

Liquor Licensing

Introduction

A Liquor Licence is needed whenever liquor is being sold.

'Selling' liquor includes:

- Where the consumption of liquor is included in a cover charge, eg. food, drinks and entry included in the one ticket price, even at a private home;
- Where entry is by donation;
- Where wine tasting is being offered with a view to selling wine, whether at the event or in the future;
- Where liquor is offered as a 'gift' when an item is purchased;
- Selling by wholesale/retail.

A licence is also required when liquor is consumed on regulated premises (even if there is no sale of liquor). Regulated premises include:

- A restaurant, café, or shop
- A bus, limousine, train, or tram
- A boat
- A public place that is being used for the purpose of an organised event, where guests pay an admission charge.

Limited Licences

If you are intending to host a party or you are organizing an event (or a series of events) where liquor will be sold or liquor will be consumed on regulated premises, you are required to obtain a limited licence. This requirement applies even if your party or function will be held at a private place.

Limited licences are also used to grant a liquor licensee a temporary extension to trading rights under his or her current liquor licence, such as an extension to a trading area or trading hours, or to allow for entertainment on premises not subject to entertainment consent.

Lodgement of a Limited Licence Application

An application for a Limited Licence must be lodged with the Office of the Liquor and Gambling Commissioner at least 14 days prior to the event.

However, applications for large events such as festivals, street closures, Christmas and New year's Eve functions should be lodged as early as possible and at least 60 days prior to the event.

A Limited Licence application form is available from all police stations or from the Office of the Liquor and Gambling Commissioner website www.olgc.sa.gov.au

An application fee is applicable (details of the fee should be obtained from the Office of the Liquor and Gambling Commissioner) and must be paid when an application is made).

The following information will be required for all outdoor events and for large events:

- Council views and landlord approval in writing;
- Views of the local police;

- A plan of the area outlining the area where the licence is required;
- Public liability insurance details;
- Details of any licensed security to be employed;
- Number of toilets to be provided;
- Type of entertainment proposed;
- Details of any marquee to be erected;
- Details of the safety equipment to be provided.

Please note that liquor cannot be sold or supplied in glass containers for outdoor functions unless the licensing authority has given specific approval.

Note: For large events, the Department of Human Services has published Guidelines for the Management of Public Health and Safety at Public Events to assist event planning.

Limited Licence Conditions

A limited licence authorises the sale and/or consumption of liquor in specific circumstances. It is granted subject to the provisions of the Liquor Licensing Act 1997 and will be subject to any conditions attached to the licence.

Standard conditions include the requirement to inform a member of the police force at the nearest station of the time, date, and place of the function. Another standard condition is the requirement to display the licence in a prominent position for the duration of the function. Other conditions relate to the safety and comfort of those attending the function.

Council Approval

Section 57 (2) of the Liquor Licensing Act states an application for a licence for premises or proposed premises must not be granted unless the licensing authority is satisfied:

- a) That any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sake of liquor have been obtained; and
- b) That any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained; and
- c) That any other relevant approvals, consents or exemptions required for carrying on the proposed business from the premises have been obtained.

Applicants must notify the local council of an application (excluding a transfer of licence application), generally by providing a copy of the 'Form 1'.

An applicant serving notice on the local council gives the council the opportunity to consider the application, and, if necessary, consult with other stakeholders, such as residents and the local Police. As the Form 1 is also required to be advertised by the applicant in the local paper, it is good practice to check the Public Notices section of such newspapers on a regular basis. It is also advisable to check for applications for transfer of a licence in order to consider the condition of the premises, and whether any notices have been lodged under the Development Act.

Council approval may be necessary, under the Public and environmental Health Act, Local Government Act, Development Act, Food Act and any other relevant legislation, in respect of any application for a liquor license, any proposed extension of the licensed area or changes to licence conditions of existing licensed premises.

Note: Consideration should be given, either through the Building Fire Safety Committee or during the development approval stage, to determining safe capacities for premises, particularly where those premises are likely to accommodate high volumes of patrons or operate as late night entertainment venues.

In the case of new work, approval would usually be subject to building consent and the issue of a certificate of occupancy.

Council approvals are also required where a licensee wishes to establish a footpath eating and drinking area as an extension of the licensed area. In the case of one-off, limited licenses, although not mandatory, the views of the relevant Council may also be sought, particularly in relation to large events.

On what grounds can an objection be made?

An objection to an application made under the Liquor Licensing Act 1997 may be lodged if there are any of the following concerns:

- The grant of the licence would result in undue noise from the premises or from patrons arriving at or leaving the premises;
- The standard of the premises makes them unsuitable to be licensed;
- The proposed premises are in the vicinity of a school or kindergarten;
- The license would adversely affect the surrounding area;
- The person/company lodging the application is not fit to hold a licence;
- Where an application is for a hotel licence or a retail liquor merchant's licence, the number of hotels or retail liquor merchant's licences already in the area;
- The grant of the application would not be consistent with the objects of the Liquor Licensing Act 1997, or would be contrary to the Act in some other way, eg. no development approval has been obtained.

If a council does not oppose an application, but wishes to make a representation before the licensing authority about some aspect of the application, such as trading hours or the provision of entertainment, an intervention can be lodged.

