



**"Setting the standards for Valley venues"**

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

Date: 4 July 2014

Dear Sir/Madam

Thankyou for the opportunity to provide feedback on the Safe Night Out Legislation Amendment Bill 2014.

Many of the things outlined in the bill and strategy have been happening in one way or another in Fortitude Valley for many years, and the foundations to continue addressing this cultural problem here are strong. It is pleasing to see that the things that have worked so well here will continue. The Valley has experienced unprecedented growth in popularity and patronage over the past decade, and the fact that crime has not spiked along with the attendance figures speaks volumes for the work all stakeholders in the community have done to manage the precinct.

If you require any further information from us please let me know, and I would be happy to appear at the public hearing to further discuss our feedback.

We look forward to working with government on the strategy moving ahead.

Yours faithfully

**Nick Braban - Chair**

## Safe Night Out Legislation Amendment Bill 2014 – VLA Response

### The Valley Liquor Accord – Who We Are

The Valley Liquor Accord (VLA) is a voluntary collaboration between local licensees, Brisbane City Council (BCC), various State Government departments, community organisations, the Fortitude Valley Chamber of Commerce (VCC), Taxi Council of Queensland (TCQ) and the Queensland Police Service (QPS), security providers, and other associated organisations.

The VLA strives to proactively address issues associated with the consumption of alcohol and illicit substances within the Fortitude Valley area and surrounds. With over 200 bars, clubs, restaurants and cafes operating day and night, safety and the projection of positive perceptions of our precinct are paramount.

From its inception in 2004 the VLA (or VAMP as it was in those days) has been instrumental in the introduction of many successful initiatives within the area, most recently its contribution to the Drink Safe Precinct management committee. The VLA is a sub-committee of the VCC and works in close collaboration with other sub-committees of the VCC, most particularly the Valley Safety Committee.

The VLA is constantly striving to deliver improved amenity and safety, and foster positive business outcomes for its members and more broadly both the day and night economies of Fortitude Valley and the City of Brisbane.

### Safe Night Out Legislation Amendment Bill 2014

The VLA welcomes the government's *Safe Night Out Amendment Bill 2014*, and is committed to partnering in reducing anti-social behaviour in Queensland.

We all know that the majority of alcohol consumed in Queensland is consumed in places other than a licensed premises. Along with this alcohol consumption per capita is trending lower, with Australians drinking less per person. This means it is not the amount of alcohol being consumed that is the problem, but the manner in which this alcohol is being consumed. This is why the measures in both the *Safe Night Out Strategy* and the *Safe Night Out Amendment Bill 2014* make sense, and we look forward to its implementation.

We welcome the Government's commitment to fund the strategies outlined without further impost on business. The on-premise liquor industry in Queensland has seen an enormous rise in the cost of doing business due to increased red tape, increased costs for training and compliance, and of course the imposition of annual licence fees. These fees were poorly thought out when implemented, assessing risk based solely on trading hours, rather than other factors which add to the likelihood of harm to the community such as size, management practices, and volume of liquor sold. This has forced many small operators out of business, and simply hindered the growth of alternative styles

of venues based on quality of drinks rather than volume. These effects have been especially hard on our area due to the way business is done here. Industry accepts that fees must be raised to pay for services, and it is heartening to see Government now using these fees to directly tackle the issues in our areas, rather than further taxing operators.

The VLA accepts that the bill needs further refinement and clarification on the details that underpin the strategy and appreciates the government's ongoing commitment to community consultation in this regard. Following are what the VLA hopes will be viewed as a constructive contribution to this ongoing healthy dialogue between government and community on important social issues impacting the future of our State. What follows are our responses to relevant clauses of the bill.

#### Clause 14, 15

We firmly support the introduction of the new offence "unlawful striking causing death". This will finally send the message that violence of any kind is not tolerated in our community and businesses. The VLA supports the punishment of violent offenders, and members are of the view that many convicted offenders are receiving relatively light sentences.

Stronger penalties for 'Coward Punch' offences are long overdue. This should not be limited solely to a 'coward punch' resulting in a death; it should also include a 'coward punch' resulting in serious injury. It is sheer chance that determines whether one of these attacks results in a death, or simply in injury. In the case of injury, the victim could be left with horrendous life-long injuries. It is our view that the severity of the punishment should be triggered by the act itself and not simply its outcome.

