Society Ltd**

Mr John McKeough, Chairman, Canberra Taxi Proprietor's Association Limited

Mr John Muir, Chief Executive, Aerial Taxi Cabs Co-Operative Society Ltd

### **Australian Hotels Association, ACT Region**

Mr Ken Smith, General Manager

Mr Robert McHarg, President

Mr Michael Capezio, Vice-President

### **Zorro's Tapas Bar**

Mr Greg Williams, Proprietor

**Australian Federal Police Association**

Mr Jason Byrnes, Secretary, A.C.T. Police Branch

Mr Allen Le Lievre, President, A.C.T. Police Branch