

# When is a Restaurant not a restaurant

Liquor Licensing Authority Decision *Baba Louise Limited* PH 208-209/2005, related to allegations that the premises were operating in breach of the conditions of the licence.

The following from the Decision makes for interesting reading.

"[33] The relevant conditions in the on-licence are as follows:

(b) Liquor may be sold only on the following days and during the following hours:

On such days and during such hours as the premises are being operated as a restaurant but not other than on the following days and hours:

Monday to Sunday 7.00 am to 3.00 am the following day.

(c) Food must be available for consumption on the premises as follows:

At all times when the premises are authorised to be open for the sale of liquor, food of a range and style similar to that shown on any menu submitted or a range of snack foods in the nature of pies, sandwiches, filled rolls, pizzas and the like, must be conveniently available for all patrons and the availability of those foodstuffs must be notified to them by appropriate notices throughout the premises.

[34] It seems to us that there has developed a misunderstanding as to the effect of these conditions. It will be observed that condition (c) is predicated by the phrase "*At all times when the premises are authorised to be open for the sale of liquor*". The times when the premises are authorised to be open for the sale of liquor are specified in condition (b). The maximum times are 7.00 am to 3.00 am the following day. **However, these times are circumscribed by the fact that liquor can only be sold when the premise are being operated as a restaurant.**

[35] It will be noted that the wording is in the present tense. **The restaurant must be operating to enable liquor to be sold.** The wording is not has been or could be operated, or capable of being operated. In order to sell liquor the premises must be being operated as a restaurant. The New Shorter Oxford English Dictionary defines "*operate*" as "To work, expend labour on" or "To be in action be functioning". Both indicate activity. It follows there fore that in an operating Restaurant, there will be chefs or cooks who are working, a kitchen which is functioning, and diners who are eating. Put in another way, operating a licensed restaurant means more than having kitchen and dining facilities available.

[36] We accept that following the amendment to s.7 of the Act on 1 April 2000, the restaurant is permitted to allow casual drinkers so long as the above conditions exist. Casual drinkers are patrons who call to the restaurant for the sole purpose of having a drink. **To do so is quite legal provided of course the premises are being operated as a restaurant. However, if the restaurant is not operating, then the bar must close....**

[37] On the two mornings in question, there were up to 20 persons present. **None were eating. The restaurant was not being operated at 2.30 in the morning.** In those circumstances, **it is clear that at that time the premises were being operated as a tavern, and therefore in breach not only of the condition of the licence, but also in breach of s.216(a) of the Act.** Under the Act, a tavern means any premises used or intended to be used in the course of business principally for the provision of the public of liquor and other refreshments. If the only product being sold and consumed is liquor, then temporarily at least the premises are not being operated as a restaurant. It is accepted that under the Act, a restaurant means any premises in which meals are regularly supplied on sale to the public for consumption on the premises. However, as stated above, the issue is not what the premises are called or known for, but what is happening at the time liquor is being served".

**Food for thought?**

Once you receive the LCQ from the HSI you satisfy the 'recent and relevant training' requirement of the Sale of Liquor Act. Contact your local District Licensing Agency (DLA) to find out what other requirements you will need to meet to be issued with your General Manager's Certificate.

## **OPTION 2: The Transition Test**

This option is only available to **existing General Manager's Certificate holders**, and consists of a one-hour test covering aspects of Host Responsibility and knowledge of the Sale of Liquor Act and it's amendments. This examination can be sat at a number of training providers in New Zealand. Visit [www.hsi.co.nz](http://www.hsi.co.nz) for those nearest to you.

In order to sit the test you must provide your trainer with a photocopy of your CURRENT General Manager's Certificate, or Renewal Certificate. The test is approximately an hour long and consists of multi-choice, yes/no and short answer questions. You are able to view the test (without the answers) prior to sitting it, It can be downloaded from the HSI website. You may want to do some refresher study- HSI has resources available, or a local Training Provider may assist you in this.

You must get 100% to pass the test. If you get between 80-99% on your first go, you are able to re-sit the questions you got incorrect then and there. If you get less than 80% on your first attempt, you will be required to re-sit the entire test.

If you are successful you will be able to apply for your Licence Controller Qualification. Fill in the application form (able to be downloaded from the HIS website), provide a photocopy of your current GM Certificate, or Renewal Certificate, the marked front page of your test and \$20.00, and post to HSI. You will then be issued with the Licence Controller Qualification. You will need to show this to your local DLA when renewing your General Manager's Certificate.

## Answers to Sale of Liquor act quiz

**Q1.** Four acceptable forms of ID are: NZ passport, NZ drivers licence, overseas passport or HANZ 18+ photo card (18+ card).

**Q2.** Probably yes (but check conditions of the restaurant licence – if it is 'supervised' or 'unsupervised' then they can).

**Q3.** Yes, they can.

**Q4.** Yes, the salesperson must have proof of age of all group members and can legally refuse to sell if they think that someone under age may be going to drink the alcohol.

