

Liquor Licensing (Small Venue Licence) Amendment Bill 2012

REPORT

The *Liquor Licensing (Small Venue Licence) Amendment Bill 2012* amends the *Liquor Licensing Act 1997* to provide for a new category of liquor licence aimed at providing flexibility to the owners of small venues, and a new streamlined process for small venue licence applications.

The aim of the small venue licence is to provide entrepreneurs with a liquor licence that is flexible enough to accommodate a variety of small business models, from food orientated business such as small tapas and sushi bars, to hybrid businesses that operate as restaurants during peak meal times or on certain nights of the week, but bars outside those times, to small specialist bars, such as wine or whisky bars, and small bars that provide patrons with an alternative to large, traditional hotels and night clubs. The proposal also aims to encourage small venues to host live music. This will encourage business activity and diversification in the liquor market and promote the live music industry.

On 23 November 2011, the Premier announced plans to transform the little-used laneways of Adelaide's CBD into vibrant spaces that attract people to the heart of the city. In his announcement the Premier identified changes to liquor licensing laws as one of the key areas for action.

Both Melbourne and Sydney have had success in revitalising CBD and inner-city laneways. In these jurisdictions the State Government has contributed to the laneway redevelopment programs by amending liquor licensing and planning laws to encourage the establishment of small licensed venues. These small venues, which operate as bars, cafes or under a hybrid bar/restaurant business model, offer a different experience, and aim to attract a different demographic, to hotels and nightclubs.

As currently structured, the liquor licensing regime does not properly accommodate this kind of hybrid business model nor does it provide a licence that is suitable for a small bar that does not wish to operate as a restaurant or night club. The current licensing framework provides for the following classes of liquor licence:

- hotel licence;

- residential licence;
- restaurant licence;
- entertainment venue licence;
- club licence;
- retail liquor merchant's licence;
- wholesale liquor merchant's licence;
- producer's licence;
- direct sales licence;
- special circumstances licence;
- limited licence.

There is no small or general venue or bar licence category.

While the hotel and special circumstances licences can, potentially, accommodate the business model of a small bar or hybrid venue, small entrepreneurs find them difficult and costly to obtain.

Hotel licences are provided for by section 32 of the Act and is the class of licence with the most extensive trading rights.

A hotel licence is subject to a number of conditions relating to mandatory opening hours and the service of meals. Consultation with small venue owners suggests that these conditions often renders a hotel licence unsuitable to the business model of a small bar or hybrid bar/food business.

A further problem posed by the hotel licence provisions is the requirement, under section 58 of the Act, that the applicant satisfy a 'needs' test.

Broadly speaking, the needs test is satisfied by proof of a gap in the market in the relevant locality rather than a general shortage of liquor, or even of a shortage in the particular locality. For hotels, this means demonstrating that they will deliver some service that is not already available in the locality. The applicant for the licence bears the burden of proving the relevant need.

The large number of hotels in the CBD make it very difficult for an applicant who wants to start a small licensed venue under a hotel licence to establish the venue is necessary in order to provide for the needs of the public in that locality.

A special circumstances licence, provided under section 40 of the Act, is very broad. It authorises the licensee to sell liquor for consumption on or off the licensed premises in accordance with the terms and conditions of the licence. Subject to whatever conditions may be imposed, a special circumstances licence provides sufficient flexibility to accommodate the business model of a small bar, restaurant or hybrid venue as proposed.

However, while the grant of a special circumstances licence is not subject to a needs test, it is subject to a major limitation. Subsection 40(2) of the Act provides that a special circumstances licence cannot be granted unless the applicant satisfies the licensing authority that:

- a licence of no other category could adequately cover the kind of business proposed by the applicant; and
- the proposed business would be substantially prejudiced if the applicant's trading rights were limited to those possible under a licence of some other category.

An applicant for a special circumstances licence who wishes to run a small bar or hybrid business will have great difficulty establishing that his or her business would be substantially prejudiced if it were forced to operate under a hotel licence, given the powers of exemptions available to a licensing authority. This creates a circular problem, as an applicant for a hotel licence is required under section 58 of the Act to satisfy the 'needs' test.

The difficulties posed by the hotel licence and special circumstances licence provisions mean that many small venue owners are forced to operate under restaurant or entertainment venue licences.

