

Article

HOSPITALITY & LICENSING

Licensee Update - Part 1

Avoiding Disciplinary Action

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In an industry where red tape is talked about in relation to nearly every aspect of the business, licensees are finding themselves under increasing pressure to remain compliant. With the introduction of management plans, codes of practice and the constant changes to these obligations, it makes it hard for licensees to keep up to date and comply with all the requirements brought about by so many rules and regulations under a raft of legislation. As the Office of the Liquor and Gambling Commissioner tend to do audits from time to time, we provide the following reminder to licensees of a few of the sometimes forgotten compliance issues of the *Liquor Licensing Act 1997 (The Act)*.

1. Changes to corporate structure

The first question to ask is, has there been a change to the structure of the licensee company? If so, Licensees should be aware that it is an offence to make any change to the structure of the licensee entity without the prior approval of the Liquor and Gambling Commissioner (**Commissioner**).

WARNING: Harsh penalties can apply if in breach.

Under the Act any person in a position of authority must be approved for that purpose. A person in a position of authority includes directors, shareholders and adult beneficiaries of a trust.

It also includes anyone who exercises (or is in a position to exercise) control or influence over the body corporate or who manages the business of the body corporate to be conducted under the licence.

If there has been a change and it is not noted on your licence, contact us to assist in having a revised corporate structure approved.

2. Profit sharing and unapproved agreements

The second question is whether the profits of the sale of liquor are shared with anyone not approved. Licensees should be aware that it is an offence to enter into any profit sharing or management type arrangement or agreement without the approval of the Commissioner. In cases where it is found that such arrangements exist, both the licensee and unlicensed person are guilty of an offence.

Such arrangements include where a licensee:

- enters into partnership with an unlicensed person in relation to the business carried on under the licence;
- enters into an agreement where an unlicensed person receives proceeds from the business carried out under the licence;

continued overleaf...

- remunerates an unlicensed person by reference to profits obtained from the business or by reference to quantity of liquor sold;
- permits an unlicensed person to manage or exercise control over the business.

A common arrangement which requires approval is that of agents who are remunerated by reference to the quantity of wholesale sales they make.

If you are unsure whether you have entered into such an arrangement or agreement or seek to have such an arrangement or agreement approved please contact us and we will discuss your business model with you.

3. Alterations and redefinition of licensed premises

The third question is, has any alteration been made to the licensed premises, or has the area where liquor is supplied changed? If yes, take note that if licensed premises are varied without approval of the Commissioner the licensee is guilty of an offence.

When applying for a licence, the Commissioner requires and approves a specific plan with clearly identified areas permitting sale and consumption of liquor.

If your premises has been altered, an application must be lodged to obtain the Commissioner's consent. If an alteration has already occurred that application needs to be lodged ASAP to avoid any potential disciplinary action. Licensees should be aware that the Commissioner can only approve alterations if all other approvals and consents, such as planning are in place.

What to do if you receive a complaint for disciplinary action?

Call us!!!

If you receive any complaint for disciplinary action from the Police or the Commissioner, no matter what the subject of the complaint, please feel free to call one of the experienced practitioners below who will be able to assist.

ASK US ABOUT OUR FIXED FEE OPTIONS!

DW Fox Tucker Lawyers may offer a fixed fee service - taking the guess work out of legal fees.



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