

Liquor licensing reform

CHANGES MADE TO THE LIQUOR LICENSING (LIQUOR REVIEW) AMENDMENT BILL AS A RESULT OF CONSULTATION

The State Government is seeking to modernise South Australia's liquor licensing system.

To undertake the significant reform, during November 2016 to January 2017, the State Government consulted with the community and stakeholders on the draft Liquor Licensing (Liquor Review) Amendment Bill.

Following this consultation process, proposed new laws have been introduced into Parliament to pave the way for the most significant reform to South Australia's liquor licensing system in two decades. This document includes the changes that were considered appropriate in light of the feedback received through the consultation process.

The new laws seek to underpin the framework for the new licensing system that aims to cut red tape, improve public safety and make Adelaide a more vibrant city.

View the full [Liquor Licensing \(Liquor Review\) Amendment Bill](#).

New licensing class system

- [General Licence \(Section 32\)](#)
The name 'General Licence' has been amended to 'General and Hotel Licence'.
- [Club Licence \(section 36\(10\)\)](#)
The club transport endorsement has been widened to apply to members of a club for the purpose of transport relating to club activities specified in the endorsement (rather than just sporting events).
- [Packaged Liquor Sales \(section 32 and 36\)](#)
Trading hours for the sale of packaged liquor under a General and Hotel Licence and Club Licence have been made consistent with a Packaged Liquor Sales Licence (8am - 10pm with maximum trading of 13 hours).

Licensees

- [Use of force by crowd controllers \(clause 55\)](#)
The requirement for a crowd controller to be supervised by a licensee or responsible person when using force to remove a person from licensed premises has been removed from the Act.
- [Drug and alcohol testing \(new Part 9 Division 5 now removed\)](#)
Due to industry concern regarding the proposed drug and alcohol testing regime of responsible persons and licensees, those reforms have been removed from the Bill.

Enforcement

- [Non-compliance register \(section 135A\)](#)
The provision has been amended so that the Commissioner may publish details (on a website maintained by the Commissioner) relating to a licensee who has been convicted of any offence under the Act. The details must be removed from the website no later than 5 years after the date of the relevant conviction.

Minors

- Sale of liquor to minors on licensed premises (section 110(4))
The offence for a minor under section 110(4) has been reduced to a maximum penalty of \$2,500 and the expiation fee has reduced to \$210.
- Power to remove or refuse entry to minors (section 116(2))
The penalty under section 116(2) has been reduced to a maximum penalty of \$2,500 and the expiation fee has reduced to \$210. This offence would primarily relate to minors.

Involvement of councils

- Notification to councils (section 52(2aa))
A provision has been inserted so that an applicant may notify a council of an application for a licence if there is no development approval required.
- Submissions by council (section 77(3))
The provision has been amended to allow submissions on planning related matters if a combined assessment panel under the *Planning, Development and Infrastructure Act 2016* has been established.
- Council dry areas (section 131)
The requirement for councils to notify the Liquor and Gambling Commissioner of an intended dry area and the ability for the Commissioner to make directions for changes to the notice have been removed.

Community Interest Test

- Community interest test (section 53A(2)(a)(i))
The factor relating to harm that might be caused by excessive or inappropriate consumption of liquor has been slightly re-worded to make it clear that harm caused to groups within a community is relevant.
- Community interest test (section 4)
The definition of a designated licence has been widened to include a Club Licence, rather than a Club Licence selling packaged liquor. This will mean that all Club Licences will be subject to the new community interest test.

Safe drinking culture

- Objects of the Act (section 3(1a)(b))
The adverse economic, social and cultural effects on communities (whether to a community as a whole or a group within a community) has been inserted as a relevant factor to what is considered harm caused by excessive or inappropriate consumption of liquor.
- Power of licensing authority to impose conditions (section 43(2)(d))
Prescribed persons or bodies, to be included in the regulations, will be given power to make an application to the licensing authority to impose, vary, suspend or revoke a condition on a licence. The prescribed persons or bodies are expected to include Indigenous groups that are recognised representative bodies through existing legislation.

Community Impact Assessment Guidelines

- The Government is considering the public feedback on the Community Impact Assessment Guidelines, which was released at the same time as the draft Bill. It is important to note that these Guidelines support proposed new sections 53A and 53B and therefore cannot be finalised until the Bill has passed Parliament and the revised regulations made. These guidelines are not made by Parliament, but instead made by the Commissioner.

Application process

- Fit and proper criteria (section 55)
Under the previous fit and proper test, an individual who has been a director of a body corporate that was wound up within the preceding five years could be disqualified. This provision has now been removed, and the licensing authority instead will rely on the existing provisions relating to reputation, honesty and integrity for the purpose of the fit and proper test.

Also the licensing authority will rely on the new power to consider 'any other factor relevant to the particular purpose to which the decision relates'. An example of this may be the person (or, if the person is either a body corporate or the director of the body corporate) has been a director of a number of bodies corporate which have been wound up for the benefit of creditors.

- Further submission (section 78)
The provision has been amended to give reference to the rules of natural justice when the Commissioner is exercising a discretion to call for submissions relating to advertised applications. There was also an amendment to allow these submissions to be made on any grounds.

Following the community and stakeholder consultation process, targeted consultation was undertaken with State Government agencies that may be impacted by reform. The following administrative and technical amendments changes were made as a result of this consultation:

- **Registrar of the Licensing Court (section 15A)**
Insertion of a provision providing for a Registrar of the Licensing Court, as the Act currently does not have a provision for a Registrar of the Licensing Court.
- **Inspectors (section 4)**
Changes to streamline the appointment of inspectors to make it more in line with other legislation administered by Consumer and Business Services.
- **Definition of premises (section 4)**
The definition of premises has been amended to make it clear that movable or temporary buildings or structures are included.
- **Publication of submissions by the Commissioner (section 11AA)**
Insertion of a provision to allow for the Commissioner to publish a determination excluding personal/confidential/commercial sensitive information.
- **Notification of applications to Commissioner of Police (section 51A)**
The amendment will require copies of applications to be given to the Commissioner of Police at least 28 days before the hearing/determination unless not reasonably practicable.
- **Representation in proceedings before the Commissioner (section 20)**
Amendments to make it clear that representation applies for proceedings before the Commissioner other than determinations made entirely on the basis of the application and written submissions without holding a hearing.
- **Transitional provisions (Schedule 2, clause 13)**
The Commissioner will no longer have to consider the objects of the Act in transitioning the existing licences to the new classes of licence.
- **Early commencement of red tape reduction measures (section 137C)**
A provision has been included in the transitional provisions to provide a regulation making power to allow some red tape reduction reforms (those that remove certain trading restrictions) to commence before the new licensing system commences.