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

Dear Mandam/Sir

### **Safe Night Out Legislation Amendment Bill 2014**

We refer to Mr Ian Berry MP's letter of 10 June 2014 inviting submissions for the consideration of the Committee on the above amendment bill. We act for the Brisbane City Licensees Association ("BCLA"), and have been asked to communicate the following comments and observations on the association's behalf.

We note that submissions were due by 4 July 2014, and express our thanks to the Committee for the opportunity to provide the BCLA's input after that date.

### **Introduction**

The BCLA was formed as an unincorporated association of licensees in 2005, and has met regularly since that time. As you may be aware, the BCLA has contributed submissions in relation to every significant area of reform since its inception, and representatives from the BCLA have served on a number of Government organised committees and working groups from time to time.

The BCLA now also fulfils the role of liquor accord for licensees within the inner city precincts, and has a close working relationship with the other three accord groups – the VLA, CSPLA and WELA.

### **Information gathering**

The BCLA circulated information about the amendments to the membership database, then convened a general meeting on Tuesday 8 July, at which the bill was discussed in detail. A follow up survey of members was also conducted providing an opportunity for written comments to be submitted. Some aspects of the proposed changes were of greater interest than others, and these submissions are generally confined to those matters.

## Submissions

### The offence of unlawful striking causing death and other criminal offence matters

Although there has been consistent support from the BCLA for the proposal to take a tougher stance on violent behaviour, there were mixed reactions to the proposed offence. On the one hand, some members thought the offence did not go far enough, in that the harsher penalty is only triggered if the consequence of the violent attack is the death of the victim. In the BCLA response to the Safe Night Out Strategy publication, it was submitted that the style of attack reflected in the proposed provision should attract the deterrent level penalty regardless of the outcome.

On the other hand, some members are concerned about the offence extending to a genuinely provoked or defensive action by the offender, who would then be precluded from raising long-standing defences like recurrent insult.

Uniformly members would like to see effective deterrents for the genuine king hit or coward's punch, but care needs to be taken to limit the effect of the new offence to these types of attack.

The exercise of a discretion by Police or DPP to prosecute or not was not regarded as being an appropriate way of filtering unintended consequences.

In relation to the increased penalties in the bill, there was again a mixture of reactions. The majority of respondents support tougher penalties, and expressed the view that there needs to be follow through in the courts.

In relation to offences relating to public officers, it was felt, as the BCLA has previously submitted, that this should extend to those like the Nightwatch Chaplains who provide a community service within late night precincts.

The proposal to remove as a mitigating factor the voluntary intoxication of an offender was generally supported.

### Undue intoxication

There were a number of concerns expressed about the proposed definition. Principally these centred around the view that according to the definition a person would be *unduly* intoxicated if they exhibited any signs of intoxication at all. In this sense the definition is of "intoxicated" rather than "unduly intoxicated". One respondent commented:

*It cannot be construed that a person is Unduly Intoxicated simply because they are having fun, being animated, or indeed singing karaoke.*

*The meaning of Unduly should be in the context of being a danger to themselves or others.*

Again, it was not considered appropriate to rely on enforcement agencies not taking action for low-end intoxication cases. Nor was it considered that the change in the definition was

justifiable on the basis that it would assist in successfully prosecuting high-end intoxication cases.

The concept of “noticeably affected” in the definition was regarded as being too vague, and therefore too open to interpretation to be helpful.

It is recommended that the committee consider adjustments to the definition to more realistically reflect the prevailing good standards of behaviour in licensed premises.

#### Changes regarding the restaurant licence category

Again there were a mixture of views expressed regarding these proposals. One licensee commented:

*As a licensee of a restaurant that has a strong bar presence I believe that the rules should be related how the venue operates as a whole rather than certain times of a single day. ie: if I have a strong bar trade on a Friday whereby my patrons that come in and drink outnumber the patrons that eat on a Friday but on each of the other days of the week the patrons that eat far outnumber patrons that drink then I should not be non compliant under the new rules.*

Others felt that the changes were unnecessary and that the existing rules if properly enforced were sufficient to deal with the small number of licensees pushing beyond the limits of the licence category.

Still others felt that the changes would have no impact at all on either the genuine restaurateur operating within the current scope of the licence, or those who would seek to push too far. It was felt that the latter would simply continue to do as they please and would find ways to conceal or characterise their operations in a way which would avoid negative outcomes. One respondent commented:

*It is very easy to call a beer a Hamburger on a Cash Register and associated reporting.*

There did not appear to be any negative reaction to the proposal to limit restaurant trading hours to 1am.

#### The nightclub licence category

There was generally support or ambivalence in relation to this proposal. One respondent was concerned to ensure the change did not have a negative economic impact on existing venues in this market segment having regard to the high levels of investment made by some industry participants.

Another respondent strongly suggested that smoking rules should be adjusted to give nightclubs consistency with hotels and clubs.

### Public safety and amenity

Some concern was expressed that the proposed provisions focus on increasing the scope of a licensee's obligations through broader conditioning of licences, rather than on the patron who misbehaves. One member commented:

*Please ensure the whole issue is addressed not just related to the licensed premises who as we all know can easily be fined or licenses revoked while the unruly who don't comply can continue with their seemingly unlawful behaviour.*

There was also concern about the potential for abuse of the increased power that the broader conditioning authority will confer on OLGR. Decisions made pursuant to this extended power need to be reviewable, and the rules of natural justice must be observed.

