

Legal Alert

Hospitality & Licensing

24 March 2020

Coronavirus (COVID-19): Liquor Licencing Information for Hospitality Industry

The COVID-19 crisis continues to evolve. Ever-increasing and unprecedented restrictions on “non-essential” activity continue to have a drastic impact upon the hospitality sector.

The position will likely continue to evolve and change.

As at 24 March 2020, there are some steps and actions that licensees should urgently consider in relation to liquor licensing, to mitigate the impact on their businesses, including in relation to annual licence fee relief, and delivery arrangements in the context of “social distancing” requirements.

Fee relief

In various Australian jurisdictions, holders of liquor licences are required to pay annual liquor licence fees, which can be substantial.

While the position remains fluid as at the date of this article (24 March 2020), licensees ought consider seeking relief from annual licence fees. This is particularly so where their licence involves “on premise” liquor sales activity which will now be suspended under COVID-19 restrictions.

On 21 March 2020, the Victorian Government announced an economic stimulus package to assist [Victorian businesses](#) and workers - see media release [here](#).

The Victorian Government has promised to “*support the hospitality sector by waiving liquor licensing fees for 2020 for affected venues and small businesses.*” It has not been explained what is meant by “affected”, but one may assume that any business that has had to alter the activities conducted under its licence to comply with Government restrictions would qualify.

[Tasmania](#) has implemented a similar stimulus package (details of which can be found [here](#)), pursuant to which licensees can expect “*a 50 per cent discount on liquor licencing fees and a waiver of all application fees for the calendar year 2020, back dated to 1 January 2020.*”

At the date of publication, there is no indication from the [South Australian](#) Government or the Governments of the

remaining States and Territories as to whether they would implement similar relief to that of Victoria (or Tasmania).

Nevertheless, licensees ought consider approaching the relevant licensing authority for similar (or expanded) fee relief.

In [South Australia](#), “*the Commissioner may, in the Commissioner’s absolute discretion, waive, reduce or refund fees payable*” by licensees (see *Regulation 4(2) of the Liquor Licensing (Fees) Regulations 2019*). In these unprecedented circumstances where the impact of COVID-19 on South Australian businesses will be very substantial, there would appear to be a strong case for a waiver (or at least reduction) annual licence fees for, at a minimum, those who apply in same and who are affected by the crisis.

In South Australia, an application for the waiver or reduction of an annual fee is made by e-mailing the licensing authority at liquorandgaming@sa.gov.au and setting out the reasons for the fee reduction and providing any supporting evidence.

A similar power exists in [New South Wales](#) (see Regulation 19 of *Liquor Regulation 2018*), and [Western Australia](#) (see Regulation 26(2) of the *Liquor Control Regulations 1989*).

In these jurisdictions (SA, NSW and WA), we encourage all licensees affected by the COVID-19 crisis to promptly apply for fee relief.

Applications for further relief (noting the stimulus package already announced) in Tasmania can be made pursuant section 26A(8) of the *Liquor Licensing Act 1990* (Tas).

The remaining Australian jurisdictions are less clear on whether annual licence fees can be waived by the licensing authority.

In the Australian Capital Territory, the current formulation of the Regulations makes no provision for the waiver of annual fees. We note that the *Liquor Act 2010* provides that the Executive may make regulations which make provision for “*the circumstances in which the Commissioner may waive or reduce fees*” (see section 229).

In Queensland, the Commissioner has no discretion to waive annual licence fees but may allow the licensee to pay their annual fee in instalments if particular circumstances arise (for example, if the licensee is affected by a “natural disaster”, or by personal or financial hardship). For further details, see [Guideline 56](#) published by the Office of Liquor and Gaming Regulation.

The Northern Territory licensing regime does not make any provision for the discretionary waiver of annual licence fees.

Where no provision is made for fee relief, we encourage all licensees affected by the COVID-19 crisis to consider lobbying their relevant licensing authorities for same.

Liquor Delivery – South Australia

Given the restrictions on non-essential public gatherings being implemented across the country, an obvious avenue for licensees to pursue to maintain liquor sales is via online means. With this in mind, it is essential that licensees are aware of delivery requirements that must be observed.

In September 2018, then incoming delivery requirements for SA were addressed in our article “**SA Liquor Licensing Reform – new requirements for “delivery”**” - copy [here](#).

To summarise, the key requirements implemented for SA in 2018 were:

- 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) (section 107A(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) (section 107A(2));
- the licensee must instruct the person delivering the liquor to the customer, to only deliver the liquor:

- to the adult who purchased it (section 107A(3)(a)); or
- to the adult person nominated by the purchaser (section 107A(3)(b)); or
- in accordance with the instructions of the purchaser (section 107A(3)(c));
- where the liquor is delivered to the purchaser or their nominee (so – where either of the section 107A(3)(a) or section 107A(3)(b) options applies) – the person delivering must:
 - require the person receiving the delivery to produce evidence of their age and identity (section 107A(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 years of age (regulation 15A(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” (regulation 15A(1)(b));
 - make and keep a record of that evidence (section 107A(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 (regulation 15A(2)(a)); and
 - must include the signed declaration (per regulation 15A(1)(a)) if that is the evidence which has been relied on (regulation 15A(2)(b)); and
 - must be retained for at least one year by the person who made the delivery (regulation 15A(2)(c)).

These requirements apply in circumstances where (section 4):

- the liquor is ordered by the purchaser by mail, telephone, facsimile transmission 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 some place (other than premises at which the liquor has been stored prior to delivery) nominated by the purchaser.

Licensees should be aware that a failure to adhere to any of these delivery requirements may result in a range of monetary penalties being imposed by the licensing authority.

Importantly, licensees will need to ensure, in addition to complying with the delivery requirements under the Act, that any delivery is effected in accordance with the

Government's policy on "social distancing" (including, for example, where checking recipients' identification).

Specialist delivery and logistics providers will already be grappling with practical challenges in complying with "social distancing" requirements and will likely be able to assist.

Summary

There is much uncertainty in the Hospitality sector at the moment, and understandably so. We encourage all licensees affected by the COVID-19 crisis to immediately apply / lobby for fee relief.

Importantly, licensees in South Australia need to be aware of their obligations under the Act in respect of delivery requirements.

Please note: this information is current as of **24 March 2020**. The speed with which COVID-19 is spreading and the varied responses both internally within Australia and externally change on a daily basis. It is important that you regularly keep up to date with all relevant information and be prepared to respond as the landscape in which the virus is moving changes.

For updated COVID-19 legal issues and considerations please access our website [here](#).

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