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**From:** Penny Wilson [REDACTED]  
**Sent:** Thursday, 22 October 2009 7:15 PM  
**To:** Law, Justice and Safety Committee  
**Cc:** [REDACTED]  
**Subject:** Inquiry into Alcohol-Related Violence in Queensland

72

**Attachments:** Liquor Accord Letter to Minister.doc; Liquor Accord Advice.pdf; Schedule 2 - Personal Responsibility.pdf; 22 Oct 09 Final Law Justice Safety Alcohol Submission.doc

Attention: Research Director

Dear Sir

On behalf our CEO, Doug Flockhart, I attach herewith our submission to your Inquiry into Alcohol-Related Violence in Queensland, together with attachments referred to herein. Please contact me if you have any questions in regard to our submission.

Regards

**Penny Wilson**

CORPORATE GOVERNANCE MANAGER  
 Clubs Queensland

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23/10/2009

**Inquiry into Alcohol-Related Violence in Queensland  
SUBMISSION BY THE COMMUNITY CLUBS INDUSTRY**

23 October 2009

**INTRODUCTION**

1. Alcohol-related violence affects licensed venues in a number of ways. These include:

- serious injury or death of patrons
- civil or criminal claims against the venue and its employees and officers
- significant damage to business reputation and the associated loss of business
- imposition of greater regulatory controls
- suspension or cancellation of the liquor licence

The vast majority of licensed venues readily acknowledge these consequences and proactively manage their exposure to alcohol-related violence in line with their respective risk profiles. In turn, community clubs it is suggested, by their very nature and trading history, are low risk venues.

2. While the triggers of alcohol-related violence are complex, it is often the case that this violence is caused by a small number of unruly patrons who fail to exercise personal responsibility and/or are not personally held accountable for the consequences. This situation has been exacerbated by the current focus on venue controls rather than an equal emphasis on holding the perpetrators to account.

3. A harm minimisation framework that recognises the shared responsibility between licensed venues and patrons, without overburdening venues with regulatory controls (often in lieu of little or no controls on patrons) or penalising the vast majority of patrons who consume alcohol responsibly, is the most appropriate response to this matter.

**THE CASE OF COMMUNITY CLUBS**

4. There are 939 liquor licensed community clubs in Queensland; of which only 72 (7.7%) trade post midnight (see Paragraph 20).

5. Community clubs are not-for-profit, member-driven and community-orientated associations. They provide facilities and services to a defined group of people, namely members, guests of members and bona fide visitors. The services offered by community clubs are delivered in such a way that, on balance, the local community benefits from the presence of clubs.

6. This underlying philosophy differentiates community clubs from other venues which provide similar services such as pubs/hotels and nightclubs in three distinct ways:

- Community clubs do not have private owners and do not explicitly trade for profit (but a surplus to sustain their operation).
- Community clubs must abide by stringent entry rules that prevent unbridled access to the clubs from the general public.

- Community clubs serve the interests of their local communities by pursuing or promoting the objects of their existence, as stated in the Club's Constitution.

These factors are critical in understanding why community clubs are low risk venues, compared to pubs/hotels and nightclubs, because the club model actively discourages risky behaviour by being responsive to the needs of members and the local community. The 'classic' example is the weekend cricket matches or netball fixtures which are 'family-friendly' affairs within the club environs.

7. It is not unusual to find that community clubs do far more than just provide vital recreational facilities in their local communities. In the case of sporting clubs, for instance, the intangible dimensions include development of social values (such as "working as a team" or "caring for each other") and codes of behaviour (such as "compliance with rules" and "respect for authority e.g. coach/referee"). These are essential life skills which impact positively on young people throughout their lives.
8. The above position that community clubs are low risk venues is further supported by the following three aspects of club operation:
  - The majority of community clubs (92%) do not trade past midnight when most of the glassings or other violent incidents are likely to occur (see Paragraph 20).
  - The majority of club patrons are generally older than those patronising nightclubs. Consequently, they display a more responsible attitude to alcohol.
  - The potential consequence of suspension or termination of membership acts as a strong deterrent in containing aggression or other undesirable behaviours that may otherwise manifest if there are no such ramifications.
9. We note that when Premier Anna Bligh announced the ban on the use of glass in July 2009, she made it explicit that it will only apply to 'high risk' venues. The Guideline issued by OLGR this month explains that OLGR can classify the whole or part of a premises as high risk "where there has been one or more glassing incidents or there has been an unacceptable level of violence at the premises over the last 12 months". It is prudent to note that this definition of high risk venues does not readily apply to community clubs. In fact, of the 41 premises listed in the Joint Media Release issued by the Premier and Minister for Tourism and Fair Trading, Hon. Peter Lawlor, on 5 October 2009, only 2 were community clubs (representing 0.2% of the community clubs industry - see Paragraph 20).
10. It is also prudent to note that the Queensland Police Force (QPF) in informal discussions with Clubs Queensland has stated that community clubs are rarely involved in significant anti-social behaviour or personal injury situations (see Paragraph 24).

