

Mr Simon Corbell MLA  
Attorney-General  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Minister,

Thank you for the opportunity to comment on the Exposure Draft of the *Liquor Bill 2010*. ClubsACT acknowledges the need for the the government, the industry and the community as a whole to take steps to curb the increase in excessive alcohol consumption and the anti-social behaviour that comes with it.

Licensed clubs in the ACT have led the way in creating and maintaing safe environments for their members and guests. Whether it be requiring members and guests to sign in or ensuring all staff are taught and apply responsible service of alcohol principles, Canberra's clubs always maintain very high standards when it comes to the sale of liquor.

Broadly speaking, ClubsACT supports the move to a risk-based licensing regime so long as there is an appropriate and fair distinction between venues that are more or less 'risky'. The current proposal to identify any licensee that operates beyond midnight as risky is far too general an approach and would unfairly regard licensed clubs or restaurants in the same way as nightclubs and bars which are generally higher risk venues.

In our view, a risk-based regime that does not reasonably distinguish between venues is not a system based on risk but simply an extra impost on licensees regardless of their location or type.

The current licensing regime already acknowledges the unique nature of clubs through the existence of a license specifically for clubs and it therefore seems illogical and unreasonable to ignore this difference in the licensing regime proposed in the bill.

As you know, ClubsACT has taken a position on a number of issues jointly with the Australian Hotels Association. Those issues are outlined below.

1. The industry is supportive of the concept of risk-based licence fees but has concerns about the effects on many venues of a substantial increase on current levels. Venues are facing increasing cost pressures in areas such as music licensing and wage increases, and it must be considered that the ACT industry comprises a large number of smaller venues with a limited capacity to pay an increased fee.

2. Industry recommends the introduction of different licence types for the different business models that exist within the industry, i.e., a 'Restaurant Licence', 'Pub/Bar Licence' and a 'Nightclub Licence'. This would remove the need for the drastic proposed changes to trading hours because these and other conditions could be regulated as part of the licence.
3. The proposed requirement for venues to put in place 'Risk Assessed Management Plans' should only apply to late trading venues. There is little value to be gained from forcing this requirement on dining venues that close before midnight.

However, should the government accept our proposed changes to the licensing regime, then the position of ClubsACT would be that the Commissioner have the power to designate that a licensee be required to have a RAMP rather than apply a blanket rule to every licensee.

4. The industry has significant concerns about the potential cost to venues of the proposed requirement for licensees to provide courtesy transport for patrons.
5. The industry opposes the proposal to encourage the development of a 'small bar' sector within the industry. These venues would struggle to generate sufficient volume of trade to maintain appropriate premises, staffing levels, security presence and RSA practices.
6. The industry strongly supports the introduction of on-spot fines for individuals who abuse bar staff or who buy drinks for intoxicated friends who have been refused service, but feels this scheme should be extended to cover a broader range of offences including violence and failing to move on after being ejected from a licensed venue.
7. Industry supports the concept of tightened restrictions on drink promotions, but more information is required so proper feedback can be given on possible effects on legitimate, responsible promotions that drive business and distinguish one venue from another.
8. Industry strongly opposes the proposal to create a criminal offence for employees who serve alcohol to an intoxicated person. While it is important to have measures in place to deter this practice, an employee being left with a criminal record is too severe a penalty for the offence.
9. The growing problems caused by patrons 'pre-loading' on alcohol before going out to pubs and clubs is exacerbated by the presence of retail liquor outlets in entertainment districts selling discount alcohol until 11pm. Industry recommends restrictions to the trading hours of off-licences or the introduction of a 'risk-based' licence fee to apply to any off-licence trading past 7pm.

The following is ClubsACT's specific comments on the bill.

### Licensing Regime

The licensing regime proposed in the bill is far too simplistic to adequately provide the government with a system which is genuinely 'risk-based' and 'user-pays'. ClubsACT supports the move to such a framework only when there is sufficient rigour built into the system to genuinely distinguish between venues which are high-risk and more likely to absorb resources such as policing and other municipal services.

It is simply a statement of fact that a restaurant or a licensed club, by their nature, present less risk than a night club or a bar and will therefore require fewer government resources. With respect to licensed clubs, entry is restricted to members and their guests, as is the sale of alcohol. Responsible Service of Alcohol (RSA) training has been standard practice for clubs for some time now. There is also generally a much higher-staff to patron ratio in clubs which allows for better monitoring of patrons and ability to actually apply RSA principles. This combined with the fact that if a person is clearly intoxicated, they will be refused entry in the first place, means that clubs should bear less of a fee burden than other venues in a user pays system.

A more sophisticated licensing regime is required that makes a meaningful distinction between different license categories.

ClubsACT proposes an alternative licensing regime. The license categories should be amended to allow for an appropriate distinction to be made between venues. The categories should be:

- Restaurant
- Accommodation
- Pub/Bar/Tavern
- Night Club
- Licensed Club
- Off License
- Special License

The license fees should be different for each category and the opening hours for each would be set by condition of the license. There would be no loading on the license fee for venues which open beyond midnight but the basic license fee for venues which operate late and are generally more risky, such as nightclubs, would be significantly higher. There would also be a moderate increase in the fee for every category to reflect the fact that the industry as a whole needs to contribute.

ClubsACT believes this would create a simple but effective system with the burden of cost falling where it should. It would also ensure the revenue the government seeks to raise from the licensing changes would not be compromised.

### Risk Assessment Management Plans (RAMPs)

ClubsACT does not support regulation where it is not warranted. On that basis, we do not support the proposal to require all licensees to produce Risk Assessment Management Plans. The need for every licensee to produce a RAMP has not been demonstrated nor has the benefits of a RAMP to all licensees been outlined.