#### Clause 16

Increasing maximum penalties for serious assaults on public officers is also long overdue. We think there is an opportunity here to expand the catchment of this offence to include anyone working in an official capacity in and around licensed premises and within the Safe Night Precincts (SNPs). Staff and security of licensed premises are authorised under section 165 of the Liquor Act to perform duties, which if not followed, are an offence. Performing these duties can put staff at risk similar to Police who are also performing legislated duties. Recent changes to the Liquor Act (Division 5) require staff and security to now put themselves at additional risk in managing members of declared criminal organisations who may wish to enter or are found on premises. Staff and security working at licensed premises should enjoy the protection of the law in the same way as other public officers.

The VLA is also of the view that the government should consider extending this type of protection to other essential service providers within the SNPs such as taxi drivers, taxi rank supervisors, bus drivers, Council workers, and community support services such as ChaplainWatch.

#### **Clause 17**

We strongly support the moves by government to make intoxication an aggravating factor rather than an excuse for violence and poor behaviour. It is our view that intoxication brings with it a higher level of personal responsibility, rather than less.

#### **Clause 23 & 24**

The VLA applauds government for adding Steroids and their analogues to the highest schedule of illegal substances in the act. These drugs are an insidious thing which adds to a poor culture in the youth of Australia, a culture which is not welcome in our precinct.

#### **Clause 30**

The VLA would like to see further detail included in the act outlining what “reasonable grounds” are for proving the belief that the listed effects have resulted from drug consumption. This might include sobriety tests or blood and urine tests.

It is sometimes difficult for staff and management to determine “undue intoxication”, as patrons do tend to show a different side of themselves when purchasing drinks as opposed to when with their friends away from supervision. This must be taken into account when making these determinations.

Furthermore, the effects listed in the bill could reasonably be the effect of many other things, such as but not limited to a disability. We do not want to see those in our society who suffer from things like this discriminated against simply by staff striving to do the right thing.

#### **Clause 42**

The VLA welcomes strengthening of the definitions surrounding licensees with a so called “restaurant” licence.

#### **Clause 43**

The VLA welcomes the creation of the “Nightclub” licence, bringing clarity to the licensing structure of Queensland with respect to these premises.

#### **Clause 46**

Removal of the moratorium on extended trading hours brings competition back into the night time economy of Queensland. We do caution however that those granted late night licenses outside of areas like Fortitude Valley, must be urged to commit to dealing with issues that late night trading creates, and be made to operate under best practice models.

#### **Clause 59 & 60**

There needs to be a burden of proof in relation to these types of decisions, and this should be explained in the act. “Adverse effect on the amenity” is a fairly broad statement and this could be applied poorly without further definition.

#### **Clause 64**

The VLA questions the efficacy of these changes. We feel it will be an additional burden on Police or OLGR resources to have to advise a licensee that a recording

is viewable. We find it unlikely that investigators will advise licensees if a recording is viewable, simply due to the time required to do this. It would make more sense to simply require a licensee to maintain a copy of the recording for a period of 1 year, similar to other requirements in the act.

#### Clause 66

There are sections of this clause which cause concern. Some definitions are very broad and open to interpretation, which concerns the VLA.

Section 142ZZB creates some very large penalties for licensees, with an expectation to maintain standards in the public space. This is simply unworkable. There has long been debate about the meaning of “safe environment” around a premises. How can a licensee ask staff to act in the public space for them, when not covered by insurance in this area? How then can a licensee maintain a safe environment in the public space without the ability to direct staff to act in this area? More investigation must be made as to the consequences of offences like these, as it is likely they place unreasonable responsibilities on private business.

Part of this clause places an expectation on a licensee to take reasonable steps to prevent offences being committed around the premises. We fully accept the responsibility on our premises, but the vague notion of “around” our premises is too broad to be effectively applied. Furthermore, how can a business be expected to police the public space? They have no authority to do so under law, and it would place their staff under great risk to do this, whilst also making them vulnerable to myriad civil lawsuits.

