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## **Recent Developments in Liquor Licensing Law and Impact on Event Management**

The risks associated with events where alcohol is supplied and consumed are universally known and as a result, there is a significant amount of regulation of the sale, supply and consumption of alcohol in public areas. It is important to have a knowledge of the relevant liquor licensing laws in order to plan and manage successful events and ensure that regulatory compliance is achieved. Failure to do so may result in direct and indirect breaches of the law which can result in criminal sanctions, and may also expose, managers, owners and contractors to civil damages claims, which may not always be indemnified by insurance policies. This paper provides a brief update on recent developments and proposed legislative changes to NSW liquor laws which are relevant to event managers.

### **Brief Background to Event Licensing**

It is of course necessary to obtain a licence in order to sell and supply liquor for consumption at an event. If the event is at a premises which is already licensed, then it makes life a little easier (although compliance and operational risks remain). An event manager may face significant issues however if the proposed venue is not subject of an existing licence and a licence must be obtained for the venue.

### **Appropriate Licence Types for Events**

#### **1. Function on Other Premises Authorisation (Existing Hotel Licence)**

This involves the use of an existing hotel licence to permit the sale and supply of liquor on a premises other than the existing hotel.

#### **2. Limited Licence (Special Event)**

This is a temporary licence which can be granted for an event if the Authority is convinced that the event is of regional, state or national significance.

#### **3. On Premises Licence (Caterer)**

This Licence permits a legitimate commercial caterer to sell and supply alcohol at numerous premises as ancillary to general catering services.

### **Case Study – Kensington at Newcastle**

Throughout 2010 the owners of a premises in Hunter Street Newcastle sought to apply for an On-Premises (nightclub) Licence at the site and engaged in significant renovations of the property. The application was refused by the Casino Liquor and Gaming Control Authority following objection from Police and local residents. A further application was also refused. The premises operated as an unlicensed all ages nightclub venue for a short period after renovations were complete in 2011.

In late April 2011 the premises commenced promotion of an event over the Easter long weekend with presale tickets for each day available for purchase. On 16 April 2011, the venue commenced trading, more or less like a

nightclub with entertainment provided in the form of DJs and liquor sold and supplied at the venue, even though no licence had been granted for the venue. It was revealed that the venue operators had engaged the services of a local caterer (who held the appropriate licence) to provide an opportunity for the sale and supply of liquor at the venue on 16 April 2011, and that a similar arrangement was to take place over the Easter long weekend. All that the caterer was required to do under the legislation applicable at the time was to issue a notice of the proposed event to the local police and local council 14 days prior to the event. There was no right of objection to the catering services being provided.

The Minister for Tourism, Major Events, Hospitality and Racing sought to intervene and an urgent regulation the Liquor Amendment (Restrictions on Authorisation to Trade on Certain Premises) Regulation 2011 was implemented on 21 April 2011 (which happened to be the first day of the 3 day long weekend event). The effect of the regulation was the imposition of a new clause 20(5)(d) to the Liquor regulation 2008 to prohibit a licensed caterer from selling or supplying liquor on any premises which has had an application for the grant of a licence, or extended trading hours refused within the previous 2 years.

While the venue operators in this case were arguably pushing the envelope, there are lessons to be learned. Firstly, given the massive amount of regulation, it is important to be aware of the applicable law. Secondly, the status quo is particularly fragile and subject to amendments at the stroke of a Ministerial pen which can have wide ranging commercial impacts, and contingency plans need to be in place for events.

Event managers should note that detailed investigation should be conducted as to the background and application history of venues proposed for events if it is proposed to operate an event pursuant to a caterer's licence.

## **“Three Strikes and You're Out” Bill**

In late June 2011, the Minister announced the proposed “3 Strikes” legislation targeting licensed premises. This concept was part of the policy platform of the then opposition in its election campaign. The Liquor Amendment (3 Strikes) Bill 2011 was introduced to parliament on 22 June 2011. Whilst there is considerable detail in the bill not necessary to recite in this paper, the general impact is that it is possible that a venue can have its liquor licence cancelled if multiple offences of the Liquor Act are committed (or alleged to have been committed).

Whilst it has always been possible for a licensee to be suspended or a licence to be cancelled under the current and indeed previous versions of the legislation, such powers have only been exercised in extreme circumstances and very rarely. The proposed bill sets out a systematic regime whereby it would appear that there is a more aggressive focus on dealing with venues which are subject of multiple licensing offences.

A very simple breakdown of the proposed law is set out below. If a licence other than a Club Licence incurs 3 strikes which are in force the following consequences flow:

- the licence is automatically cancelled;
- no new applications for a licence at the premises can be made by any person associated with the business owner of the premises at the time the 3<sup>rd</sup> strike was alleged to have occurred for a period of 12 months after the licence is cancelled;
- any licensee or manager of the premises at the time of the offence which caused the 3<sup>rd</sup> strike is permanently disqualified from holding a licence or managing a licence at that premises;
- any licensee or manager of the premises at the time of the offence which caused the 3<sup>rd</sup> strike is disqualified from being the licensee or manager of any other premises either permanently (if also licensee or manager at the time the first 2 strikes were

incurred) or for some other time determined at the discretion of the Director General.

There is a rather complicated process of determining the various strikes. It is not simply a case of 3 offences resulting in the consequences set out above. For the first strike, at least 3 prescribed offences need to be alleged to have been committed by the licensee or relevant person (such as employee) in a 12 month period, or the first offence determined so significant by the Director General that a strike should be recorded. Note that an offence need only be alleged (by way of Court Attendance Notice or Infringement Notice) for it to be counted towards a strike. It is not necessary that a conviction or finding of guilt be made against the licensee.

The second strike is incurred if the first strike is in force and the licensee or relevant person (such as an employee) is charged with a prescribed offence within 12 months after the first strike came into force and is charged with another prescribed offence. Both offences subject of the second strike must also be offences which have been previously committed to gain a first strike. Again, the offence need only be alleged for it to count and the Director General retains a discretion that if the first alleged offence counting towards the second strike is sufficiently serious to warrant the second strike without a supporting offence.

The third strike is incurred if two strikes are in force and within 12 months of the second strike coming into force the licensee or a relevant person (such as an employee) is charged with a prescribed offence, AND importantly, the charge has not been withdrawn or dismissed and the Director General considers that a third strike should be incurred in the circumstances. The major difference here is that if the alleged offence is contested in court and ultimately withdrawn or dismissed, it cannot be used to incur a third strike, whereas it would still count in the case of a first or second strike.

The prescribed offences for which a venue may be subject of a strike include:

- breach of licence condition;
- permit intoxication, indecent, violent or quarrelsome conduct;
- supply liquor to intoxicated person;
- permit sale, use or possession of drugs; and,
- sell or supply liquor to minor.

A breach of licence condition would include those conditions imposed by statute, along with others imposed on a particular premises. The breach of some of these conditions is almost innocuous and occurs frequently. For example, there is a statutory condition that requires the licensee to maintain a register containing the RSA certificates of all persons involved in the sale and supply of liquor and involved in security related activities. If a certificate of one person is missing, there is a breach of licence condition.

The other concern is the liability for the actions of employees.

There are obvious ramifications for operators and event managers. There could be potentially significant civil obligations between licence/premises owners and event managers as a result of the impacts of this proposed legislation which would require detailed consideration in contract documentation. It is imperative that operations are conducted which avoid the potential for allegations to be made as to prescribed offences, however this is no easy feat. Such onerous regulatory conditions highlight the need for competent and effective risk assessment and aversion planning and implementation.