

Christchurch Tri-Agency Newsletter

October 2013

This newsletter is jointly produced by the Christchurch City Council Liquor Licensing Team, the Police Alcohol Strategy and Enforcement Team, and Community and Public Health Liquor Licensing Officers.

Licensees

Please ensure this newsletter is circulated to all staff, especially Duty Managers.

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1. New Christchurch City Council Liquor Licensing Team Leader

We welcome Fiona Proudfoot to the role.

Many of you will know Fiona through her role as a Licensing Inspector with the team since August 2010. Fiona has a varied background which spans health, Policing and the liquor industry.

Before joining Council Fiona spent two and a half years in the NZ wine industry, involved in both production and sales. Prior to this Fiona was a UK Police Officer for nearly eleven years, involved in general duties and training and leaving the Police as a Training Sergeant. Fiona also worked for 3 years as a Clinical Scientist in the UK Health Service.

The changes to the licensing regime with the introduction of the Sale and Supply of Alcohol Act 2012 will be significant and Fiona is looking forward to supporting licensees and the community through these changes.

2. Amenity And Good Order

From my perspective it seems that the current focus of most discussion seems to be around the development of Local Alcohol Plans. It is worth noting that with the implementation of the new Sale and Supply of Alcohol Act 2012 there are already some provisions that have been brought into law.

A notable provision is Section 105(1) (h), which introduces the requirement on the District Licensing Committee and/or ARLA to consider:

- (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
- (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
- (ii) *it is nevertheless desirable not to issue any further licences:*

Amenity and Good Order is defined in the Act as “... *the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable*”.

It remains to be seen how the Authority will approach this issue in practical terms but it is clear that issues and problems that occur proximate to licensed premises may well have a bearing on the decision when an application for renewal is made.

The sort of things that spring to mind could be noise, disorder and antisocial behaviour in the locality that the premise is situated - there will be others. (Recent case law [2013] NZARLA PH 920 refers)

You may have read recently that Police are putting a lot of effort into preventing crime and that means that there are a lot more Police staff working on the street in the evenings than there were. The District Commander Superintendent Gary Knowles commented that a sharp rise in public place disorder reporting could be attributed to the increase in staffing and the resulting increased detection rates.

Good operators will make sure that they have good systems in place to ensure that they do not attract the sorts of issues that potentially affect their licence and I am happy to support that in any practical way that I can. I would rather licensees contact the Tri-Agency early over any potential issues, (be it new licences or renewals) so we can help them comply with the provisions.

Senior Sergeant Gordon Spite, Police Alcohol Team

3. Food Availability Requirements

The Liquor Licensing Authority considered food availability in the “Waipapakauri Hotel” decision PH371-271/2010. The following is an extract from that decision:

[7] The Authority considers that the expression “must be conveniently available” means that the food must be available upon request and within a very short period of time.

[8] For patrons to wait for 15 or 20 minutes for food does not achieve the object of the legislation as set out in s.4 of the Act. The purpose of requiring food to be available is so that persons can eat and therefore reduce alcohol abuse. If persons are required to wait for some 15 to 20 minutes the chances are that they will proceed to have another drink.

It is clear from this decision that in respect of on licence premises, other than restaurants, food must be available almost immediately. This would preclude premises from relying totally on outsourced food although that remains available as an additional option to the food that is immediately available.

The expectations of the monitoring agencies are:

- Food **must** be available and promoted throughout on licence and club licensed premises at all times that liquor is available. This is just as important at the end of business as the start.
- Unless the premises are set up and operate as a restaurant, menus (including price) should be large and clear rather than reliance of table top or bar top menus.

Controlled purchase operations to ensure compliance are being conducted. This will involve patrons requesting food. If it is revealed that food availability does not meet the required standard, an application for the suspension of both the on licence and general manager’s certificate is the likely consequence.

Peter Shaw, CDHB

4. New Alcohol Accord

For the past 12 months the Council along with a number of licensees have been working on pulling together a new Alcohol Accord, one that has merit and real benefit for all licensees in the City.

The purpose of the Accord is primarily to support licensees in light of the changes to the new Act.

One of the aims of the new Act is to give communities a greater voice in licensing matters. This means the public have more grounds to object to new licences or renewals and the regulatory agencies must also look closer. I believe that under the new regime licences will be harder to get and harder to retain. (Time will tell)

The Accord is a communication tool fully supported by Council, Police, Health Protection Agency and ACC. This is your way of showing the community in which you live that you want to be part of that community and are doing all possible to minimise alcohol related issues.

