



Distilled Spirits Industry Council of Australia Inc.

25 September 2013

Dr. Richard Chadwick
General Manager,
Adjudication Branch,
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Dr Chadwick,

RE: Authorisations A91224 & A91225 by the State of Queensland acting through the Office of Liquor and Gaming Regulation (OLGR)

The Distilled Spirits Industry Council of Australia (DSICA) welcomes this opportunity to make a submission on the interim application. DSICA made several submissions for the original granting of Authorisations A91224 and A91225 in 2010 (attached). Many of our original objections still stand.

DSICA has long supported the use and operation of local liquor accords in all Australian jurisdictions. We believe that liquor accords provide the opportunity for local solutions to be found to local problems and issues, so providing much needed flexibility and timeliness in responding to emerging problems. However, we have always been mindful of the potential anti-competitive nature of such discussions and potential arrangements between competitors. We also have been mindful of the potential for consumers' choices to be restricted through the accords at the suggestion of licensing regulators and the Police.

Much of the Queensland OLGR's current PLAA is fully supported as reasonable suggestions for licensed venues to agree to abide with.

We have a number of criticisms of the operation of the current PLAA and the application by OLGR for what is in effect an extension of the authorisations.

"Free The Spirit"

The new authorisation should not be for the proposed period of five years. DSICA believes that if ACCC grants a new authorisation, it should be for another three-year period. Our reason for this is that to our knowledge the OLGR application is the only time when the operation of the Pro-forma Liquor Accord Arrangement (PLAA) is examined. Five years is too long a period between assessments of the PLAA's effectiveness and operation.

The establishment of explicit price controls (i.e. setting a minimum price per standard drink) by the Townsville CBD liquor accord and the Whitsunday liquor accord was not encompassed by the original authorisation. DSICA believes that the Townsville CBD and Whitsundays liquor accords are examples of the dangers to competition presented by the original authorisation. These accords interpreted the PLAA as authorising the setting of minimum prices and they did so in preference to other clearly included ways to cooperate on venue promotions.

The PLAA provided clear alternatives to setting an explicit minimum price per spirit drink. Accord members could have agreed to banning or restricting extreme discounts or agreed not to have promotional discounts of limited duration. DSICA notes that extreme discounts in the PLAA definitions include half-price drinks. Several of the organisations supporting the Townsville minimum price scheme refer to promotional 2-for-1 specials, i.e. for half-price. DSICA also notes that a happy hour is a discount of limited duration.

The PLAA also provides authorisation for accord members to cooperate in their marketing so as to avoid promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state.

DSICA also notes that page 19 of the application clearly shows that the spirits minimum price applied outside of the promotional hours or days before public holiday and was in fact a permanent feature across all trading hours. That does not fit with the accord supporters claimed justification that the problem to be solved was around certain days and times.

Reading the supporting statements referring to the Townsville CBD liquor accord, it is clear that the liquor accord introduced the minimum price for spirits in response to competitive marketing activities between several venues to provide rival happy hours. These happy hours tended to be sequential rather than concurrent, so drinkers could utilise several in succession at rival venues and so drink cheaply for long periods of several hours. This was accompanied by unacceptable standards of behaviour and violence in and around these venues within the Townsville CBD. How much of this behaviour was a result of the consecutive happy hour promotions is clear, but it is reasonable to assume that they would at least have played some role.

DSICA also notes that the Townsville and Whitsunday liquor accords only set minimum prices for spirits and not for other products such as beer, wine or cider. DSICA questions why the accord members collectively agreed to curtail their spirit 2-for-1 promotions and not instead include price specials on other product categories.

The application goes to some lengths to provide supporting statements from the members of the Townsville CBD liquor accord that their minimum price arrangement should not be curtailed under a re-authorisation; however DSICA notes that numbers of recorded alcohol assault type complaints lodged with OLGR has not altered significantly during the trial periods. In fact, there was a significant increase from the prior comparable period before the minimum price arrangement began (eight complaints, five requiring enforcement action compared with 14 complaints, seven requiring enforcement action). There is no independent statistical basis for arguing that the spirits minimum pricing in Townsville CBD led to a public benefit. Similarly, the Whitsunday accord members found that the minimum price arrangement had made no significant impact on behavioural issues surrounding alcohol abuse within that accord.

Conditions attached by the ACCC in the granting of the original authorisation should have precluded this explicit minimum price arrangement between rival venues through explicitly banning the setting of prices by accords. DSICA notes that within business in general, collusion between competitors on prices is highly attractive in terms of reducing price competition and increase profitability.

As noted above, DSICA is generally supportive of liquor accords. We do not wish to impede sensible cooperation between licensed venues to manage alcohol abuse related social problems and issues.

We remain concerned at OLGR singling out some drinking practices and drinks of very high alcohol and carbonated spirit drinks for specific restraints under the PLAA. That approach in some ways diminishes the RSA responsibilities on licensees. If the PLAA is re-authorised, the setting of prices for drinks should be explicitly and categorically excluded from being protected. The incentives for licensees to interpret the PLAA loosely enough to justify price setting are too great.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Riden', with a stylized flourish at the end.

Stephen Riden
Research and Communications Manager