SUBMISSIONS ON BEHALF OF DELAWARE NORTH VENUE SERVICES PTY LTD ("DELAWARE NORTH") IN RELATION TO THE REVIEW OF THE LIQUOR CONTROL REFORM ACT 1998 (VIC)

Background

Delaware North is an international food, venue and hotel management company. Delaware North manages and provides food and beverage concessions, premium dining, entertainment and retail at many large venues in Victoria, Australia and around the world including sports stadiums, entertainment complexes, national and state parks and casinos.

Delaware North and its associated entities operate a number of liquor licences within the State of Victoria as follows:

1. Etihad Stadium – Late Night (On-Premises) Licence No. 32253528.

2. Melbourne and Olympic Parks – Late Night (On-Premises) Licence No. 32225305.

   Whilst Melbourne and Olympic Parks Trust is the licensee, Delaware North holds the contract with Melbourne and Olympic Parks Trust for all liquor service at Melbourne Park. Delaware North is approved pursuant to section 106 of the Liquor Control Reform Act 1998 (Vic) (the Act) to supply liquor at Melbourne Park.


   Whilst Sovereign Hill Museum Association is the licensee, Delaware North manages the delivery of all retail catering at Sovereign Hill including the supply of liquor pursuant to section 106 of the Act.

All of the abovementioned liquor licences are attached to this submission.

Delaware North also manages and delivers the catering and service at numerous outlets within Melbourne Airport.
Additionally, as part of its stadia portfolio, Delaware North is also responsible for the service of liquor\(^1\) at the Sydney Cricket ground, Allianz Stadium, the Western Australia Cricket ground and Domain Stadium in Australia.

The purpose of this submission is to raise concern that the current operation of the *Liquor Control Reform Act 1998* (Vic) (*the Act*) does not consider the unique nature of major venues in Victoria, such as Etihad Stadium, Melbourne Park (and which would also extend to other major venues in relation to which our client is not involved, for example, the Melbourne Cricket Ground), when assessing compliance with the Act and the associated penalty regime.

It is our submission that the issuing of demerit points under Part 4A of the Act should not apply to ‘major’ venues. ‘Major’ venues would be those venues which cater to large scale, public events and which attract thousands of patrons, such as the Australian Open at Melbourne Park. The primary focus of these types of events is on some form of entertainment such as sports or live music as opposed to typical licensed premises where the focus is on the service of food and liquor. The supply of liquor at major venues is ancillary to the entertainment being provided.

As set out in the Terms of Reference of the Review, the liquor and licensed hospitality industry makes a significant contribution to Victoria’s cultural life and economy. The Terms of Reference also acknowledge the important role licensed premises play in our cultural and economic life and it is on this basis that major venues should be given an exemption in relation to the issuing of demerit points under the Act.

**Demerit Points System**

As the demerit points system currently stands in Victoria, licensees incur demerits points on their liquor licence if there has been a non-compliance incident in relation to that licence. One offence equals one demerit point and a licence will be automatically suspended if it reaches one of the three demerit point thresholds. Whilst Delaware North operates nationally, Victoria is the only state in Australia which has a demerit point regime. This creates challenges for Delaware North to operate consistently throughout Australia in relation to the major venues it operates. The consequences of the issuing of demerit points can be detrimental to the operation of a liquor licence and it is Delaware North’s submission that such a penalty disproportionately penalises major venues.

It is our submission that this ‘one size fits all’ approach to the issuing of demerit points to licensed venues across Victoria is problematic, particularly for major venues such as Etihad Stadium and Melbourne Park, for the following reasons:

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\(^1\) Either as licensee or pursuant to the relevant approval in each respective state.
1. Generally, a licensed premises (whether a restaurant, nightclub, hotel or club) will feature a smaller red line area with a lesser number of patrons for the relevant licensee to control and supervise. This is to be directly contrasted with an event at say Etihad Stadium, in which the average attendance is approximately 31,000 patrons. Etihad Stadium has the capacity to hold in excess of 55,000 patrons and holds on average 73 national and international events per year. To issue the same sanction against a major venue and a high street restaurant is disproportionate and inconsistent with the objects of the Act.

Furthermore, the red line area in relation to the liquor licence at Etihad Stadium covers the entire area of the stadium and is not just limited to the retail food and beverage outlets within the stadium.

2. Major venues generally have more entry and exit points than a typical licensed premises with general security often under the control of a 3rd party. For example: for a major venue the size of Etihad Stadium, there are nine gates located on the perimeter of the red line area with each gate containing multiple points of entry and exit, which Delaware North do not directly control. The entry and exit points are controlled by crowd controllers employed by Melbourne Stadiums Limited, the owner and operator of Etihad Stadium. The very nature and design of Etihad Stadium means that there is a heightened degree of difficulty in the control and supervision of patrons compared to a typical licensed venue.