The Accord will be launched on 5 November 2013 from 11.30 am to 1.00 pm in the function room at the Civic Offices. We will also speak to some of the key changes brought in with the introduction of the Sale & Supply of Alcohol Act 2012 at that time. We extend an open invitation to those who wish to attend.

Martin Ferguson, DLA Staff.

5. Staff Training

Staff training is the key to operating a successful business, especially in overcoming the risks involved in a heavily regulated environment.

The three regulatory agencies combine to provide a staff training package that covers legislative requirements, licence conditions and the expectations of the agencies. These sessions are provided without charge.

Contact Peter Shaw, Community and Public Health to arrange training for your staff.
CPLiquorLicences@cdhb.govt.nz

Peter Shaw, CDHB

6. New Definition Of intoxication

The Sale and Supply of Alcohol Act 2012 provides us with a definition of intoxication:

Intoxicated means *observably affected by alcohol, other drugs, or other substances (or a combination of 2 or all of those things) to such a degree that 2 or more of the following are evident:*

- (a) *appearance is affected:*
- (b) *behaviour is impaired:*
- (c) *co-ordination is impaired:*
- (d) *speech is impaired*

You will note that you and your staff will now have to be aware of other drugs or substances that patrons may have consumed and the affect this will have on them and the reaction of the drug with any alcohol you sell them.

Intoxication is the focus of our monitoring.

Hospitality New Zealand, the Police, the New Zealand Institute of Liquor Licensing Inspectors and the Health Promotion Agency have collaborated to produce the “Intoxication Assessment Tool” to help you and your staff understand the indicators of intoxication. This is available at:

<http://www.alcohol.org.nz/sites/default/files/useruploads/LatestResources/Intox-Assess-Tool-A4SS%20Revised%207%20May%202013%20V2.pdf>

We urge caution – this is only a tool. Still make sure you speak to any patron you are concerned about and make a full assessment before taking action accordingly. If you assess a patron as being “influenced” and fit to remain on licensed premises we expect intervention. Of course some patrons may be “influenced” but not fit to remain on licensed premises.

There are three main offences in relation to intoxication:

S248 – Sale or supply of alcohol to intoxicated people

S249 – Allowing people to become intoxicated

S252 – Allowing intoxication on licensed premises

Allowing intoxication on licensed premises

(1) The licensee or a manager of any licensed premises who allows an intoxicated person to be or remain on the licensed premises commits an offence.

(2) A person who commits an offence against subsection (1) is liable on conviction to a fine of not more than \$5,000.

(3) It is a defence to a charge under subsection (1) if the defendant satisfies the court that, as soon as the defendant or any employee of the licensee became aware of the situation, reasonable steps were taken in respect of the intoxicated person concerned, either—

- *(a) to take the person to a place of safety on the licensed premises; or*
- *(b) to remove the person from the licensed premises.*

We often talk of a “place of safety”, this is mentioned in S252:

It is important you have a place of safety; an area that is away from the bar and where patrons can be looked after while you arrange for them to get home. And it is vital that every staff member knows where that place is.

Jennifer Davison, DLA Staff.

7. Club Managers Certificates And The New Act

The new Act applies to all managers certificates filed after the 18th December 2013.

Under the new Act a person must be 20 years or older to be a manager and there is no longer a separate Club Managers Certificate.

In addition, existing club managers who do not hold a Licence Controller Qualification and who wish to renew their manager’s certificate will need to obtain the prescribed managers’ qualification (the Licence Controller Qualification) during a yet to be determined grace period.

Please note – from the 18th December you may also need to show that you have knowledge of the new act. This requirement will be set out in the pending Sale and Supply of Alcohol Act Regulations.

Paul Spang, DLA Staff

8. Trading Hours Over Christmas (The Sacrosanct Days)

The new Act has brought in changes to how licensed premises trade on Anzac day morning, Good Friday, Easter Sunday, and Christmas Day.

All Off-licensed premises can still not sell liquor.

Now **ALL premises holding an On License** can only sell liquor to persons present on the premises to dine. Previously this applied to Hotels & Taverns only.

Parliament's original intent was to restrict all liquor sales on these days, they however thought that it would also be reasonable to allow a person to enjoy a beer or a wine with their meal on these days, hence the dining provision.

Again for clarity, if you are functioning as a restaurant (providing meals) you may sell alcohol to a person as an accompaniment to their meal. Casual drinking is not permitted.

If any confusion remains discuss your plans with agency staff.

Martin Ferguson, DLA Staff.