## **AREAS FOR COMMENT**

## **Best Practice Harm Minimisation Measure**

### ***Why do some individuals become violent offenders after consuming alcohol? What medical or psychological factors are involved?***

11. We cannot provide expert commentary on the medical or psychological factors that make some individual violent offenders because we are not qualified in this area.
12. Notwithstanding the above, our view is that personality profiling is fraught with danger because different people react differently to alcohol and no one 'personality factor' can be a universal indicator. There are also moral and ethical concerns, especially if a person is wrongly identified to be unduly intoxicated because of a disability or a medical condition. It is also widely acknowledged in research that cultural and demographic factors such as a person's gender, age and ethnicity shape attitudes to alcohol consumption.
13. There has never been, nor there should ever be, an expectation that venue operators - the management team in the case of community clubs - should be trained in this area because their role is to simply run a business within the legislative framework of their operation (such as health and safety, duty of care and responsible service standards). There are two significant precedents that explicitly discourage employees from personality profiling as follows:
  - Venue employees are only required to watch for common signs of undue intoxication and if these signs are present, then they have a duty of care to provide appropriate assistance such as arranging return transport. They do not determine that the person has a problem with alcohol (which is left to qualified counsellors should the patron decide to seek external assistance which may be suggested by venues at an appropriate time).
  - Gaming employees do not determine that a patron is a problem gambler. Rather, they are required to refer a patron they suspect on reasonable grounds to be a problem gambler to a trained counsellor (with the patron's consent). For this purpose, gaming venues are required under the *Queensland Responsible Gambling Code of Practice* to establish links with Gambling Help Services (GHS).

### ***What measures are there to reduce harm?***

### ***How effective have those measures been?***

### ***What works? What doesn't work?***

14. Queensland has a comprehensive suite of measures to address alcohol-related harm. The measures include:

- Mandatory Responsible Service of Alcohol (RSA) training for all persons involved in the service of alcohol. This now even includes staff employed to collect glasses.
- Code of Practice for Responsible Service, Supply and Promotion of Alcohol (part of which is now law) that outlines acceptable and unacceptable practices relating to service of alcohol.
- Advertising Ban on Drink Promotions that bans the external advertising of drink prices, free drinks, multiple drinks and/or discounted liquor.
- Provision of water free of charge or at a reasonable cost in licensed venues.
- Provision of food (as part of the annual licence fee regime) or the risk profile of the venue is escalated and a higher annual fee is payable.
- Prohibition on sale or supply of alcohol to minors.
- Signage such as "No More it's the Law" that alert patrons on the legal obligations of venues.
- Additional restrictions on the sale of alcohol for certain special days e.g. Anzac Day, Christmas Day and Good Friday.
- House Policy and a higher level document called the Risk Assessment Management Plan (RAMP) which must be formally approved by the Office of Liquor and Gaming Regulation (OLGR), both of which contain relevant information on the manner in which the business is operated, including business philosophy, security arrangements, noise controls, patron management and service standards. Unlike the house policy which is an ongoing requirement, the RAMP is only required in the following situations:
  - new licence applications
  - licensees applying to renew 3am to 5am trading prior to 31 March 2009
  - extended trading hours approvals
  - permanent variation of licence applications
  - permanent changes in licensed area
  - transfers of existing licence
  - restricted liquor permits

15. These and other measures have been very effective from the point of view of licensed community clubs because they work in tandem to reduce risks. In the event of a breach, the onus is on venues to demonstrate to QLGR that they have effectively implemented these measures. The consequences of failing to effectively implement these measures ultimately include suspension or cancellation of the venue's liquor licence.

16. Managing alcohol related issues should be a shared responsibility and currently the emphasis is too much on the venues. Numerous research papers have shown that societal controls such as those implemented by venues (e.g. responsible service of alcohol) are only effective to a certain extent, after which personal responsibility must take over. In this regard, societal controls should be complementary to personal responsibility, rather than in lieu of personal responsibility. The Australian Government's paper titled "Changing Behaviour: A Public Policy Perspective (available at <http://www.apsc.gov.au/publications07/changingbehaviour.htm>) aptly sums up this view

(on page 2) as follows: "In the areas of welfare, health, crime, employment, education and the environment, it is clear that achieving significant progress requires the active involvement and cooperation of citizens".

