

THE HOSPITALITY MESSENGER

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

September 2017 20th edition

LAVAN

September long weekend ETPs should have been applied for by now, but it may not necessarily be too late. We may be able to help with a late application.

Melbourne Cup day ETPs should be applied for now. Most will need to be lodged by 24 October 2017 at the latest, some need to be lodged earlier.

Section 40 certificates – can't live with them, can't live without them



In our experience, section 40 certificates continue to cause grief for many applicants. From simply being an added time and cost burden, through to being a real obstacle in the licensing application process.

It is wise to deal with the issue sooner rather than later when considering a licensing application.

Applicants should also be careful in what they submit to the local government authority because it can lead to conditions being imposed on a section 40 certificate that result in commercially restrictive, or otherwise unwanted conditions of a licensing approval.

New exemption regulations for tourism operators

In our September 2016 edition of The Hospitality Messenger, we reported that the liquor licensing exemption for tourism operators had come into effect.



That exemption has now been amended.

Tourism operators will now only qualify for the exemption if they are accredited under the Australian Tourism Accreditation Program.

Furthermore, the person supplying the liquor is required to have successfully completed the "Provide Responsible Service of Alcohol" training course.

For any tourism operator currently taking advantage of the exemption, it is highly recommended that you review the licensing authority's new policy to ensure compliance with the exemption requirements.

"Alcohol" / "Liquor" Is there actually a difference?

Yes. Alcohol is a spirit ingredient of liquor. Liquor is defined in the WA legislation as a "substance intended for human consumption which at 20° Celsius contains more than 1.15% ethanol by volume, or such other proportion as is prescribed" and anything else prescribed as being "liquor".

Did you know?



If there is a leasing dispute between a licensee and its landlord, the Director of Liquor Licensing has the power in some cases to suspend the licence or grant a protection order to any party to the dispute.

REMINDER regarding incident registers

Licensees are reminded to ensure that they are recording incidents in accordance with requirements of the Liquor Control Regulations and licensing authority policy. In our experience, licensees often come close to complying, but don't quite comply fully and therefore, risk penalties. The content and form of recording needs to be accurate. Click [here](#) to access the relevant policy.

Liquor store applications have dominated the last 20 Director decisions which have comprised 11 liquor store applications – three were refused and 8 new liquor store licences granted.

The Quadrant, 1 William Street,
GPO Box F338, Perth, Western Australia 6841
Tel +61 8 9288 6000 Fax +61 8 9288 6001
www.lavan.com.au

LAVAN

EMBARGO

The WA Liquor Control Act contains a restriction on the ability to re-apply for some applications that have failed.

The Act says that, if a certain application "is not granted because the licensing authority is not satisfied that granting the application is in the public interest, an application for the grant or removal of a licence in respect of the same premises or land cannot be made within 3 years after the licensing authority's decision unless the Director certifies that the proposed application is of a kind sufficiently different from the application that was not granted".

It is not easy in many cases to persuade the Director that a new application is "of a kind sufficiently different".

This means that applicants should aim to put forward the best case possible to avoid disappointment and costly failures. Also, landowners should generally assist in that process where they can to try to avoid their properties being caught up in the embargo.

There has been talk of amending this provision in the Act, but nothing has happened in that regard.

Standards of licensed premises

– continuing obligations

Licensees are under an obligation to maintain licensed premises as approved by the licensing authority, at all times, including the standards of the various components of those premises. Click [here](#) to view the licensing authority's useful policy guideline, which is due to be reviewed this month and so it may be amended.

Would your premises pass an inspection today?



Is your branding protected?

Businesses spend a lot of time and money developing visually striking brands to stand out from the crowd.

It is essential for your business to ensure that your branding is properly protected.

If you fail to check for trade mark conflicts you could find yourself on the receiving end of a nasty cease and desist letter (and possible court proceedings).

Therefore, it is important to check the Australian trade mark register for conflicts before you settle on your brand and branding. If all clear, you should file trade mark applications for the various aspects of your branding.

Filing a trade mark application is cheaper and easier than you might think. If you need assistance, Iain Freeman and Andrew Sutton from Lavan's Intellectual Property team can help.



Iain Freeman
Partner
iain.freeman@lavan.com.au
(08) 9288 6759



Andrew Sutton
Solicitor
andrew.sutton@lavan.com.au
(08) 9288 6742

OUR TEAM

Your business or club 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 or club? 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 yours.



Jessica
Patterson
Partner

P: (08) 9288 6946
E: jessica.patterson@lavan.com.au



Dan
Mossenson
Emeritus Partner

P: (08) 9288 6769
E: dan.mossenson@lavan.com.au



Alec
Weston
Associate

P: (08) 9288 6873
E: alec.weston@lavan.com.au



Grace
Tang
Law Clerk

P: (08) 9288 6954
E: grace.tang@lavan.com.au