



Proposed Changes to Liquor Laws



You may have noticed that the State Government has recently introduced to Parliament, amendments to the *Liquor Control Reform Act 1998*. The First Reading of the Amendment Bill was read in Parliament on 30 October 2007.

The Minister for Consumer Affairs, Mr. Tony Robinson said the new laws "strike the right balance between maintaining a vibrant night-life and keeping our streets safe".

The proposed changes include:

- A Police power to shut down nightclubs immediately for 24 hours if violence is occurring or public safety is threatened. However this power requires input from the Chief Commissioner of Police prior to enforcing the lockout.
- The power to ban troublemakers from entertainment precincts for 24 hours.
- The Courts to be given power to issue Exclusion Orders for up to 12 months for repeat offenders.
- The Director of Liquor Licensing to be given power (in consultation with police) to declare an area an entertainment precinct. Areas currently under consideration are King, Queen and Chapel Streets.
- Streamlining the power of the Director of Liquor Licensing to make a late hour entry declaration to introduce a lockout.

- The definition of an 'Associate' of a licensee is to be amended to explicitly include any individual who has significant influence of the conduct of the licensed venue.
- Cafe's and restaurants which operate as bar/nightclubs late into the night will be required to have appropriate security.
- The penalty for serving alcohol to intoxicated persons or allowing them on licensed premises is to be increased to a maximum of \$13,200.
- The 'on the spot' fine for this offence is to be increased to a significant \$1,320.
- The penalty for serving alcohol without a licence to be doubled to a maximum of \$26,400 or 2 years imprisonment.
- The Director of Liquor Licensing be given the power to suspend licences or vary trading hours.
- The Director of Liquor Licensing will be able to ban advertising or promotions that encourage irresponsible consumption of liquor or are not in the public interest.

These proposed amendments to Liquor Laws have the potential to create significant issues for Licensees and the industry as a whole. Licensees should make themselves aware of these proposed amendments to the *Liquor Control Reform Act* and should they find themselves in a situation where legal advice is necessary, contact Ryan Commercial Lawyers as soon as possible.

DOOR POLICY

The Right to Refuse Entry



The Right to Refuse Entry is a current, relevant and potentially expensive issue for Licensee's and related parties. A Licensee must be proactive in ensuring compliance with their obligations under the *Equal Opportunity Act 1995 (Vic)* and develop, establish and actively implement procedures that extend beyond responses to issues arising from photo identification at the entrance to a venue by security personnel; and the fine but dangerous line between a Licensee's right to refuse entry and acting in a manner that may be considered discriminatory.

There are many and various ways in which a Licensee or venue may implement procedures to ensure that discriminatory behaviour by it or its staff/security does not occur and result in proceedings being brought for discrimination.

The procedures may include:

- Workshopping staff and security personnel;
- Attending Cultural Awareness Training;
- Attendance at courses conducted by other Equal Opportunity and Anti-Discrimination Groups; and
- Drafting of Anti-Discrimination Modules for inclusion in the Staff Induction or Venue Procedures Manual.

Case Study: The Peel Hotel

On the 24th of May 2007, The Peel Hotel applied to the Victorian Civil and Administrative Tribunal (VCAT) for exemptions to:

1. Enable the Company and its staff to refuse or restrict entry to those who do not identify as homosexual males; and
2. Advertise that male patrons who do not identify as homosexual will be refused entry to the premises.

In a landmark decision VCAT granted the Application for exemption.

The owner of The Peel Hotel Mr McFeely said "I did it [lodged the Application] to protect the integrity of the venue and to ensure the safety and comfort of my regular gay clientele".

Mr McFeely said he went to the tribunal after his gay patrons expressed concerns over the number of heterosexuals and lesbians frequenting his pub.

He said that his gay clientele were made to feel like zoo animals, and violence often occurred. Therefore as of the 24th of May 2007, The Peel Hotel has the right under the *Equal Opportunity Act 1995* to refuse entry to heterosexual men and lesbians.

It should be noted that the exemption granted to the Licensee of The Peel Hotel is limited specifically to these premises and cannot be used by another licensed premises as a basis for excluding patrons based upon their sexual preference, race, colour, religion etc.

Prior to The Peel Hotel case, a number of applications have been made to VCAT for similar exemptions. These applications related to age, gender, colour, race, religious beliefs and now sexuality.

VCAT looks at many things when an application for exemption is lodged including:

- whether there is discrimination;
- whether the exemption is reasonable and appropriate;
- circumstantial factors relevant to the matter; and
- any other factors including the public interest that might justify the exemption

It may be possible for licensed premises to apply for an exemption similar to that granted to the Peel Hotel, where a venue caters to a specific clientele.

However, it is essential for a Licensee and their staff and security to understand their rights and also those of the patrons wishing to attend the venue.

