

# THE HOSPITALITY MESSENGER

Your Western Australian liquor, hospitality, event and related industries news and information presented by Lavan Legal

February 2016 1<sup>st</sup> edition

## ELIZABETH QUAY

Through our eyes on 4 February 2016



Photo taken from Jessica's office

Our team is watching the exciting daily progress of Elizabeth Quay evolving just below us. We are delighted to be working with clients setting up new hospitality businesses at the site and conducting events occurring there.

There are opportunities for various bars and restaurants. We can assist with introductions and getting the ball rolling.

### \* Reminder \*

Annual licence fees were due by  
1 January 2016.  
If you have not yet paid,  
do so now.

### Brag Board

We are proud to assist in establishing many new WA businesses and events

Almost 100% of applications we lodge are approved

### Did you know?

Changing the way a part of licensed premises is used is likely to require written approval from the licensing authority. For example, removing chairs and tables from a dining area to create a dance floor. Failing to obtain approval could potentially result in a fine, licence suspension or other adverse consequences.

## Leasing of licensed premises - according to the High Court

In 2015 the High Court considered a case involving an unauthorised lease of a dining area.

Key facts:

The New South Wales Polish Club entered into a lease agreement with another party to run a restaurant and function service from the Club. The lease breached the Club's liquor licence obligations. The relationship between the parties broke down. A dispute arose and the Club wanted to avoid the lease and argued that the lease was unenforceable because it was in breach of the NSW liquor legislation. The Club claimed there was, therefore, no lease of the restaurant area.

The High Court was not persuaded by the Club's arguments and found in favour of the restaurant tenant, finding that, despite the agreement breaching the Club's licence and the liquor legislation, it was still valid and enforceable as a lease. The High Court decision has authority in Western Australia and serves as a timely reminder for licensees of the obligations associated with leasing out some or all of premises.

The *Liquor Control Act 1988* (WA) provides that most licences are subject to the strict condition that the licensee must retain the right to occupy the licensed premises to the exclusion of all others. This condition continues to apply during any period the licence is suspended.

This means that licensees cannot enter into any agreement which gives rights to another party to use the kitchen, restaurant or any other part of the premises. For example, a chef cannot run his/her catering business from the venue.

If such an unauthorised arrangement were to be entered into, sanctions under the liquor legislation would be likely to be imposed and potentially, in the worst case scenario, it may result in the licensee losing its interest in the licence.

These adverse consequences would still prevail despite the possibility of a court upholding the agreement on the basis of the High Court ruling.

Click [here](#) to read the full decision.

### Congratulations!

The Lavan Legal Liquor Team congratulates Cape Cellars in Busselton on the recent Sunday trading approval, the organisers of Origin for the success of the 2016 New Year's Eve event and Perth Racing on a great Perth Cup Day last month.

### Connection corner - we like to connect our clients...

One of our clients' venues was recently subject to adverse media reports through no fault of the licensee, so we introduced him to media and PR experts we know who provided very valuable advice and assistance with handling the media to help preserve and protect the venue's reputation.

We have information about available sites around the metropolitan area for new licensed venues. We can connect landowners and tenants.

# SPECIAL CONDITIONS

Whilst keeping our eye on the changing nature and content of special trading conditions imposed on licences and permits we have noted the following recent examples:

- Any queues of people waiting to enter the premises are to be regularly inspected and monitored by the licensee and those who appear to be unable to comply with the licensee's entrance requirements must be asked to leave the queue and the vicinity of the premises
- No subwoofers are to be installed with the sound system
- Patrons are only permitted to enter and leave the premises through the single entry sliding front door.

Special conditions have become an important feature of the modern licensing regime. They can be a useful risk management tool in balancing competing interests of parties. They can also potentially be useful for applicants and licensees in supporting their applications, if presented in the right way.

Despite positives associated with special conditions, there are also potential adverse effects and complications which should be carefully considered.

We can provide advice regarding your special trading conditions - the interpretation of them, prospects of successfully varying them and the process involved in applying to vary.

*We are cheering  
for the  
Western Force  
as the team  
kicks off its  
2016 season  
this month*



## Fact Box

100 new liquor store applications decided  
2010-2015  
→ 64 licences granted  
36 licences refused

11 new hotel/hotel restricted licence  
applications decided 2010-2015  
→ 10 granted  
1 refused

Have you got a great idea for a new business.... been looking for new premises... keen to buy an existing venue....we can greatly assist you in many ways including finding a site, licensing, leasing, a development application, company set-up, trademarks, contracts and more.

# Scarborough this summer!

We are proud to have been involved with the establishment of three great new venues at the Scarborough beachfront precinct.



Matisse Beach Club



Scarborough Beach Bar



El Grotto

## OUR TEAM



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Your business is an important contributor to the Western Australian community and to WA's growing liquor, hospitality, events, tourism and related industries.

Are you getting the most out of your business? Are you fulfilling all of your ideas and enjoying business success?

If you have an idea for a new business, we would love to help you develop it.

We encourage you to obtain modern business solutions from us and receive the benefits of a life long working relationship to help maximise your business potential. Any expenditure with us is an investment in your business and its future.

We enjoy visiting our clients' businesses and will be happy to visit you.



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