

Submission to Legislative Assembly
ACT Liquor Act



It is a great pleasure to be here today and to provide Members of the Legislative Assembly with some thoughts on the operation of the operation of the recently amended ACT Liquor Act

I would like to make a few general comments on the Act, then address some specific concerns which arise from the implementation of the Act. Then, if time permits, give you my thoughts as to where this Act and other relevant legislation will take us unless we stop to consider where we, as a Territory, wish to go.

The first point is that this Act does not exist in isolation. It is but part of a web of economic drivers, taxes, charges and regulations which combine to drive the hospitality industry. I have records going back many centuries in Britain which shed light on the interplay between these factors and how they have shaped the alcohol culture in the Australia of today.

I must tell you that a study of these records has led me to believe that our present culture of apparent alcohol abuse has been shaped mostly by government taxation and regulation and that, therefore, this culture has resulted directly from government policy.

In other words, our present alcohol problem has been caused by government policy not mitigated by it. Governments, State and Federal, must recognize this if we are to deal with it. I shall examine this belief later in my remarks.

I also have to say that alcohol abuse is not as much of a problem as it has been in the past. A NSW Royal Commission in the mid 1850's reported that 3552 arrests for public drunkenness had been made in Sydney Town the previous year. This would equate to a half a million arrests in the Sydney of today. Anecdotally, Civic does not seem to be as bad as it was 20 years ago; though there are different adverse patterns of behavior today. Today's problems often seem to involve young girls behaving badly, a mixture of alcohol and drugs and, especially, preloading.

Preloading seems to be a particular problem, however, the changes to the Act have, if anything encouraged this to occur. Patrons are better and safer in a venue than on the streets or in the parks drinking: Or staying at home drinking cheap alcohol from a bottle shop before going to Civic, mostly after the small venues have closed.

I accept that the Act was well intended but a failure to consult widely before the legislation was passed, and its complete inflexibility doomed it as a practical solution or useful tool of public policy.

There are two major directions in which the Act falls down.

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	6
DATE AUTH'D FOR PUBLICATION	7/03/12

Bl.

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

I expect this was done to 'tie down' the few irresponsible venues. However, the detail of compliance required makes it likely that all venues will, at some stage in their trading day, be in breach of the law.

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

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

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

To give another example, if a venue RAMP states that in the event of a fire staff will cry fire three times then immediately leave the building themselves (reasonable behavior on OHS grounds), what if the venue has a number of deaf or disabled patrons on the premises at that time who need special assistance? To provide assistance here, required by common sense, will require staff to break the terms of the RAMP and thus the law. This is not good public policy.

The second direction where this Act falls down is the way in which charges were imposed. It is vital when governments impose a tax or charge that they be very clear as to the purpose of the charge. There are three obvious purposes which could apply here. To apply a tax or charge to:

- raise revenue for the ordinary annual services of government
- cope with a social cost
- create a 'price signal' for behaviour modification

If general revenue was the purpose here, a sensible government response would have been to examine the various classes of businesses to determine their financial viability and thus their ability to pay. Charges could have been set accordingly. You shear the sheep not slaughter them.

This Act slaughtered some venues while barely giving others a beard trim.

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

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

I earlier claimed the government was the driver for our poor alcohol culture. Let me expand here and show where we will end up if legislation like the present Act under examination remain our bench mark.

Beer manufacture has traditionally been the preserve of government. In Elizabethan times, control here was complete with a total Royal monopoly on export and domestic production made through brewing guilds under strict supervision in the major cities.

Yet beer was a staple in the diet of all persons. It was safe to drink and could be made twice a year to produce a stable and pleasant product. Even school children were given a few pints a day to stay healthy; a practice which still applied in Belgium when my son-in-law was a boy.

Lucky boy!

Charles I applied the first direct tax on beer as an excise on malted barley. This was at the outbreak of the civil war and Charles was always short of money. The response of brewers, domestic and the fledgling industrial brewers, was to use other starches to produce the beer.

While this drove the development of a range of different beer styles, it led to a thin unstable product being produced with a limited hop profile. Of course, hops preserve the beer against degradation and infection.

Gradually under the influence of this excise on malted barley, brewers reduced the percentage of malt to around 60% of total starch.

At this point, low valine worts, resulting in a short shelf life due to residual diacetyl, destroyed the ability of brewers to make beer which would survive the summer periods. Tax had turned a healthy product in the 1640's, which was consumed because town water, itself, was hopelessly unsafe, into a cheap and nasty product with limited keeping abilities. Cholera and typhoid outbreaks resulted.

Eventually, the industrial revolution and cheap steam provided the solution, brew beer without hops, the most expensive ingredient, then double distill the beer which results. This 'white spirit' was stable with an excellent shelf life and it could be flavoured with spices to make a pleasing product.

Of course, when flavoured with juniper berries it is called 'gin'.

The gin revolution and gin palaces, with appalling social consequences, resulted.

We are at a similar tipping point. Beer excise has driven per capita consumption down to the immediate post war level. In addition, venues have to compete against cross subsidies from poker machines in the clubs and illegal drug sales in other venues. The Wig & Pen is highly successful and does everything exactly by the book, yet is not especially profitable. Other venues less successful than the Wig appear to have evolved other business practices to stay afloat in this corrosive environment.

If we are not careful, we will collapse most, and especially the small, licensed venues, where supervision of patrons can be undertaken and leave the way clear for illegal drugs and loss leader alcohol from major supermarkets to take their place.

Look to Britain for an example. For years they pursued policies similar to currently being implemented in Australia. This resulted in around 30 pub closures a week over many years. Alcohol in the supermarkets has become so cheap and so much of a health and social problem that legislation is, I believe, being considered to compel the supermarkets to charge at least the excise rate for the product they sell.

I shall complete my remarks at this point. I recommend a major revisit of the Act with an intention to drive a culture of excellence in hospitality in the Act.