This section of the draft bill should be omitted until further consultation with the legal fraternity, the insurance industry, and other knowledgeable stakeholders is undertaken to determine the workability of these requirements in the real world. The importance of getting this part of the legislation right is paramount to both give certainty to business and insurers, and to inculcate government for legal challenge further down the road.

#### Clause 72 & 73

We strongly welcome the increase in penalties for those who refuse to leave or continue to try and enter licensed premises after refusal of entry.

#### Clause 74

The VLA supports the introduction of an integrated ID scanning **software** solution for Queensland .

The VLA is of the firm view that there should not be a mandated hardware solution forced on licensees. Many have made significant investments in ID scanning technology of different types. These decisions have been made voluntarily by licensees who recognised that this technology provides an opportunity to enhance safety within and around licensed premises. It would be unfair to ask these early supporters of ID scanning in licensed premises to pay again for a new system, particularly when the development of a software

solution is viable and can be accessed by all premises through Cloud based technology.

We would also advocate a study into better solutions, as the current technology in the marketplace is poorly suited to many types of venues. There is no doubt that simple technology is available to access ID databases, and this must be the way forward. The use of mobile technology is most exciting in these areas.

Scanning hardware will also need a good minimum standard set, to ensure there is no issue with banned individuals circumventing the technology.

Section 173EF forces licensees who are able to trade after midnight to use ID scanning, whilst those who do not trade after midnight do not have to. This is blatantly unfair on those who have a license, but may not necessarily use it each night of the week. The premises directly next door may very well on a Tuesday night trade similar hours to the premises forced to scan, so why would only be one be made to comply? Furthermore, on a busy Saturday night, how are the aims of the legislation achieved if a premises in a Safe night Precinct (SNP) which does not trade after midnight and does not have ID scanning allows “banned” individuals access to their premises, whilst the licensee next door is quite correctly not allowing them access. These individuals may then very well engage in anti-social behaviour, in the public space, circumventing the whole aim of this bill. There must be equal application of these requirements between certain licence types for this plan to work. Bars, pubs and nightclubs whose main activity is the sale of liquor must all comply after a certain time on high volume nights. It would make sense to us that 11pm on Friday and Saturday nights would be the best situation.

We also question the need in section 173EH for details of an ID to be “recorded”. Can’t the aim of the legislation be achieved simply by comparing the information on the ID to the database of banned individuals, rather than recoding every person’s information?

Also in this section is reference to the time scanning must begin. 8pm is simply unworkable and will have a far reaching detrimental effect on the hospitality industry in Queensland. There is simply no realistic need to scan people from such an early time. In Fortitude Valley for example, the precinct does not get incredibly busy until after 11pm. Before this time there are ample resources to deal with any anti-social behaviour in a fast and effective way. Once there is such a volume of people in the area that a higher level of security and oversight is needed, ID scanning becomes a useful tool. Before this time it simply sends a poor message about Queensland and the people who live here, 99.99% of whom do the right thing. It would be strange for people attending a function at a venue, or out for dinner at one of our popular bars, to be scanned on arrival at 8pm in the evening. Furthermore, employment of measures like ID scanning is only really needed on the high volume nights of Friday and Saturday. Any other night of the week it is simply redundant. Furthermore it would make sense for the legislation to also call for scanning on nights like the eve of gazetted public holidays, Exhibition Wednesday, New Years Eve etc.

The VLA would support exemptions for accommodation providers from ID scanning. This would need to be balanced with the fact there are some “Hybrid” accommodation businesses that have attached to them high-volume late night bars, which definitely should be required to scan. It is our opinion that in consultation with the accommodation industry a system can be found whereby large hotels with very little late night activity (Hilton, Sofitel etc.) were exempt, but places like backpackers with bars attached would not be, but scanning would only apply to the areas of the accommodation business that operate as a bar.

#### Clause 75

The VLA is very excited at the prospect of the creation of local boards to devise solutions to local problems. We have had much experience with the Drink Safe Precinct (DSP) management model and feel the expansion on this in this bill is an excellent move.

We would ask that section 173NK is amended to include security providers as members of local boards, as they play an incredibly important role in the management of venues, and the provision of safe environments. Security providers were included as members of DSP committees, so there is no reason they should be excluded from the SNP boards.