3. Further to the above, major venues experience extreme influxes of patrons within short periods of time, and whilst all security staff would be aware of the need to refuse entry to patrons who may be intoxicated, these extreme influxes can increase the likelihood of patrons not being fully evaluated for drunkenness before being admitted into the venue (again outside the operator’s reasonable control as set out above).

4. Unlike typical licensed premises, Delaware North also does not possess exclusive authority to eject patrons from major venues such as Etihad Stadium. This authority also primarily rests with the crowd controllers employed by stadium management such as Melbourne Stadiums Limited. The standard process for eviction of drunk or disorderly patrons is that Delaware North, once being aware of such patrons on the premises, is to notify the stadium management’s crowd controllers to remove the individual in question.
These factors identify the necessity of assessing and differentiating major venues from other types of licensed premises to which the Act apply to when it comes to compliance and the issuing of demerit points. The types of events hosted at venues such as Etihad Stadium and Melbourne Park, including the Australian Open, have major benefits for the Victorian economy, which is known as the sporting and entertainment capital of Australia and which are compatible with the objects of the Act, including the following:

(a) To facilitate the development of a diversity of licensed facilities reflecting community expectations; and

(b) To contribute to the responsible development of the liquor, licensed hospitality and live music industries.

It is not our submission that no penalty should apply to operators of major venues for breaches of the Act, including non-compliance incidents. However, given the size of the licensed area of major venues, the number of patrons and the frequency of major events which are held at venues such as Etihad Stadium and Melbourne Park, it is our respectful submission that operators of major venues should be exempt from receiving demerit points under the Act, which disproportionately penalise major venues. Rather, it is our submission that where offences against the Act are made out, disciplinary action might constitute an infringement notice in the absence of a demerit point. This would ensure that licensees of major venues remain accountable.

Such an exemption would not deprive the Commission, Victoria Police and the Chief Commissioner of their other rights under the Act if prolonged concerns arose in relation to the operation of major event premises. Rights would still be retained to initiate a variation of licence if there had been non-compliance incidents or to otherwise institute disciplinary proceedings.\(^2\)

**Defences to Non-Compliance Incidents**

Under the Act, it is noted that there is only one non-compliance incident with a defence.

Under section 108(4) of the Act a licensee –

(a) Must not supply liquor to a person who is in a state of intoxication;

(b) Must not permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

\(^2\) Albeit it is important to note that the overall disciplinary record of major event licence holders in Victoria is, on our understanding, exemplary.
Section 108(5) provides that it is a defence to a prosecution for an offence under subsection (4)(b) for the accused to prove that—

(a) Neither the accused nor any relevant person who was on the premises at the time of the alleged offence knew that drunken or disorderly persons were on the premises; and

(b) Either the accused or a relevant person had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises.

It is also our submission that the defence set out in section 108(5) should be revised for major venues where there is a large licensed premises to take into account the nature of same for the reasons set out above.

It is important that the test of reasonableness allows for consideration of the specific characteristics of the venue and diligence of the licensee.

The other non-compliance incidents which can lead to the issuing of a demerit point do not have defences. These offences are as follows:

1. Supplying liquor to an underage person, other than as permitted (section 119(1)(a)).

2. Permit liquor to be supplied to an underage person, other than as permitted (section 119(1)(b)).

3. Liquor is supplied to an underage person on licensed premises, other than as permitted (section 119(2)).

4. Permit underage person on licensed premises other than as permitted (section 120(1)).

This submission in no way intends to derogate from Delaware North’s responsibilities under the Act. However, this submission seeks to make clear that what should be expected from a compliance point of view is that the licensee takes all reasonable steps to mitigate the risk of any breaches under the Act and that there must have been a clear breach by the licensee. For example, a clear breach by a licensee would be failing to check identification and serving alcohol to a minor, particularly for major venues where security controls do not often rest with the licensee themselves.

Example of Incident at Etihad Stadium
On 7 December 2013, a patron, who was the subject of the offence, was a guest at a function held in the Legends Bar. It is alleged that at approximately 7:50 PM, the offending patron began displaying signs of intoxication. The offending patron was immediately ejected from the Legends Bar by crowd controllers employed by Etihad Stadium. The offending patron then proceeded to act in a disorderly manner towards the crowd controllers and then subsequently to two Victoria Police Officers who were patrolling that particular area. After questioning the offending patron, Victoria Police officers informed Delaware North, that Delaware North was in breach of its obligations under the Act as a result of having a drunken person on the licensed premises. An infringement notice was subsequently issued.

