



Review of:

**The Late Night Trading Code of
Practice**

The General Code of Practice

**Submission by the Australian Hotels
Association (SA Branch)**

10 March 2015

Introduction

The Australian Hotels Association – South Australian Branch (AHA|SA) welcomes the opportunity to provide its submission to the review of the two Codes of Practice under the Liquor Licensing Act 1997:

1. Late Night Trading Code of Practice
2. General Code of Practice

The comments in the submission complement those provided in person at the meeting between the AHA|SA and the Internal Consultancy Services Group of the SA State Government on Friday 27 February 2015.

Background

The AHA|SA represents a diverse range of hospitality focussed businesses that include traditional metropolitan and regional hotels, smaller bars and taverns, accommodation specialists, late night entertainment providers, functions centres, dining specialists and tourism destinations.

The Late Night Trading Code of Practice impacts AHA|SA members whose venues operate beyond 3am as well as those which only operate a gaming room only beyond 3am. The General Code of Practice impacts all licensees.

At the time of the development and introduction of the Late Night Trading Code of Practice in late 2012 the AHA|SA provided a full submission to the State Government. The AHA|SA was pleased to see a number of its concerns addressed in subsequent amendments and also welcomed the amendment requiring this review of this Code after twelve months.

General Comments

The AHA|SA and its members recognise that liquor is a specialised product which by its nature requires more regulation than other basic goods and the AHA|SA supports the General Code of Practice and the Late Night Trading Code of Practice as introduced.

The AHA|SA and its members have responded constructively to the introduction of both Codes, have adjusted their business practices to meet the requirements and the AHA|SA continues to work with its members to ensure that requirements under both Codes are met.

A number of other measures to address anti-social behaviour were implemented at the time the Late Night Trading Code of Practice was introduced. These included:

- an increased visible police presence in late night economy precincts
- increased information and public transport services by Government
- changes to taxi ranks

As well, amendments to the Liquor Licensing Act 1997 (The Act) dealing with patron behaviour were made in the middle of 2013. The Commissioner's powers were strengthened and the expiation fee for those who behave in an offensive or disorderly manner in (or in the vicinity of) licensed premises was increased from \$160 to \$500. The definition of intoxicated was also expanded to include both liquor and other illicit substances and the objects of The Act were modified to focus on minimising risk.

This range of common sense measures and amendments to The Act were supported by the AHA|SA. As a consequence however it is now almost impossible to disentangle one measure from another and to singularly evaluate which, if any, has been more or less effective than another.

In conducting this independent review the AHA|SA urges the Internal Consultancy Group to ensure that all recommendations and in particular any consideration of tightening conditions on licensees is firmly evidence based. The AHA|SA and its members will not accept further restrictions on trade based on anything else.

It is also disappointing to see from time to time what can only be described as 'pedantic policing' by Licensing Enforcement Branch staff and a lack of common sense application of the intention of The Codes. More detail will be provided when discussing each Code, suffice to say the hotel industry will quickly lose its goodwill should a common sense and reasonable approach not be taken to the application and enforcement of both Codes of Practice.

Review of the Late Night Trading Code of Practice

The Late Night Trading Code of Practice (LNC) does not impact the majority of AHA|SA members. Most however are supportive in principle with the purpose of the LNC and those directly affected have accepted the majority of the requirements as being reasonable. AHA|SA and its members have cooperated with the Government, SAPOL and others in ensuring a smooth transition to the LNC's provisions.

Some, including the huge and popular HQ (Newmarket Hotel) had already made a commercial decision to introduce a number of the security and safety provisions set out in the LNC such as polycarbonate glassware, CCTV and ID scanners prior to the LNC's introduction.

The AHA|SA acknowledges the co-operation of the Liquor and Gambling Commissioner in providing common sense exemptions to those venues who only wanted to operate their gaming rooms after the 3.00am Late Night Restricted Entry provisions (Part 4 Para 12) and who did not want to open any other part of their venue.

The AHA|SA also acknowledges the work undertaken to provide case-by-case exemptions for those venues that operate as specialty 'sports venues' to allow entry after 3.00am in order to host events such as the soccer World Cup. This kind of common sense approach assists in promoting a good working relationship between venues and government.

The AHA|SA provides the following specific comments on the Late Night Trading Code of Practice.

1. The Adelaide Casino

The single most contentious element of the LNC continues to be the exemption of the biggest bar in town, The Adelaide Casino from the 3.00am Late Night Restricted Entry provision. It remains unreasonable and illogical that the Casino, in the heart of the late night precinct, is not included and as a part of this review the AHA|SA urges the Internal Consultancy Group to recommend its inclusion. Licensees firmly object to having to meet the LNC while the Casino does not and there is simply no evidence-based reason to leave it out.