17. ~~We cannot stress more the need for patrons to take personal responsibility for their actions and to understand that there are serious consequences for their behaviour. In our view, this aspect is not working well because patrons often fail to comprehend the simple fact that they may be held personally accountable for their risky behaviour, which may not only put them at risk but also jeopardise the safety of others and expose the venue to a range of compliance breaches.~~
18. It is important to reiterate that the vast majority of patrons in community clubs and licensed venues generally consume alcohol responsibly and the current measures, designed to target the minority (of offenders), have adverse effects on responsible guests' level of enjoyment, socialisation and recreation. This aspect must be reconciled and fully considered in any future measures that are introduced to address this situation.
19. Many community clubs (as well as other licensed venues) now belong to liquor accords. Part of their terms of reference is to identify and ban patrons who display intoxicated, anti-social or aggressive and violent behaviour from attending any venues that are part of the liquor accord. This measure has the potential to be extremely effective in deterring inappropriate behaviour, with the threat of not only being banned from the venue in question, but being banned from most of the venues in that liquor accord area (see Paragraph 38).

## The Impact of Late Opening Hours

### *How have late opening hours impacted on the incidence of alcohol-related violence?*

20. Late opening hours have been identified by the Government as high risk periods for licensed premises. It must be noted that a vast majority of community clubs (92%) do not currently trade post midnight. Figures obtained from OLGR show the following:

Post Midnight	Number of Community Clubs	Percent of Industry (N=939)
Up to 1 am	20	2.1%
Up to 2 am	47	5.0%
Up to 3 am	4	0.4%
Up to 5 am	1	0.1%
Total	72	7.7%

Source: OLGR, 13 October 2009

21. Under the current laws, licensed premises that open during these hours do not have a choice but to accept management of escalated risks as a condition of trade in this period. They strive to "do the right thing" by law. In view of this, it is injudicious to say that late opening hours in themselves may encourage alcohol-related violence.

22. As stated above, venue/societal controls can be effective only to a certain extent, after which personal responsibility must take over (see Paragraph 16).
23. It may be the case that a precinct as a whole is a high-risk zone, not just the venues ~~inside the precinct. The problem is compounded if there is a shortage of public facilities in~~ the precinct, which is very often the case.
24. We believe that while alcohol has been widely identified as a contributing factor, it is not the only factor and other issues, such as drug use and shortage of public transport, must be focused upon, rather than just late opening hours. Only then can holistic solutions be found to the problems of unruly behaviour, violence and criminal activities because these factors have direct bearing on patron behaviour. In informal discussions with members of the police force, they readily acknowledge that illicit drugs are a significant part of the problem, but it seems the avenue of least resistance is taken in identifying alcohol exclusively as the problem.
25. In many cases, alcohol and/or drugs are consumed (in an individual's home) **prior** to patronisation of licensed premises and when an incident of violence is reported, it is always associated with the venue that the offender is patronising at the time of the incident. The venue is limited in its defence, even though it may have CCTV (installed at great expense) or other measures in place to show that the offender did not readily consume alcohol on the premises, because the onus of proof is often too great.
26. It is worth noting that approximately 79% of alcohol is sold for off premise consumption, the vast majority through bottle shops and liquor barns. If onerous requirements are placed on venues, many people may decide to take their patronage away from regulated environments and on to the streets, parks and to house parties in the suburbs. This will simply escalate the problem, stretching limited police resources beyond their capability to respond in a timely way and could even endanger lives as a result.
27. Society today runs 24/7; people work all hours of the day and night and expect to be able to have a meal, be entertained and have a drink whenever they feel like it. Responsible licensed premises should be able to respond to society's needs. We should not be faced with a situation that because of the actions of the irresponsible few, everyone else has to suffer through the introduction of Draconian measures including restrictive hours of trade, plastic glassware and lockouts.

***What has been the impact of the 3am lockout on the incidence of alcohol-related violence?***

***What other impacts has the 3am lockout had on patrons, venues, and other stakeholders?***

28. We do not discount the underlying purpose of the 3am lockout which is mostly to stop 'venue-hopping'. This measure, however, is not a panacea and must be analysed objectively.
29. It appears to us that many patrons are greatly inconvenienced by the 3am lockout, especially if they happen to be outside the licensed premises and cannot get in after 3am. The same can also be said of people who are inside the licensed premises but have lost

the company of their friends because they cannot enter the premises after 3 am. It is suggested that the feeling of frustration and loss of control in these situations may be actually acting as catalysts for loss of good judgement.

30. ~~In our view, the 3am lockout captures a majority of otherwise responsible patrons and may be possibly escalating the problem. The following is just one example that illustrates this point:~~

- A person who is locked out may choose to wander the streets for a couple of hours before he or she is reunited with his or her group. The situation is aggravated if this person is a female and may have left her bag (containing car keys, money etc.) with a person who is inside the venue.

31. The 3am lockout is most effective if it operates in conjunction with other measures such as the availability of safe and affordable transport. This is because the 3am lockout encourages mass exit, putting extra pressure on public transport, not to mention crowd control and public safety issues - the types of issues that it is designed to prevent!

