

The Manager
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Leasing Negotiators
Property Consultants
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Dear Manager,

REVIEW OF LIQUOR LICENSING ACT

I am responding to your request for suggestions to improve the legislative framework and management of liquor licenses in South Australia.

Part of this company's work is acting as lease negotiators and property consultants. This includes assisting a party with negotiating new leases, rent reviews, assignment of leases and dealing with property maintenance disputes. The bitterest negotiations I am involved in concern licensed premises.

Most licensed premises are covered by the Retail and Commercial Leases Act.(RCLA)
Early last year I submitted recommendations to the Small Business Commissioner suggesting amendments to the Retail and Commercial Leases Act. That submission made many suggestions and I shall only repeat those that particularly concern licensed premises.

Since the last major review of the Liquor Licensing Act the following legislative changes that concern licensed premises have been introduced or amended.

Retail and Commercial Leases Act (Regulations 2010)
Work Health & Safety Act 2012 (State)
Disability (Access to Premises — Buildings) Standards 2010. (Comm)

In addition to these there are standards covering electrical wiring, air conditioning, plumbing and fire services.

There is no requirement a lease complies with the Retail and Commercial Leases Act. The vast majority do not. Almost all do not require the lessor to maintain the premises but require the lessee to do so.

Section 13 of the RCLA covers building capital expenditure and maintenance. Generally the lessee is not liable for making good damage arising when the lessee is not nor entitled to be in possession. Similarly the lessee is not required to compensate for depreciation due to "ordinary wear and tear".

The RCLA at section 13(1) generally excludes capital expenditure. The Disability (Access to Premises — Buildings) Standards 2010 Commonwealth Regulations can impose a requirement for considerable capital expenditure. The requirement for capital expenditure for disabled access, fire up grade or in many cases a wiring up-grade, is not a lessee cost,

The recently enacted Work Health and Safety Act 2012 places a requirement for a lessor as a supplier of a workplace to provide premises that is “without risk to the health and safety of persons”. The penalties under this act are significant.

There is a condition of a liquor license the premises must be safe.

In a recent application to the Magistrates Court seeking an order to enforce a lessor inspection of a potentially unsafe building under section 68 of the RCLA the Magistrate held the Magistrates Court did not have jurisdiction to cover the Liquor Licensing Act nor the Work Health and Safety Act.

Many premises that were licensed over 40 years ago are unlikely, without alteration, to be suitable for licensing today. Many improvements approved have only partially been completed. Usually the owner failing to complete toilet additions or disabled access. There is no requirement to ensure a lessor carries out the capital works, not a lessee cost, and that is the greatest area of conflict.

To address this I suggest an amendment to the Liquor Licensing Act to ensure a lessor undertake its responsibility to inspect and maintain licensed premises. I also suggest if a landlord re-enters and operates a business that the business is not further transferred until the premises are suitable for licensing, meeting current standards.

Similarly the act should describe who is responsible for inspection of licensed premises. Currently councils are avoiding their responsibilities stating it is solely the responsibility of Consumer and Business Services. The inspecting party should understand the building code, including air conditioning standards, health regulations as well as licensing requirements.

Many premises would not pass a health inspection.

Maybe a joint inspection with a council building and health officer should be considered.

Part of my business involves assisting with assignments of leases. The process of assignment of a liquor license is too complicated and long. Why does it have to be advertised? The license exists, the conditions are known, the only point to be investigated is the character of the applicants. 30 days is sufficient to transfer a licence.

Hopefully the above is valuable. If the amendments are incorporated in the legislation there will be less disputes, safer premises, and easier transfer of licenses.

Yours faithfully.



W A Close

Director