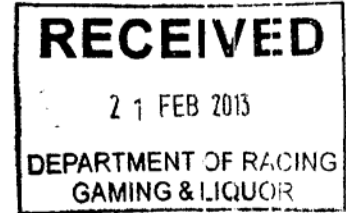




Executive Officer
Liquor Act Review Committee
PO Box 6119
EAST PERTH WA 6892



2013 Liquor Control Act Review - Important Issues

To the Executive Officer,

Please accept my submission on the important issues that are impacting our business. To simply the review of my issues, I have provided the following summary.

- The definition of “drunk” - Section 3A
- Extended Trading Permits (ETPs) for small bars, hotels and taverns - Section 60(4)(g)
- Managers and Licensees Liabilities and Duties - Section 100 and Section 101
- Offences under the Act to be defined as simple criminal offences

The definition of “drunk” - Section 3A

The current definition of “drunk” in the Liquor Control Act should be maintained.

Reasons:

The current definition of the term ‘drunk’ in the Liquor Control Act is consistent with other Australian states and standards of Liquor laws as it allows for the individual and subjective nature of drunkenness.

The definition of ‘drunk’ in Section 3A of the Liquor Control Act states;

(1) A person is drunk for the purposes of this Act if – the person is on licensed premises or regulated premises; and the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.

(2) If an authorised officer or a person on whom a duty is imposed under section 115 decides, in accordance with subsection (1), that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunk at that time.

The requirement for law enforcement officers to undertake careful observation to prove that the patron’s impairment had resulted from their drinking alcohol is a critical factor in today’s poly drug use environment. A person should only be deemed ‘drunk’ when through observation of alcohol consumption, a person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired.

The current Liquor Control Act does not authorise Police to take alcohol breath tests from patrons. This is both scientifically correct and fair as breath test evidence is irrelevant to being ‘drunk’. A person’s ability to consume and absorb alcohol is effected by their, age, weight and size, metabolism, general health, and even genetic factors.



A division of Touraust Corporation

Operated by Inter City Belmont Pty Ltd ABN 96 112 756 662

Managed for Inter City Belmont Pty Ltd by Touraust Hotels ACN 065 297 403 ABN 65 065 297 403

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Recommendation:

The current definition of "drunk" detailed in the Liquor Control Act be maintained.

Disciplinary Matters - Section 95(11)

That Section 95(11) of the Liquor Control Act be removed, as it prevents a licensee from providing a defence to a complaint where a licensee;

11 (a) did not know, or could not reasonably have been aware of or have prevented the act or omission which gave rise to the complaint; or

11 (b) had taken reasonable steps to prevent that act or omission from taking place.

Reasons:

Section 95 was added to the Liquor Control Act to specifically prevent licensees from mounting a defence when they could not have been reasonably aware or have taken reasonable steps to prevent an offence from occurring.

Vicarious liability is recognised under Australian Law that in certain conditions, employers are responsible for the wrong doings of other employees.

Vicarious liability should be reduced or excluded altogether if it can be demonstrated that the licensee or manager took all reasonable steps to prevent an offence or misdemeanour occurring.

It is recognised that:

- Reasonable steps must be active preventative measures. The defence or reasonable steps rests with the licensee or manager.
- Procedures, guidelines and training was in place.
- Could not have reasonable been aware of or prevent the Liquor Control Act or omission which gives rise to the complaint.
- Employees are required to sign a Code of Conduct affirming compliance of the requirements set out under the Liquor Control Act, subordinate legislation, guidelines or venue's policies.

Employers, managers and licensees that put measures into place to ensure employees are educated and clearly understand their obligations should be recognised as taking reasonable steps to avoid vicarious liability.

Recommendation:

Remove Section 95(11) of the Liquor Control Act.

Managers and Licensees Liabilities and Duties - Section 100 and Section 101

Provide a defence within Section 100 and 101 for licensees and managers to the actions of staff, that can demonstrate reasonable steps have been taken requiring those staff to comply with the



requirements under the Liquor Control Act or conditions of the license.

Reason:

Vicarious liability is recognised under Australian Law that in certain conditions, employers are responsible for the wrong doings of other employees.

Vicarious liability should be reduced or excluded altogether if it can be demonstrated that the licensee or manager took all reasonable steps to prevent an offence or misdemeanour occurring. It is recognised that:

- Reasonable steps must be active preventative measures. The defence or reasonable steps rests with the licensee or manager.
- Procedures, guidelines and training was in place.
- Could not have reasonable been aware of or prevent the Liquor Control Act or omission which gives rise to the complaint.
- Employees are required to sign a Code of Conduct affirming compliance of the requirements set out under the Liquor Control Act, subordinate legislation, guidelines or venue's policies.

Employers, managers and licensees that put measures into place to ensure employees are educated and clearly understand their obligations should be seen to be taking reasonable steps to avoid vicarious liability.

Recommendation:

Provide a defence within Section (100) and (101) for licensees and managers that can demonstrate reasonable steps have been taken requiring staff to comply with the requirements under the Liquor Control Act or conditions of the license.

Offences under the Act to be defined as simple criminal offences

The Liquor Control Act be amended to define that offences be categorised as "simple criminal" offences, and not "indictable" offences.

Reasons:

There needs to be clarity that offences in the Liquor Control Act be defined as simple criminal offences and not indictable offences, which could potentially limit future employment, immigration, and financial prospects of staff within the industry.

We are also aware that in many circumstances hospitality staff have decided not to contest charges and offenses issued under the Liquor Control Act for fear defending an innocent action may result in a finding of guilt and therefore receiving an indictable criminal offense record.

Recommendation:

Define offences as simple criminal offences.

Regards



Clause 3(1)



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