12 April 2013

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Liquor and Gaming (Red Tape Reduction) Amendment Bill 2013 - Submission 011

Via email to: lacsc@parliament.qld.gov.au

Dear Committee Members,

Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013

BARS Consultants, Commercial Licensing Specialists and RSA Liquor Professionals are leading consultancy firms specialising in the Liquor & Gaming industry and collectively represent more than a thousand licensed premises across Queensland and submit hundreds of applications to OLGR on an annual basis.

Our clients are located across the length and breadth of Queensland and represent both large and small community and commercial premises in every license category, in every region, with the full range of trading hours. A wide range of licensing, compliance, training and red tape effects are evident across our collective client base. Our submission are restricted to relevant amendments to Liquor & Gaming legislation and do not respond to various other legislative amendments included in this Bill.

We submit we are amongst the most experienced consultants in this specialist field and trust our collective submissions and experience can be given suitable weight by this committee. We welcome the opportunity to collectively provide the following submissions on behalf of our clients and the industry generally:

1. RSA & RSG Training

The Bill proposes to remove the current approval processes for Registered Training Organisations (RTOs) to deliver "OLGR Approved" Responsible Service of Alcohol (RSA) and Responsible Service of Gaming (RSG) Courses and corresponding amendments about what training course certificates Licensees must retain and have available for production. These amendments at face value are reflective of the transitional requirements to the National Training Framework under the exemption window provided by the *Vocational Education and Training (Commonwealth Powers) Bill 2012* which expires in June 2014.

Our concerns can be summarised simply as follows:

- The amendments in their current form appear to remove the current requirement for refresher training every three years in these core competency mandatory courses and seek to transition the minimum training standard to the national competency which is effectively valid for life once obtained. This is a backwards step.

- No refresher or revalidation training obligations are currently provided for in the national RSA or RSG competencies.
- The Bill should be amended to ensure both the Liquor & Gaming Acts retain some form of currency and refresher or re-validation training to ensure the important gains made by the current three year mandatory training regime are not lost in the rush to reduce red tape.
- The introduction of mandatory RSA, RSG and RMLV training courses created a training industry that is currently regulated by OLGR under the Liquor and Gaming Acts and employs a wide range of industry service providers across Queensland and Australia that are likely to see adverse impacts on their businesses and employment if these issues are not properly and fully considered. OLGR's website lists 154 approved RTO's that are currently approved to deliver these courses. This Bill has been introduced with little warning and no direct correspondence to these RTOs by OLGR advising them of the Bill's introduction and its implications on their businesses. These RTO's currently pay annual fees to OLGR as part of the approval process and may stand to lose the benefit of approval without apparent compensation for fees already paid to OLGR if their approval lapses by these amendments.
- These amendments conflict with current considerations of the Liquor and Gaming Red Tape Reform Panel which is tasked to make recommendations about whether persons trained in Responsible Management of Licensed Venues (RMLV) should be taken to be trained in Responsible Service of Alcohol (RSA). This would not be permitted under the National Training Framework. This Bill seeks to change one piece of a complex jigsaw puzzle that is already being considered in more detail by a sitting established expert panel. Accordingly we recommend these amendments should be deferred to the expert industry panel.

Mandatory RSA & RSG training is an essential building block for harm minimization in every State and Territory of Australia in some form or another. Transitioning to nationally accredited RSA & RSG training is generally supported by most stakeholders as a logical and necessary step and a red tape reduction in its own right. We do not however support bringing this amendment forward from that already foreshadowed by the *Vocational Education and Training (Commonwealth Powers) Bill 2012* deadline of June 2014 without more detailed consultation. It is our submission these elements of the Bill should be deleted and instead referred to the currently established Liquor and Gaming Red Tape Reform Panel for more detailed consideration and consultation as part of phase two of the Governments red tape reduction strategies for Liquor & Gaming legislation.

2. Community Investment Fund

Various elements of this Bill seek to amend the way in which a percentage of Gaming Taxes and all proceeds of Annual Fees under the Liquor Act are distributed and managed by Government. Currently these taxes and annual fees are directed into the Sport & Recreation Benefit Fund and Community Investment Fund formed under sections 313 and 314 of the Gaming Machine Act. Under s219 of the Liquor Act all annual fees paid by the Liquor Industry (some $18+ million dollars) are currently paid into the CIF Fund.

