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Your Ref: 2010 LLA Review

Mr Paul White
Liquor and Gambling Commissioner
Office of the Liquor and Gambling Commissioner
GPO Box 2169
ADELAIDE SA 5001

Dear Commissioner

Invitation for submissions on the review of the Liquor Licensing Act 1997 and the Code of Practice.

I refer to your email of 20 July 2010 and thank you for inviting the Society to consider and comment discussion paper "A Safer Night Out" July 2010 and the Review of the Code of Practice for licensed premises.

We provide the following comments.

A SAFER NIGHT OUT

As a starting point the Society welcomes any initiatives to promote patron safety in and around licensed premises. Although there certainly appears to be greater media scrutiny and publicity of so-called "alcohol fuelled violence" we are not aware of any actual increase in such undesirable activity in and around licensed premises since the introduction of the *Liquor Licensing Act 1997*, which liberalised to some degree the liquor licensing regime in this State.

Whether such undesirable activity is increasing or not is in our view not totally relevant to the issue at hand. Certainly if initiatives can be put in place to stamp out such undesirable activity then they are to be welcomed.

Increasing the Powers of the Liquor and Gambling Commissioner

The Licensing Authority is currently comprised of the OLGC and the Licensing Court. Although there is some overlap, the OLGC is largely responsible for the administration of the *Liquor Licensing Act* and the Licensing Court has a more judicial role in dealing with disciplinary matters and the majority of contested hearings.

The proposal to endow the OLGC with additional powers to suspend the operation of a liquor licence immediately, make short term interim orders to impose further conditions on Licences or to remove an "inappropriate person" from a position of authority from licensed premises does not in our view appear warranted.

As the discussion paper notes, the OLG already has extensive powers to impose conditions on licences. Section 43 of the Act describes a wide range of examples where the Authority (OLG or Court) might impose such conditions. The Authority can impose conditions in a very wide range of situations including the grant, transfer or removal of a Licence, on application by the Licensee, on application by the Commissioner of Police, on Application by OLG where a matter is before the Court, on OLG's own initiative if the Authority considers the condition necessary for public or safety or in any other proceedings under the Act involving the licensee.

Those powers are very wide but in our experience are very rarely exercised by the OLG or indeed police.

The discussion paper describes current arrangements as "convoluted" and that the process "fails to provide an effective and timely response".

With respect, very few such applications are made under the existing provisions of Section 43. Were it the case that the OLG had made a number of such Applications unsuccessfully then we could see an argument for an increase to the powers of the OLG. The reality is that the existing powers are underutilised.

Another item of concern is that we consider it undesirable and a denial of natural justice to give OLG the power, as is discussed, to "remove an inappropriate person from a position of authority from licensed premises". That person could be a Director of a Licensee Company, Shareholder, Trust Beneficiary or Approved Manager/Responsible Person. Should OLG be given the power to make such an Order then it could deny a person their livelihood and ability to earn an income. At present, a complaint may be made to the Licensing Court seeking an Order that such a person is not "fit and proper" for the purposes of the Act. Such matters can be fiercely contested and with good reason. Such a finding has major consequences for a person's livelihood as described. In our submission it is more appropriate for such a matter to be fully argued before the Authority (be it the OLG or the Court) giving all interested parties the right to be heard and make submissions on such matters before such an extreme Order or finding can be made.

Other proposals such as "lockouts" for individual premises or groups of premises are again in our view not a matter which should be able to be ordered by the OLG without proper enquiry, giving all interested parties the right to make submissions.

Again, the powers exist for such lockouts to be imposed on individual premises or groups of premises. Again in our experience such power is rarely exercised.

In short, the proposed increased powers of the OLG as described in the discussion paper do not appear warranted or desirable.

Greater Powers to the Commissioner of Police

The Society notes that a proposal is being considered to empower the Commissioner of Police ("SAPOL") to temporarily shut down a licensed venue in an emergency situation. While we do not take issue with such a power in such situations, we do have concerns as to how such powers are to be exercised.

In reality, in the situation described in the paper such as "a large brawl or a riot" we cannot imagine a situation where a licensee would not agree to a request by police to close licensed premises in such situations under the current Legislation.

