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Review of Liquor Licensing Act

You will no doubt be aware of the review of the South Australian Liquor Licensing Act prepared by the Honourable Tim Anderson QC for the Government of South Australia.

Mr Anderson delivered a lengthy report to the Government dated 29 June 2016 which has since been made public.

The report makes 129 recommendations as to possible changes to the liquor licensing regime in South Australia.

The State Government has since responded publicly supporting the vast majority of those recommendations.

A draft Bill to amend the Liquor Licensing Act has now been released. Public consultation is open until 6 January 2017.

What we would say is that if you are contemplating making application to the Liquor and Gambling Commissioner for a liquor licence or variation to an existing licence, then you should not presume that your application will be easier to achieve under any proposed new legislation. Indeed if the recommendations of Mr Anderson are adopted, then certain applications are likely to be more involved and time consuming.

If you are contemplating such an application we would recommend that you seek advice sooner rather than later, instead of waiting to see what might come of the recommendations in the Anderson report.

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Small Bar? Hotel? Which liquor licence?

One of the recommendations of the Anderson report was to extend the reach of the Small Venue Licence beyond the CBD to include North Adelaide.

The State Government has announced that it is not in favour of extending that licence type beyond the CBD at this stage.

There has been some public concern expressed in the media by a range of parties that “small bars” should be allowed in the suburbs and beyond.

There is no barrier to a small bar being granted a liquor licence outside of the CBD. The Small Venue Licence can only be granted in the CBD.

If an applicant can show that there is a public need for the grant of a new Hotel Licence for a “small bar” outside of the CBD, then there is no reason why a Hotel Licence cannot be granted for a small bar across the State.

There are of course certain obligations that go with the rights of a Hotel Licence under the current Liquor Licensing Act.

The clear difference here is that there is no impediment to the grant of a Liquor Licence for a small bar outside of the CBD. Proof of public need for the grant of a new Hotel Licence or such a small bar proposal may well be a viable proposition depending upon the availability of other licensed outlets in the locality.

Again, it may be that the test for the grant of a new Hotel Licence is more difficult to achieve under the anticipated change to the Liquor Licensing Act, which we await with much interest.

Licence conditions for entertainment - who can you trust?

As we have reported previously, in December 2015 changes were made to the Liquor Licensing Act. Any “entertainment conditions” restricting the nature of entertainment activity provided by a licensee were effectively cancelled between 11.00am and 12 midnight. The Commissioner has not reviewed and updated all licences at this stage. The effect of this is that you cannot rely on the conditions listed on a liquor licence to determine what entertainment can or cannot be provided at licensed premises.

Application can be made to the Commissioner to have conditions updated. We would be happy to assist licensees with such applications.

Licensees should be aware that any restrictions on activities which stem from planning and building approvals must still be complied with and that licence conditions cannot “override” any limitations imposed by the planning regime.

Licensees providing ‘prescribed entertainment’: urgent action required

You might recall that in December 2015 the Liquor Licensing Act was amended to allow for licensees to provide entertainment between the hours of 11.00am and 12 midnight without the need for an Entertainment Consent granted under the Liquor Licensing Act.

Despite the changes to the Liquor Licensing Act, venue restrictions imposed under the Development Act or other legislation still apply.

The other change brought in at that time was that the consent of the Licensing Authority was still required for licensees to provide “prescribed entertainment” which includes entertainment of a sexually explicit nature, a professional or public boxing or martial arts event, or other entertainment prescribed by the Regulations.

The Liquor and Gambling Commissioner has allowed licensees a “grace period” of 12 months expiring in December 2016.

If you are a licensee who provides entertainment of that nature then you must make application to the Commissioner as a matter of urgency to ensure that your ability to provide that entertainment continues beyond December this year.



Liquor licence capacities

A reminder that the Liquor and Gambling Commissioner is now prepared to revisit capacities imposed on liquor licences based on advice from a Council, Architect or Building Certifier.

There is now scope to combine capacities for separate areas, and to increase capacities previously set by the Commissioner, based on such expert advice.

Until such time as capacities are varied by the Commissioner, a licensee is still obliged to comply with those capacities, and is at risk of prosecution or disciplinary action for any breach.

Gaming machines

The Liquor and Gambling Commissioner continues to conduct occasional trades in Gaming Machine Entitlements.

The trend arising from those trading rounds is that the public "auction" price is gradually reducing over time.

Licensees should be reminded that if they hold a Gaming Machine Licence then they are entitled to participate in the Trading Rounds to buy and sell Gaming Machine Entitlements up to the maximum number of machines approved under their Licence.

The right to sell Entitlements in the trade may be limited by the terms of the lease in place. We can assist with advice as to the ability to sell in such circumstances.

Stamp duty cut on buying a licensed business

As of 1 July 2016, stamp duty is no longer payable on the purchase of a licensed business. The dreaded Gaming Machine surcharge was also previously abolished. Care should still be taken to ensure contracts deal with the stamp duty implications of a lease being transferred.

We welcome this reduction in costs associated with buying and selling licensed businesses in South Australia.

Heritage matters - or does it?

There has been recent discussion as to a proposed overhaul of heritage protection and regulation in South Australia.

We would expect legislative reform to proceed in conjunction with the changes to planning and development laws as described below. Our expectation is that any changes to heritage protection are likely to result in a freeing up of development opportunities for heritage listed premises.

Prospects for new gaming machine venues - social effect?

The industry is awaiting a decision from the Liquor and Gambling Commissioner on an application by a licensee to relocate its liquor and gaming operations to a new location.

As part of the requirements of the Gaming Machines Act the licensee was required to apply for the grant of a new Gaming Machine Licence, with the associated obligation to satisfy the "social effect" test under the Gaming Machines Act.