2. Evidence Based Review

Based on media reports it would appear that the LNC has achieved some success in reducing anti-social behaviour and violence and of course the AHA|SA welcomes this.

This success has variously been reported in articles about decreased crime in the late night precinct around Hindley Street as well as reductions/changes in times and numbers of hospital admissions (sometimes contradictory).

Anecdotal evidence has also been heard by AHA|SA at various precinct meetings about the positive and negative impacts of the introduction of the LNC on daytime and night time traders and on the precinct in general. AHA|SA members have reported reductions in patronage, changes to the times people come to venues, reductions in revenue as well as increased pre-loading.

As discussed at our 27 February meeting the AHA|SA assumes that examination of evidence based data will be included in this review. The AHA|SA contends this should include police and hospital data and contain the location of incidents and times and types of hospital admissions as well as source of alcohol. If the introduction of the LNC has simply shifted the times of admissions to hospital for example (as one media report indicated) then any further onerous restrictions on trade would be both unwarranted and ineffective.

Reports by AHA|SA members also suggest that there has been an increase in pre-loading as a result of the introduction of the LNC. If this is the case it does nothing for safety and penalises licensed premises and not the source of alcohol or patrons.

The AHA also urges examination of locations of incidents. It is common knowledge that a number of tragic “coward’s punch” crimes have occurred well away from licensed premises by people who have not been into licensed premises. It is important when aiming to reduce these awful incidents in an effective way that the real causes of the problems are determined and acted upon. This should include pre-loading and the effect of illicit drugs.

The AHA|SA strongest recommendation is that without strong evidence, with the exception of the inclusion of the Adelaide Casino into the 3.00am ‘lockout’ no changes should be made to the Late Night Code of Practice. Licensees have accepted it and there is simply no reason to place further restrictions on them and their businesses.

3. Part 6 of the Late Night Trading Code of Practice

Provisions of Part 6 of the LNC currently apply only to those venues that trade between 4.01-7.00am (or to close). These include:

- Clause 15 Restrictions on liquor supplied free of charge
- Clause 16 Restrictions on the sale and supply of beverages promoting rapid or excessive consumption
- Clause 17 Restrictions on the use of Glassware

The AHA|SA is aware that at the time of developing the LNC this commencement time of 4.00am was due to then existing provisions of The Act (Section 11A) which allowed the Commissioner to publish Codes of Practice:

- (fa) to impose special requirements for the sale of liquor for consumption on licensed premises between 4 am and 7 am on any day for the purpose of reducing alcohol-related crime and anti-social behaviour;

This time-based clause of The Act has since been amended and The Commissioner consequently has much broader powers with regards to Codes of Practice and their provisions.

As a result of the changes to The Act and this review, the AHA|SA expects one consideration of the State Government will be the winding back of those provisions which currently commence at 4.01am to, it is assumed, line up with the Late Night Restricted Entry commencement time of 3.01am.

If a change is contemplated the AHA|SA could accept that 3.01am would be consistent with other provisions of the LNC, however would strongly oppose any wind back prior to 3.01am.

4. Use of Closed Circuit TV (CCTV)

Part 5 Section 14 of the LNC details the use of CCTV. Paragraph (8) refers to the powers of an authorised officer to request the CCTV footage.

- (8) The licensee must ensure that the visual recordings and any information relating to the visual recordings is made available as soon as practicable upon the request of an authorised officer acting in the acting in the course of his or her official duties (noting that the authorised officer must identify the date, time and location of the premises to which the request relates as well as the reason for the request).

The Liquor Licensing Act 1997 in Part 9 sets out the Special Powers and Enforcement. Division 1, Section 122 sets out the Powers of authorised officers.

- (1) An authorised officer may, at any reasonable time, do 1 or more of the following:
- (a) enter, remain on and inspect licensed premises (and, if entry is refused, may employ such force as is reasonably necessary to gain entry);
 - (b) require any person (whether on licensed premises or otherwise) who has possession of books of account, records required to be kept under this Act or any other records relevant to a business conducted under a licence, or to transactions involving the sale or purchase of liquor, to produce those books of account or records for inspection;
 - (c) examine, copy or take extracts from such books of account or records;
 - (d) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
 - (e) require any person who is in a position to provide information relating to the sale, purchase or supply of liquor to answer any question put by the authorised officer on that subject;
 - (f) require any such person to state his or her full name and address and date of birth.

The AHAISA has been advised of a number of instances where authorised officers have seized CCTV footage without a specific incident in mind and then used that footage to take disciplinary action about sometimes minor issues.