Issues to consider when buying and selling Licensed Premises

If you are intending to enter into a Contract of Sale for the Freehold and/or the Business of licensed premises, there are a number of issues which need to be considered prior to signing any documentation.

When entering into a transaction as a **Purchaser**, due diligence including but not limited to the following should be undertaken:

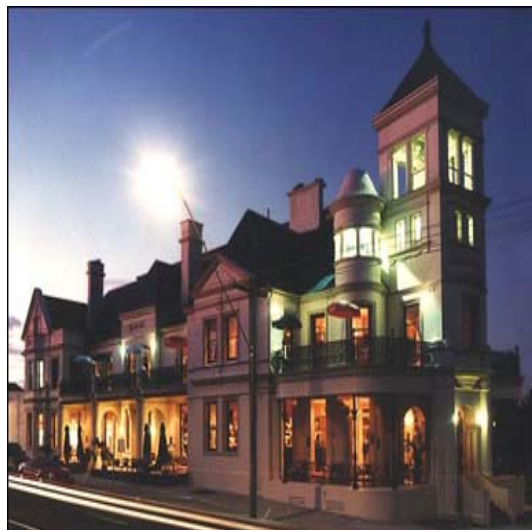
1. reviewing the Liquor Licence for the Premises including all conditions and ensuring the transaction is conditional on the successful transfer of the Licence;
2. reviewing any Planning Permits attached to the Property and confirming these are being complied with and properly reflect the business being conducted;
3. where the Property is subject to a Lease, reviewing all Lease documentation;
4. company searches where the Vendor is an incorporated entity;
5. confirming the current registration of the Business Name and ensuring its ownership will be transferred at settlement;
6. considering any intellectual property issues, particularly any trademarks which form part of the Business assets;
7. reviewing the Liquor Licensing Victoria approved Plan to ensure it accurately reflects the current situation at the Premises and where it does not, having the Vendor attend to making (including paying for) any necessary Application for Variation of Licence; and
8. obtaining a copy of the Registration of Food Premises from the Health Department of the local Council and ensuring the Registration is transferred to the Purchaser.

When considering entering into a transaction for the sale of Licensed Premises/Business, a potential **Vendor** should consider and confirm among other things, the following:

1. all the matters detailed above;
2. ensuring all aspects of the Lease are in order including payment of rent and outgoings, maintenance obligations (including painting), exercise of options and so on;
3. whether the sale qualifies as a supply of going concern and is therefore GST exempt;
4. how the Vendor intends to deal with its employees. For example will the Purchaser be required to assume employment of the staff, or will the Vendor terminate the employment on or before the settlement date;
5. ensuring all Services Contracts and other Agreements are included in the Contract to ensure the Purchaser assumes the responsibilities of the Agreements;
6. specific terms, options and/or other conditions included in the documentation which are relevant to the transaction and required by the Vendor.

As can be seen, there are a number of complex issues to consider and address prior to entering into any form of Contract or Agreement. It is recommended that both a Purchaser and a Vendor undertake an appropriate level of due diligence. The Purchaser to ensure they know exactly what they are buying and the Vendor to ensure all is in order before signing a Contract and to avoid a situation where a Purchaser discovers an 'issue' after Contracts are signed but before settlement. Ryan Commercial Lawyers is very experienced in this area and is able to advise any prospective client on the sale or purchase of a Licensed Business or freehold.

Mentone Hotel





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A BOUTIQUE FIRM DELIVERING BIG FIRM LEGAL SOLUTIONS

Ryan Commercial Lawyers was established in February 2005. Ryan Commercial Lawyers focus and commitment is in and to liquor licensing, property, commercial and sports law, and the tourism and hospitality industries. Our firm has a strong and growing client base in these areas and it is our goal to further develop these areas of the firm.

We provide expert legal services in a personalized, efficient and cost effective manner. The consideration of the commercial realities for our client's business are always of paramount importance to our team at Ryan Commercial Lawyers.

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NEW YEARS EVE TRADING

Most Licensees would be aware that over the last few years, the Director of Liquor Licensing Victoria has granted an automatic extension of on-premises trading to all holders of a General Licence, On-Premises Licence, Full Club Licence and BYO Permit to be able to trade until 3am for the night of New Years Eve.

However this year, Liquor Licensing have released a statement advising that that an automatic extension will only be granted until 1am.

Please ensure your Licensed Venue is aware of this change and takes the appropriate measures.

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"I smuggled in some liquor like you asked me to ... inside the little chocolates."

RYAN COMMERCIAL LAWYERS
wish you Seasons Greetings and a happy and safe 2008
This office will close at 5:00pm on
Friday 21 December 2007
and will reopen on Monday 7 January 2008
If urgent assistance is required please call Paul Ryan on 0418
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