Delaware North made detailed submissions to Victoria Police in relation to the infringement notice issued. Delaware North made clear that it took all reasonable precautions to avoid having any intoxicated person on the premises and this isolated incident was beyond Delaware North’s reasonable control. Delaware North staff were adamant that the offending patron was not served alcohol at the Legends Bar, or any other beverage concession within the redline plan at Etihad Stadium on the night of the incident. It was submitted that it was likely that the offending party received alcohol beverages from the two other patrons whom the offending patron was in attendance with.

Delaware North submitted that such behaviour was clearly outside of its reasonable control. Delaware North had taken all reasonable steps to ensure that:

a) It did not supply alcoholic beverages to any patrons who were showing visible signs of intoxication.

b) Any patrons showing signs of/or behaving in a drunk and disorderly manner were immediately reported to the crowd controllers employed by Etihad Stadium.

This incident illustrates how significantly different a major venue such as Etihad Stadium differs from a typical licensed venue. It is submitted that given the nature of the premises that Etihad Stadium is and the type of the events that it hosts, an exemption should be given to Etihad Stadium and other major venues liquor licences when compliance is considered and the issuing of demerit points under the Act.

The infringement notice was ultimately waived following preparation of a detailed submission by Delaware North.

As stipulated above, the way the current demerit point system operates is that any demerit point will remain on Delaware North’s license for a total of three years and sufficient accrual of
demerit points can lead to a prohibition on the service of alcohol throughout Etihad Stadium or a similar venue.

Given that there is a significant public interest requiring the availability of alcohol at large public events and the ramifications if a prohibition ever occurred, it is submitted that demerit points should not be issued against licensees of major venues.

It is also noted that licensees of these types of major venues generally have higher standards of operation than typical licensees for example, in relation to their:

(a) Management Plans;

(b) Policies and Procedures; and

(c) Training of staff.

**Forums and Liquor Accords**

At present, the forums and liquor accords are divided by geographical boundaries. Whilst this may be practical, it does not promote collaboration between major venues on harm minimisation in the unique setting surrounding major events. It is our submission that an accord or forum be established for operators of major venues and events (e.g. Melbourne Cricket Ground, Etihad Stadium, Melbourne Park, Victoria Racing Club, Melbourne Racing Club and F1 Grand Prix). This would create consistency around the operation of major venues in relation to best practice and harm minimisation.

**Conclusion**

Based on the submissions above, it is put that the Act should be amended so that major venues are not subject to the issuing of demerit points. Further, strong consideration should be given to revising the defence in section 108(5) to provide clarification as to what constitutes reasonable steps. In particular, it is our submission that there should be clarification on what reasonable steps should be taken for major venues where a red line plan covers the entire venue and security for the entire venue is outside the operator’s direct control.

Bazzani Scully Priddle Lawyers
15 December 2016
On-Premises Licence  
Licence No. 32253528

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2016

Licensee  
DELAWARE NORTH VENUE SERVICES PTY LTD

Address  
LEVEL 2  
630 CHURCH STREET  
RICHMOND 3121

Licensed premises address  
ETIHAD STADIUM  
DOCKLANDS 3008

Trading as  
ETIHAD STADIUM

Additional person(s) endorsed on licence  
CRAIG LEVY - approved as nominee, and is liable as if the licensee, until ceasing to manage and control the licensed premises.

TYPE OF LICENCE
This licence is an late night (on-premises) licence authorising the licensee to supply liquor on those areas of the Etihad Stadium detailed on the approved plans of the licensed premises for consumption on the licensed premises during the trading hours specified below.

AMENITY
The licensee shall not cause or permit undue detriment to the amenity of the neighbouring area to arise as a result of the sale and or consumption of liquor on the licensed premises.

SPECIAL CONDITIONS
1. PUBLIC AREAS
The following special conditions apply to the Public Beverage Outlets (internal concourse public retail food and beverage outlets).

   LIQUOR TYPE, VOLUME AND MAXIMUM NUMBER OF CONTAINERS PER TRANSACTION
   Liquor supplied may only be served as follows:
   Beer: 4 x 425ml plastic cups per transaction.
   Wine: 4 x 185 ml plastic cups per transaction.
   Spirits: 2 x 375ml cans poured into 425 ml plastic cups per transaction.
   Cider: 2 x 425 ml plastic cups per transaction.

   SUPPLY/SERVICE OF LIQUOR AT SPORTS EVENTS
   Liquor from the public beverage outlets may only be supplied from the time of gate opening until 15 minutes prior to scheduled completion of the last sporting event. Liquor supplied from the public beverage outlets shall not exceed four (4) containers of which a maximum of two (2) may be pre-mixed spirits, per customer per time.
   Beer supplied from the public beverage outlets is restricted to, at or below 3.5% alcohol by volume for sporting events after 7 p.m.
   Full strength beer supplied in the Food Court after 6.30 p.m. must be consumed in the Food Court.