The Explanatory Notes detail that these proposed amendments have been put forward not by industry but by Queensland Treasury and Trade. The proposal is to abolish the Community Investment Fund entirely and for all current and future proceeds of the CIF to be transferred to Consolidated Revenue. In our submissions no element of this proposal reduces red tape for the Liquor & Gaming industry and we believe the vast majority of Licensees and industry stakeholders would oppose these amendments if they were more clearly informed of the proposed changes.

Amongst the other widely supported community initiatives and grants provided under the CIF Fund the current section 322(5)(f) provides that a component of the CIF funds are paid out for funding that part of the department through which this Act is administered – effectively industry currently self-funds the administration of OLGR via the taxes and annual fees they pay under the Liquor & Gaming Acts. This long standing arrangement ensures the industry that they will not be so easily left to the vagaries of "Whole of Government" budgetary considerations and can at the very least ensure their fees are largely utilised by current and future Governments to ensure that OLGR is sufficiently staffed to administer the relevant Acts with sufficient resources such that industries applications don't get delayed due to future budget cuts. The Tourism and Hospitality industry are one of the four pillars of the Queensland economy and the current CIF Fund arrangements in part provide funds to perpetuate that status. These fundamental changes should not be dressed up as red tape reduction simply to reduce a level of internal accounting records and procedures that are generally in the industry's best interests to be maintained. Similarly major public sporting, cultural and infrastructure projects of State benefit are also funded by the CIF which often contribute directly or indirectly back into the Hospitality and Tourism industries.

In his second reading speech on 28 August 2008 for the *Liquor & Other Acts Amendment Bill 2008* the then Minister, Andrew Fraser spoke to the issue of the then new liquor license annual fees as follows:

> Annual liquor licence fees will be introduced, and will be based on the risk that each licensed premises presents to the community. Alcohol abuse and misuse requires significant expenditure by the Queensland Government. In Queensland, taxpayers are required to meet the costs associated with policing, health treatment, prevention and emergency responses, transport and other costs. The new fees will ensure that licensees contribute appropriately to the direct on-going costs to Government of administering, managing and regulating the sale, supply and consumption of liquor at the premises; to harm minimisation initiatives aimed at changing social and cultural attitudes towards alcohol consumption, particularly among young Queenslanders; and backed-up with additional inspectors to ensure licensees are under no doubt as to the Government's commitment to ensuring the safety and amenity in and around licensed premises.

Included as an attachment to these submissions is a media statement by the then Minister on 26 August 2008 outlining the intent of the Government to apportion these new fees to the administration of the Liquor & Gaming Industries by funding OLGR and for these fees to be used for a wide range of harm minimization strategies with direct links to the Liquor & Gaming industries.

The proposed amendments will no longer see OLGR effectively "self-funded" by industry and these fees and taxes used in a defined manner to benefit the industry and community in a direct or indirect way. If passed by this committee these fees and taxes will simply be absorbed into consolidated revenue and once there are likely never to be returned to the current system. These changes will see the 2009 commencement of "annual fees" truly become what many described it as in the first place, little more than a new tax grab on an already heavily taxed industry.

The current Liquor and Gaming Red Tape Reform Panel is tasked to make recommendations on funding Drink Safe Precincts and similar initiatives and the relevant proposed amendments should be deferred and referred to the expert panel for more detailed consideration. The CIF is one obvious and direct source of existing controlled, separate and sustainable funds to support such industry initiatives.

3. Risk Assessed Management Plans

Clause 134 seeks to remove the current requirement for Risk Assessed Management Plans (RAMPs) for "low risk" premises but is limited to only "meals" licenses. We submit that any sustainable business using best practice procedures in an environment where harm minimization is a key object of the legislative scheme should be required to have a document detailing their risk management strategies. Even if for many low risk businesses this is a limited document of several pages only that may protect them civilly or provide due diligence or similar defenses to alleged breaches of legislation. The requirement for a RAMP was introduced as recently as January 2009 and was a positive step forward in best practice measures across the liquor industry. We are not aware of any peak industry body request for this change and it appears a recommendation of OLGR presumably to reduce their own workload.