### Responsible service, supply and promotion of liquor and preservation of amenity

Much of the discussion in relation to these changes centred on the lack of clarity around the extent of the licensee's additional responsibilities. For example, it is proposed that a licensee's obligations will include taking reasonable steps to stop or prevent the commission of certain offences in or "around" the licensed premises. The question was asked repeatedly what distance from the licensed premises would be regarded as still being "around" it. There was further concern about the determination of these matters in circumstances where a number of licensed premises were clustered together. How do licensee's determine which is responsible, and for which area in the absence of clearer provisions.

This comment was also made:

*anything where the legislation is written as "reasonable steps" by definition is subjective and open to interpretation. as business people we require certainty to what we can and cant do and then address our staff training to that certainty. unfortunately there is no certainty when you have legislation drafted that quotes the words ""reasonable steps"*

It was also noted that the current inequity in advertising restrictions between on premises and off premises sales has not been addressed. Nor has any change been proposed to address the inequity between restaurants operating within hotel premises and those operating independently. The former are unable to publish information about their wine lists for example, whilst the latter may lawfully do so.

It was strongly suggested that the inequity between on and off premises liquor advertising was a key contributor to excessive pre-loading by patrons.

The following is a typical response:

*Advertising for all those selling alcohol must be clear, concise, fair and reasonable for all parties.*

*Licensed venues, bottleshops, on line alcohol vendors, bulk multinationals who sell alcohol by the trolley load or multi bottle sales campaigns of spirits etc should all be*

*addressed but to isolate licensed premises as the easy targets for legislation is unreasonable and unfair by any State Government legislation.*

Another was in these terms:

*Advertising of drink promotions should apply for ALL licencees, whether that be on or off premise. Cannot for the life of me understand why only one segment of the market is under such stringent controls but another side of the market has carte blanche to flood the market with cheap alcohol...and people wonder why our drinking attitudes in the youth are the way they are when bottles of spirits are advertised blatantly in every form of media.*

The BCLA again urges the Government to review advertising restrictions, and extend these to cover the sale of retail packaged liquor.

Lastly, it was observed (in relation to this set of changes) that there was something of a departure from the principle of reducing red tape. The prospect of increased conditioning of licences, compliance notices and so on seemed to be a step toward rather than away from administrative complexity.

### ID Scanning

Whilst the use of ID scanning technology is generally supported, there were a range of concerns expressed about the way the scheme is to be set up. Principal among these is the proposal for scanning to be required from 8pm. There was unanimous opposition to this start time, as it would capture diners and function attendees who were clearly not the scheme's target. It was felt that an 11pm standard start time for mandatory scanning would be far more appropriate.

There was also concern that the introduction of ID scanning would reduce the effectiveness of the usual checking undertaken by door personnel. The following contribution is typical of the views expressed by members:

*My observations of scanning in many many venues is that the responsibility for checking the Licence details is given over to the scanning device. Those scanning simply no longer check the person and presented ID.*

*Importantly though, scanning, if it must proceed should not be before 11pm in Commercial Hotels, lest it will destroy the food and function side of these business.*

There was also concern that the scheme would be mandatory only within safe night precincts. It was felt that it should apply to all premises operating after 1am. Observations of trading patterns in Sydney, where restrictions apply in some areas and not in others, are that those outside the affected areas are now doing particularly well while those within are suffering.

There was also concern that the requirement to scan ID applied whether the premises intended trading after 1am or not.

Finally, there was concern that if the requirements for those within were too onerous compared to the requirements for those outside Safe Night Precincts then the system would lack stability. There needs to be incentives for establishing and remaining part of a Safe Night Precinct and some licensees were starting to have difficulty seeing the benefits.

#### Safe Night Precincts, local boards and consultative committees

Those members who had exposure to the Drink Safe Precinct trial were very supportive of the intended structure. The following comment reflects this sentiment:

*Having been previously a part of an extensive trial in the Valley Drink Safe Precinct, I believe to be a highly effective method. It allows for the varying parties to share preventative measures and information it also means they can formulate cohesive action plans plus implement evaluate them. It is actually a no brainer!*

There were a number of concerns regarding the detail of the board structure, and its powers and functions. For example, it is unclear what the implications of a licensee's membership being terminated would be, and what recourse such a licensee would have to ensure a just result.

A question was also raised about the potential for (and undesirability of) variation between the administration of one precinct and another.

Finally, the competitive nature of the industry within the inner city trading areas was seen as a challenge for individual boards.

#### **Conclusion**

The BCLA reiterates its earlier submissions in relation to the reform of the regulation of the industry, and in particular its submissions in response to the Safe Night Out Strategy document. Elements of the amendment bill progress some of those reforms, whilst other important aspects still need to be addressed.

On the whole, the BCLA is supportive of the Government's attempts to improve the regulatory and social framework in which members do business, and will provide every assistance with respect to the implementation of changes moving forward.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Matthew Jones', with a long, sweeping horizontal line extending to the right.

Matthew Jones  
**Director**