#### Clause 84

The removal of alcohol as a mitigating factor in sentencing is long overdue. As previously stated, the expectation on an individual should be higher when they voluntarily choose to use intoxicants.

#### Clause 92

The VLA supports government moves to force the judiciary to make community service orders mandatory for offences in the public space. This is where the most problems occur in our precincts, most often by people quite rightly refused entry or ejected from premises for poor behaviour. It only makes sense for them to be forced to pay the price for poor behaviour.

#### Part 9

We are largely supportive of this tranche of legislation. The creation of Sober Safe Centres will give police another tool to deal with anti-social behaviour in our precincts.

Strengthening of move on orders is also very welcome.

What we do raise is that it is important Police are well trained as to the application of these tools. It is not in the interest of vibrant and fun areas to have people not feeling comfortable to express themselves and have fun. A heavy handed approach to youthful exuberance will not have the outcome we are all seeking, but only serve to fuel the flames of anti-social behaviour.

We very much welcome the cost recovery provisions for those who deserve to be placed in these centres, as this is a cost the individual should wear, not the tax



payer or business. This will also serve as an effective deterrent against poor behaviour.

Clause 117 is long overdue, and will finally give some clarity as to the effects illicit drugs are having on offenders.

Clause 118 is perhaps one of the most positive pieces of change in this draft bill. Taking the power to ban individuals out of the court process will speed up the application of bans, strengthen the ID scanning system, and keep miscreants out of our businesses and precincts. This legislation mirrors other legislations in Australia. It has been reported that in the Fortitude Valley DSP, of 487 banning orders applied for by police, only 201 were issued. Magistrates have been failing to apply community standards and expectations to these for a very long time, allowing offenders to continue to visit the places they put at risk. This is anathema to private business. Business has borne the cost for these people for too long, and the balance has now been restored. On top of this, of the 14 recorded breaches of banning orders in the area, penalties have been minimal. The system has not been working, and this part of the bill will fix this issue.

Strengthening of banning legislation to now allow photographs of banned individuals to be provided to licensees, staff and security is long overdue, and very welcome.

#### **Part 10**

It is the VLA's view that current legislation covering public nuisance offences is strong enough. We do not feel that increasing the fine for this type of offence will achieve a reduction in violence; conversely it may simply cause further anger from an already marginalised youth when fined for small transgressions.

The VLA is also concerned about consistency in application of public nuisance laws. Our members have observed, over a period of time, that these laws are not applied consistently by Police. It can often hinge on the mood of an officer who may have been dealing with a very serious incident or a series of minor incidents that have been particularly challenging. Issuing on-the-spot fines for public nuisance offences that are related to 'annoying' rather than potentially violent behavior can be counter-productive.

The VLA is of the view that some of the other actions articulated in the Strategy will effectively deal with these issues (such as the 'sober safe centres') and negate the need for changes to the penalties related to public nuisance offences.

On a further matter of consistency, the VLA questions why this offence (public nuisance) would attract a higher penalty than the offence of refusal to leave a licensed premises. Situations in which patrons refuse to leave licensed premises are potentially far more volatile than many of the behaviours that would be classified as 'public nuisance'.

The VLA supports increasing fines for refusal to leave licensed premises, as this is an issue which can often lead to violence. This would send a strong message to



patrons that they must follow direction from staff and security in venues, and support the efforts of staff and security in maintaining safety in and around premises.

### **In Summary**

It should be noted that precincts like Fortitude Valley make the best sense for cities to manage late night trading. Having a concentration of traders in these areas allows for a concentration of scarce services and resources, which directly saves government money in the long term. This also prevents late night activity impinging on the amenity of suburban areas.

It is simply logical that with higher numbers of people comes higher crime and harm. It must be remembered that when we look at per-capita statistics, the level of crime and harm in our entertainment precincts is no higher than anywhere else in the state. Places like Fortitude Valley are the safest places to socialise in Queensland late at night, just like consuming liquor in bars, pubs and clubs is the safest and best managed place to do this.

The measures in both the draft bill and the strategy will continue to improve these areas, and we look forward to working with government on the implementation of this legislation.