These amendments create an uneven playing field where some low, even lower, risk businesses than restaurants are still required to provide a RAMP but the largest liquor industry sector is not. Restaurants currently account for 2268 of the 7015 licenses in Queensland and these amendments mean that almost 30% of the liquor industry over time will not require even the most basic of RAMPs. The Law, Justice and Safety Committee in their March 2010 report into alcohol related violence included as recommendation 32 of their report "That the Government ensure that all necessary legislative or enforcement steps are taken to address the issue of premises with restaurant licenses trading as nightclubs" and more detailed discussion on this issue is included at page 38 of that report. Whilst the vast majority of restaurant premises are low risk, the removal of easily achieved and best practice procedures such as a RAMP, strips away almost any deterrent to a rogue trader obtaining a restaurant license. These proposed amendments and recently amended OLGR practices strip back the minimum standards of an application so far could elect not to obtain the harder "nightclub" style license they should obtain and seek a restaurant license instead where they could commence trade very quickly and get 6 months or more of problematic trade under their belt before they could reasonably be subject to disciplinary action by regulators.

One form of red tape is the inherent confusion created by a licensing scheme that allows wide and complexly varied requirements for various license types. A more consistent approach itself reduces red tape. We recommend the committee reject the proposed removal of RAMP requirements for meals licenses and instead recommend that sections 50-54 of the Liquor Act be amended such that a RAMP is required to form part of the accompanying documents to support OLGR consideration of a license, BUT that the requirement of the Commissioner to approve the RAMP for all license types is removed. This may seem like an odd recommendation however the reality is that a RAMP is a management plan that should be developed by all licensees regardless of whether they are low or high risk, and that OLGR largely do not possess the practical operational experience to assess and approve such a document. It is however a valuable document for OLGR to have on record and to consider when assessing the overall risk of an application before the Commissioner and what strategies have been proposed to reduce that risk. This approach is consistent with the current practice where a CIS is required but is not "approved" by the Commissioner.

Current application processes such as a transfer of an existing restaurant are regularly delayed whilst OLGR consider and approve the RAMP lodged with the application. A preferred approach is maintaining a requirement to lodge a RAMP with all applications, providing for a waiver on request to the Commissioner for individual cases (similar to s118(3)), but removing the procedural red tape approval process that delays applications currently before OLGR. This would allow flexibility for some permanent variations or low risk but "relevant applications" that have to have a RAMP approved or amended that could otherwise be waived. Such an approach not only removes red tape for restaurants but for all license types whilst maintaining best practice procedures by requiring a RAMP document to be lodged and retained on OLGR's files for future reference, such as during a Disciplinary Action.

4.0 Community Impact Statements & Waive of Advertising

The concept of advertising and Community Impact Statement waivers within a "Commercial Complex" is generally supported however, as above, the various rules and requirements for each differing license type can serve to create confusion and red tape, not remove it. As it stands an applicant almost needs a flow chart to fill out OLGR license forms there are so many options dependent on the response and license type.

The proposed changes in clause 137 provide improved flexibility for the Commissioner to waive requirements for a Community Impact Statement in a similar manner to that currently available for waiving of advertising. Like RAMPs above, we support the retention of the basic requirements of all applications to include a Community Impact Statement as part of an overall system of considering license applications. The current proposal is reflective of this minimum requirement for all applications but provides the Commissioner with the necessary flexibility to waive these requirements in some circumstances and these amendments should be supported.

Proposed s116(1B)(c)(ii) unnecessarily restricts the discretion of the Chief Executive to consider a waiver case on its merits having regard to noise. Some level of amplified noise can surely be provided in a commercial complex without triggering a CIS that may otherwise have been waived on request. This element could be deferred and considered by the expert panel as part of their overall review of noise issues and regulation of noise at licensed premises.

Clause 139 and 140 propose to provide greater clarity to applicants in knowing in advance whether an application will be advertised or otherwise. We support the broad intention to allow greater flexibility in waiving of advertising by the Commissioner especially for DBS and low risk restaurants. We are concerned the current proposed amendments do not allow for other low risk applications to be equally provided this flexibility and this perpetuates the confusion created by varying requirements for each application type. The objective of these amendments could be achieved by amending section 118 of the Act to provide for greater flexibility generally to be given to the Commissioner supported by a Guideline under s42A which would provide the clarity of this intent to DBS and low risk restaurant applications and other license types but maintain the base line standard requiring advertising of all relevant applications unless waived. The proposed s118AA would then not be required.

