

Transfer of Liquor Licence

A licence holder may transfer their liquor licence to another person with the approval of the Commissioner for Licensing.

QUALIFICATIONS FOR A LIQUOR LICENCE

The Commissioner for Licensing must be satisfied that the proposed licence holder is qualified to be granted the liquor licence applied for. Section 22(1) of the *Liquor Licensing Act 1990* 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 by 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

The proposed licence holder should provide information to help satisfy the Commissioner in respect to 22(1)(c) above. That information should include details of any management structures proposed by the licence holder 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 a liquor licence holder 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 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.

INFORMATION AND PROCEDURE

A liquor licence cannot be transferred to another person without the approval of the Commissioner for Licensing.

An application to transfer a licence should be made at least 28 days before the day on which the transfer is to take effect.

If an attempt is made to transfer the benefit of liquor licence to another person without the approval of the Commissioner the licence is suspended with effect from the date of the attempted transfer.

APPLICATION DOCUMENTS TO BE LODGED

The application must include the following:-

- 1) Licence Application form.
- 2) Licence Application Fee – Please refer to the fee schedule.
- 3) Provide two (2) A4 or A3 size scale plans of the licensed premises.

NOTE:

- (1) Following lodgement of the application for transfer of a liquor licence the proposed licence holder will be contacted by the Liquor and Gaming Branch to discuss the matter.
- (2) An application for transfer of a liquor licence shall be made at least 28 days before the day on which the transfer is to take effect.
- (3) An annual licence fee applies to all liquor licences. Any negotiation in relation to proportioning of the fee between the current licensee and proposed licensee is a matter for those parties.

OUT-OF-HOURS PERMIT APPLICATION

To be completed if required.



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Further information can be obtained at
www.liquorlicensing.tas.gov.au

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