This process differs from an objection under the Act to the extent that an objection should be made where a council is opposed to an application, but, where a council simply wishes to make representation or comment about an application before the licensing authority, for example, trading hours or the provision of entertainment, intervention, is the appropriate process.

When intervening in relation to an application, it is not necessary to meet strict requirements about when an intervention may be lodged, or on whom or when it needs to be served. Council simply needs to lodge a written notice of intervention with the Commissioner, stating the grounds for intervening, at any time before the application is determined.

A council will often intervene in an application where there is a precinct licensing statement, or alcohol management plan covering a particular area, for the purpose of informing the licensing authority about the existence of that statement or plan.

A council may also wish to make representation, on behalf of ratepayers who live in the vicinity of licensed premises, or proposed licensed premises, about patron behaviour, noise emanating from the premises, or concern about potential noise or disturbance. Although there is no statutory requirement to do so, it is advisable to lodge interventions before the call-over date.

Applications for extension of trading are on Council land

An extension of trading area approval allows for the inclusion of areas adjacent to licensed premises not leased or owned by the licensee. For example, this approval can be obtained for the licensing of

footpaths and other outdoor areas that are adjacent to the licensed premises, and under control of the local council. The local council will usually consider separate approval for use of areas under council control, such as footpaths. Many councils use a permit system where conditions are set and an annual fee is payable. Council development approval may also be required.

A copy of the agreement and any conditions imposed must accompany the application to the Liquor and Gambling Commissioner. The council approval will also need to specify that the consent includes sale and supply of liquor consumption within the specified area, the approved capacity and hours of operation.

An order is usually made, where a licensee has been given approval to use an adjacent area, that the approval will lapse if council consent lapses, is withdrawn or revoked.

Noise issues

A licensee has an obligation to minimise the impact of noise emanating from licensed premises or by the behaviour of patrons of licensed premises.

If noise is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged with the Liquor and Gambling Commissioner.

A complaint may be lodged by:

- The Commissioner of Police
- The council for the area in which the licensed premises are situated;
- A person claiming to be adversely affected by the subject matter of complaint. (In this instance a complaint must be made by at least 10 people who live, work or worship within the vicinity of the licensed premises. However, if the Commissioner is satisfied by the nature or gravity of the complaint, a complaint made by fewer people may be accepted.)

When a complaint is made, the Commissioner will serve a copy of the complaint on the licensee within seven days of lodgement and allow 14 days from the date of service before the matter progresses to conciliation or hearing. This is to ensure that the licensee is aware of the concerns and provides an opportunity for the licensee to address the problem, or for the parties to resolve the problem together. It is recommended that concerns are raised with the licensee before a complaint is lodged. The matter may then be resolved quickly without outside intervention.

The Commissioner will attempt to conciliate between the complainant and licensee. If the matter is resolved by conciliation, terms of settlement may become conditions of the licence. If conciliation cannot be achieved, the parties may choose whether the matter will be referred to the Licensing Court or dealt with by the Commissioner as a contested hearing. In some circumstances, the Commissioner may issue directions to, or impose conditions on, the licensee, before or during the conciliation proceedings, about the subject matter of the complaint. If the matter proceeds to a contested hearing, the licensing authority will take into account a number of relevant factors including, amongst others:

- The period of time the activity has been occurring;
- The trading hours and character of the business;
- The desired future character of the area in which the licensed premises is situated;
- The history of the premises, including any history of live music;
- Whether or not the noise from the premises is reasonable in the circumstances;
- Any environment protection policies that exist under the Environmental Protection Act 1993, that apply to the provision of live music on the premises;
- Any other matter that the Commissioner or the Court consider relevant.

Each case will be considered on its merits, having regard to all relevant factors. Councils often support ratepayers by lodging a compliant on their behalf, or by joining in with nearby residents who have already made a complaint. In the latter case, whoever represents council will often represent residents' interests as well during the proceedings before the licensing authority.

Existing Licensees

On licensed premises, liquor is only permitted to be sold and consumed in approved areas and during approved trading hours, as outlined in the Liquor Licensing Act 1997 and subject to any conditions outlined in the particular licence. Any permanent changes need to be approved by the licensing authority. However, this can be achieved for one off events with limited licence.

For example, where a licensed premise does not have entertainment consent, the licensee can obtain consent for the provision of one off entertainment by applying for a limited licence.

If a licensee wants to extend hours, trading areas or gain entertainment consents for a one off occasion, a limited licence must be granted by the licensing authority.

If a licensee intends to hold a function on different premises, for another organisation which does not have a license, the licensee would need a limited licence.

Other information

Easement and Encumbrances

The Certificate of Title for a property contains information regarding the location and nature of any easements and the details of any encumbrances that apply to the land.

If your proposed development extends over an easement or is affected by an encumbrance on your property, documentation must be submitted to the Council demonstrating that the authority controlling the easement (eg. SA Water, ETSA, etc.) or the person(s) holding the encumbrance have approved the proposed structure.

Want to know more?

The above information is advisory only. It is intended to provide a guide and a general understanding of the key points associated with the particular topic. It is not a substitute for reading the relevant legislation or the Development Plan.

It is recommended that if you are intending to undertake development, you seek professional advice or contact the Council for any specific enquiries or for further assistance concerning the use and development of land.

Contact details

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