9. Recent Under Age Controlled Purchase Operations

Since the last newsletter in March 2013 two under age controlled purchase operations were conducted in Christchurch and Banks Peninsula testing On, Off and Club premises.

On the 8th June 2013, 14 licensed premises were visited resulting in 4 on-licence sales to minors.

On the 3rd October 2013, 18 licensed premises were visited resulting in 1 off-licence sale to a minor.

All sales resulted in the breaches being referred to the District Court and/or the Alcohol Regulatory Licensing Authority.

Congratulations to those premises that were tested and passed. They have been notified in writing.

Please, take this opportunity to remind all staff, and ensure you have systems in place to prevent sales to minors and other unauthorised persons.

Please remember that the only approved forms of ID are:

- New Zealand Drivers Licence
- New Zealand or overseas passport
- Hanz 18+ Card

Senior Sergeant Gordon Spite, Police Alcohol Team

10. Special Licence Applications

For those who have not yet been advised, we now operate partially under the Sale & Supply of Alcohol Act 2013. This comes fully into force on 18 December 2013 and the Sale of Liquor Act 1989 will be no more.

There are changes which relate to how we deal with special licence applications:

1. The Medical Officer of Health must now also report on Special Licence applications.
2. The Medical Officer of Health and the Police now have 15 working days in which to report if they have any matter in opposition.

The criteria has also changed in how applications are assessed. This is in line with the new object of the Act which requires greater regard to the amenity and good order of the environment. For clarity this means - will the granting of this application make the area less pleasant and agreeable than if the licence was not issued? In short this now means you need to get your applications in as early as possible, at least 20 working days before the event. Realistically an opposed application could require a hearing and take upwards of five weeks to determine.

You also need to complete the application in full and put as much detail in the application as possible so that your application can be considered in the best light. A lack of information may see it being opposed or simply returned.

Martin Ferguson, DLA Staff.

11. Smoking Areas

We are aware that many licensees are busy converting, re-constructing or opening new premises. Please ensure that your architects/designers take account of the requirements of the Smoke-free Environments Act when designing areas proposed to be used for smoking. It is the licensee's responsibility to ensure any smoking areas on their premises comply with the Act. It is therefore preferable to ensure any new smoking areas are built to compliance from the outset, rather than future costly renovations being required to bring them inline with the legislation.

We are also aware that some licensees have added plastic screens (or similar) to smoking areas which have previously been deemed compliant. The Smoke-free Environments Act 1990 requires licensees to take 'all reasonably practicable steps' to ensure that people do not smoke in any area of the premises that is not an 'open area'. When considering whether an area is an 'internal area', the Act stipulates that any opening, capable of being closed, is to be treated as closed. Therefore, in many cases, the addition of these screens has resulted in the area changing from being an 'open area' to an 'internal area' and as a result is no longer compliant. The effect of this is that smoking is now prohibited within the area. Licensees need to be aware that if they allow smoking within an 'internal area' of the premises, this could result in prosecution.

The following website provides a calculation tool as a guide to assessing whether an area is an 'open' or 'internal' area: <http://www.health.govt.nz/our-work/regulation-health-and-disability-system/smokefree-law/open-areas-calculator-smoke-free-environments>

If licensees wish to discuss any issues regarding the Act, please contact:

Geraldine McGettigan
Smokefree Enforcement Officer, Canterbury District Health Board
DDI: 03 3786722
Email: geraldine.mcgettigan@cdhb.health.nz

Peter Shaw, CDHB.

12. Sports Club Licenses Suspended For Selling to The Public

In April this year licensed Clubs (including licensed sports clubs) were tested to see if they would sell liquor to the general public. Two sports clubs, two Working Men's Clubs and one RSA were tested in Christchurch. The 2 sports clubs sold liquor to unauthorised people. This resulted in club licence and Duty Managers Certificate suspensions.

A club licence **only** authorises the sale and supply of liquor on the premises to;

- (a) Any member of the club; or
- (b) Any person who is a guest of, and is accompanied by, a member of the club; or
- (c) Any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights for members of the clubs.

Put simply, an On Licence allows the sale and supply of liquor to the public, a **Club licence does not allow the sale and supply of liquor to the public** unless the club has been issued a special licence.

The licensee or manager of any licensed premises that sells or supplies liquor when not authorised by the licence commits an offence under section 165 of The Sale of Liquor Act 1989 - Unauthorised sale or supply. The possible penalty in the case of the licensee is a fine not exceeding \$20,000 and/or the suspension of the licensee's licence for a period not exceeding 7 days. In the case of a manager, a fine not exceeding \$20,000.

