

hospitality

MULLINS

Mullins Lawyers

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CURT SCHATZ
EDITORIAL

This newsletter contains a couple of articles on very timely and important matters.

We have sought to cover matters of importance and interest to both the hotel and club sector.

In relation to the hotel sector, we have written an article about the small bars as a category of liquor licence created by the amendments to the *Liquor Act* that came into effect on 1 January this year.

These bars are of great interest to consumers and traditional licensees alike. Time will tell how they go and whether or not they are successful. There have been some mixed stories out of Melbourne about them.

In relation to clubs, the amending Bill producing some certainty regarding the entitlements for electronic gaming machines in clubs has been released.

We will see some activity as clubs without much use for poker machines seek to capitalise on the value of entitlements by transferring them to clubs who need them.

...difficult credit conditions, a seemingly ever increasing amount of licensee responsibility so far as compliance is concerned, and the impost of renewal fees on liquor licences...

This area of new law will present many challenges for clubs that wish to take advantage of the opportunity. My strong recommendation is that those clubs seek legal assistance if they wish to enter into any such arrangement.

I wanted to finish this editorial on a rather serious note by saying that there are many challenges facing the hospitality industry at the moment. These include difficult credit conditions, a seemingly ever increasing amount of licensee responsibility so far as compliance is concerned, and the impost of renewal fees on liquor licences on an annual basis, just to name a few. We have also seen the demise of several hotel groups.

Whilst this rationalisation may be seen as healthy, there are certain challenges to the stakeholders in the industry.

It is hoped that the economy will return to some form of equilibrium in 2010 and that the cost of compliance by a licensee with harm minimisation measures will have been absorbed by then, so most outlets can once again obtain a reasonable return on investment.

Our dedicated team remains ever ready to provide cutting edge commercial advice to the industry. I personally look forward to any enquiry of the team or myself. My direct line is (07) 3224 0230 and mobile 0417 773 242.

Entitlements for category 2 licensed premises

CURT SCHATZ

Most of you will be aware that the Queensland State Government intended to legislate to create entitlements for gaming machines for Category 2 Licensed Premises.

Moreover, these entitlements are transferable.

The Gaming and Other Legislation Amendment Bill 2009 makes provision for these entitlements.

Importantly, any transfer of an entitlement for Category 2 Licensed Premises does not have any effect until, and unless, the Gaming Commission approves the transfer. Additionally, an application for approval to transfer these entitlements can be made on either a permanent or temporary basis.

When a club seeks to purchase the entitlements, the consideration ought to be monetary, and must not give the transferor licensee a direct or indirect interest in or percentage or share of the gaming revenue from the transferee licensee's premises.

The Bill makes provision for variations to any arrangement to be applied for where the parties wish to vary the arrangement and the transfer has not yet taken place.

Where parties seek to transfer entitlements on a temporary basis, the period of the transfer must not be less than one year or more than eight years.

Where any application is made to transfer entitlements on a temporary basis, the approved number of gaming machines for all licensed premises to which the transferor licensee's licence relates must not be less than 30 - which is important to keep in mind if an application is sought under the sections.

Additionally, during the period of any temporary transfer, the transferor licensee must keep a register stating the number of entitlements involved, the name and licence number of the transferee licensee and other details.

If a gaming licence is cancelled, lapses or expires, the entitlements attaching to it will become entitlements of the State.

Similarly with operating authorities in hotels, entitlements cannot be encumbered.

Section 109ZJ of the Bill states "the Chief Executive must, within 2 years after the commencement of this section, start a review of the operation of the provisions of this Act relating to entitlements".

As with the hotel industry, the Government has stated it will review the success and/or process regarding entitlements to Category 2 Licensed Premises.

It will be interesting to see how clubs react to the opportunity to transfer these entitlements where there is a perceived benefit to the club.

Obviously it is still a Bill, so any document drawn now needs to take that into account and make appropriate provisions to protect parties' interests. This will require specific expertise. Please call me for any assistance.

Everyone's a fan of the bar... but what about the bar licence?

HOLLY WHITCROFT



During the process of drafting widespread reforms to the *Liquor Act 1992*, the potential to create a new licence type to allow small "boutique bars" was raised. One new licence is the new "Commercial Other – Bar Licence" ("bar licence").

The bar licence varies from other

licence types primarily because other licences stipulate that the service of liquor must be ancillary to the provision of another service, matter or activity. Under a bar licence however, no food, entertainment or activity is required to accompany the service of liquor. The only requirement is that the licensed premises seat no more than 60 patrons at any one time.

The objective of this new licence type was to enable similar venues and cultural hotspots as witnessed in Melbourne (ie the "laneway bars") to develop in Queensland. This is intended to add to Queensland's culture, fostering live music and allowing patrons to enjoy an alternate style of venue, away from the large-sized commercial hotels, taverns and nite-clubs.

The introduction of this new licence type has been somewhat controversial. One of the key issues in the controversy is the perceived advantages of a bar licence, given the low annual licence of \$516 (compared to \$2,784 for commercial hotel licences) and the absence of any requirement for food or entertainment, or for toilets to be on-site, which some hoteliers consider unfairly advantageous. It must be noted, however, that bar licences are subject to the same rigorous requirements faced by other proposed licensees, such as having to satisfy council requirements to obtain approval as a licensed venue and high fees for trading outside standard hours (10:00am to 12 midnight) which adds considerably to the cost of holding what was intended to be a cost-effective licence.

Another issue that attracts attention is that the premises must have a maximum seating capacity of 60 persons – the Act does not provide a maximum total capacity, only maximum seating capacity, which means a premises could arguably allow 80 persons on-site, so long as there was seating for only 60. It is noted however that the Office of Liquor Gaming and Racing ("OLGR") has endorsed a condition on those bar licences issued so far this year to the effect that only 60 persons, seated or otherwise, are permitted on the premises at any one time.

The process of applying for a bar licence is much the same as the procedure for applying for a commercial hotel licence.

The requirements of a bar licence application are:

1. Completion of the relevant application form;
2. Payment of the application fee (\$1,031 which is separate to the \$516 annual fee);

3. Appointment of an approved manager (which replaces the old concept of a nominee). The application fee to be endorsed as an approved manager is \$365;
4. Criminal history checks on relevant parties, for example on the individual licensees, or directors of the proposed licensee if it will be a company, and the approved manager (currently \$35.50);
5. Evidence that the person/s who will be in control of and operating the licence (which includes the licensee if it is an individual, and approved managers) have completed the Responsible Management of Licensed Venues course;



6. Evidence that the premises has town planning approval to be a licensed venue;
7. Lodgement of a Community Impact Statement ("CIS"), focusing on harm minimisation (this replaces the previous 'Public Interest Submission', and would involve drafting submissions to evidence that the premises would not adversely impact on the surrounding locality);
8. Lodgement of a proposed Risk-Assessed Management Plan ("RAMP") which requires a licensee to identify local conditions and risks and demonstrate what practices and procedures will be/are implemented at their premises to meet the *Liquor Act's* objective of harm minimisation;
9. Advertising the proposed use of the premises; and
10. Lodgement of ancillary documents including layout plan, location plan, proof of tenure in the premises etc.

The preparation of the application and its ancillary items, in particular the RAMP and CIS, can be difficult. It is necessary to ensure the proposed premises has council approval to be a licensed venue. If you are considering opening a new premises and consider a bar licence may suit your needs, we suggest you contact Mullins Lawyers or the OLGR for assistance.