***What changes, if any, should be made to opening hours, and alcohol service strategies within those hours, to reduce alcohol-related violence?***

32. There are now extensive measures in place during these hours in some precincts to mitigate the risks. The premier examples are measures outlined in the Brisbane City Safety Action Plan which focuses on five key areas:

- Managing alcohol
- Strengthening policing
- Improving transport
- Creating a safer environment
- Working together

33. As explained above, a majority, if not all, of these measures focus on venue/societal controls. The Government must strive to get the balance right and instead of imposing or additional controls on venues such as the 16 September announcement of a retrospective moratorium on all applications for extended trading hours between 12 am and 5 am, it must consider issues such as patron behaviour and personal responsibility. This approach is justified on the basis that a majority of patrons would continue to 'party' regardless of venue/societal controls, so must be compelled to take personal responsibility for their actions.

34. If a venue is proven to be irresponsible in regard to serving intoxicated patrons on several occasions (not just an isolated incident), then appropriate action should be taken against that venue which may include reducing its hours of trade or in extreme cases, suspending or cancelling its liquor licence. This would be preferable to using a "one size fits all" approach.

**Flow-on Issues for Emergency Service Workers, Police and Front-line Health Workers**



***What is the impact of alcohol-related violence on police and other emergency service workers and health workers?***

***How can negative impacts on these workers be reduced?***

35. We cannot adequately comment on this issue because we do not have access to relevant performance data. However, we do acknowledge the physical and psychological risks that these front-line workers are directly exposed to in the course of their duty and the indirect effects on their family members and others.

36. It may be prudent to note that these front-line workers are exposed to all forms of violence, not just those fuelled by alcohol. In some cases, alcohol may be used as a scapegoat, when the root cause of the violence may be something else (for example illicit substance abuse, mental health issues, lack of life experience, etc).

37. The effect on these front-line workers can be greatly reduced through a realignment of Government policy that puts greater responsibility on patron behaviour. It is quite apparent now that increased regulatory controls on venues often do not yield satisfactory outcomes because these controls are being imposed in lieu of patrons taking responsibility for their actions (see paragraph 33).

**Education Campaigns and their Role in Cultivating Effective Social Change in Terms of Community Attitudes to Alcohol Consumption**

***How do we change the drinking culture and create a culture of individual responsibility?***

38. We are strongly of the opinion that most of the measures needed to influence cultural change at the venue-level are already in place. It is more a matter of providing enough flexibility to venues to effectively implement them. A good example is again the liquor accords. Although many community clubs are part of their local liquor accords, the requirements of the club's constitution often conflicts with the liquor accords. Hence, a person who is banned by a venue participating in a liquor accord cannot be automatically suspended from a club in the same liquor accord where he or she is also a member because each club must deal with membership matters as per their respective constitutions. This usually involves the member being brought before a committee to explain his/her actions before a decision is made with regard to temporarily or permanently banning them from membership - natural justice must be afforded to the member. Clubs Queensland has already brought this matter to the attention of the Government and suggested that legislative reform is required to protect clubs from any actions by members as a result of banning under a liquor accord. Our legal advice on this matter and a copy of our letter to the Hon Peter Lawlor, Minister for Tourism and Fair Trading are included for your reference.

39. There is ample evidence to illustrate a partnership approach could effectively identify and address various anomalies. Recent amendments to the Liquor Act, for instance, required the approved manager to be present at the club for 7-10 am trading. After considering submissions by Clubs Queensland, the Government has now recognised that this is not a high risk period and the approved manager must only be reasonably available. There is also an exemption given, upon application, to small venues (up to 10 employees involved

in the service of alcohol). This approach focuses attention on the most important issues and prevents uneconomical use of scarce resources.

40. As evidenced above, it is very apparent that there is too much emphasis on venue/societal controls which operate in lieu of personal responsibility. ~~The Government needs to get this balance right, for example by imposing significant on-the-spot penalties on individuals who break the law. As the case of glassing illustrates, it is not what people drink from but how much they drink that causes the problem. A 'slap on the wrist' is no longer effective.~~

***What education campaigns are currently in place?***

***How effective have they been?***

***How could they be improved?***

41. We are aware of a number of ongoing educational campaigns such as the Good Sports Program and Drinkwise. However, we cannot comment on them individually because we do not have access to detailed performance data.
42. Clubs Queensland has recently submitted an application for funding that addresses some of the 'gaps' in recent educational campaigns as we see them. Our application takes a three pronged approach:
- It uses a short film, to be professionally produced, on the effects of binge drinking.
  - It targets 12 to 15 year olds and their parents in the context of sports clubs.
  - It allows for informal discussions after the screening of the film that involves parents, children, coaches and other relevant persons on issues covered in the film.

