

BARLINK MACKAY

TO WHOM IT MAY CONCERN

As president of BARLINKLINK Mackay I have been asked to raise a number of issues concerning the

SAFE NIGHT OUT LEGISLATION AMENDMENT BILL

The new proposed sections 142ZX to 142ZZD relating to responsible hospitality practices and advertising restrictions are of the most concerning to Barlink Mackay.

Our concerns are summarised as follows:

- The proposed changes are approx. 4 times the length of the current relevant sections and introduce even more confusing wording and unclear obligations on licensees than the current already confusing matters.
- They provide little or no defences for licensees.
- They impose an obligation on licensees to not “allow anyone to advertise” drink special etc. (How do you control the social media pages of patrons)
- They fail to reflect the Code of Practice developed in consultation with industry and peak industry bodies.
- S142ZZA(2)&(3) empowers the Commissioner to develop and implement a guideline or regulation that can impose a new responsible hospitality practice (such as no shots or jugs after 12midnight like NSW) without further amendment to the Legislation or consultation with industry. This is a concerning building block for future restrictions.
- Section 142ZZB has major implications for ALL licensees not just those in SNOPs and includes obligations for licensees to take:
 - Take all reasonable steps to ensure the use of the premises does not adversely affect the amenity of the area
 - Take all reasonable steps to ensure the behaviour of persons entering or leaving the premises does not adversely affect the amenity of the area
- Most concerning is the obligation in s142ZZB(4) as follows:
 - If a licensee or permittee knows or has reason to believe that a relevant offence is being, or is about to be, committed in or around the relevant premises, the licensee or permittee must take reasonable steps to stop or prevent the commission of the offence.

Barlink Mackay does not believe the current legislation is that fundamentally flawed it needs such a dramatic overhaul and these major changes are simply unjustified in an environment where red tape reduction, not more red tape is the goal. Individual RAMPs will all need to be updated in the areas pertaining to the legislation. It is our understanding the Bill allows the Commissioner to require Licensees to amend their own RAMPs if they don't think they are sufficient. This is another step too far.

The insurance implications of these sections are dramatic and may lead to unsustainable rises in insurance risks and even loss of insurance cover for many late night trading premises and can't be understated. Licensees and their staff or security have no powers to give effect to s142ZZB(4) or control the actions of others in many of these sections and an incident may see licensees charged for the actions of others they have no lawful ability to control. If a crowd controller intervenes in a fight 30-40

metres from a pub in a small town and is injured or injures someone then what protections do licensees have under their insurance premiums or for charges under the Criminal Code? The short answer is none.

A far more effective approach in our view would be to maintain the current s148A and 148B and expand the defences available under s229 (which applies to a limited number of offences) to include all offence and disciplinary action provisions of the Act if a licensee has demonstrated due diligence and/or taken reasonable steps to avoid the commission of the offence. This approach allows licensees to implement a range of best practice measures to demonstrate a defence for offences that may occur in and around their premises where the alleged offence happens without their knowledge or authority and they have acted with due diligence.

229 Liability for certain offences against Act

(1) Despite section 7 or 23 of the Criminal Code, if an offence against section 155, 156, 157 or 161 is committed by a person as agent or employee, the principal or employer is presumed to have participated in the offence, may be charged with actually committing the offence and, subject to subsection (2), may be punished for the offence.

(2) It is a defence to a charge made against a person under subsection (1) that—

- (a) the offence happened without the defendant's knowledge or authority; and
- (b) the defendant had exercised due diligence to avoid the commission of the offence.

If these new sections are imposed then section 229 must be expanded to provide defences for all of these new offences (and many existing offences) as well as Disciplinary Actions

The introduction of scanners at 8.00pm is also a concern a more suitable time in our opinion is 10.00pm.

Regards
Mark Laffin
President
Barlink Mackay