In addition I believe there are a number of Clubs hosting weddings, birthdays etc and selling liquor where a special licence should have been obtained.

Inspectors, Police and Community and Public Health staff will carry out further Club Controlled Purchase Operations. Licensed Clubs must ensure they only sell liquor to authorised persons.

If you have any questions please don't hesitate to contact me directly.

Paul Spang, DLA Staff.

13. Infringement Offences Post 18 December 2013

The Sale and Supply of Alcohol Act 2012 introduces a new infringement notices regime. Some offences that previously required only court proceedings are now categorised as infringements that can be responded to immediately by Police and licensing inspectors. The classification as an infringement offence will allow for greater enforcement of these offences. We are awaiting regulations to set the infringement fees and form of the notices.

There are nine infringement offences under the new legislation. Some of these are new, while others are the same as previous legislation. Some can be responded to by the Police only, while others can also be responded to by Licensing Inspectors. The table below provides these details:

Infringement Offence	Section of 2013 Act	New or existing	Police issue	Inspector issue
Buying of alcohol by people under the purchase age	243	Existing	Yes	No
Minors in restricted areas or supervised areas	244	Existing	Yes	No
Permitting minors to be in restricted areas or supervised areas	245	New	Yes	No
Manager intoxicated on duty	250	New	Yes	Yes
Employee intoxicated on duty	251	New	Yes	No
Sales of spirit in vessel exceeding 500 ml	254	New	Yes	Yes
Offences relating to evidence of age documents	257	New	Yes	No
A breach of section 214(3): name of manager on duty to be displayed	258(1)(b)	New	Yes	Yes
Failure to comply with certain requirements and restrictions imposed by or under this Act (e.g. not displaying a licence; failure to provide water etc)	259	New	Yes	Yes

The tri-agency group will continue using the graduated enforcement model however we will make use of these infringement notices as part of that model.

Jennifer Davison, DLA Staff.

14. Health Licensing Team Update

Reminder to have a current Certificate and keeping your details up-to-date

Remember that in order to legally operate to sell food you must have a current food licence, either a Certificate of Registration 2013/2014 or a Certificate of Exemption for holders of the Food Control Plan.

Check that your licence has the correct details including name and address and that the food business is registered for the correct purpose and processes.

If your details have changed please notify us so that we can keep your records current so we may contact you. Also include email addresses so we have another means of contacting you particularly as a means of getting information to you faster and more effectively.

For administration queries please contact our Health Admin team at HealthAdmin@ccc.govt.nz or phone 941 8999.

Food Control Plans

The Food Control Plan (FCP) for the Food Service and Catering businesses are currently available for those wanting to implement a food safety programme in their food service business. At this stage we are able to provide some assistance and so businesses choosing to implement this FCP are able to take advantage of the support we can offer.

We advise keeping in touch with our Health Licensing team as legislation relating to food is expected to change and this is likely to affect food premises in the Food Service and Catering industry particularly premises holding liquor licences.

For further information regarding this FCP, please contact Environmental Health Officer in the Health Licensing team at HealthLicensing@ccc.govt.nz or phone 941 8999.

Rowena Yee, Food Act Officer, Health Licensing

15. Training Provider With Tri-Agency Input

Avonmore Tertiary Institute – Phone 0800 428 666

Christchurch Polytechnic Institute of Technology – Phone 940 8000

Pinnacle Hospitality Training – 0277 594 428

16. Contact Telephone Numbers

Christchurch District Licensing Agency:

- Fiona Proudfoot (Team Leader) – Phone 941 5064
- Martin Ferguson (Senior Inspector) – 941 8956
- Paul Spang (Inspector) – Phone 941 8826
- Jenn Davison (Inspector) – Phone 941 8828
- Natasha Lafituanai – Phone 941 8827
- Maria White – Phone 941 8821
- Gina Moore – Phone 941 8068
- Fax: 941 5033
- Email: liquor.licensing@ccc.govt.nz
- www.ccc.govt.nz/business/licencesconsents/liquorlicences/index.aspx

Community and Public Health:

- Paul Tweed – Phone 378 6771
- Peter Shaw – Phone 378 6812

New Zealand Police Liquor Licensing - Phone 372 5784

Regards

Christchurch City Council Liquor Licensing Team, Police Alcohol Strategy and Enforcement Team and Community and Public Health Liquor Licensing

PLEASE CIRCULATE THIS TO ALL YOUR STAFF- ESPECIALLY DUTY MANAGERS - AND/OR PLACE ON YOUR NOTICE BOARD