The AHAISA is also aware of instances of venues being told to install CCTV systems citing the LNC even though there is not a legal requirement under The Act to do so.

While not in any way condoning breaches of either the LNC or The General Code of Practice it is simply unreasonable to use CCTV footage to conduct what is really a fishing expedition and engenders no confidence or goodwill between venues and those officers. We are aware of some venues, that currently have CCTV for safety reasons but have no legal requirement to do so, considering turning it off. This is obviously not in the best interests of safety.

The AHAISA recommends that the opportunity is taken now to amend The Act and to include a provision similar to that in the LNC, stating that authorised officer must identify the date, time and location of the premises to which the request relates as well as the reason for the request.

5. Drink Marshals

Part 3 Section 10 of the LNC sets out requirements for Drink Marshals at premises which trade between 3.00am and 7.00am and have a capacity of more than 200.

10 Drink Marshal

- (1) Between 12.01 am and 7.00 am or closing time (which ever is earlier), the licensee must ensure that at any given time, at least one person who is approved as a Responsible Person under the Liquor Licensing Act 1997 is performing the duties of a drink marshal.
- (2) The duties of a drink marshal are to monitor compliance with section 108 of the Liquor Licensing Act 1997 and the Liquor Licensing General Code of Practice and, in particular, to monitor the behaviour and alcohol consumption of customers to reduce the likelihood of incidents of intoxication and/or disorderly, offensive, abusive or violent behaviour on licensed premises.
- (3) The drink marshal must patrol the whole of the licensed premises accessible to and occupied by customers, and must alert bar and serving staff to any concerning behaviour that is taking place by customers on the licensed premises.
- (4) If the drink marshal suspects that a person is intoxicated or observes someone behaving in a disorderly, offensive, abusive or violent manner, he/she may exercise the powers that they have under the Liquor Licensing Act 1997 as a Responsible Person or they must immediately report this to the licensee or manager/supervisor on duty for appropriate action to be taken.

Section 11A (7) of The Act provides an exemption for a Responsible Person who is performing a 'prescribed function' under the LNC from the operation of the Security and Investigation Industry Act 1995 and the requirement to be licensed as a Crowd Controller.

- (7) A person is, in relation to the performance of a prescribed function under a code of practice, exempt from the operation of the *Security and Investigation Industry Act 1995*.

This 'prescribed function' is generally interpreted as performing the duties of Drink Marshal under the LNC. The AHA|SA submits all staff at all times are, and should be, monitoring patrons as part of their general duties. Therefore the AHA|SA submits that any employee who is monitoring patrons and/or any employee who is an 'authorised person' as defined in Section 4 (a) and (b) should also be exempt and would support an amendment in this regard.

The General Code of Practice

The AHAISA and its members support The General Code of Practice (GC). As with the LNC members have embraced the Code and the AHAISA continues to work with them to ensure compliance, including assistance with the development of Management Plans.

The AHAISA does not recommend any major changes to the GC but provides a comment on general application and 'housekeeping'.

1. General Code - Part 2 – Required Training and practices

The AHAISA supports the requirements for Responsible Service of alcohol training. However, as reported at our meeting, it is disappointing from time to time to see what can only be described as ‘pedantic’ policing of this requirement.

In the case in point, a receptionist at a venue with accommodation was asked if she had had Responsible Service of Alcohol training as she was, in effect, responsible for the minibars! This is a patently ridiculous application of the GC. Quite apart from the fact that this staff member dealt with customers only at check in and check out, it is unreasonable that she would be responsible for the consumption of alcohol from private guests while in their rooms.

Following this logic, one could expect that a night security guard might need such training, or perhaps each and every one of the 100’s of staff working in housekeeping in large accommodation hotels.

The AHAISA recommends that as well as suggesting to police in Licensing Enforcement Branch (LEB) that a common sense approach be taken that an amendment is made to the GC to include an exemption from Responsible Service of Alcohol Training for those staff who have no areas of responsibility which involve the direct service of alcohol.

Conclusion

The AHA|SA and its members have adjusted their business practices to meet the requirements of both the Late Night Trading Code of Practice and The General Code of Practice.

Apart from removing the exemption from the Restricted Late Night Entry provisions for The Casino and some housekeeping matters the AHAISA does not recommend any major changes to either Code as part of this Review.

While welcoming any reductions in anti-social behaviour since the introduction of the LNC, the AHAISA would not accept any further tightening of licence conditions through The Codes unless these are strongly evidence based. In this regard the AHAISA recommends thorough examination of all available data.

The AHA|SA thanks the Internal Consultancy Group for the opportunity to meet to discuss the review and provide its written submission.

Should you wish to discuss any aspect further please contact Ian Horne or Wendy Bevan on 08 8232 4525.