

## Hospitality, Gaming & Registered Clubs Alert July 2008

### The Liquor Act is Repealed - Long Live the Liquor Act

“ Sweeping changes have been brought about by the repeal of the old Liquor Act. These changes will affect all Clubs, so it is critical that you familiarise yourself with them, to ensure you comply. ”

It is not possible to review in a few pages the sweeping changes that have been brought about by the repeal of the *Liquor Act 1982* (**Old Act**), the commencement of the *Liquor Act 2007* (**Liquor Act**) and the numerous amendments to the *Registered Clubs Act 1976* (**Clubs Act**).

This article attempts to consider, discuss and review a few of the more important and relevant changes to the Liquor Act and endeavours to point out a few pitfalls.

#### The Basics

First and foremost in the new regime is that a registered club is now the holder of a club licence. A club licence will be issued for each premises of the club. This is a big change as clubs have lost the special status of having a certificate of registration and applications relating to club matters are more likely to be treated in a similar way to other licence

matters. For example objections from police and community are more likely.

With the repeal of the Old Act, the Licensing Court of New South Wales (**Court**) and the Liquor Administration Board (**LAB**) have been abolished. The functions of the Court have been largely taken on by the Casino, Liquor and Gaming Control Authority (**Authority**), and the Director of Liquor & Gaming (**Director**) has been granted extended powers.

Most premises applications i.e. a variation of a club's defined premises or its non-restricted area, or an application for the variation of trading hours will be made to the Authority.

#### Trading Hours Have Changed

If you read one thing in this article read what follows!

In relation to liquor sales for consumption on and off the premises, the Liquor Act restricts the trading hours of a club to the standard trading hours (**STH**). The STH are from 5am to midnight except for Sundays when they will be 10am to 10pm. Existing clubs will retain their current trading hours (in relation to sales for consumption on premises) **but** they must notify the Authority within 12 months of their existing trading hours, which will then become their trading hours. If a club fails to notify the Authority within

12 months it is restricted to selling liquor during the STH.

Also clubs need to be very careful in relation to any movement of premises or establishing new premises as this is likely to be treated as a new licence and existing hours are unlikely to be preserved. Also a Community Impact Statement will be required (see later in this article).

In relation to takeaway liquor sales, no automatic extension is available and a club is prohibited from selling takeaway liquor outside the STH. An application may be made to the Authority for an extension in trading hours, but the extension is only available on a Sunday.

If the club has existing restrictions on trading hours, that were imposed by the Court or the LAB, those conditions will continue to apply e.g. Noise complaint conditions.

#### Definition of and Guidelines for Determining Intoxication

The Liquor Act now defines the meaning of *intoxication* and the Director may issue guidelines to assist people in determining whether a person is intoxicated. The Director's guidelines are located at the following website: [www.olgr.nsw.gov.au/pdfs/intox\\_guidelines.pdf](http://www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf)



## Removal of a Patron from the Premises

The Liquor Act makes it an offence for a person to enter or re-enter the licensed premises within 24 hours, if that person has been refused entry to the licensed premises, or if that person has been turned out of the licensed premises, by an employee of the of the club, or another authorised person (which includes a policeman), for intoxication, violent, quarrelsome or disorderly conduct.

The 24 hour exclusion applies *regardless* of whether it was the police who turned the person out or a club employee or other authorised person, or whether or not a penalty notice was issued to the person. If the club refuses entry or ejects a person for the grounds specified then that person commits an offence if they enter, or attempt to re-enter, the premises within 24 hours of being refused admission or being turned out.

Once the person is asked to leave the premises, or refused entry to the premises on the grounds specified, then that person must remove themselves at least 50 metres away from the premises, and remain so for at least 6 hours. If the person comes within 50 metres of the premises without a lawful excuse, that person has committed an offence.