The problems with a restaurant licence, when applied to the business model of a small bar or hybrid business, are two-fold. Firstly, it requires patrons to be attending a function at which food is provided, or to be seated in order to be served liquor without a meal. Secondly, except as otherwise allowed by a condition of the licence, the business must be conducted such that the supply of meals is, at all times, the primary and predominant service provided to the public at the premises. While the qualification except as otherwise allowed by a condition of the licence provides some flexibility, a licensing authority cannot completely exempt a licence from the statutory conditions. This means it unlikely that a licensing authority could grant a restaurant licence with a condition completely exempting the premises from the requirement to

serve meals or to be open during certain hours. It should be noted that ‘meal’ in this context means a substantial, sit-down, meal and does not include light food that may be served with or ancillary to liquor. This renders a restaurant licence unsuitable for a small bar owner who seeks flexible opening hours and who does not intend offering its customers meals (and, given the cost of operating a commercial kitchen, many may not wish to do so).

Similarly, entertainment venue licences, provided for under section 35 of the Act, permit the sale of liquor for on-premises consumption but only:

- for consumption with or ancillary to a meal to patrons in a designated dining area;
- when live entertainment is provided; or
- if the licence conditions so allow, to patrons attending a function at which food is provided or who are seated at a table.

Importantly, subsection (2) of section 35 provides that an entertainment venue licence must be subject to a number of conditions one of which is that the business conducted at the licences premises must consist primarily and predominately of the provision of live entertainment.

These limitations render an entertainment venue licence unsuitable for a small venue owner who does not wish to serve meals or host functions or sell liquor at times other than when live entertainment is provided or who otherwise does not wish to operate predominately as a live music venue.

Even where an applicant overcomes the problems with the licensing structure, other than where the premises operate under an entertainment venue licence (with the problems inherent with that category of licence), section 105 of the Act requires a further consent to be granted before licensed premises can have entertainment. In order to obtain entertainment consent, an applicant must satisfy the licensing authority that:

- (a) the giving of consent to the entertainment would be consistent with the objects of the Act; and
- (b) the entertainment is unlikely to give undue offence to people who reside, work or worship in the vicinity of the premises.

Although the need to obtain a separate entertainment consent may be appropriate for large venues or venues that seek to offer entertainment into the early hours of the morning, for small venues that wish to offer entertainment only up to midnight it is unnecessary and the requirement that multiple approvals be obtained adds to the costs incurred by small venue

owners who wish to offer entertainment. Consultation with small bar owners and live music venue operators indicates this is a major disincentive to smaller venues offering live entertainment which has had a detrimental impact on the live music scene in Adelaide.

The Government also believes that the application process should be streamlined.

Currently, section 77 of the Act gives any person a right to object to the grant of a liquor licence. Under section 17, contested applications must be referred to conciliation. If conciliation fails, an application must be referred to the Liquor Licensing Court (unless the parties agree to the Commissioner determining the application). Where matters are determined by the Commissioner, section 22 provides general right to seek review of a decision of the Commissioner to the Court. Section 27 provides a right of appeal (with permission of the Supreme Court) from a decision of the Court. The right to object combined with the conciliation, hearing and appeal processes can draw out the application process and lead to significant costs being incurred by applicants and to inappropriate, overly restrictive, licence conditions. The costs associated with the process have been identified by small venue owners as a major barrier and disincentive to entry into the market.

The Government has consulted with small bar owners, live music venue operators, organisations such as Renew Adelaide, the Adelaide West End Association, the Adelaide City Council, and the Australian Hotels Association of South Australia (AHASA). As a result of this consultation, the Government proposes the creation of a small venue liquor licence, one that will allow a licensee flexibility in terms of the business operated under it. To cut red tape and business costs, a new streamlined process for small venues licence applications is also proposed.

A small venue licence will have these features:

- A small venue licence will authorise the sale or supply of liquor for on-premises consumption, and on-premises consumption of liquor with or ancillary to a meal, during specified hours of service. Sale of liquor for off-premises consumption will not be authorised.
- The maximum capacity of a small venue will be limited to 120 patrons (including internal and external areas).
- Standard hours of service (of liquor) will be 11am to midnight on any day other than Christmas Day or Good Friday. The hours of service will be able to be extended to cover midnight to 2am on any day other than Boxing Day or Easter Saturday or 8am

to 11am on any day other than Christmas Day or Good Friday through an extended trading authorisation.