The Liquor and Gambling Commissioner is yet to deliver his decision on the application, however it will no doubt be received with much interest as the first decision of its kind under the new regime.

In recent weeks a regional licensee has applied to seek a "Social Effect Certificate" for a proposed new gaming machine venue in a regional centre.

Again industry will no doubt be looking on with much interest as to how the authorities deal with this latest application.

There has also been a proposal arising from the Liquor Licensing Act Review to look at its interaction with the Gaming Machines Act. Mr Anderson QC is likely to be asked to look into such matters.



Development Act becomes Planning, Development and Infrastructure Act

2016 saw the introduction of the Planning, Development and Infrastructure Act which is the first in a suite of legislative changes which will ultimately replace the Development Act in South Australia.

This new Act will overhaul the operation of the Planning and Development Regime in South Australia. This will see changes to Planning Policy and possibly some relaxation of planning restrictions currently in place.

There remains a lot of work to be done to implement the new Act which is expected to occur over a number of years. We will keep our clients and readers informed as to changes that may affect them.

Licensing Court disciplinary action

The Licensing Court continues to receive complaints from the Commissioner of Police as to the operation of licensed premises in breach of the Liquor Licensing Act.

Licensees should be aware of their obligations under their Liquor Licence.

It is also important to remember that there are also obligations under the General Code of Practice and also Late Night Trading Code of Practice for certain venues trading at later hours.

In particular, licensees should remember that they must ensure that staff are trained in responsible service matters and that there is an up to date Liquor Management Plan which has been communicated to staff as per the requirements of the Liquor Licensing Act.

Licensee companies - ongoing disclosure requirements

The Liquor and Gambling Commissioner is currently reviewing the way that applications for changes to a licensee company structure are approved.

The Commissioner is moving towards a process of approving individuals rather than company structures themselves.

The Commissioner is yet to publish guidelines as to how the new process is to be administered.

In the meantime licensees should remember that the obligations under the Liquor Licensing Act continue to apply and that it is an offence for a person to assume a position of authority in a licensee company without the approval of the Licensing Authority. That position of authority can include being a Director, Shareholder, Trust Beneficiary or Manager.

Smoking, dining and outdoor areas

2016 also saw changes to the Tobacco Products Regulation Act which resulted in further restrictions on where people can smoke in public areas.

It is now unlawful for patrons to smoke in public areas where food is made available.

There must be a clear and distinct delineation between areas where food may be consumed and where smoking is permitted.

Wineries and weddings - marrying up your approvals

There has been a growing trend for wineries and cellar doors to host weddings and other functions.

We have observed a growing tension between the traditional cellar door concept and the evolving needs of licensees and patrons.

The interaction between Development Act and Liquor Licensing Act entitlements and obligations can be problematic, especially in some wine regions. Licensees should ensure their function activities are authorised by their Development Act and Liquor Licensing Act authorisations.



Unfair dismissal and Workers' Compensation claims on the rise

Unfortunately, our employment and safety team has seen a rise in the number of employees challenging a decision to terminate their employment, despite the termination often being for valid reasons.

Employment law claims are not only limited to unfair dismissal. Increasingly, employees in this sector are challenging employer decision making by lodging workers compensation claims alleging unreasonable management action.

It is more important than ever that employers, regardless of size or industry, obtain specialist employment advice before terminating an employee. All too often our team are tasked with assisting an employer defend a lengthy, complex and expensive unfair dismissal and/or workers compensation claim, which could have been avoided by a 15 minute telephone call to obtain specialist advice prior to terminating.

Employee payslips and record-keeping

Many would be aware that certain "7-Eleven" operators are currently being prosecuted for alleged systemic underpayment of wages and falsifying of employment records. The legal requirement on employers to keep legally accurate employee records and payslips is in the spotlight.

However, many employers fail to appreciate that employee records and payslips are strictly regulated by the Fair Work Act. Not complying with those obligations can have significant consequences, including fines and prosecution.

As but three examples of commonly misunderstood requirements, did you know that by law:

- > Payslips must particularise superannuation contributions (not just wages)?
- > You must have a written record as to how the employment ends, including how it ended and the name of the person who terminated the employment?
- > In certain instances, an employee can direct that their employer must collate and provide time and wage records, going back as far as 7 years, within 3 days?

It is more important than ever that your payslip and record keeping is compliant. Please contact us for advice if you have any concerns in this regard.

Outdoor dining areas

You might be aware of a recent change in policy approach by the Liquor and Gambling Commissioner to allow patrons to stand while consuming liquor in outdoor dining areas on public pavements.

Licensees should be reminded that if there is a condition on their liquor licence which requires patrons to be seated, then that condition must still be complied with until such time as the Commissioner varies the condition on application by the licensee.

It might also be the case that Council as the owner of that land requires that patrons be seated to consume liquor.

It is important to remember that licensees must comply with both Council requirements under the Outdoor Dining Permit and the terms and conditions of their Liquor Licence.



Please contact us:

Please feel free to contact any of our experienced practitioners should you require any further detailed advice.



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What can we help you with?

- > All applications to the Liquor and Gambling Commissioner including new applications for, and variations to, licences, redefinition of licensed premises, extended trading authorisations
- > Representation and defence of Police complaints
- > Licensing Court actions
- > Supreme Court appeals from Licensing Court
- > Buying, selling and leasing licensed premises
- > Advice regarding applications for development approvals
- > Environment, Resources and Development Court appeals against development decisions
- > Advice regarding State and local heritage and regulated tree removals
- > Employment and industrial relations issues
- > Occupational health and safety issues
- > Entertainment consent
- > Gambling applications of various kinds, including gaming machines, Keno and TAB
- > Representation in courts and to relevant authorities
- > Outdoor permits
- > Smoking regulations
- > Taxation advice

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