**Q5.** No, we have a minimum legal age of purchase which is 18 years.

**Q6.** No, someone under 18 years can be present in undesignated and supervised areas. They can only be in a restricted area if they are employed to prepare or serve a meal, clean, stock-take, check or remove cash etc.

Adapted from ALAC website: [www.alac.org.nz](http://www.alac.org.nz)

By Lynley Cvitanovic, Senior Health Promoter,

Public Health Centre

Whanganui District Health Board



## Trading over easter & anzac day

A reminder for those premises which operate a Hotel or Tavern type On Licence and Off Licences. Good Friday falls on Friday 14 April 2006 and Easter Sunday falls on Sunday 16 April 2006 which means no liquor is to be sold or supplied on either of these days, and for premises who would normally trade after 12.00 midnight **on the Thursday before Good Friday and on Easter Saturday your premise can only trade until 12.00 midnight.**

The conditions of your licence will give the exact details applicable in your case but in general they are:

### **OFF-LICENCE**

This licence is subject to the following conditions :

- (a) No liquor is to be sold or delivered on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day:
- (b) Liquor may be sold or delivered only on the following days and during the following hours:  
Monday to Sunday xxx to yyyy am the following day; EXCEPT THAT on the Thursday before Good Friday; and on Easter Saturday; and on Christmas Eve; and on the day before Anzac Day, liquor may only be sold between xxx and 12.00 midnight.

### **HOTELS and TAVERNS**

This licence is subject to the following conditions:

- (a) No liquor is to be sold or supplied on Good Friday, Easter Sunday, Christmas day or before 1.00 pm on Anzac Day to any person other than:
  - (i) Any person who is for the time being living on the premises whether as a lodger or an employee of the licensee or other (**Hotel only**); or
  - (ii) Any person who is present on the premises for the purpose of dining.
- (b) Liquor may be sold only on the following days and during the following hours:
  - (i) At any time on any day to any person who is for the time being living on the premises. (**Hotel only**)
  - (ii) Monday to Sunday xxx to yyyy am the following day to any other person who is present on the premises; EXCEPT THAT on the Thursday before Good Friday; and on Easter Saturday; and on Christmas Eve; and on the day before Anzac Day, liquor may only be sold between xxx and 12.00 midnight.

## Using council footpaths

Those premises that have been granted a Licence to Occupy the pavement have a responsibility to remain within the allotted space and keep the area tidy. Your patrons will probably move tables and chairs around and go beyond the boundaries and cause problems for pedestrians.

Check the conditions of agreement and you will find that in most cases you are required to maintain at least 1.8 metres of clear footpath for pedestrian use. This space is usually measured from the kerb.

Bear in mind that if you also have kerbside signage then the "clear access" must take this into account. Ensure the height of any umbrellas does not create a hazard to pedestrian's eyesight! To assist in monitoring these areas markers will be placed in the paving.

We seek your co-operation in keeping to the conditions of the Licence – remember that if you abuse it you will lose it!

# Local Liquor wanganui

Issue No. 21

A newsletter prepared by the Wanganui District Licensing Agency for those in the Liquor Industry

March 2006

## Wel come

**Welcome to the District to all the new Premise owners:**

R Enterprises Limited for Red Flame Café, Danny's Limited for Danny's Karaoke Bar & Café, Guru Krupa (2004) The Hospital Shop Foodmarket, Point of Light Enterprises Limited for Wanganui New World, BNG Holdings for Bull n Gate, Vaga Limited for Vega, Logan & Partridge Limited for Aramoho Hotel, The Partnership of Anne & Dion Ngatai for Anndion Lodge, The Red (2005) Limited for the Red, Bushy Park Homestead Limited for Bushypark, The Grand Hotel (2004) Limited for The Grand, Roto Holding for Avoca Hotel, Dunard NZ Limited for Vincent's Yellow House Café & Gallery.

## Daylight savings ends Saturday 19 March 2006



With the ending of Daylight savings nearly upon us it is timely to remind you of our local policy in this regard, for those late night traders.

**Licensed premises will trade through until normal closing time, close up, then put your clocks back an hour.**

Similarly in six months time you will trade through until normal closing time, close up, and then put your clocks forward an hour.

This agreement was based on the swings and round-about principle and has worked satisfactory thus far.

## Contacts

Wanganui District Council  
District Licensing Agency  
P O Box 637  
Wanganui

### **District Licensing Agency Inspector**

Doug Bonner

[doug.bonner@wanganui.govt.nz](mailto:doug.bonner@wanganui.govt.nz)

Phone 349 0001 extn 8023 Fax 349 0536

### **Licensing Officer**

Debbie Richdale

[debbie.richdale@wanganui.govt.nz](mailto:debbie.richdale@wanganui.govt.nz)

Phone 3490001 extn 8116

or visit our website at

[www.wanganui.govt.nz/ESBU/LiquorLicence/index.asp](http://www.wanganui.govt.nz/ESBU/LiquorLicence/index.asp)

## New Licensing officer



As a result of staff changes within Council, we have a new Licensing Officer, Debbie Richdale. While Debbie may be new to the Council she brings a wealth of administrative experience to the position. She has proven to be a quick learner and is very thorough with her work.