## Late Hour Entry Declarations (LHED)

The Director may make Late Hour Entry Declarations, the effect of which will be that the club is unable to admit persons into its premises, even though it may be authorised to trade until a later time. The club will be notified of the proposed order and will have 21 days to make a submission to the Director in relation to

the proposed order. The Director must consider the submission before making the LHED.

## Community Impact Statements (CIS)

The Liquor Act mandates that certain applications require a CIS. A CIS is a notice written to specific bodies within the local community containing information about the application and the process by which the recipient is able to consult with the applicant. The purpose of the CIS is to allow the Authority to consider the impact on the local community. A CIS is required if the club wants to *move* premises, create a new set of premises or for any particular application that is required by the Authority to be accompanied by a CIS. We do not know yet whether the authority will require a CIS for substantial additions or alterations to club premises or club amalgamations but it is certainly possible.

## Incident Registers

A club must, if it sells liquor after midnight at least one day per week and on a regular basis, maintain an incident register in which is recorded every incident specified in the Liquor Act that occurs outside the Standard Trading Hours.

## Liquor Promotions

The Liquor Act now authorises the Director to restrict certain activities, which promote sale or supply of liquor. The Director has published draft guidelines which identify which type of promotion will be prohibited. The guidelines are far reaching and, in their current form, are likely to restrict the vast majority

of the usual liquor promotions. Peak bodies involved in the liquor industry are meeting with the Director to discuss the guidelines.

## Noise Complaints

The Director of Liquor and Gaming will now have power to deal with complaints about the quiet and good order of the neighbourhood. How this will work will be interesting as the Director will have the power to impose conditions on clubs virtually immediately.

One bit of good news is that under the new Liquor Act the Director may take into account “order of precedence” in the neighbourhood. In other words if your club was there before the complaining neighbours this is an argument that a club can use to say that the neighbours must expect some level of disturbance because they knew the club was there before they moved in. How well received this argument will be in practice is yet to be seen.

## Disclosure of Information of Persons Interested in the Business of the Club

A very important change brought about by the Liquor Act is that disciplinary proceedings may be brought against the club because persons who are *interested in the business of the club*. Clubs will need to consider any person or business which operates from club premises as they may fall within this provision. It would seem to include the caterer of a club, any operator of poker playing games and any shops on club premises. Clubs can not allow businesses to operate from their premises if persons who are not fit and proper persons are interested in the businesses.



## Disciplinary Proceedings – New “Catch All” Provision

The Clubs Act now provides a “catch all” provision for taking proceedings against clubs. That ground is that a complainant (Director, Commissioner of Police or the general manager of a local council) may make a complaint against a club on any ground that the complainant considers appropriate for the taking of disciplinary action against the club. This is obviously very open ended and clubs could find themselves having to explain conduct which is not specifically unlawful.

## A Few Questions about the Liquor Act

We have set out below a few questions, raised by clubs regarding the Liquor Act.

### Can a Club Provide Alcohol at an Off-site Function?

A registered club cannot provide from its registered premises alcohol for consumption off-site at a function which is neither sponsored by nor paid for by persons who are not members of the club. However, if the club were to hold the function off-site for its members and liquor was to be consumed there, then the club must ensure that it obtains a limited licence pursuant to the Liquor Act 2007.

### Can the Police Impose a Restriction on the Alcoholic Content of Beer Sold at Football Matches?

The Liquor Act does not empower the police to impose a restriction on a licence granted under the Liquor Act. However,

if a club was selling alcohol off-site, then, as part of the application process for that licence, the police would be entitled to make submissions to the Authority and one submission may be that the Authority grant the licence subject to the condition that only light beer be sold at the function.

*Note: The provisions of the Liquor Act and Regulations and their interaction with requirements of the Registered Clubs Act and the Gaming Machines Act (which is also currently under review) are complex. This article is for general information purposes only and is not intended as a substitute for legal advice. Clubs should seek their own specific legal advice before taking action in relation to matters referred to in this article.*

## For more information on this topic please contact:



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