



Introduction

Legislation governing Liquor Licensing in Victoria has undergone a number of amendments over the last two years. In the past, those changes were directed towards high profile, large bar style venues however, more recently there have been a number of regulations introduced which effect Licensees generally.

This article highlights a number of changes that have been implemented that effect new and existing Licensees.

Categories of Licence

The categories of Licences have changed. Categories of Licence also reflect the amount of fees that are applicable and what are considered to be higher risk venues are liable to pay higher fees. In order to separate restaurant Licences and bar type Licences, late last year the government introduced new categories such as:

- General Licence (commonly referred to as a hotel licence)
- On-premises Licence
- Late Night On Premises Licence
- Restaurant and Café Licences

The important distinction between restaurant/café Licences and on-premises Licences is that restaurant / café Licences have the precondition that the predominant activity is the serving of food.

Procedures

In the past, Application for a Liquor Licence was considered to be a straightforward process however throughout the last twelve months there have been a number of new regulations which require Applicants to be very thorough in making an Application. It is now imperative when making an Application for a new Licence or variation of Licence that an Applicant ensures that all necessary documents are lodged at the time of filing.



A check list is now provided to ensure that Applicants comply and in the event that all documents are not provided, the Application will be rejected.

It is important for any Applicant for a new, variation or transfer of Licence to ensure that they comply with the checklist.

Documents Supporting Application

In making an Application for a Licence there was a view that it would be a straightforward process however, throughout the year there has been deregulations which effect Applicants:

Making an Application for new Licence/Variation

It is now imperative when making an Application that all documents set out in Liquor Licensing information for each category is supplied at the time of filing. In the event that there are documents which do not comply with the check list, that Application will be rejected. It is important for any Applicant for a new, variation or transfer of Licence to ensure that they comply with the checklist.

I highlight below the most critical documents that are required for Applications for new Licence/Variation:

- It is imperative that an Applicant demonstrates that there is planning permission supporting the Application. To this extent, an Applicant must ensure that there is reference in the planning permit to the sale and consumption of liquor on the premises.
- Effective 1 November 2010 an Application will now need to be accompanied with 4 copies of the red line plan detailing the area of the premises where alcohol is to be served.
- When lodging the plan of the premises an Applicant should ensure that they strictly comply with the fact sheet that is provided by Liquor Licensing Victoria. It is imperative that the Applicant ensure that there is strict compliance with the requirements set out in the fact sheet regarding licenced areas otherwise the Application will be rejected.
- Police Questionnaires – most people think that a Police Questionnaire is a straight forward document however the ambiguity in some of the questions posed does invite interpretation. Police Questionnaires in the current format have not changed for many years. The problem with Police Questionnaires is whilst they are meant to be probity document they rarely, in the writers considered opinion, do not go far enough. If these documents are merely a form of identification than so be it. However, if it is the intent to determine the background of the Applicant than the type of questions being offered in the writer's opinion do not satisfy sufficient probing criteria.

Responsible Service of Alcohol Training (RSA)

It is clear that Liquor Licensing Victoria is now emphasising greater education when it comes to the serving of alcohol. Changes have now been made to RSA training requirements. Under the new amendments to be effective as of 1 January 2011. Compulsory RSA training will be extended to include Licensees and serving staff operating under a General, On Premises or Late Night Licence.

- Existing Licensees and serving staff operating under the categories will have 12 months from 1 January 2011 to complete the approved course.
- More importantly Licensees subject to RSA requirements will now need to maintain a register that must record the following:
 - the name of the Licensee
 - a copy of the most recent certificate
 - the name of each person who supplies liquor
 - a copy of the most recent RSA certificate and refresher training acknowledgment issued to each person
- The Licensee will require to have this register readily accessible and available for inspection.
- It is imperative in the case of the categories referred to above an RSA training regimen be maintained, updated and more importantly evidence of completion of such course is retained.
- The stricter RSA requirements however do not apply to off premises (restaurant and café licence).

