

hospitality

MULLINS

Mullins Lawyers

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CURT SCHATZ
EDITORIAL

This edition of the Hospitality Law newsletter will be received during a time of unprecedented transition and uncertainty.

There are many factors contributing to this transitional phase, but some of the more important ones are summarised below:

1. The economy faces commercial decline and an environment where bank or any other credit is almost impossible to obtain.
2. The share market is extremely volatile both domestically and internationally.
3. Yields on hotel assets have softened.
4. The State Government announced a "cap" on gaming in hotels and clubs to run from 15 April 2008 to 30 April 2010
5. The amendments to the *Liquor Act* have now been passed through Parliament, with an emphasis on harm minimisation.
6. There is a similar pattern emerging in the Government's view on gaming as to harm minimisation.
7. The steps to be taken, and the cost of compliance with the Government's more stringent operational regime, mean extra burden on liquor and gaming licensees.

Some of these factors are totally outside of your control.

On the other hand, some of them are within your control and you should take every opportunity to avoid risk where good advice would assist you in achieving that objective.

The greatest risk to licensees is to continue operating without any knowledge of or advice on new requirements regarding *Liquor Act* amendments. An example includes the ability for licensees to apply to OLGR to change their trading conditions. With the introduction of standard trading hours, licensees should consider their options carefully.

I often see licensees treat their liquor and gaming licences without proper respect for the substantial commercial value that they represent. The articles written in this edition deal with issues to be considered prior to cancelling any liquor or gaming licences, or surrendering any operating authorities. It is important to understand that some of these decisions are irreversible, and may carry immediate effect.

My team of dedicated specialists are proficient in dealing with all these matters, or any liquor or gaming issue. We look forward to being of assistance to our clients into the future.

PROTECT YOUR LIQUOR & GAMING LICENCES AT ALL COSTS

AMANDA CAMPBELL



In the current economic climate, the collapse of seemingly "rock solid" corporations and business ventures are no longer considered

freak incidents. Almost daily, it seems, we are witnessing the demise of organisations, large and small, national and international. While economists are warning against a panic, it is realistic to expect this trend to continue and, unfortunately hospitality venues are not immune.

We thought it was timely to point out two particular assets which are often misunderstood, under valued or put at risk namely liquor and gaming licences. Where a licensed venue is in financial trouble, it is of paramount importance to do everything possible to preserve these valuable assets. Often, those involved fail to take proper steps and by their action or inaction, allow liquor and gaming licences to lapse or be cancelled. For a failing venue (or their creditors or landlord) this can be the commercial equivalent of giving away a safe full of money simply because you don't know how to access it, or understand the relevant law.

Both liquor and gaming licences have obvious value to any entity that might wish to trade liquor from the site or operate gaming. There is also intrinsic value in the liquor licence because it must exist in order to hold a gaming machine licence.

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WE ARE MOVING From 1 December 2008
we will be located at Riverside Centre

Our new address:

Mullins Lawyers
Level 21, Riverside Centre
123 Eagle Street
Brisbane QLD 4000

GPO Box 2026
Brisbane QLD 4001
Tel (07) 3224 0222
Fax (07) 3224 0333

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The goodwill value attaching to the liquor and gaming licences at a failing venue is often not significant if it has been trading poorly.

However, there is an "opportunity value" to an incoming licensee. If it can obtain a transfer of an existing liquor licence and avoid the lengthy, costly and risky "new application" process, it can be in the venue and selling liquor as soon as six weeks from the application date. The incoming licensee could, at the same time, apply for approval to hold an onsite gaming licence. Once approved, the new licensee could operate the same number of gaming machines as authorised for the site pursuant to the prior gaming licence.

The new licensee will pay valuable consideration to the failing venue to obtain the benefits of these "transfer" applications, which are significantly faster, less costly and easier than applications for new licences.

This is also good for the landlord (who can collect rent sooner) and any creditors of the failing venue.

Clubs – potential value – new legislative framework

On 15 April 2008, the Treasurer announced a cap or moratorium on gaming machines in clubs to take effect from that date and apply until 30 April 2010. The simple effect of this new policy is that any applicant for a new gaming licence, where the application is made after the 15 April 2008, must go through the rigors of getting an approval. They then acquire additional entitlements to operate gaming machines, which may be at a substantial cost. The approved applicant would not be able to trade gaming machines on the site until such time as the Government brings down the process by which gaming operators will be entitled to trade gaming machines in clubs.

The Government has stated that the scheme most likely to be introduced would be a reallocation scheme, which may be similar to the scheme in place for the hotel sector.

This could mean that the Government will create an entitlement for each machine that existed prior to 15 April 2008. Owners of the new entitlements could then surrender them into a pool (similar to the current hotel process) and obtain the tender proceeds, which are likely to be substantial.

At the moment any such scheme is in a developmental stage. However, what is clear is that regardless of the scheme, a venue will have many more options to realise the value of its assets if it preserves its liquor and gaming licences.

There is not likely to be any situation where it is in the best commercial interests of any of the parties to allow licences to be cancelled. When cancellations occur it is often a result of misunderstanding the process, undervaluing these assets or short term action without regard for the best long-term outcomes.

Even when a venue is struggling, or there are disputes between landlord and tenant such that the landlord wants to remove the tenant, all parties should remember that **if there is any intent** to trade liquor and gaming from the site in the near future, it is a waste and commercially illogical to allow the licences to be cancelled. Obtaining proper advice at the outset allows all possible steps to be taken to preserve the licences, even where there are tenure issues or the venue is not trading for financial or other reasons.

Automatic cancellation of gaming machine licences

MATTHEW BRADFORD



Most hoteliers would be aware that when their general liquor licence is suspended (eg for renovations, damage to premises, etc) that their gaming machine licence is simultaneously suspended until the liquor licence becomes active again.

However, many licensees may not realise that as soon as their liquor

licence is cancelled or surrendered (whether voluntarily or otherwise), their gaming machine licence will immediately be cancelled and any operating authorities will be forfeited to the Government.

This is an irreversible process. The Office of Liquor, Gaming and Racing is unable to re-activate a cancelled licence. Accordingly, whenever a licensee is seeking to close down their hotel and surrender their liquor and gaming licences, it is important for the licensee to ensure:

1. The gaming machine licence is surrendered first.
2. It receives written confirmation that the surrender has been accepted.
3. The operating authorities have been placed in the tender pool.



The licensee will receive the proceeds from the sale of the operating authorities (less the Government's commission). It will then be safe to surrender the liquor licence.

This should serve as a timely reminder to landlords as well as licensees. Where a tenant is in default under a hotel lease and the landlord does not wish to take over operation of the hotel or sell it to another operator, the landlord may try to cash in by selling the operating authorities via the tender pool. However, if the landlord surrenders the liquor licence first, without waiting to surrender the gaming machine licence, then it will lose the benefit of the operating authorities.

Similarly, if a licensee or landlord becomes aware that the Office of Liquor, Gaming and Racing is taking disciplinary action that may result in a liquor licence being cancelled, it may be prudent to ensure the gaming machine licence is surrendered before the cancellation takes effect.

With the proposed changes to gaming machine licences for clubs to take effect from next year, this may also be of importance to licensed clubs and their landlords.