The strengths of this approach is the use of modern technologies that young people can readily identify with and the unique way in which modern technologies can be harnessed to directly engage young sport participants and parents on some of the most sensitive issues surrounding alcohol abuse and misuse.

It is hoped that by addressing these issues from a youth's perspective and in the non-threatening environment of sporting clubs, significant behavioural changes could be encouraged, resulting in lasting positive changes built on participatory reinforcement.

This initiative acknowledges the technologically savvy nature of this age group which is critical to the success of any educational campaign aimed at the youth population and is an example of an early intervention and prevention strategy.

Note: This is only one tool to educate and cause generational change.

43. It goes without saying that educational campaigns must target both the young and the old and should be built around the core values of 'respect for self and others' and 'taking personal responsibility' (see Paragraph 51). Such programs/campaigns should be ongoing, reinforcing positive messages that promote the need for people to take personal responsibility for their actions and encourage responsible consumption of alcohol.

## **The Role of Parents in Influencing Attitudes Towards Alcohol Consumption**

***How are parents influencing the attitudes of young Queenslanders?  
How can parents be assisted in instilling responsible attitudes to drinking?***

44. Children mostly learn by imitation and often adopt the good and bad habits of their parents. It is critical therefore that parents set good examples themselves (i.e. take personal responsibility). This is the starting point.
45. The other important consideration is that introducing alcohol to children at an early age may have been a social or cultural norm in the past but it is no longer acceptable now.
46. Parents must realise that no other institution is a substitute for their role and important life matters should not be left entirely to others, for example teachers or carers. Surely, teachers and carers have a role to play but parents must be the primary role models.
47. It must be also recognised that many parents want to do the right thing. Unfortunately, demands of modern day living means they are unable to spend as much time with their children as they may wish. Thus, mentoring and experiential learning is diminished.
48. Given the above, an educational campaign that targets the role of parents is one option to explore in this area. Clubs Queensland has already made significant progress in this regard (see Paragraph 42). Suffice to say, this project will assist parents to talk with their children (12 to 15 years) about drinking because it is designed as an 'icebreaker' and provides a framework for helpful discussions on responsible attitudes to drinking at a time when parents tend to have strong bonds with their children. If these discussions about alcohol are nurtured at an early age, it is expected that constructive conversations between parents and children will continue into early adulthood.
49. The above initiative not only supports our view that people should take personal responsibility for their actions but also goes further to demonstrate how this can be learnt or taught in a non-threatening environment.

## **The Economic Cost of Alcohol-Related Violence**

***What is the economic cost of alcohol related violence to the Queensland community?  
How could this cost be reduced?***

50. We understand that the economic cost of alcohol related violence amounts to millions of dollars in areas such as:
  - lost productivity
  - health care costs
  - salaries and equipment
  - business red tape
51. This money is wasted year after year because it is often the case of trying to 'fix the symptoms but ignoring the disease' (which in our view is the absence of complementary controls on patrons in support of venue controls). Attached is an article from ClubsNSW that explores the issues surrounding personal responsibility.

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52. The economic cost can be greatly reduced if there is a recognition that both venues and patrons have important roles to play and their roles are complementary to each other. As explained throughout this submission, it appears that greater and greater controls are being imposed on venues in lieu of any such controls on patrons.
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## **SUMMARY**

53. Alcohol-related violence is a very serious matter for licensed premises and patrons.
54. While there are no easy solutions to this issue, the practical reality dictates that the focus must continue to be on high risk venues and the notion that venues and patrons have complementary roles to play in harm minimisation. Each application for late trading should be taken on its merits, concentrating on the venue's previous history and not taking a "one size fits all" approach. Venues that are found to be consistently irresponsible should face the harshest penalties which will potentially deter other venues from acting in a similar fashion.
55. On the flip side, there needs to be more emphasis on individuals taking responsibility for their own actions and facing the consequences. This can be learnt or taught from an early age.
56. Clubs Queensland is happy to assist the Government in any way possible to achieve positive outcomes in this area. We thank the Government for the opportunity to comment on this issue.



29 September 2009

**The Hon. Peter Lawlor**  
Minister for Tourism and Fair Trading  
Level 26, 111 George Street  
BRISBANE QLD, 4000

Dear Minister

### **Liquor Accord and the Club Constitution**

I am writing to bring to your attention an anomaly that is currently restricting many community clubs from actively embracing the liquor accord as a harm minimisation measure.

The anomaly has arisen despite s.224 of the Liquor Act providing for this arrangement because this section does not set out the powers, obligations and protections accorded to participating venues by virtue of their membership of the Liquor Accord.