Should a licensee not agree to such a request then they could leave themselves open to disciplinary action, for example for endangering the health, safety or welfare of persons resorting to the licensed premises pursuant to Section 119 of the Act.

While in principle we take no issue with such a power to order licensed premises to cease trading in legitimate extreme circumstances, we are concerned to ensure that such powers are reserved for such circumstances. We are not aware of any instances where such powers have been needed.

A Plan for Safer Precincts

Again, the proposal to empower the OLGC to make Orders for all licensed premises in a particular location or precinct, rather than simply on an individual basis, does not seem warranted in our opinion. The OLGC already has powers to seek to impose conditions on licensed premises as described above. Empowering the OLGC to issue such blanket orders may not be warranted where for example there are a number of venues experiencing difficulties but some venues are well run and are operating without incident.

In our view the more appropriate course would be to retain the existing process whereby applications are made against individual premises which are alleged to be in need of limitations on their trading conditions. Licensees could then agree to the condition by consent, or put submissions as to why they might not be appropriate.

Trading Hours and Other Measures to Tackle Antisocial Behaviour

We note a proposal that the OLGC should have the authority to reduce trading hours for premises with a poor compliance record.

Again, with respect, those powers already exist.

SAPOL, OLGC and local Council under certain circumstances are all empowered to take disciplinary action in the Licensing Court which can result in a range of penalties ranging from reprimand to fine, disqualification of a person from being licensed, suspension of a licence for a period of time or indefinitely or imposition of further conditions on Licences.

If venues are operating in such a manner as to cause antisocial behaviour then the powers already exist to seek to curtail their trading rights and conditions.

The Society also notes reference to an exemption which might be considered for Sky City Casino on the grounds it offers "a unique experience". With respect, it could be said that numerous venues offer "a unique experience" and could mount a good case for such a similar exemption. Why Sky City Casino should be exempt from reduced trading hours is difficult to imagine.

We also note that Adelaide City Council has been active for a number of years in seeking to standardise trading hours in various precincts of the city of Adelaide. Council has undertaken such an approach by way of intervention or objection to Licence applications, and by imposition of conditions on Development Authorisations. Again that power already exists and has been well exercised by the City of Adelaide. SAPOL and OLGC also have similar powers under existing legislation and we see no reason why such powers ought to be extended given they are rarely exercised by SAPOL or OLGC at present.

Annual Liquor Licence Fee

It is the Society's understanding that such licence fees have been introduced interstate and have resulted in significant additional compliance costs for licensees and the industry.

The Society is concerned by such a proposal and its implementation.

Party Buses

Such buses are now generally licensed by way of a Special Circumstances Licence on a permanent basis or by way of one-off Limited Licence.

It is the Society's understanding that some years ago such buses were the source of more concern although now that they are generally licensed, OLGC already has extensive power to control the activities in and around such buses.

We take no issue with any proposal by the OLGC to seek to impose further conditions on such Licences for buses should they continue to cause difficulties.

Again, the powers already exist for the OLGC under current arrangements so there would appear to be no need for any legislative reform to deal with any perceived issues.

The Society is not aware of the New South Wales experience but anecdotally South Australia would not appear to have the same level of difficulties that NSW may have.

Integrated Design Commission

The Society notes the establishment of the Commission and welcome any further consideration and input from such a body.

City Safety Strategy

The very wide range of input proposed in connection with the Capital City Committee and City Safety Steering Group to develop a safety strategy for the Adelaide Central Business District is noted.

The Society welcomes the input from the various stakeholders and encourages such discussion of these important matters.

SUMMARY

The Society welcomes the discussion paper and consideration of such important matters and looks forward to a more detailed set of proposals in due course.

As you will note from the above comments the Society is concerned that additional powers are proposed for the OLGC and SAPOL concerning licensed premises when there would appear to be no good reason for such additional powers. Should the OLGC or SAPOL have concerns with venues and their operation, particularly late at night, then the powers are already in the *Liquor Licensing Act* to seek to curtail such activities and impose additional conditions and obligations on such licensed venues.

