

Legal Alert

Hospitality & Licensing

December 2017

South Australian Liquor Licensing reform – initial amendments

The recently enacted *Liquor Licensing (Liquor Review) Amendment Act 2017 (SA)* makes significant amendments to the liquor licensing regime in South Australia.

Many of the amendments are yet to take effect, and will be implemented over the course of 2018. Some changes, however, are of immediate effect and apply now to current licences.

Licencees should ensure that they are aware of immediate changes which may be applicable to their business, and otherwise be ready to monitor, plan for, and respond to the major changes to be implemented throughout 2018.

SA liquor licensing law reform

On 2 November 2017, the *Liquor Licensing (Liquor Review) Amendment Bill* passed in the Legislative Council, and the *Liquor Licensing (Liquor Review) Amendment Act 2017 (Amending Act)* received assent on 28 November 2017.

The Amending Act commenced on 18 December 2017, with operation of many of its provisions suspended to dates yet to be proclaimed (likely in 2018).

Big picture – how did we get here?

The Amending Act is a significant milestone in a review process which began more than two years ago. The South Australia Government published a “liquor licensing discussion paper” on 2 October 2015, which was then followed by a review and report by the Honourable T R Anderson QC on 29 June 2016.

The aims of the Anderson review included assessing the “adequacy, effectiveness and relevance” of the licensing regime, to identify improvements to “modernise” the licensing regime, “reflect current day community attitudes”, “promote greater business flexibility” and “encourage new bold and dynamic business models”.

Three broad objectives of the review were “reducing red tape”, “promoting a safer drinking culture” and “vibrancy”.

The State Government indicated an intention to implement most of the recommendations of the Anderson review. Some elements have changed and evolved through the

course of stakeholder consultation, the drafting of amending legislation, and in debate and amendment in Parliament.

It remains to be seen how these broad aims and intentions manifest in a practical way, as the Amending Act takes effect now and in months to come.

Implementation – some now, some later

Most of the substantial changes made by the Amending Act to the licensing regime are yet to take effect. The Government has advised that these major changes (including to licence categories) will be “phased in” over stages through 2018 and beyond.

There are some changes made with immediate effect (with new Regulations designating certain provisions in the current legislation, and certain conditions specified in existing licences, as no longer having legal effect).

Without being exhaustive, there are two changes which may be most relevant for businesses conducting wine retail and related activities under a liquor licence:

Sundays and public holidays

Some categories of licences were, until now, subject to particular constraints on trade on Sundays and/ or on certain public holidays. Any such restrictions as to Sunday trade which applied to Hotel Licences, Special Circumstances Licences, and/or Club Licences, have now been modified by the Amending Act and new Regulations – supply of liquor under those licence categories for

consumption on or off the licensed premises on Sundays may now take place between 8:00 am and midnight.

Similarly, to the extent that a licence has previously had any specific restraints by reference to public holidays (including Christmas Day and Good Friday), those restraints have now been removed (and trading hours for such days are simply the same as an equivalent, "ordinary" day of the week).

This "removal" of restrictions operates, of course, only in relation to these "liquor licensing" constraints or restrictions. For businesses which operate within particular planning or development approval conditions (which might include constraints on trading hours, for example), those constraints continue to apply.

Designated dining, reception and sampling areas

Some licences have conditions allowing certain methods of service of liquor only within designated "dining", "reception" or "sampling" areas within the licensed premises. Those particular "area" restrictions have been, in effect, removed.

Where licences provide for these trading rights but limited to specific areas within broader licensed premises, these rights can now be exercised across the entirety of the licensed premises.

Again – one caution here is that the change to liquor licensing constraints does not remove any planning or development constraints, or alter or affect other conditions of a licence.

Major changes – still to come

Some of the major changes under the Amending Act which will be introduced in stages over 2018, include:

- changes to categories of liquor licences – this will affect both "new" applications and existing licensees (including transition of "old" licences to "new" categories – businesses operating under existing Special Circumstances Licences will need to take particular care here);
- current restrictions (including the "needs" test) on the proliferation of "pub" and "bottleshop" licences will be removed – in their place, a new "*community interest and public impact*" test will be introduced – this test will also be applied to a range of liquor licensing applications – the details are yet to be determined and the practical effects here remain to be seen;
- with an aim to reduce the delay and cost, the process for licensing applications will change including in relation to "objections";
- changes to annual licence fee structures; and
- a number of compliance and enforcement changes – many clearly "sensible" on their face, others which

may impose yet further burdens on licensees and their staff.

In a number of respects, there remains uncertainty on "detail" and practical implementation. There will be further consultation between Government and industry (including in particular industry representative bodies).

Immediate steps for licensees

Licensees should take the opportunity now to review the conditions "on the face" of their licence, to ensure that they take advantage (where applicable) of the immediate changes to the licensing laws discussed above.

The licensing authority has published a short summary of the immediate changes – copy available [here](#). Industry and representative bodies (South Australian Wine Industry Association, for example) also provide useful information and guidance for their members.

Licensees may wish to seek legal advice on the practical application of the immediate changes, particularly if planning and development constraints may remain in place notwithstanding the "loosening" of certain liquor licensing constraints.

2018 will see the staged implementation of some of the most significant changes made in the last several decades to the liquor licensing regime in South Australia.

Licensees will need to pay close attention to the nature and effect of these changes as they are implemented, to avoid any "trip ups", and ensure they take full advantage of new opportunities.

We will provide further alerts and articles in the New Year on these upcoming changes and opportunities.

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