



Restaurant  
& Catering

SAVOUR  
AUSTRALIA



20 December 2016

Legislative Services  
Attorney-General's Department  
GPO Box 464  
ADELAIDE SA 5001  
C/- [LLPSubmissions@sa.gov.au](mailto:LLPSubmissions@sa.gov.au)

Dear Sir/Madam,

### RE: Reforms to Liquor Licensing Act 1997

Restaurant & Catering Australia (R&CA) welcomes the opportunity to provide comment to the proposed changes to the *Liquor Licensing Act 1997*. The hospitality industry has appreciated the ongoing engagement with the Government on ways to improve liquor licensing in the state.

R&CA is the peak industry association representing the interests of 35,000 restaurants, cafés and catering businesses across Australia. In South Australia alone there are over 2,300 restaurants, café and catering businesses<sup>1</sup>, contributing \$1.1 billion to the state<sup>2</sup>. These operators represent the largest group of liquor licence holders in the state, with 1,400 or 21 per cent of licences attributed to this sector. Restaurants and food businesses are also the largest contributors to the night-time economy, generating 56.9 per cent of sales revenue in the Adelaide LGA, equating to approximately \$611 million in receipts<sup>3</sup>.

The *Liquor Licensing (Liquor Review) Amendment Bill 2016* therefore has significant implications for the restaurant and catering industry. To this end, R&CA seeks to provide feedback on changes to the *Liquor Licensing Act 1997*.

Generally, R&CA believes a majority of the amendments will strengthen liquor licensing and reduce red tape. Establishing a separate licence class for restaurants and caterers and removing conflicting and duplicative processes with local councils will minimise delays associated with development applications and approvals.

However, R&CA believe the Government has missed a significant opportunity to streamline approval processes for small hospitality operators seeking to provide alcohol ancillary to a

<sup>1</sup> Australian Bureau of Statistics (2014) 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015

<sup>2</sup> Australian Bureau of Statistics (2015) 8501.0 Retail trade – Australia Table 11: Retail Turnover, State by Industry Subgroup, Original

<sup>3</sup> TBR (2016) *The Australian Night Time Economy 2009-2014 Federal, State and Key LGAs*, p30

meal without an authorisation. The proposal to breath-test responsible persons on duty is also at conflict with the objectives of the review and current workplace health and safety laws in existence.

Summarised below are key comments from the association with regards to the amendments:

## CATEGORIES OF LICENCE

### **Recommendation 9: Dedicated Restaurant and Catering Licence**

R&CA welcomes the establishment of a separate Restaurant and Catering Licence. R&CA believes this change will better reflect the operating nature of cafes and restaurants in SA, while allow operators to better meet the needs of customers when serving alcohol on- and off-premise (caterers).

However, R&CA believes the Government has missed a significant opportunity to reduce red tape for small cafe and restaurant operators by not removing the requirement for a Section 34(1)(c) authorisation (alcohol ancillary to a meal). R&CA estimates that around 80 per cent of liquor licence applications for a restaurant include a Section 34(1)(c).

R&CA believes retaining Section 34(1)(c) represents significant red tape for small hospitality operators, yet similar red tape has been removed from other high-risk licence classes i.e. Recommendation 17 – removal of the requirement for hotels to provide meals during certain hours. The Hon Tim Anderson QC even indicated “*the decision to trade at specific times and whether to provide meals should be a business decision based on the demands of market competition, not a matter of statute*”.

If it is truly the government’s intention to recognise cafes and restaurants as low risk venues and reduce administrative burden, the Government will remove the Section 34(1)(c) requirement as recommended by the Hon Tim Anderson QC.

Recognising the concern that the removal of the authorisation may lead to pseudo restaurants operating as late night drinking venues, consideration may be given to requiring operators to ensure that their predominant focus remains ‘*the provision of meals*’ during the hours of trade where alcohol is available for purchase.

### **Recommendation 11: Small venue licence**

R&CA supports the amendment of the Act in accordance with Recommendation 9 of the review. R&CA believes it is important patron capacity is maintained at 120. While R&CA supports the expansion of the Small Venue Licence (SVL) to include North Adelaide, R&CA notes the Government’s intention to defer this decision until after a review has been conducted.