We are concerned by the apparent move away from a system where trading rights are only taken away from Licensees and those persons associated with licensed premises following a hearing of the matter

before a Commissioner or Judge. To bestow further powers on SAPOL or OLGC to close venues and remove people from the industry and their livelihood at the stroke of a pen without being given the right to a hearing appears to have the potential to be of much concern and an unnecessary and unfair denial of natural justice, without any real benefit to public safety.

REVIEW OF THE CODE OF PRACTICE FOR LICENSED PREMISES JULY 2010

The existing Code of Practice has provided Licensees with a good guide in terms of responsible service practices. The Society agrees that it is timely for the Code to be reviewed and updated now that it has been in existence for some 13 years and there has been significant change in the industry over that time.

Practices Relating to Minors

There does not appear to be any great current issue or problem experienced with such matters. The Society notes that the proposed draft Code will require "documented practices that will help minimise breaches of the relevant provisions under the Act". We wonder whether in fact such a proposal will simply result in more paper work for Licensees rather than provide any real benefit for the public.

We also note a suggestion that Licensees must also ensure that minors are "appropriately supervised" having regard to the circumstances and the age of the minor.

We note that minors are allowed on most licensed premises until 12 midnight. Such premises range from Hotels to Restaurants or large sporting venues.

Minors are not allowed to be on premises subject to an Entertainment Venue Licence after 9.00pm and there may well be good reasons for such an earlier restriction than other Licence types.

We have also seen a move in recent times towards licensed premises such as Hotels providing a more "family friendly" atmosphere. It is not uncommon to see Hotels and Restaurants providing children's play areas.

If the intention of the proposed draft Code is to regulate the operation of such family friendly activities then we welcome such proposals as long as such activities are encouraged rather than unduly restricted.

We see the growth of such family friendly areas and licensed premises as a very positive development in the Hospitality industry in the State and should be nurtured.

There are already strong provisions in the Gaming Machines Act to prevent minors entering or being attracted to Gaming Areas and with good reason.

Practices Promoting a Responsible Attitude to Consumption of Liquor

The Society is concerned by the proposal that all Licensees and staff involved in the service or supply of liquor at licensed premises must undertake formal responsible service of alcohol training.

At present the OLGC is required to be satisfied that all Licensees, Directors of Licensee Companies, Managers/Responsible Persons and the like have sufficient knowledge of such matters before approving their assumption of a "Position of Authority" in relation to licensed premises.

At present there is no obligation for other staff involved in the sale and supply of liquor to carry out such formal training.

There is a cost involved in such training.

With respect, the Society does not see the need for all staff to undergo such training. Given the nature of the industry it is quite common for staff to come and go and to work in licensed venues for a short period of time. By requiring all staff to undergo such training we expect that some casual staff might be deterred from seeking employment in the industry.

We note that certain exemptions can be sought at the discretion of the OLGC. We do see the compliance and exemption process to have the potential to be quite an exercise in itself.

With respect, we see the current system whereby those persons who are managers or in charge of licensed venues are required to carry out such training as being adequate. The additional cost and compliance requirement proposed does seem excessive without any great benefit to patron safety or public interest.

House Policy

Any requirement for a Licensee to develop an internal policy for dealing with responsible service matters does not appear to be of great benefit to the public. Rather, it could become another exercise in paper work with no real practical benefit.

We can see the scenario whereby industry associations will simply provide a standard Policy document for venues.

We do not see any great public benefit arising from such a proposal.

Alcoholic Content and Standard Drinks

The Society supports any move towards providing additional information to patrons so that they are aware of the number of standard drinks they are consuming.

We do see some difficulty from a Licensee's point of view where for example a standard size glass of beer could amount to a different number of standard drinks depending on the strength of the beer served. Equally such concerns could arise from a standard size serve of wine when different wines have different alcohol contents.

Whilst applauding the applaud we question the practicality of its implementation.

Free Drinking Water and Non Alcoholic Drinks

The Society applauds this initiative. It would certainly be undesirable for alcoholic drinks to be sold for a lower price than soft drinks. Free water should be provided to patrons on request.

