Applying for a Liquor Licence

LIQUOR LICENCE TYPES

There are five types of liquor licence in Tasmania.

General licence

A general licence authorizes the sale of liquor on the licensed premises between 5 a.m. and midnight daily, for consumption on or off the premises. Hotels providing bar and bottle shop facilities usually operate under a general licence.

Club licence

A club licence authorizes the sale of liquor on the licensed club premises between 5 a.m. and midnight daily, for consumption on or off the premises. The sale of liquor is generally limited to club members, guests and people attending the premises for club related activities.

On-licence

An on-licence authorizes the sale of liquor for consumption on the licensed premises between 5 a.m. and midnight daily. Premises such as bars, lounges and nightclubs that do not have takeaway liquor service (off sales) usually operate under an on-licence.

An on-licence also authorizes the sale of liquor at a restaurant for consumption with or without food. An on-licence in respect of premises operating as a restaurant (where the principal activity is serving food for consumption on the premises) can be issued where the intention of the licensee is to continue to operate as a restaurant.

Off-licence

An off-licence authorizes the sale of liquor on the licensed premises between 5 a.m. and midnight daily for consumption off the licensed premises. This licence is usually issued for a standalone bottle shop facility or where the bottle shop portion of a hotel premises is to be independently licensed.

Special licence

A special licence authorizes the sale of liquor on the licensed premises between specified times and is subject to specific limitations or restrictions such as the types of liquor that can be sold or the means by which sale takes place. This licence is usually issued to authorize the sale of liquor at cafés, restaurants, function centres, tertiary institutions, accommodation providers, wine producers, wholesalers or tourist attractions.

The Commissioner may in accordance with section 25B of the *Liquor Licensing Act 1990* grant a liquor licence subject to such conditions as the Commissioner thinks fit.

A liquor licence can only be held by a person who is at least 18 years old. A licence cannot be held by more than one person or by a company or trust.

QUALIFICATIONS FOR A LIQUOR LICENCE

The Commissioner for Licensing must be satisfied that the applicant is qualified to be granted the liquor licence applied for. Section 22(1) of the Act defines qualifications for a liquor licence applicant as follows:

(a) he or she is a natural person who has attained the age of 18 years; and
(b) the Commissioner is satisfied that the person is a fit and proper person to be a licensee; and
(c) the Commissioner is satisfied that the person will be able to exercise effective control over the service, and any consumption, of liquor on the premises for which the licence is sought; and
(d) the person has satisfied the Commissioner that the person has the necessary knowledge, experience and competency.

In addition, a person is not qualified to be granted a liquor licence if the Commissioner reasonably suspects that any associate of the person who is a natural person and likely to have any influence over the management of the business to be carried on under licence is not a fit and proper person to be an associate of a licensee.

FIT AND PROPER

Under the Act a person must be fit and proper to be qualified to hold a licence or to be an associate of an applicant or licensee. If an associate is not fit and proper, then the applicant or licensee is not considered to be qualified to hold a licence.

The Commissioner for Licensing determines whether a person is fit and proper and is qualified to hold a licence. The Act requires that all decisions must be made considering what is in the best interests of the community.

What does fit and proper mean?

Fit and proper means different things depending on the circumstances to which it is applied. Whether a person is fit and proper can depend on: the **activities a person will be performing** and the **ends to be served by those activities**; and **a person's previous behaviour.**

When authorising a person to become a licensee, decision makers are concerned about whether the person knows and understands their legal obligations, and whether they have the ability to act with honesty and integrity to minimise harm arising from the misuse of liquor.

What is considered when making an assessment?

Determining whether a person is fit and proper happens on a case-by-case basis, as every person's situation is different. It requires judgement and evaluation.

Considering a person's **character** and **reputation** are important parts of the assessment. Character is important as it reflects a person's moral qualities (their views about what is right and wrong) and suggests how they may act if they become a licensee or an associate. Reputation is important as it reflects what a reasonably-minded member of the public thinks about the person's likely future behaviour, regardless of their character.

The Commissioner is able to make inquiries to assist the assessment, including requesting a report from the Commissioner of Police (although this is not always necessary). A national police check is always undertaken.

Matters of interest in a fit and proper assessment

- Any major convictions within a given period.
- A consistent pattern of convictions that suggest a disregard for the law.
- Any convictions against the Act.
- Failing to discharge financial obligations or debts owing to the Crown under the Act.

- Good repute, integrity and character; no history of behaviour that would cause the person to be unsuitable to hold a licence, or be an associate of a licensee.