5.0 Approved Managers

The proposed amendments in clause 152 do not seek to reduce red tape in our submission but serve to create more red tape and remove necessary flexibility for industry. Currently a licensee has to ensure a Licensed Approved Manager is either present or reasonably available (within one hour of the premises). In almost all cases such Approved Managers are "employed" by the licensee but this can sometimes not be a simple task. The current system provides much needed flexibility where a small family restaurant or country Hotelier can make flexible local arrangements to have a colleague who holds such a license make themselves available in circumstances where they are not "employed" by the licensee. A restaurateur could for example take a weekend off and make arrangements for the second approved manager of another local licensed premise to act in that role whilst they took a short planned (or unplanned) break. Locum style Licensed Approved Managers may be restricted under these proposed amendments as they may not be directly employed by the licensee. The existing sections are in our submission a balanced mix of effectively ensuring licensed premises are managed by trained, licensed approved managers but also suitably flexible to enable a licensee to backfill the approved manager's role without the complex industrial relations implications of employing such a person for a temporary period.

Similarly the proposed s155AD(4)B definition of when an Approved Manager is "present" at premises is entirely inflexible and unnecessary. The explanatory notes suggest an owner or senior manager who is the approved manager must be performing a defined role and cannot be on the premises socially. A country publican can surely be on the premises socially, even consuming a few drinks but not intoxicated, and still be in overall management control of the premises. OLGR have previously attempted to prosecute a Licensee trading after midnight where a licensed approved manager was "present" on the premises but performing the role of a bar attendant in a busy bar. The Magistrate correctly determined that the presence of the licensed Approved Manager was sufficient. Any strict defining of what roles a licensed Approved Manager must be performing fails to reflect the broad tasks an approved manager may have to perform across the long hours of a shift and these amendments expose licensees who are otherwise compliant to the risk of prosecution where in the above case there was no other alcohol related harm of violence identified. This proposed amendment seeks to introduce more red tape, and decrease the necessary flexibility that licensees need to meet their broad trading requirements. The plain English definition of present should suffice and be maintained.

Clause 152 should be set aside in its entirety.

6. General Comments

- Using a definition under s4 as proposed in clause 121 of the Bill to effectively define that a "subsidiary on-premises license (meals)" includes a "café" style business is not ideal and we propose an additional sub-category after s67A is a more consistent manner in which to enable this type of business to be properly licensed.

- Clause 127 allows for a range of amendments to the current exemptions from the requirement to be licensed under the Liquor Act which we broadly support as a risk based red tape reduction strategy. We do however recommend some clarification and practical amendment as follows:
    - The "two standard drink" restriction on the new proposed exemption for Hospitals and nursing homes and the current similar exemptions for hairdressers, limousines, and retirement villages is in practice too low. This exemption would allow a retiree to have two XXXX Gold stubbies per day in the village's community hub, but not two XXXX Bitters which contain 1.4 standard drinks per stubby which would in practice restrict supply to one drink per day if they preferred a full strength beer. Similarly with wine, a standard drink is 100ml of wine but a standard serve across industry (commonly where a wine glass is marked) is 150ml making the average serve of wine 1.5 standard drinks. Again only one standard serving glass of wine could be supplied under the exemption. The existing limousine exemption is also impractical and does not meet the intent of the exemption. Most limousine hires include a 700ml bottle of sparkling or other wine which is generally accepted as a low risk "sale or supply" of liquor. The current exemption would retain a requirement for a limousine to be licensed if a hire for two adults included a full bottle containing an average 6-8 standard drinks. If these exemptions are to meet the intent of the legislation and provide an effective exemption then the standard drink exemption should be increased to at least 4 standard drinks per day. The proposed exempt businesses are inherently low risk in their own right and the average retiree deserves more than one or two mid-strength beers without being strangled by red tape and can do so safely without affecting the amenity of the community.
    - The current exemption for Retirement Villages (retained in the new proposed s14B) is restricted to only those villages licensed under the *Retirement Villages Act 1999*. We understand that for various reasons a number of "retirement villages" are licensed under the *Manufactured Homes (Residential Parks) Act 2003* and despite a similar risk profile are not currently covered by the current or proposed exemptions. A search of OLGR's database details that at least 8 premises with the word "retire" in their business name remain licensed presumably because the current exemptions are not sufficiently broad. We understand a number of premises have restricted alcohol supply rather than face the red tape processes currently involved with obtaining and maintaining a liquor license. Any proposed amendments should ensure these current deficiencies are considered and amended wherever possible.
- Clause 132 seeks to amend the authority of an "entertainment" license to re-introduce periods prior to 5pm where liquor can be sold in association with a meal. This change was an unintended amendment in 2009 and its re-introduction is long overdue and supported. In seeking to amend this section however consideration should be given to what defines "in association with a person being provided entertainment". Similar definitions under s10 allow for one hour before, during and after a meal. In a strict interpretation of the current proposed section a licensee would not be authorised to supply liquor to a patron if a band or DJ was on a break and the background music of a jukebox was provided, even if entertainment was provided for the majority of the premises trading hours after 5pm. Section 4AA (Meaning of Entertainment) could be amended to clarify this issue or section 67AA(2) could be clarified as part of amendments to this Bill.

