

Legal Alert

Hospitality & Licensing

September 2018

SA Liquor Licensing reform – new requirements for “delivery”

The *Liquor Licensing (Liquor Review) Amendment Act 2017* (SA) introduces significant changes to the liquor licensing regime in South Australia. Some changes have come into effect, others have remained “suspended”, to be implemented in the months ahead.

A further tranche of the changes have recently been proclaimed and will come into operation from [24 September 2018](#).

These include new requirements in relation to [delivery to retail customers](#) (sales by “direct sales transactions”)

This is one of an ongoing series of Legal Alerts on changes to South Australian liquor licensing laws.

SA liquor licensing law reform – changes so far

Some of the changes to the South Australian licensing regime introduced by the *Liquor Licensing (Liquor Review) Amendment Act 2017* (SA) (**Amending Act**) are already in effect (from 18 December 2017).

We discussed these in our [December 2017 Legal Alert](#).

Delivery to customers - “proof of age” requirements

By recent proclamation (6 September 2018), certain provisions of the Amending Act will come into effect on 24 September 2018.

The effect of this proclamation is that a new section 107A of the *Liquor Licensing Act 1997* (SA) takes effect, together with a new regulation 15A of the *Liquor Licensing (General) Regulations 2012* (SA) – these add new obligations in respect of the “sale of liquor through direct sales transactions”.

Various categories of South Australian liquor licences include a right to sell liquor by way of “direct sales transactions” – broadly, where liquor is ordered by the purchaser by mail, telephone, fax or internet or other electronic communication, and the liquor is delivered to the purchaser, or a person nominated by the purchaser, at the residence or place of business of the purchaser or other address nominated by the purchaser.

In summary, the new requirements for delivery of liquor by “direct sales transactions” are as follows (and by reference

to the new section 107A (**s107A**) and Regulation 15A (**R15A**):

- licensees offering liquor for sale by “direct sales transaction” must ensure that their liquor licence number is included in any advertisement published or distributed by them or on their behalf (including electronic and printed advertisements) (s107A(1));
- at the time of receiving an order from a retail customer by “direct sales transaction”, licensees must require the purchaser to provide their date of birth (unless the purchaser has previously provided this to the licensee) (s107A(2));
- the licensee must instruct the person delivering the liquor to the customer, to only deliver the liquor:
 - to the adult who purchased it (s107A(3)(a)); or
 - to the adult person nominated by the purchaser (s107A(3)(b)); or
 - in accordance with the instructions of the purchaser (s107A(3)(c));
- where the liquor is delivered to the purchaser or their nominee (so – where either of the s107A(3)(a) or

s107A(3)(b) options applies) - the person delivering must:

- require the person receiving the delivery to produce evidence of their age and identity (s107A(4)(a)), which:
 - can be, where it is “reasonable to assume” the recipient is over 18 years of age, by having that person sign a declaration that states their name and that they are over 18 of age (R15A(1)(a)); or
 - otherwise, must be an approved form of evidence, for example a current driver’s licence, “Proof of Age” card, passport, or “Keypass identification card” (R15A(1)(b));
- make and keep a record of that evidence (s107A(4)(b)), which:
 - must be in writing, including as to the type of evidence of identity and age produced, the name and date of birth of the recipient, and the delivery address (R15A(2)(a)); and
 - must include the signed declaration (per R15A(1)(a)) if that is the evidence which has been relied on (R15A(2)(b)); and
 - must be retained for at least one year by the person who made the delivery (R15A(2)(c)).

The new law includes offences and penalties (for licensees and for their delivery agents) for failures to comply with these delivery requirements.

Practical issues, existing licence conditions

The start date for the new s107A “delivery” requirements has been set by proclamation on relatively short notice. It might be hoped that the licensing authority (and Police) will take a practical approach in enforcing the new requirements in the short term, as South Australian licensees (and their logistics providers) adjust to the new requirements.

Some existing Direct Sales Licences carry a standard condition prohibiting deliveries where liquor is left unattended. Such a constraint is inconsistent with the right to deliver liquor “in accordance with the instructions of the purchaser” (per s107A(3)(c), discussed above).

There may be an argument that the operation of the new provisions renders those existing licence conditions void by operation of other provisions under the new legislation, or that otherwise the licensing authority ought entertain applications by licensees to now remove or vary those

existing conditions so that their licence is “brought into line” with the new s107A requirements.

The licensing authority has recently intimated that the Liquor and Gambling Commissioner will take the view that the new s107A will “override” certain existing licence conditions, and will be writing to affected licensees in this regard.

Immediate actions for SA licensees

The new requirements mirror (at least in a number of respects) similar provisions regarding the delivery of liquor in force in other Australian jurisdictions.

Many licensees (and their delivery providers) will already have in place procedures and requirements for liquor order and delivery which address at least some, if not all, of these new statutory requirements.

Licensees should, as a matter of priority, carefully review their sales and delivery processes, including liaising as necessary with their logistics and delivery service providers to ensure compliance.

Further changes to the SA liquor licensing regime will be brought into effect over the weeks and months ahead. At this stage, the licensing authority’s indication is that major changes including conversion to new licence categories will likely be in “late 2019”.

We will provide further alerts and articles over time on the ongoing liquor licensing changes, and the obligations on, and opportunities for, South Australian businesses that arise from same.

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