When would a person not be considered fit and proper?
A person would not be considered fit and proper if they are a member of a criminal organisation, or associated with a criminal organisation. Other examples of matters that would be closely examined under a fit and proper assessment include:

- prison terms;
- the committing of a serious offence, including violence, corruption or drug related offences;
- the committing of many smaller offences, such that a pattern of disregard for the law or for public safety is displayed;
- having been bankrupt, or entered into an arrangement or composition with creditors; and
- a history of non-compliance under the liquor legislation.

What if a licensee or an associate is no longer considered fit and proper?
The Commissioner can consider taking disciplinary action, which may include the suspension or cancellation of a licence.

EXERCISING EFFECTIVE CONTROL

Applicants are to provide information to help satisfy the Commissioner in respect to Section 22(1)(c) above. The information should include details of any management structures proposed by the licence applicant to monitor the sale and consumption of liquor on the premises; details of any house policies, procedure manuals or staff training to be in place at the premises in relation to the sale of liquor and conduct of the premises; information that indicates an understanding by the applicant of the day to day operations of a licensed premises and details of the time the applicant will physically be at the premises.

RESPONSIBLE SERVING OF ALCOHOL

Unless exempted by the Commissioner for Licensing an applicant for a licence must undertake a Responsible Serving of Alcohol course (RSA) or provide evidence of RSA accreditation.

ASSOCIATE(S) OF THE APPLICANT

A person is taken to be an associate of an applicant for a liquor licence if –

(a) the person holds, or will hold, any **relevant financial interest**, or is, or will be, entitled to exercise any **relevant power** (whether in right of the person or on behalf of any other person) in the business of the applicant, licensee or permit holder and, by virtue of that interest or power, is able, or will be able, to **exercise a significant influence** over, or with respect to, the management or operation of that business; or
(b) the person holds, or will hold, any **relevant position**, whether in right of the person or on behalf of any other person, in the business of the applicant or licensee; or
(c) the person is a **relative** of the applicant or licensee; or
(d) the Commissioner is satisfied that the person could exercise a significant influence over the applicant, licensee or permit holder.

"relative" means a spouse, partner, parent, child or sibling (whether full blood or half- blood).
"relevant financial interest", in respect of a business, means –
(a) any share in the capital of the business; or
(b) any entitlement to receive any income derived from the business.
"relevant position", in respect of a business, means –
(a) the position of director, manager or other executive position or secretary, however that position is designated in that business; or

(b) if that business is conducted in premises in respect of which a liquor licence is in force, the licensee.

"relevant power" means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others –

(a) to participate in a directorial, managerial or executive decision; or

(b) to elect or appoint any person to any relevant position.

REQUIREMENTS FOR A LIQUOR LICENCE

Section 24A(1) of the LLA defines the requirements for a liquor licence as follows:

(1) In considering an application for a licence, the Commissioner must make a decision which, in the opinion of the Commissioner, is in the **best interests of the community**.

(2) In considering an application for an off-licence, the Commissioner must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on licence in respect of premises operating as a restaurant, the Commissioner must be satisfied that the premises are, or are intended to be, used as a restaurant.

BEST INTERESTS OF THE COMMUNITY

In considering an application for a liquor licence under section 24A of the Act the best interests of the community is determined by either the Commissioner for Licensing or the Tasmanian Liquor and Gaming Commission, after considering the object and scope of the Act, and the interests included in the *Liquor Licensing Regulations 2016* (shown below).

2A. Object of Act

(1) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –

(a) minimise harm arising from the misuse of liquor by –

(i) ensuring that the supply of liquor is carried out in a way that is in the ***best interests of the community*** and does not, as far as practicable, detract from public amenity; and

(ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and

(iii) encouraging a culture of responsible consumption of liquor; and

(b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the ***best interests of the community***.

(2) It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a matter as to further the object set out in subsection (1).

Both the Commissioner and the Commission are independent bodies established under legislation. They take the unique circumstances of each case into account when making a decision. The Regulations make clear that they must take the interests of the whole community into account, not just private interests

The definition of ***best interests of the community*** is prescribed in the *Liquor Licensing Regulations 2016* as follows:

(a) ***The general costs and benefits to the community of the supply, or proposed supply, of liquor*** considers the nature and type of facilities proposed. Costs of a proposal may include the potential for alcohol-related anti-social behaviour or alcohol-related crime. Benefits may include employment, tourism, cultural or recreational benefits that may arise from the proposed activities, such as the responsible development of the hospitality industry.