The effect, in the absence of the above protection, is that a community club must have due regard to its rules or constitution when dealing with membership matters. In practice, it means that a community club cannot automatically ban a person who has been excluded from another venue in the same Liquor Accord, which essentially defeats the purpose of the Liquor Accord.

Based on **legal advice** (copy attached), Clubs Queensland has advised clubs that they need to amend their constitution so that the latter provides for suspension or termination of membership for the purposes of complying with a Liquor Accord. However, this is a time-consuming and onerous process because the constitution can only be amended by a special resolution of members and, if passed, an amendment must be formally registered with the Office of Fair Trading before it can come into effect.

The legal advice offers two possible solutions:

1. Include specific provisions in the Liquor Regulation that provide for directions on the suspension or exclusion of club members. There is already a precedent for these provisions in NSW and Victoria. Our preference is for the NSW model because the decision to ban a person is not made by the club (hence, they do not face the same dilemma as their Queensland counterparts). Rather, it is made by the regulatory authority (upon application by venues) and clubs enforce the ban by statute.
2. Alternatively (and until the Liquor Regulation is changed), the Chief Executive of the Office of Liquor and Gaming Regulation could issue guidelines, under s.42A, which can provide similar direction.

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Clubs Queensland recognises that harm minimisation is the first objective of the Liquor Act and joining a Liquor Accord is an important measure which should be embraced by all licensed venues. For the Liquor Accord to work to its full potential for clubs, it is important that the anomaly identified in this letter is rectified.

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I will be very appreciative if this matter is progressed as a matter of urgency.

Yours sincerely

**Doug Flockhart**  
Chief Executive Officer

# What Happened to Personal Responsibility?

Our clubs are Australian institutions, places where people come together for a common purpose, to socialise with family and friends in their "second living room." And for more than a century average people have come to clubs to have a drink, to enjoy a meal and have a punt, and almost always safely and in good humour without causing harm to themselves or others.

Where issues arise, as a society we've tried to strike a sensible balance between the need to create regulation that helps deal with the problem, and having individuals take responsibility for their own actions. Generally speaking, in the past we had the balance right. However, these days clubs are finding themselves being asked to unfairly take responsibility for some of society's perceived ills at the moment.

There's a tendency for governments to try to treat the symptom of problems and not the causes. If the problem is childhood obesity, ban fast-food advertising rather than giving families the tools they need to properly manage diet (say through effective education and incentives to eat right). If the problem is school kids consuming caffeine loaded energy drinks, social commentators and self-styled 'experts' advocate restricting their sale to bottle shops and limiting the number that can be purchased. Never mind that it's usually parents that supply kids with these drinks!

Banning alcohol advertising at sporting events, even banning sponsorship of sport altogether, is seen by some as the silver bullet in the effort to reduce consumption of alcohol among young people. And this kind of prohibitionism isn't limited to alcohol. In the name of addressing problem gambling we see proposals to outright ban poker machines, to limit their availability, to introduce expensive technology so players can set time and spending limits on their play, and to ban ATMs. It seems that everyday someone is asking for something to be banned. This is based at least in part on a view that people can't or shouldn't have to be responsible for what they do. That is, it's someone else's job

to ensure that my own actions don't hurt me or others. If I drank too much, the barman shouldn't have served me. If I spent too much, I shouldn't have been given access to cash.

This trend is developing in part because it's easier both administratively and politically for governments to regulate clubs than to introduce measures that encourage people to take on responsibility, and penalise individuals for their actions if things go wrong. We've recently seen the introduction of stringent new license conditions on venues identified as violent. This includes the sale of alcohol in plastic containers, lockouts, and restrictions on the type and number of drinks that can be purchased. But what you won't find is an increase in the penalty on patrons for drunkenness or offensive behaviour or any requirement that people arrested for assault subject themselves to a test for illicit

substances. The onus is on the club to ensure behaviour by patrons is acceptable.

There are ways government can encourage people to take responsibility for their own actions. Police can issue more "fail to quit" notices which attract a fine of \$550. As is being contemplated in Victoria, this penalty could be drastically increased so there's a substantial disincentive to anti-social behaviour. The crime of public drunkenness could be reintroduced and enforced. A "no more, it's the law" state-wide campaign could also be run so people are made aware of the law and their obligations. And education generally, especially of young people, could be enhanced in an effort to establish safe drinking clearly in the minds of patrons. These types of measures would complement the efforts of clubs as they attempt to maintain safe, family friendly environments. ■



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## ClubsNSW

The National Club & Casino Association



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Our Ref: 2661074

Dear Doug

**Advice on Liquor Accords and Banning Powers**

We have been asked to provide Clubs Queensland with an overview of the interplay between club constitutions and Liquor Accords, against the background of the proposed *Liquor Act 1992 (Qld) (Act)* reforms.

