

Guideline 3

Applications for the imposition, revocation or variation of licence conditions under section 53 of the *Liquor Act 2007*

Overview

This Guideline provides information about the Independent Liquor & Gaming Authority's (**the Authority**) power to impose, vary and revoke licence conditions under section 53 of the *Liquor Act 2007 (NSW)* (the **Liquor Act**). This guideline also provides guidance on the administrative process for the making and determination of an application to impose, revoke or vary licence conditions under section 53 of the Liquor Act.

1. Authority's power to impose, vary and revoke conditions under section 53 of the Liquor Act

1.1 Section 53 of the Liquor Act is the source of the Authority's power to impose new conditions on a licence and to vary or revoke licence conditions that were previously imposed (or taken to have been imposed) by the Authority. The Authority exercises its powers in accordance with the objects of the Liquor Act (section 3 of the Liquor Act).

1.2 The Authority may impose conditions on a licence at any time on the Authority's own initiative or on application by the Secretary of the Department¹ (the **Secretary**) or the Commissioner of Police. These may include, without limitation, conditions:

- a. prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm, or both; and
- b. restricting the trading hours of, and public access to, the licensed premises.

1.3 The Authority may also vary or revoke licence conditions at any time if the licensee, the Secretary, or the Commissioner of Police applies for such conditions to be varied or revoked. They may also be revoked by the Authority's own initiative.

1.4 While conditions are commonly imposed, varied or revoked by the Authority under section 53 of the Liquor Act when an application is before the Authority, licensees should be aware that conditions may be imposed, varied or revoked at any time, irrespective of whether any particular application or matter relating to the licence is before the Authority.

1.5 The decision of the New South Wales Court of Appeal in *Independent Liquor & Gaming Authority v Whitebull HTL Pty Ltd & Ors* [2023] NSWCA 224 affirmed the Authority's power to impose gaming harm minimisation conditions on a liquor licence at any time under section 53(1) of the Liquor Act in accordance with the overarching harm minimisation objects of the Liquor Act.

¹ The Department is the government department responsible at the time.

2. The Secretary's power to impose, vary and revoke conditions under section 54 of the Liquor Act

2.1 As an alternative to making an application under section 53 of the Liquor Act, the Secretary may impose conditions on a licence under section 54(1) of the Liquor Act as the Secretary considers necessary or appropriate.

2.2 The Secretary may vary or revoke licence conditions if the licensee or Commissioner of Police applies for such conditions to be varied or revoked, or on the Secretary's own initiative.

2.3 The Secretary must not impose, vary or revoke a condition that is inconsistent with a condition that was imposed by the Authority, the Liquor Act or the *Liquor Regulation 2008* (the **Liquor Regulation**), and may not vary or revoke a condition that has been imposed by the Authority except in limited circumstances.

2.4 The Commissioner of Police should first approach the Secretary for licence condition related applications for two reasons:

- a. Where Police applicants apply to the Authority for the imposition of new conditions at first instance, it denies licensees a right of merits review by the Authority under the *Gaming and Liquor Administration Act 2007*; and
- b. Once a licence condition is imposed by the Authority, the Secretary cannot exercise the power under section 54(2) of the Liquor Act to vary or revoke that condition, depriving the regulatory framework of the expertise and enforcement capacity of the Secretary in that regard.

3. Making an application to the Authority or Secretary

Where the applicant is a licensee

3.1 Licensees seeking to vary or revoke a condition on a licence that was imposed, or taken to have been imposed, by the Authority should complete [Form AM0120 Change liquor licence condition - application by licensee](#):

- a. The form should be lodged to liquor.applications@liquorandgaming.nsw.gov.au.
- b. Payment and supporting documents should be provided when the application form is lodged.
- c. A copy of the application, including attachments, should be lodged at the police station closest to the licensed premises and the Liquor Licence Application Notice to the local consent authority, within 2 working days of lodging with L&GNSW.

3.2 Licensees seeking to vary or revoke a condition on a licence that was previously imposed by the Secretary should complete [Form AM0125 Change liquor licence condition - submission by licensee to the Secretary, Department of Enterprise, Investment and Trade](#):

- a. The form should be lodged to safe.premises@liquorandgaming.nsw.gov.au.
- b. Supporting documents should be provided when the application form is lodged.
- c. There is no fee for the application.

Where the applicant is the Secretary or Commissioner of Police

3.3 Applications to the Authority by the Secretary or Commissioner of Police for the imposition, variation or revocation of conditions should be made in writing to the Authority.