(b) Whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –

(i) ***reside or work; or***

(ii) ***attend schools or other facilities frequented by children; or***

(iii) ***attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or***

(iv) ***attend places of worship.***

Consideration may be given to whether there are hospitals, hospices, aged care facilities, places of worship, child care centres, schools, alcohol free areas, public parks/children's playgrounds or facilities, or support services for people receiving treatment for alcoholism or other addictions located within a specific distance of the proposed premises, and the potential impact that the proposal may have on these.

(c) ***Possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor*** is quite broad, but may include:

- issues relating to outlet density and whether the proposed premises is located in an area more prone to alcohol-related issues, for example, its proximity to businesses with vulnerable customers (such as an opportunity store that is frequented by a significant number of alcohol dependent customers);
- the availability of safe transport options where the premises is likely to result in late night departures of patrons;
- the incidence of alcohol-related crime in the area; and
- whether the location of the premises is one about which Tasmania Police, the Department of Health and Human Services and/or Local Councils have concerns with regard to increased access to alcohol.

Potential adverse effects on public amenity are among the objects of the Act and would be considered in licence applications. Public amenity includes the nature and character of the local community and how the proposed licence would fit that location. Impacts that may be considered include litter and other pollution associated with the operation of a premises, increases in pedestrian and vehicle traffic, types of local businesses, public services and residences in the vicinity.

APPLICATION DOCUMENTS TO BE LODGED

THE APPLICATION MUST INCLUDE THE FOLLOWING:-

(1) Licence Application form.

(2) Licence Application Fee – refer to the fee schedule.

(3) All applicants must provide a submission addressing:-

i. Section 22(1)(c) of the Act (refer page 3) and how you as the applicant will be able to **exercise effective control** over the service and any consumption of liquor on the premises for which the licence is sought; and

ii. Section 24A(1) of the Act (refer page 4) and how your application is in the **best interests of the community.**

(4) Your **submission** should also cover the following if applicable to your application:

i. Business plan, including an outline of your products/services in terms of key features and potential customers;

ii. Business / Professional experience, in particular relevant knowledge, experience and competency in relation to the service of liquor;

iii. Planning approvals relating to the sale and consumption of liquor;

iv. General description of facilities and services;

v. Construction details (materials, finishes, acoustic treatment etc.);
vi. Costing of completed facility;
vii. Details of food (if applicable) to be provided, including menu;
viii. Liquor services - bars to be provided (if applicable) and range of liquor;
ix. Type of Entertainment (if applicable); and
x. Type of Accommodation (if applicable).

(5) Plans – A4 or A3 size scale plans of the proposed licensed premises:
i. Site or property plan;
ii. Floor plan; and
iii. Photographs of site / building where applicable.

(6) In addition, the following is required for a Club Licence application:
i. Evidence of the number of members in the club;
ii. Copy of the constitution and rules; and
iii. Certificate of incorporation.

PROCEDURE FOR LICENCE APPLICATIONS

APPLICATION

(1) Before proceeding with an application for a liquor licence, an applicant should contact the Liquor and Gaming Branch to discuss the intended application.
(2) It is recommended that a licence applicant check with the relevant local council to clarify any issues such as planning and building requirements before lodging an application for a liquor licence. While an application for a licence can be determined without planning approval having being obtained, applicants should be aware that a licence is of no effect if the use of the premises for the sale of liquor is not otherwise lawful. The Commissioner may request the applicant to provide details around planning related issues prior to considering the application.
(3) The applicant for a liquor licence is to give public notice of the application. The Commissioner for Licensing will provide the applicant with the format for the notice.
(4) If the Commissioner is satisfied that an applicant is qualified to hold a licence and that the application is in the best interest of the community he will direct the grant of the licence. The Commissioner may choose to refer the matter to the Tasmanian Liquor and Gaming Commission to make a determination. If the Commissioner refers the matter to the Commission then the applicant will be informed that this has occurred.

GRANT OF LICENCE AND ANNUAL FEE

(1) If the Commissioner or Commission directs the grant of a liquor licence the Commissioner shall
(a) inform the applicant; and
(b) request the applicant to pay:
i. a grant of licence fee (refer to the fee schedule)
ii. an annual fee – this will be calculated according to the date the licence is to be issued.
(2) The Commissioner shall not grant a liquor licence until the fees specified have been paid.
(3) A liquor licence does not authorize the sale of liquor if the use of those premises for that purpose is otherwise unlawful.

REFUSAL OF LICENCE APPLICATION

If the Commissioner makes a determination to refuse the licence application the applicant may appeal to the Tasmanian Liquor and Gaming Commission against the decision. Any decision made by the Commissioner or Commission may be published.

LIQUOR AND GAMING CONTACT DETAILS

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