As instructed, we have considered whether licensed club premises that are or may become members of a Liquor Accord have the power to suspend or exclude a member whose conduct was unacceptable at another licensed premises that is also a member of the same Liquor Accord.

We have specifically considered the following in our advice:

- (1) how New South Wales and Victorian clubs involved in Liquor Accords, have dealt with suspending/excluding club members;
- (2) privacy/defamation issues if photos/names of offending members are going to be displayed/published; and
- (3) the possible use of section 165B of the Act to prevent the entry of a club member onto club premises.



**Executive Summary**

1. Liquor Accords are now intended to be recognised under Queensland legislation, but it is not compulsory for licensed premises to be a member of a Liquor Accord.
2. As a result of the Queensland Government's decision not to set out in statute the powers, obligations and protections afforded to Liquor Accords, a club must have regard to its own constitution when deciding how to deal with a troublesome patron.
3. We think that the best solution, which will be both the most cost effective and time efficient, is for Clubs Queensland to provide a circular to its member clubs containing a suggested amendment to their constitutions.
4. Joining a Liquor Accord may assist clubs in complying with the underlying harm minimisation principles of the new Act.
5. However, we recommend that the terms and conditions of club membership contain a provision advising new members that the club may have access to information about their behaviour at other licensed premises who are members of the same Liquor Accord for the purposes of complying with the requirements of the Liquor Accord.
6. Clubs Queensland may wish to lobby the Queensland Government to have the liquor regulations (being those made under the newly amended Act) include provisions which mirror those in NSW and Victoria and provide guidance in relation to the establishment and ongoing administration of Liquor Accords. In our view, the *Liquor Act 2008* (NSW) provides the best model for Liquor Accords.

**Liquor Accords in Queensland**

A Liquor Accord is intended to be a forum for interested parties within a local community to address liquor-related problems affecting their area and to work collaboratively to agree on specific actions, objectives and strategies to help address issues of concern.

Members of Liquor Accords usually include representatives from licensed premises, businesses, councils, police, government departments and other community organisations.<sup>1</sup>

It is not compulsory in Queensland for holders of a liquor licence to be a member of a Liquor Accord. However, the *Liquor and Other Acts Amendment Bill 2008* (Bill) was released on 28 August 2008 and it proposes to insert a new Section 224 into the Act to introduce Liquor Accords into the legislation as a voluntary harm minimisation initiative.<sup>2</sup>

According to the Explanatory Notes of the Bill, the intention for the inclusion of Liquor Accords is to clarify the purpose and membership of a Liquor Accord for a locality.<sup>3</sup> The provision attempts to achieve this intention by providing a definition of Liquor Accords and their function, but does not provide any guidance on powers or obligations.

<sup>1</sup> Queensland Treasury website at <http://www.liquor.qld.gov.au/Accords.html>

<sup>2</sup> *Liquor and Other Acts Amendment Bill 2008* Explanatory Notes

<sup>3</sup> *Liquor and Other Acts Amendment Bill 2008* Explanatory Notes

### **Liquor Accords in New South Wales and Victoria**

While the Bill proposes that the Act will "recognise" Liquor Accords, the NSW and Victorian liquor legislation<sup>4</sup> has spelt out the powers and obligations of the Liquor Accords in those states.

Unlike Queensland, both the NSW Act and the Victorian Act gives members of Liquor Accords the power to ban a repeatedly troublesome patron from all member-licensed venues for certain periods of time.

Pursuant to section 78 of the NSW Act, an application can be made to the NSW Casino, Liquor and Gaming Control Authority (NSW Authority) to issue an order banning a person from entering or remaining on licensed premises. Such an order can be made in circumstances where the person has been repeatedly intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises. The director, the police or a licensee who is part of a Liquor Accord can seek such an order. Under this section, an order to ban a person from entering or remaining on licensed premises can apply to multiple venues that are members of a Liquor Accord.

The NSW Authority will provide the person subject to the application for a banning order application with an opportunity to make a submission before any decision is made. The NSW's Authority's decision cannot be reviewed simply because a person does not agree with it. The Supreme Court of New South Wales can consider claims of a denial of natural justice or concerns about due process.

As the decision to ban a member is not made by the club in NSW, clubs do not face the same dilemma that clubs in Queensland do, as it is a State authority that makes the decision to enforce a ban, and the NSW clubs are empowered to enforce that ban by statute.

The Victorian Act contains a similar power under section 146B, which allows a Liquor Accord to ban access by the public, or individual members of the public, to their licensed premises in a manner and to the extent provided by the relevant Liquor Accord. This means that it is the Liquor Accord that may require its members to cease to supply or allow the consumption of liquor at their premises or to ban public access or access by individuals to their licensed premises.