- At the discretion of the Commissioner, an entertainment consent authorising entertainment (other than prescribed entertainment) on the premises during standard hours of service (11am to midnight) will be deemed to apply to the premises without the need for an application for separate entertainment consent. Entertainment beyond standard hours will require a separate entertainment consent. Prescribed entertainment will include adult entertainment.
- Gaming will not be permitted.
- Small venue licences will only be able to be granted in prescribed areas. This will be limited to the Adelaide Central Business District for an initial period of 12 months after which additional areas may be prescribed by regulation following consultation by the Minister with relevant industry associations and councils.

A new process will apply to applications for small venue licences:

- Applications for small venue licences will be determined, in all cases, by the Commissioner.
- Small venue applications will have to be advertised.
- There will be no requirement that the Commissioner attempt conciliation of a small venue licence application.
- The general right of objection will not apply to a small venue licence application. Instead, there will be a general right to make submissions to the Commissioner on a small venue licence application.
- The Police Commissioner will retain the right to intervene in a small venue licence application, which will include the right to put evidence to the Commissioner.
- The Police Commissioner and the applicant will retain the right to seek review of the Commissioner's decision in the Licensing Court. The Police Commissioner will only have the right to seek review on 'fit and proper person' and 'public interest' grounds.

In all other respects, the provisions of the Act will apply: an applicant for a small venue licence will have to pass the 'fit and proper person' test; the premises will have to be suitable; licensees will have to comply with mandatory conditions regarding codes of practice.

These reforms have been the subject of consultation with small venue operators, regulators and groups such as Renew Adelaide, the Adelaide West End Association and the Adelaide City Council. There is widespread support across these groups for the Government's reform proposals.

I commend this bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Liquor Licensing Act 1997*

4—Amendment of section 17—Division of responsibilities between the Commissioner and the Court

This clause amends section 17 of the principal Act to require applications to which section 52 of the Act applies and that relate to the new small venue licence to be determined by the Commissioner.

The clause further provides that the conciliation provisions in section 17(1)(b) do not apply to an application to which section 52 applies that relates to a small venue licence.

5—Amendment of section 21—Power of Commissioner to refer questions to the Court

This clause amends section 21 of the principal Act to provide that, in relation to applications in respect of a small venue licence, the Commissioner can only refer questions of law to the Court for determination, rather than all of the matters listed in that section.

6—Amendment of section 22—Application for review of Commissioner's decision

This clause amends section 22 of the principal Act to allow the Court to review certain decisions of the Commissioner relating to applications for, or relating to, a small venue licence.

7—Amendment of section 31—Authorised trading in liquor

This clause amends section 31 of the principal Act to add a new class of licence, namely the small venue licence.

8—Insertion of section 40A

This clause inserts new section 40A into the principal Act, setting out what a small venue licence authorises, along with conditions attaching to the new class of licence.

Of special note is that a small venue licence can only be granted in respect of premises located in a prescribed area (which is currently the Adelaide CBD, but to which other areas may be added by regulations).

9—Amendment of section 53—Discretionary powers of licensing authority

This clause provides that the Commissioner has an absolute discretion to grant or refuse an application for a small venue licence, which (pursuant to section 21 of the principal Act) limits review of the Commissioner's decision in respect of the discretion.

10—Amendment to section 76—Other rights of intervention

This clause amends section 76 of the principal Act to provide that the section does not apply to proceedings relating to an application for, or in relation to, a small venue licence. New section 77A provides rights of submission in relation to small venue licences.

11—Amendment of section 77—General right of objection

This clause amends section 77 of the principal Act to provide that the section does not apply to proceedings relating to an application for, or in relation to, a small venue licence. New section 77A provides rights of submission in relation to small venue licences.

12—Insertion of section 77A

This clause inserts new section 77A into the principal Act, setting out the rights of people to make submissions in relation to an application for, or in relation to, a small venue licence.

13—Amendment of section 105—Entertainment on licensed premises

This clause amends section 105 of the principal Act to provide that a licensee of licensed premises in respect of which a small venue licence is in force does not require an authorisation to provide entertainment on the licensed premises, subject to the conditions set out in new section 105(1a).