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27 April 2015

Legislative Services
Attorney-General's Department
GPO Box 464
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Dear Sir / Madam

LIQUOR LICENSING (ENTERTAINMENT ON LICENSED PREMISES) AMENDMENT BILL 2015

The AHA|SA welcomes the opportunity to comment on the above Draft Bill.

The Government's intention to remove the requirement for separate entertainment consent for licensed premises that wish to provide entertainment before between 11am and midnight is welcomed and fully supported by the AHA|SA.

Licensed venues are critical to the success and development of the live music industry in this State. Hotels/pubs/clubs/taverns/nightclubs host the overwhelming majority of live music with more than 76% of all APRA/AMCOS receipts from live music venue expenditure coming from these licensed premises. Providing simple ways for venues to provide entertainment and give live musicians the best opportunities to gain exposure is also supported by the objects of Liquor Licensing Act 1997 set out in section 3(1)(b).

The requirement for specific entertainment consent has been a major complaint of AHA|SA members and has been raised time and time again as the single biggest barrier currently facing venues wanting to include live music or other entertainment as part of their offering.

Ideally, the AHA|SA would like to see removal of the need for entertainment consent altogether rather than just for that held between 11am and midnight (except for Prescribed Entertainment). The AHA|SA however recognises the need to balance the right to trade with the reasonable expectations of those who reside near licensed premises. The AHA|SA also recognises that this proposal is consistent with various Liquor Licensing Court and Full Court decisions relating to noise and disturbance and provides a level of consistency between hotel and small venue licence holders. The AHA|SA therefore supports the rationale of the proposed amendment.

The AHA|SA understands that amenity is important, especially in areas of potential conflict between residents and venues providing entertainment. This proposed Bill adequately addresses this balance between residents and venues at this time. It allows any venue to provide entertainment between 11 am and midnight while also providing residents, via Section 106 of the Liquor Licensing Act – "Noise 106—Complaint about noise etc emanating from licensed premises", the opportunity to raise concerns about unreasonable disturbance *once* it has occurred rather than by pre-emptively preventing all entertainment .

That said, after this Amendment has had time to 'prove itself', given the protections afforded via Section 106 of The Act, the AHA|SA will continue to advocate for removal of the need for entertainment consent altogether, especially in the CBD and main entertainment precincts.

Residents and others also retain their rights through local council planning requirements. While the planning process may result in significant delays and/or impose obligations, it is arguably better for an operator who is seeking to establish a venue to fully understand the conditions before the venue is constructed or converted into a licensed premise where entertainment is proposed, rather than find that conditions are imposed later when obtaining the liquor licence.

The AHA|SA would support strengthening 'first occupancy' rights in both the proposed section 105(3)(b) and the existing section 106 (6)(b) criteria, as well as the primary use of specific precincts.

In the CBD the role of live music and entertainment more broadly in providing an active night time economy, a vibrant city and critical employment and business opportunities should be paramount. In areas such as Rundle Street and Hindley Street for example, the AHAISA would consider that the reasonable hosting of entertainment should be prioritised regardless ultimately of who was 'there first'. This principle should also be considered beyond the CBD.

While AHA|SA recognises the stated intention of the Adelaide City Council to promote vibrancy it must be recognised that these intentions (and associated noise attenuation criteria for development in the Adelaide (City) Development Plan) are not universal to all councils and that pressure from rate paying local residents can be strong.

In fact the Adelaide Council has been itself party to imposing conditions which could be considered anti 'live music', particularly in some of the precincts in their area. A recent example of this is "La Buvette Drinkery", a Small Venue in Gresham Street, Adelaide. Despite the State Government's apparent intention of the Small Venue Licence to promote a vibrant live music culture in the CBD, and despite the fact that Small Venues do not require entertainment consent, this venue has a specific condition on its licence that prohibits all live entertainment except background music!

The role of Planning and Local Government

The AHA|SA recognises that existing conditions applied to licences via the planning process will remain. While this is not ideal they are reluctantly accepted as having been applied in instances where such conditions are or were warranted. In some cases however these conditions were imposed many years ago and the nature of the activity of the venue has changed.

For example in the case of the Watermark Hotel at Glenelg (formerly known as "Lenny's"), there are several pages of conditions, some imposed as part of the development process, other imposed through conciliation in the 1970's and 1980's when the venue was a major entertainment venue. It is now however predominately a dining venue and some conditions are unreasonable.

The AHA|SA is concerned that irrespective of the proposed amendments the ability of licenced premises to provide entertainment, live or otherwise, may be thwarted at the whim of the particular local council involved. It may also lead to premises on opposite sides of a main road having different requirements simply because they are on the boundary of two local government areas.

Many live music venues are situated in mixed use precincts on main arterial roads but not in the central CBD. Suburban councils have a significant role to play in supporting music in local precincts and it would be unacceptable if the intention of this Amendment is thwarted by local councils using planning approvals in the absence of liquor licensing requirements.

One most recent example is the application by Greater Union for a Special Circumstances Licence on Partridge Street Glenelg. Conditions of the proposed Licence state:

“NO UNREASONABLE SOUND LEVELS SHOULD BE EMITTED FROM ANY SOURCE OR DEVICE ON THE SUBJECT SITE SO AS TO IMPAIR OR IMPINGE UPON THE ENJOYMENT OF OCCUPIERS OF ADJOINING PROPERTIES.” http://www.cbs.sa.gov.au/assets/files/GLENELG_Partridge_Street.pdf

This condition, applied to all sound levels, contains extremely subjective terms such as ‘unreasonable’, ‘impinge’ and ‘enjoyment of occupiers’ and will do nothing to support a vibrant main street culture.

While recognising the need for amenity for local residents, these proposed Amendments regarding the need for entertainment consent will be meaningless if local councils apply conditions such as these to licences. The Liquor Licensing Court in a recent decision likened licence conditions to a contract which must be capable of being understood and capably of being enforced. Vague terms whether they be general licensing conditions or conditions specific to the provision of entertainment should not be couched in such vague terms that are capable of undermining the proposed *“unlikely to give undue offence to people who reside, work or worship in the vicinity of the premises”* (105(3)(b)).

The AHA|SA is committed to working with the Liquor and Gambling Commissioner and assisting our members - who will need to comprehend the complexities of their current conditions - and fully supports the legislative framework provided in the proposed Bill to transition to the proposed licensing conditions for entertainment provided between 11 am and midnight.

We also support the Commissioner’s proposed ability to vary licence conditions on his or her own motion and would be concerned if our members where required to pay fees to remove redundant conditions. This Amendment is a critical first step.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Horne', written in a cursive style.

Ian Horne
General Manager