We support, in principal, moves by the Government to reduce red tape and streamline efficiency in the administration of Liquor & Gaming laws in Queensland however the rush to introduce these measures with limited consultation whilst a more detailed and consultative process is already underway is a piecemeal approach that may serve to create further confusion and unintended consequences in an already complex and difficult to interpret set of legislation. Many of the elements of this Bill have broad merit and should be strongly supported, but many others are fundamentally flawed and show signs of an obvious rush for change without proper consideration. A holistic approach where the Liquor Act is reviewed in one considered, detailed set of amendments, even a new Act, is far preferred to the current and continuing situation where there have been some 43 editions of the Liquor Act and some 38 editions of the Liquor Regulation since 1 January 2005. Change fatigue is an understatement and the opportunity should be taken to ensure this constant state of amendments is stopped by allowing due process and careful consideration of complex, interconnected issues by the current industry expert panel.

We thank the Government and the Legal Affairs and Community Safety Committee for the opportunity to make these representations on behalf of our clients and the broader industry and we hope this invaluable opportunity to address red tape issues can be achieved in a balanced, informed and consultative manner.

Regards

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Media Statements

Media release

Treasurer
The Honourable Andrew Fraser

More Liquor Licensing officers announced as new liquor laws introduced: Fraser

Treasurer
The Honourable Andrew Fraser

Tuesday, August 26, 2008

More Liquor Licensing officers announced as new liquor laws introduced: Fraser

The State Government will appoint 10 new Liquor Licensing officers in key Queensland metropolitan and regional areas as part of wide-ranging reforms to the Liquor Act.

Treasurer Andrew Fraser said the new officers would be located on the Gold Coast and Brisbane and in Cairns, Townsville, Rockhampton, Hervey Bay, Toowoomba and Mackay as part of the government's commitment to minimise harm related to the misuse of alcohol.

Mr Fraser said the new positions, at a cost of $1.1 million, would be funded by revenue generated from the introduction of annual fees to ensure licensed premises play their part in contributing to the costs of regulating the liquor industry and minimising liquor-related harm.

But, Mr Fraser stressed, the new licensing regime was not about raising revenue.

"It's estimated that a maximum of $22 million will be generated by these fees in the first year of operation - $15.5 million of that will go toward the operating costs of Liquor Licensing during the same period," Mr Fraser said.

"Fees will also be directed toward the Bligh Government's Indigenous Alcohol Strategy, with a package of $14.1 million over four years to councils to divest their canteen licenses.

"When I announced the new fee structure earlier this year, I gave a commitment that a component of the fees would be used to employ extra Liquor Licensing officers.

"Today, the government makes good on that commitment.

"This is about ensuring the industry contributes to the costs of alcohol related harm and crime – those costs should not be a burden taxpayers have to shoulder."

Mr Fraser said the first stage of a new, hard-hitting advertising campaign aimed at reducing alcohol-related harm was due to be rolled out next month.

"The campaign will be aimed at encouraging patrons of licensed premises to take responsibility for their actions and also to reinforce to adults the very real and very serious ramifications of secondary supply of alcohol to minors."

Mr Fraser said the staffing increases announced today compliment the successful establishment of the Office of Liquor, Gaming and Racing, which commenced operation as an integrated Unit of Treasury on 18 July.

"We expect the integration to result in a one-stop shop – a better service for Queensland communities which reduces red tape and places harm minimisation and industry integrity at the top of its agenda.''

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