Patron Numbers

There has been a trend in recent years for Liquor Licensing Victoria to amend existing Licence conditions to incorporate a patron capacity. It is not uncommon for a Transferee when acquiring a Licence of Premises to note that no reference is made to the patron capacity and it has a false belief in assuming that the numbers will be unlimited. In order to regulate this situation it is now necessary for any Applicant with a transfer/new Licence to provide evidence as to patron capacity. Generally a certificate is required from a Registered Building Surveyor.

Liquor Licensing has recently announced that the mechanism by which maximum patron numbers are determined is to be review. The nature of this review is unknown. All that one should be cautious of is that the department is committed to introducing a new maximum capacity policy.



Public Display Notices

Display notices that are required to be consistently displayed on a premise are to also change. From 1 November 2010 the Director of Liquor Licensing will specify the date on which the Public Display Notice must be continuously displayed and the date it can be taken down.

Applications should be submitted in their ordinary fashion however, after the Application is received the Applicant will receive a letter from the Director letting them know the period that they need to display the Public Notice. The forms are being updated. It is imperative that an Applicant ensure that they monitor the receipt of this Display Notice so as to avoid any delay in processing their Application for new Licence or proposed variation.

Cumulative Impact Policy

The Government recently announced a review as to the assessment of new Licence Applications and variations. The statement of policy of the cumulative impact of licenced premises is a new policy that refers to the impacts that evolve from a concentration of Licensed premises in a defined area. It is proposed the new changes come into force on or before 1 January 2011 however, as of this date, such details have not been forthcoming. It is clear from the policy statement released to date that the government is considering areas that they have identified that community impacts associated with such as physical environmental setting, a mix of premises and their operating conditions. This will no doubt have an impact on trying to avoid the concentration of Licenced premises within a small precinct. One can only assume that this policy is geared towards large late night venues.

Minor Business Exceptions

In keeping with the Government's recent announcement regarding exceptions, as of 1 January 2011 exceptions will apply for a small business to hold a liquor licence. Any proprietor must notify the Director of Liquor Licensing that they comply with the small business exemption. To be exempt from the requirements of Liquor Licensing the Applicant will have to fulfil the criteria. The exemption applies to the following types of businesses, bed and breakfasts, florist and gift services, hairdressers, butcher shops and the like. Therefore these businesses can supply alcohol as a minor part of their services and do not have to obtain a Liquor Licence due to the fact that they require minor regulation.

Summary

It is clear that there has been a shift in the Liquor Licensing policy of the past and we are currently witnessing subtle changes which will bring about a greater control of Liquor Licensing. If the intent of these changes is to ensure that Licensees are compliant then it is the writer's view that such changes are unnecessary.

History shows that there is a small percentage of Licensees who abuse Liquor Licensing Laws and as a consequence of various knee jerk reactions Governments generally tighten those Laws to affect the small minority.

It is the writer's view that the Liquor Control Reform Act as it was enacted has had the necessary legislative support to ensure that there is compliance with the Liquor Licensing Laws.

Like anything it is the method of enforcing those Laws that has let down the system. It is clear that there has to be a review as to the way the Liquor Licensing Authorities pursue those Licensees who constantly abuse and breach the Liquor Licensing Laws.

It is only a minority however that minority impacts on those Licensees who have endeavoured to work within the legislative framework.

Knee jerk reactions and reference to alcohol abuse is not merely due to the manner in which the current Laws are complied with but is also to do with a larger educational program that stems from the family home and it is important that any government when considering the impact of liquor on the community that it does not just isolate as the culprits of the program the Licensee but looks at broader community issues so as to ensure that all facets of the community are properly educated about the orderly consumption of liquor. ■

*Nicolas Zervos, Principal – Zervos Lawyers,
Former Assistant Commissioner – Liquor Licensing Commission*