R&CA would however highlight members have indicated there is demand for a SVL in certain metropolitan precincts. R&CA is of the view that SVLs should be considered on merit where operators can demonstrate appropriate demand exists.

## TRADING CONDITIONS

### **Recommendation 16: Public Holiday trading**

R&CA fully supports the removal of trading restrictions on Sundays, Christmas Day, Good Friday and New Year's Eve. R&CA believes the amendment may provide further incentive for operators to consider trading on these days. R&CA subsequently supports Recommendation 24; a standard automatic extension of Nominated Trading Hours until 2.00am on New Year's Day.

### **Recommendation 18: Designation of areas**

R&CA fully supports the removal of designated dining areas as outlined in Recommendation 18. R&CA believes the change will provide greater operational flexibility. However, R&CA would seek greater consistency between venue licence types by removing the requirement for patrons to be seated while consuming alcohol in outdoor dining areas of restaurants and cafes.

## ANNUAL LICENCE FEE

### **Recommendation 36: Changes to annual licence renewal fee structure**

R&CA notes the government's intention to review annual licence fees, and that consultation on this fee will occur when the regulations are to be drafted. However, R&CA seeks to ensure that the low-risk nature of cafes, restaurants and caterers is duly recognised through the fee structure. For example, R&CA believes there is disparity between the fee proposed for small bars (\$250) and a restaurant of similar capacity (\$375), given the primary purpose of a restaurant is the provision of food. If the annual fee is to truly reflect the level of risk associated with certain venue types, venues where the focus remains the provision of food should not be subject to higher licensing fees.

### **Recommendation 44: Exempt BYO restaurants, cafes and tourism operators from late trading fees**

R&CA supports reduced regulation for low-risk BYO cafes and restaurants. However, R&CA's concern remains that the risk profile of these venues changes when late night trading occurs and operators are not required to meet the same principles of harm minimisation as licensed venues. The concern remains that requiring patrons to 'self-regulate' their own service of alcohol often does not occur and in fact is more likely to lead to patrons consuming more when bringing their own. BYO restaurant/venue staff need to mitigate this risk appropriate RSA training to be able to identify and appropriately intervene if a situation arises.

## PLANNING AND LIQUOR LICENSING REGIME OVERLAP

### **Recommendation 69: Ability of council to object to matters dealt with at planning level**

R&CA strongly believes that local councils should not have the right to object or intervene in a liquor licence approval if planning consent has already been granted. Current loopholes provide an alternative avenue to which councils and residents can interject and slow approval processes. Subsequently the association supports Clause 53, New Section 77(3).

## COMPLIANCE AND ENFORCEMENT

### **Recommendation 107: Alcohol and drug testing of responsible persons**

R&CA adamantly objects to the creation of Part 9 Division 5 of the *Liquor Licensing Act 1997*. R&CA questions the legitimacy and parity derived from regulators having the ability to conduct alcohol and drug testing in the hospitality industry, yet not prescribe the same level of compliance in other industries that have similar duties of care (health care, SAPOL and child care for example).

Under this requirement, a sommelier or cellar door licensee, for example, would be in breach of the Act if he/she samples wines when interacting with diners or tourists. This amendment will in fact create greater regulatory burden and reduce flexibility for operators, which is inconsistent with the objectives of the review. Further, the industry is unaware of any evidence to suggest there are considerable instances of malpractice to warrant such a legislative change.

Sufficient obligations already exist under work health and safety law requiring licensees to ensure their staff do not perform work while under the influence of alcohol or drugs. Given sufficient state-based legislation exists to prosecute employers that breach their obligations, the responsibility to implement and enforce a company's policies and procedures regarding alcohol and drugs is the responsibility of the licensee, not an area for further government intervention. R&CA advocates *Clause 88- New Part 9 Division 5* be removed.

I would welcome further consultation on the above mentioned amendments to the *Liquor Licensing Act 1997*.

Yours faithfully,

**John Hart**  
**Chief Executive Officer**