LICENSING COURT OF SOUTH AUSTRALIA

Important Announcement

PRACTICE DIRECTION NO. 10

I, Brian Patrick Gilchrist, the Licensing Court Judge, on the 9th day of April 2020, by virtue of the provisions of Section 16A of the Liquor Licensing Act 1997 and Rule 8 of the Licensing Court Rules 2012 do hereby make the following Practice Direction.

The recent Government announcements about social distancing, limiting the number of persons associating together in public, and the need for those over 70 and those over 60 with health problems, to stay at home, will have an immediate and significant impact on the ability and willingness of people to attend courts and tribunals.

That said, the work of the Licensing Court of South Australian is a vital public service and where possible we have an obligation to continue to deliver that service. I appreciate that the severe restrictions that have been placed on the hospitality sector will mean that there will be fewer applications. But, adjourning all matters indefinitely until the crisis has passed is not an option. It could potentially result in intolerable delays.

Technology has been utilised in courts and tribunal for many years. Direction hearings have been conducted by telephone to accommodate solicitors and their clients who live away from Adelaide. Evidence has been taken via video link up or by telephone for interstate witnesses.

With these matters in mind, I have resolved that the default position in connection with matters before the Licensing Court shall, for the time being, be such that all hearings should be conducted with all participants attending remotely. That will not always be appropriate or possible, in which case sensible alternative arrangements that involve taking adequate precautions will need to be considered.

For now, the Licensing Court's preferred method of conducting hearings is via an app known as Microsoft Teams, to which the Court has a subscription. The app does not require any other participants to download the software, as it can be launched from an internet browser.

I am mindful that s 22 C (1) of the Licensing Act 1997 provides that proceedings before the Court must be held in public. The desire of the public to have access to the proceedings can be accommodated. Hearings will be recorded and transcribed. If a member of the public wishes to view the proceedings or have access to transcript the person may make application to the Clerk of the Court.

Before resolving to utilising this app to conduct the hearing, counsel or the party (as the case may be) will be contacted by telephone to participate in a tele-conference to ascertain whether the parties would be receptive to the idea, and to identify any issues they foresee such as whether they and relevant witnesses have equipment available to run the app. Directions may need to be given about the provision of documents (preferably electronically) to parties or their representatives and where necessary witnesses.

If it is resolved to conduct the hearing in this way, it is desirable to establish a test-run Teams meeting before the hearing, so that the parties might familiarise themselves with the software and identify any other relevant issues.

Prior to the hearing, the Court will send a calendar invite to all necessary parties. The invite has a link attached to it, which may be forwarded on as necessary to other participants. At the relevant time, parties are able to click 'join' to enter the virtual meeting space. When that happens, parties are admitted to a 'lobby' and subject to approval by the Judge's assistant, they may then enter.

If a party is likely to be unable to join via an internet connection (for example, by reason of limited access to Wi-Fi or data), the party or their representative should contact the Court ahead of time to request that an Audio Conferencing facility be set up. This enables people to dial in to a Microsoft Teams meeting with a phone.

It is also possible for participants who are not needed to be seen, to turn off their videos and microphones so as to not crowd the screen. These participants will be able to hear and see the proceedings. This facility is ideal for instructing solicitors and parties who are present but legally represented.

When a witness is called, the witness will be required to take an oath or to make an affirmation. If an oath is sought, the witness should provide their own Holy Book or Scripture. If none is available, the witness may take an oath without a sacred object, if the witness considers that the oath will still be binding. Regardless of the method chosen, the witness is legally bound to tell the truth.

Where objections to questions require some deliberation and would ideally occur out of earshot of the witness, there are two options: first, asking the witness to mute their computer or walk out of the room, both of which require a level of trust; and secondly, the Tribunal is able to virtually eject the witness from the meeting space and ask counsel or an instructor to call the witness when they are able to re-join the meeting.

Despite the general success of the test run in avoiding major technical issues that might arise during the course of the hearing, it is obviously going to be the case that sometimes the proceedings will not run smoothly and issues will arise that could not have been foreseen. This may result in the proceedings being adjourned to enable the issues to be resolved.

These are very challenging times. There will inevitably be hiccups as we attempt to grapple with modern technology and it will take time for us to become familiar with new ways of working. But in light of the current health crisis, we must adapt and do our best to ensure that the wheels of justice continue to turn.

His Honour Judge Gilchrist
The Licensing Court Judge