There are certainly some venues that may benefit from the production of a RAMP and ClubsACT recommends that the commissioner be given the power to determine which venues should be required to complete a RAMP.

Given the commissioner may only approve a RAMP if it meets certain community safety and harm minimisation principles, then these principles and how they need to be included in RAMPs must be made as clear as possible in the regulations. The more effort the government puts into ensuring the industry is made aware of the commissioner's requirements for RAMPs, the smoother the transition to the new system will be.

ClubsACT also firmly believes that the commissioner, through the approval processes of RAMPS, be empowered to require or compel licensees to do anything not currently required by explicit regulation or legislation. RAMPs can not become an alternative method of regulating licensees.

### Register of Incidents

ClubsACT believes that not every licensee should be required to keep a register of incidents. The commissioner should have the power to designate those licensees who are required to maintain an incident register.

### Adults-Only Areas

ClubsACT does not support the introduction of adults-only areas unless staff are exempt from the exclusion of minors. Many licensed clubs in the ACT employ minors and excluding these staff from designated adults-only areas of clubs would be impractical nor would it contribute to the government's aims for this clause.

ClubsACT requests that the bill allow for staff to enter designated adult-only areas.

### Liability Issues and Offences

The bill proposes a number of new offences including offences for staff serving intoxicated patrons. While advice from the Minister indicates these will not be regarded as criminal

offences, it is nonetheless ClubsACT's position that staff should not be liable whilst performing their duties as staff in a licensed premises and the liability should rest with the licensee alone.

The bill proposes to introduce a number of new criminal offences including:

- i) Not complying with an approved RAMP;
- ii) Not displaying or making an approved RAMP available for public inspection;
- iii) Failing to keep an incident register;
- iv) Supplying liquor without an RSA certificate; and
- v) Failing to keep an RSA certificate on the premises.

ClubsACT believes instituting new criminal offences for the above is far too severe. Further, there is no demonstrated need for RAMPs to be available to the public and certainly no case made for failure to do so to be a criminal offence.

If these offences remain in the bill, then there should be a one-year moratorium on infringements being issued to allow time for the industry to become familiar with the new arrangements.

#### Mandatory Responsible Service of Alcohol

ClubsACT strongly supports the proposal to make Responsible Service of Alcohol training a mandatory requirement for licensees and staff.

#### Transport

While ClubsACT recognises it is not the government's responsibility exclusively to provide transport options for patrons of licensed venues, we do not support any attempt to compel through legislation, licensees to provide transport for patrons.

Notwithstanding that position, we would support further discussions between government and industry which explored opportunities to supplement existing transport options.

However it is important to recognise that the current service provided by the taxi industry is inadequate as is the limited bus service and that this is contributing to the problems we are seeing in Civic in particular. Addressing these issues would be a precondition for ClubsACT to participate in discussions regarding transport options for patrons.

#### Enforcement

It needs to be recognised and acknowledged that there are existing laws which prohibit the sale of alcohol to patrons who are already intoxicated which are clearly not being enforced. The very existence of the *Liquor Bill 2010* is testimony to that fact.

The question necessary follows. If the current laws are not being enforced then how effective will the new laws be at curbing alcohol related violence, particularly when the 10 new police officers that are to be funded from the licensing regime are to be general duties police that may not spend any more time policing the current laws as the existing officers do.

This is a key point for ClubsACT. If we are to be forced to pay increased license fees to fund 10 new police officers, then it is incumbent on the government to ensure a significantly increased and sustained effort is undertaken by ACT Police to address excessive alcohol consumption and breaches of the law within venues rather than simply rounding up individuals who have already consumed too much alcohol and are engaging in anti-social behaviour. Enforcement of the current laws needs to occur where the laws are being flouted – within the venue. If ACT Police do not enter venues and enforce current laws, then no progress will be made.

ClubsACT recommends that the ACT Government release data on how much time ACT Police spend in venues enforcing current laws. This is necessary data and would represent a baseline against which future efforts can be measured.

### Principles for Review

ClubsACT supports the ACT Government's intention to review the effectiveness of this bill at an appropriate point after its passage. However we also believe it is important to establish the measures of effectiveness against which the legislation's success or otherwise can be assessed.

This could be done a number of ways but one approach would be for the Assembly Standing Committee for Justice and Community Safety to self-refer an inquiry and establish those measures once the legislation has passed the House.

This would enable industry to contribute to the process via hearings and submissions and would also guarantee Assembly oversight of the independent review process.

It is vital that the government be prepared to make changes to the legislation should there be a demonstrated need to do so. This can only be enhanced by setting criteria for how the legislation's success can be measured now when the objectives of the bill are well known.

### Conclusion

ClubsACT supports the broad thrust of the *Liquor Bill 2010* and acknowledges that industry needs to do more to ensure patrons drink responsibly in their venues. However, ClubsACT reiterates that if it is the government's desire to introduce a user-pays, risk-based system, then the burden of the increased license fees should rest with those venues which are genuinely higher risk.

The suggested changes included in this submission, to the government's proposed license categories and fees have the support of the Australian Hotels Association and ClubsACT and

represent a workable and fair approach. It is also a proposal which does not compromise the revenue the government wishes to raise from the increased license fees but places the burden where it should be.

The industry looks forward to continuing to work with the government on passage of a workable and effective bill through the Assembly.

I would be happy to expand on any aspect of this submission.

Yours sincerely

A handwritten signature in cursive script, appearing to read "J House", enclosed in a light gray rectangular border.

Jeff House  
Chief Executive

5 May 2010.