3.4 The request should be accompanied by a separate detailed submission that sets out the following:

- a. information identifying the licensed premises and current, confirmed details of the address and contact details (including email address) of the licensee to enable prompt service of the application upon the licensee;
- b. the alleged facts and circumstances and any submissions in support of the applicant's request for the imposition, variation or revocation of licence conditions;
- c. any relevant antecedents – for example, whether issues similar to those raised in the application have been the subject of recent formal or informal compliance action with regard to the licensed premises, and if so, to what end;
- d. whether it is the applicant's view that any information submitted by the applicant should not be disclosed to third parties, should be disclosed only in part or should only be disclosed on a confidential basis and, if so, why. Examples of reasons why non-disclosure or limited disclosure may be desirable include to protect the identity of an undercover police officer or to protect the identity of a third party complainant in cases where the applicant has reasonable grounds for believing that disclosure may cause harm to that complainant;
- e. if any material is not to be disclosed to third parties (such as the licensee or manager of the premises), a separate "non confidential" version of the submission should be enclosed that provides sufficient detail to enable the licensee or other interested person to respond to the facts alleged by the applicant;
- f. an index of all material submitted in support of the application; and
- g. the name, office held, place of work and contact details of the applicant and confirmation (if the applicant is an officer exercising delegated power) that the applicant is "*an officer authorised pursuant to section 157 of the Liquor Act 2007*".

3.5 The submission may annex evidence or other material in support of the application, including but not limited to: third party witness statements, letters or emails, maps, diagrams, photographs, video surveillance footage and extracts from databases or other business records.

3.6 Each annexure should be provided separately and not in the form of a consolidated document, so that it may be readily extracted from the rest of the documentation. All supporting material should be submitted in electronic form. Audio-visual material must be submitted in a format that is viewable with a commonly used media player software.

3.7 Applicants under section 53(1)(a) of the Liquor Act should consider the Authority's duty to afford a licensee an opportunity to be heard on any allegations forming part of an application. The Authority may be unable to maintain confidentiality and for this reason, applicants should consider whether any material too sensitive to be disclosed to a licensee should be relied upon in their application.

4. Informal process

4.1 The Authority is an independent administrative body. It administers its power to impose, vary or revoke licence conditions in a manner that is as efficient and informal as possible, with a view to minimising time and costs to all stakeholders.

4.2 While the Authority may, at its discretion, decide to conduct an interview, convene a conference or receive submissions either orally or in writing, the Authority expects to determine most applications "on the papers" (that is, on the basis of the written material before it).

4.3 When preparing an application, applicants should note the following:

- a. material submitted in support of an application should be relevant to satisfying the Authority that a proposed new condition or variation or revocation of an existing condition is necessary;
- b. in some circumstances the Authority may give greater weight to direct witness evidence than second-hand hearsay evidence;
- c. opinion evidence proffered by an expert concerning a field of expert knowledge may be given greater weight than the opinion of a non-expert on that subject matter; and
- d. the use of direct speech in witness statements may help to clarify those matters that are of central importance to an application.

5. Natural justice

5.1 The Authority complies with relevant provisions of the Liquor Act and the rules of natural justice or procedural fairness. The Authority must not impose a new condition upon an existing licence, or vary or revoke a condition of a licence, unless it has given the licensee a reasonable opportunity to make submissions about the proposed action and taken such submissions into consideration.

5.2 The key facts and contentions of an application under section 53 of the Liquor Act must be supported by material that is sufficiently specific to enable a licensee to respond – for example, relevant records from the “COPS” database, witness statements, or CCTV footage relating to specific events.

5.3 When an application under section 53(1)(a) of the Liquor Act is received by the Secretary or Commissioner of Police, the Authority will notify the licensee of the application enclosing a copy of all material that was received from the applicant. The notice will advise the licensee of the time (usually 21 days) within which written submissions may be made in response to the application. If submissions are received from the licensee within the time specified, the Authority must consider those submissions prior to making its decision.

5.4 The Authority will also write to the applicant providing a further, brief opportunity (usually 7 days) to make any written submissions in reply. This is an opportunity for the applicant to deal with any facts or contentions arising from the submissions of the licensee. A copy of any reply will be provided to the licensee after it is received by the Authority and in advance of the Authority’s determination.

5.5 If no submissions are received within time, the Authority may promptly make a decision on the material before it.

6. Determination

6.1 The Authority will notify the applicant and licensee of its decision once made.

7. Appeal rights

7.1 There is no statutory mechanism for review on the merits of a decision made by the Authority under section 53 of the Liquor Act. Judicial review of administrative action is available only at common law on limited grounds, which is accessed via section 69 of the *Supreme Court Act 1970 (NSW)*. Judicial review proceedings are required to be commenced within three months of the date that a decision was made by the Authority.

8. Review of this guideline

8.1 The Authority may review and update this guideline from time to time.

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A handwritten signature in black ink, appearing to read 'Caroline Lamb', written in a cursive style.

Caroline Lamb

Chairperson