It appears that the Victoria Police work closely with Liquor Accords to enforce any bans that are placed on an individual, and again, as in NSW, the individual members of the Liquor Accords (that is, the clubs and pubs) are largely protected in this process by the relevant statutory provisions.

### **Impact of Club Constitutions**

As a result of the Queensland Government's decision not to set out in statute the powers, obligations and protections afforded to Liquor Accords, a club must have regard to its own constitution when deciding how to deal with a troublesome patron. As stated above, this is not the case in NSW and Victoria because of the protections that have been built into their legislation.

This particular issue is unique to clubs because unlike hotels and nightclubs, clubs have members and a constitution to consider. Therefore, a club must ensure first that its own constitution allows it to suspend/exclude members in circumstances alluded to in the Liquor Accord agreement/memorandum of understanding (Agreement).

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<sup>4</sup> *Liquor Control Reform Act 1998 (Victoria) (Victorian Act) and Liquor Act 2007 (NSW) (NSW Act)*

**Possible solution – long term**

Clubs Queensland may wish to lobby the Queensland Government to have the liquor regulations (being those made under the newly amended Act) include provisions which mirror those in NSW and Victoria and provide guidance in relation to the establishment and ongoing administration of Liquor Accords. These regulations could then provide direction on issues such as dealing with the suspension and exclusion of club members.

As an alternative, Clubs Queensland could lobby the Chief Executive of the Office of Liquor, Gaming and Racing (OLGR) to issue guidelines under the proposed new section 42A, which provide similar direction.

If you require further information or our assistance in this regard, we will be more than happy to help.

**Privacy and Disclosure Issues**

You expressed concern in your email to us dated 12 August 2008 about the publishing of confidential information among Liquor Accord members in relation to particular individuals or incidents.

The *Privacy Act 1998 (Cth)* states that "personal information" is "information about an individual whose identity is apparent from the information". Information regarding a person's unacceptable behaviour at another licensed premises would be regarded as personal information if the person's identity could be ascertained from the information kept. Accordingly, in most cases information recorded by a club about a person's unacceptable behaviour at another licensed premises will fall within the scope of "personal information" as contemplated by this legislation.

Under Principle 1 of the *National Privacy Principles (NPPs)* an organisation must not collect personal information unless the information is necessary for one or more of its functions or activities. The National Privacy Principles have effect under the *Privacy Amendment (Private Sector) Act 2000 (Cth)*.

If clubs were to join a Liquor Accord and a member is banned from the licensed premises in that same Liquor Accord, personal information would need to be disclosed to members of the Liquor Accord in order to ensure the ban could be enforced.

However, the information that is recorded by a club about a particular club member or patron needs to be accurate and not defamatory in nature. We say this for various reasons, namely, the relevant individual is entitled to request a copy of the information that the club holds about that individual. Accordingly, if the information is not accurate, then the club is required (under the Clubs Queensland Privacy Code) to update the information. In addition, if the information is defamatory, then the club may risk being sued under relevant defamation laws.

To ensure clubs do not infringe the NPPs, we recommend that the terms and conditions of club membership contain a provision advising new members that the club may have access to information about their behaviour at other licensed premises and that club members consent to the club recording and otherwise using personal information about them with members of the same Liquor Accord for the purposes of complying with requirements of the Liquor Accord.

**Benefits of joining a Liquor Accord**

Under the Bill, annual licence fees will be determined on a risk-based approach. The compliance history of licensed premises will be considered and additional fees charged for those licensed premises with a poor compliance history.

While the Bill is silent on the issue, we assume that the government may view voluntary membership of a Liquor Accord favourably when considering the compliance history of a venue in calculating liquor licensing fees for the relevant assessment period, thereby potentially reducing the liquor licensing fees payable by the club because it is itself a member of a compliant Liquor Accord. However, please be aware that the government has not provided any solid assurances of this to date.

Finally, the most important thing to note is that harm minimisation is the primary objective of the new Liquor Act. As Liquor Accords are seen by the OLGR as a means of reducing liquor-related harm in the community, if Clubs Queensland encouraged its member clubs to join Liquor Accords, it may assist greatly in Clubs Queensland complying with the underlying principle of the Act.

**Conclusion**

However, we think that the best solution, which will be both the most cost effective and time efficient, is for Clubs Queensland to provide a circular to its member clubs containing a suggested amendment to their constitutions. As mentioned above, we are happy to prepare an article for the Clubs Queensland magazine to assist member clubs to understand the changes.

Clubs Queensland may wish to lobby the Queensland Government to have the liquor regulations include provisions which mirror those in NSW and Victoria and provide guidance in relation to the establishment and ongoing administration of Liquor Accords. In our view, the NSW Act provides the best model for Liquor Accords.

Please let us know if you would like us to help you in amending the Clubs Queensland member constitutions or in making submissions to the Queensland Government.

Yours faithfully



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