8 May 2020

The Hon Vickie Chapman MP
Attorney-General
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ADELAIDE SA 5000

via email: AttorneyGeneral@sa.gov.au

Dear Ms Attorney

Summary Offences (Liquor Offences) Amendment Act 2018

1. I refer to your letter of 14 April 2020 in relation to the Summary Offences (Liquor Offences) Amendment Act 2018 (“the Act”).

2. The Society notes that the Act contains a number of reforms to the Summary Offences Act 1953 (SA) (“the Summary Offences Act”) and other Acts, to create new offences and provide additional investigative powers to reduce the incidence of the unlawful sale and supply of liquor to vulnerable communities where the possession and consumption of liquor is generally prohibited.

3. The Society understands the Act has not commenced as it requires supporting regulations and a notice of designated areas to be made. The Society notes that you are seeking comments in relation to additional amendments to the Act, regulations and a draft Notice of Designated Areas.

4. The Society’s Aboriginal Issues Committee has considered the various proposed provisions and provides comment on the specific matters sought in your letter: exclusions, prescribed amounts and designated areas, below.

Exclusions

5. The Society notes the Summary Offences (Liquor Offences) Amendment Bill 2020 (“the Amendment Bill”) which seeks to amend the Summary Offences Act to provide for exclusions from the operation of the offence in section 21OC of the Act.

6. Clause 4 of the Amendment Bill dis-applies section 21OC for persons in prescribed areas (or parts of prescribed areas) where the consumption or possession of liquor is not unlawful and where there is a current exemption from the prohibition on the consumption of liquor.

7. The effect of clause 4 will be to make a person who is a “first person supplier” not guilty of an offence against existing section 21 OC (1) of the Act, if the consumption or possession of liquor by the “third person” to whom supply was made in the prescribed area, is not prohibited under another Act or law. It is considered that such supply would in any event be an unlicensed sale and prohibited by section 29(1) Liquor Licensing Act 1997 (SA). Yet by virtue of the interpretation definitions in section 21OA of the Act, all Aboriginal Lands Trust (ALT) land is prescribed.
8. Although it had been intended to resolve the matter by regulations, the effect of the existing section 21OC (1) was to penalise third-party transactions in prescribed areas, even if dry area regulations or laws under the Aboriginal Lands Trust Act 2013 did not apply to a particular piece of ALT land, and even if there was no law prohibiting possession or consumption of liquor on that prescribed area.

9. It is noted that the dry area regulations under the Aboriginal Lands Trust Regulations 2014 only cover the Umoona Reserve at Coober Pedy and the Yalata reserve at Yalata. Such regulations do not apply to the many other parcels of land held by the ALT, where consumption of liquor is not an offence.

10. The Aboriginal Issues Committee considers the effect of clause 4 of the Amendment Bill, will be to make section 21 OC of the Act apply to only a “first person seller or supplier” to a “third person consumer” on those ALT lands where possession of liquor is an offence. This is appropriate and achieves the intended result.

**Prescribed Amounts**

11. The Society notes the Summary Offences (Liquor Offences) Variation Regulations 2020 have been drafted which prescribe the amounts of liquor for the purposes of the rebuttable presumptions in sections 21OB and 21OC of the Act.

12. The Society’s Aboriginal Issues Committee considers that the definitions in regulation 12A are satisfactory; and regulation 12 B, which declares the prescribed amounts to create the rebuttable presumption of grog running, are also entirely appropriate.

13. The Aboriginal Issues Committee further noted for your information that regulation 12B(b) prescribes an amount of 4L of wine, which is the size of a 4 litre cask of wine. It has been demonstrated that cask wine in particular, can create disastrous effects in remote Aboriginal communities. Also, such casks are regularly used by grog runners for the purposes of supply. Therefore, it has been appropriately included within the regulations.

14. Finally, the Committee considers regulation 12B sets an appropriate test for the operation of the presumption.

**Designated Areas**

15. The Society notes a draft Notice of Designated Areas ("the Draft Notice") has been prepared for the purposes of section 21OC of the Act. The draft Notice designates land within 20km outside the boundary of the ALT Lands, APY Lands and Maralinga Tjarutja Lands.

16. The Aboriginal Issues Committee considers the Draft Notice may be too broadly drafted. Paragraph 1 of the draft Notice refers to “Trust Land within the meaning of the Aboriginal Lands Trust Act 2013 is the designated area in respect of that land.” However, the regulation making power under section 21 OD of the Act allows the minister to make quite specific designations of designated areas, where the 20km rule should apply.

17. The Aboriginal Lands Trust Regulations prescribe that the only areas which may properly be designated are the Yalata reserve and the Umoona reserve, therefore, it is appropriate that the notice only apply to those reserves.
18. The Aboriginal Issues Committee considers that it is possible that individual police officers might become confused by reading the proposed draft Notice. For example, they might assume that the effect of the notice was to give them powers in relation to any parcel of Aboriginal Lands Trust land. Yet the effect of the Amendment Bill would be to remove such a power except for the two communities mentioned.

19. Therefore, it is suggested that such confusion could be avoided by the creation of a much more specific Notice.

20. Finally, the Society does not make any submissions in relation to the operation of the proposed provisions to the APY lands or the Maralinga Tjarutja lands, as it is understood that those bodies will be making their own submissions.

Yours sincerely

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