# Licence Controller Qualification

**If you want to manage a licensed premises there are some things you need to show in order to get a General Manager's Certificate from your local District Licensing Agency. One of these is that you've had 'recent and relevant training'. So a qualification has been developed that proves just that...**

From the 1<sup>st</sup> April 2006 all current holders of a General Manager's Certificate, and all new applicants, will need to hold the nationally recognised Licence Controller Qualification (LCQ). This qualification has been developed by the hospitality industry to standardise and improve the overall quality and skills of managers working in licensed premises.

New Regulations came into force on the 21<sup>st</sup> March 2005. The following table shows the impact of these:

DATE:	NEW APPLICANT:	CURRENT GENERAL MANAGER'S CERTIFICATE HOLDER:
21 March 2005 to 31 March 2006	No impact. HSI strongly recommend that any course of training undertaken results in the gaining of the two unit standards 4646 and 16705 that make up the LCQ	Renewals will only be granted for 2 years unless you hold the LCQ
1 April 2006	Must hold the LCQ before applying for a General Manager's Certificate	No renewals after this date if you don't have an LCQ

## About the Licence Controller Qualification (LCQ)

The qualification itself is made up of two unit standards. These require you to:

- Demonstrate knowledge of the Sale of Liquor Act 1989 and implications for the operation of licensed premises **Unit 4646**
- Demonstrate knowledge of Host Responsibility requirements as a duty manager of licensed premises **Unit 16705**

## Two ways to gain the qualification

To gain your License Controller Qualification:

- EITHER take part in the unit standard process and gain two unit standards required for the qualification
- OR have your current experience recognised through the Transition Test (available to exiting General Manger's Certificate holders only)

## OPTION 1: The Unit Standard Process

The two NZQA unit standards that make up the License Controller Qualification can be completed by attending a course at an NZQA-accredited Training Provider, or through an approved HSI Registered Assessor.

You can find out who offers courses in your area by checking [www.hsi.co.nz](http://www.hsi.co.nz).

Once you have successfully gained the two units, you need to apply for your Licence Controller Qualification from HIS. Fill in the application form, which can be downloaded from the HSI website, provide evidence of holding the two units (e.g. Certificate from issuing provider, copies of front page of completed unit standards assessments, or NZQA Record of Learning), and post to HIS with the \$20.00 payment included.

# Health promoters report

Local off-licenses 'came up roses' when we carried out two pseudo patron surveys before Christmas. The aim of these was to monitor youth liquor sales practices. Whanganui's Youth Access to Alcohol (YATA) Project Group visited nine premises during the first survey and eight premises during the second. We sent an eighteen year old volunteer, without any ID, into each premise to buy alcohol. Of course, a volunteer of this age is legally entitled to a purchase. The onus is on the vendor however, to be sure that a potential purchaser is in fact eighteen years of age or over. The only valid way of doing this is to sight and carefully check an acceptable form of photographic ID such as a driver's licence or a passport.

Sixteen out of our volunteer's seventeen attempts to purchase liquor were unsuccessful. This was because, in each instance, she was asked by the retailer for her ID to confirm her age before a legal transaction could take place. She could not provide this and consequently the sale was politely, but firmly, declined.

This is a great result and a clear indication that off-licences are taking the youth alcohol supply issue seriously. Pseudo patron survey results are shared with the District Licensing Agency and Police to assist with regulating youth alcohol sales practices. General survey outcomes are also shared with the media and covered in local news as a way of raising public awareness of youth supply issues.

As you will undoubtedly be aware, young people quickly learn which premises will sell to them only after careful checking of ID. Therefore the more consistent and rigorous you are about carrying out such checks the less likely it is that underage youth will target your premises for easy sales.

Our YATA Project Group plans to continue carrying out pseudo patron surveys targeting youth liquor sales practices throughout this year. We will also continue raising parental awareness around safety issues in supplying their under 18s with alcohol. Agencies participating in this Project work include the Public Health Unit, Road Safe Central, Taumata Hauora Trust's Community Development Unit and the YMCA.

Health Promoter (Tobacco, Alcohol & other Drugs)  
Public Health Centre  
Private Bag 3003 Wanganui  
**Lynley Cvitanovic Phone 06 348 1789**

## Contact

# !!!sale of liquor act quiz!!!

Here's your chance to find out who is most 'up with the play' in your workplace when it comes to knowing the ins and outs of the Sale of Liquor Act. Challenge your work mates to beat your results! (answers over the page).

## Questions

**Q1.** What are the four acceptable forms of ID for someone buying alcohol?

**Q2.** Can someone under 18 years of age serve alcohol in a restaurant?

**Q3.** Can someone under 18 be given alcohol by their parents in a restaurant?

**Q4.** Can a supermarket refuse to sell alcohol to a member of a group (who has acceptable ID) when there are members of the group present who do not have ID and appear to be underage?

**Q5.** Does New Zealand have a legal drinking age?

**Q6.** Can someone under 18 frequent any area of a licensed premise?