Irresponsible Drinking Practices

The Society also applauds the attempt to provide hard and fast examples of unlawful practices. It is desirable from all points of view to have rules in place so that everyone knows what is permitted and not permitted.

We do note a proposed prohibition of "all you can drink" admission charges. We wonder whether that is in fact a matter which should be prohibited when it is quite common practice for function packages to include food and beverages. There may need to be some fine tuning of that prohibition.

Practices Relating to Intoxication

The Society notes that the Act was recently amended to introduce a new offence dealing with such matters.

This paper appears to provide that a Licensee must "establish, document and maintain practices to prevent the sale and/or supply of liquor to intoxicated persons and to manage the presence of intoxicated persons on licensed premises".

Again, the Society endorses the sentiment although we expect that a Licensee will simply adopt a standard form document without any real benefit from a compliance or enforcement point of view.

Practices Relating to Disturbances, Disorderly or Offensive Behaviour

Again Licensees are already open to complaint proceedings and possibly disciplinary action in circumstances of undue offence, annoyance, disturbance or similar. We wonder whether requiring a Licensee to document practices to prevent such undesirable activity is really going to achieve a great deal.

Again, the Society applauds the intent although wonder whether additional paper work and compliance is really going to achieve a great deal of public benefit.

Practices Relating to Entertainment

Again the proposal appears to require that Licensees document practices to prevent undesirable activity arising from such entertainment on licensed premises.

Again we wonder whether any additional compliance is necessary or will achieve any real benefit.

Adult Entertainment

There does not appear to be any confusion on behalf of the public as to whether or not they are about to enter licensed venues providing such entertainment. Certainly we are not aware of any concern or complaint being raised by members of the public who are exposed to such entertainment unwillingly.

The Society welcomes any additional conditions proposed to ensure that such entertainment is provided in a safe, responsible and adult only manner.

Closed Circuit TV and Radio Network

Such initiatives certainly appear potentially useful in certain areas.

The proposal to give the OLGC the power to order that premises install such material as a Licence condition again appears excessive and unnecessary. As described above the Commissioner already has the power to seek to impose such conditions on Licences and any additional power appears unnecessary.

Queue Management

Again the Adelaide City Council has for some time dealt quite successfully with such matters by seeking to impose conditions on Liquor Licences in the City of Adelaide to regulate queuing.

The Society welcomes any further consideration of such matters.

Restricting Liquor Sales During Late Night Trading

Again, OLGC and SAPOL already have the powers to seek to impose conditions on Licences dealing with such matters.

A condition on Licences to cease service of alcohol 30 minutes prior to close of trade is effectively already in place. A Hotel Licence which for example is authorised to serve liquor until 2.00am can now allow patrons a further 15 minutes to drink up and 30 minutes to leave the premises. The existing provisions of the Act appear to achieve the intent as expressed in the paper.

Prohibiting Glasses and Breakable Containers

We note reference to Police claims as to a certain number of assaults where the weapon used was a bottle or a glass. We are not aware of whether those incidents were inside or outside licensed venues, or whether any proposal to prohibit service of liquor in glass is warranted.

With respect, comparing South Australian venues to those in New South Wales may not be overly helpful or useful.

We are certainly not aware of any great need for such measures.

Indeed, as we have expressed above on a number of occasions, should OLGC or SAPOL consider such prohibitions to be desirable then they are at liberty to seek to impose such conditions on Licences under current arrangements.

With respect, the Review document ignores the fact, as stated in the SAPOL "Alcohol and Crime" Report of December 2009, that the reduction in New South Wales incidents involving glasses or bottles used as weapons began before the specific New South Wales restrictions were enforced.

Induction and Refresher Training

We again query the need for formal training of all staff.

We wonder whether in practice the additional in house training recommended is really going to achieve a great deal.

Penalties for Breaching the Code of Practice

The Society notes the proposal that certain breaches of the Code of Practice are to be dealt with by way of Expiation Notice. We can see the benefit of allowing for such expiation under certain circumstances for offences of a less serious nature.

Thank you for providing the Society with the opportunity to consider this matter. Should you these comments raise any questions please do not hesitate to contact me.

Yours sincerely



Jan Martin
EXECUTIVE DIRECTOR