   Liquor from the Public Beverage Outlets (internal concourse public retail food and beverage outlets) may only be supplied from the time of gate opening until 15 minutes prior to the scheduled completion of the last sporting event.

2. OTHER AREAS NOT BEING PUBLIC AREAS
Liquor may only be supplied in glass containers in enclosed function rooms and bars, but no glass containers are permitted to leave the enclosed function rooms and bars.

NON EVENT DAYS
1. Any licensed area which is not an enclosed building must be enclosed by a semi permanent barrier. Liquor may not be removed from the licensed area.

2. Liquor may be consumed in glass containers only in the outside area.
EVENT DAYS (Event days being when sports or major concert events are held on the arena of Etihad Stadium).

1. Any licensed area which is not an enclosed building must be enclosed by a semi permanent barrier. Liquor may not be removed from the licensed area.

2. Liquor may only be consumed in plastic containers in the outside area.

3. The licensee shall ensure that one (1) additional crowd controller, licensed under the Private Security Act, to staff the external entry point to the external licensed area.

When Darts Events are held at the premises the following special conditions will apply:

All liquor supplied shall be at or below 3.5% alcohol by volume.

Crowd controllers licensed under the Private Security Act, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof.

Crowd controllers are to be present from 30 minutes before the start of the event, until 30 minutes after the event finishes.

The supply of liquor must be from a bar.

A Responsible Service of Alcohol (RSA) monitor is to be employed at each bar, for the period that liquor is being supplied.

TRADING HOURS

Sporting Events -
Anzac Day Between 12 noon and 1 a.m. the following morning.
On any other day Between 9 a.m. and 1 a.m. the following morning.

For any other event -
Anzac Day Between 12 noon and 1 a.m. the following morning.
On any other day Between 7 a.m. and 1 a.m. the following morning.

APPROVAL/CONSENTS:
Unaccompanied persons under the age of 18 years are permitted on the licensed premises at any time on condition that they neither purchase nor consume liquor.

End of Conditions - Printed on 16/12/2016
Late night (on-premises) Licence

License No. 32225305

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2016

Licensee  MELBOURNE & OLYMPIC PARKS TRUST

Address for service  GPO BOX 4611SS

Licensed premises address  BATMAN AVENUE

Trading as  MELBOURNE PARK

Additional person(s) endorsed on licence

MATTHEW DAVID FORSYTH - approved as nominee, and is liable as if the licensee, until ceasing to manage and control the licensed premises.

Type of Licence

This licence is an late night (on-premises) licence authorising the licensee to supply liquor on those parts of Melbourne Park detailed on the approved plans of the licensed premises for consumption during the trading hours specified below.

Amenity

The licensee will not cause or permit undue detriment to the amenity of the neighbouring area to arise as a result of the sale and or consumption of liquor on the licensed premises.

Supply of Liquor

Liquor containers

- Liquor supplied from the public beverage outlets may only be served in plastic containers or opened cans, with a maximum volume of no more than 425 ml and with a maximum alcohol content of 5.3%, except for wine which may be supplied in plastic containers of a maximum volume of no more than 185 ml. Supply of liquor from the public beverage outlets will not exceed four (4) containers per transaction of which a maximum of two(2) products may be other than beer or wine.

- Liquor may be supplied glass containers in:
  - All enclosed private/corporate areas, including outdoor and balcony areas within an enclosed cafe or restaurant or within an area set aside for the exclusive use of members or corporate visitors, but no glass containers in which liquor has been supplied are permitted to leave these areas.
  - At tennis events conducted at the licensed premises, liquor from the public beverage outlets may be supplied until the actual completion of the last tennis event. For all other events at the licensed premises, liquor from these outlets may only be supplied until 15 minutes prior to the scheduled completion of the event.
  - During the Australian Open tennis tournament and where a temporary limited licence applies to the area on the red line plan it is permissible for liquor supplied pursuant to this licence to be carried onto and consumed within the licensed area to which this permanent licence pertains.

During the Australian Open tennis tournament the licensee will at all times comply with the endorsed Alcohol Management Plan in place for the tournament. The licensee is required to submit a new Alcohol Management Plan to be approved by both Victoria Police and the Victorian Commission for Gambling and Liquor Regulation annually.

Trading Hours

Good Friday  Between 12 noon and 11 pm
Anzac Day  Between 12 noon and 3 am the following morning.
Sunday  Between 8 am and 3 am the following morning.
On any other day  Between 7 am and 3 am the following morning.

Approvals/Consents

Section 9(1)(b)/9A(1)(b)/11A(3)(b) Footpath/External Area. The licensee is authorised to supply liquor on premises, other than the licensed premises, authorised by the Victorian Commission for Gambling and Liquor Regulation shown on the approved plan during the hours specified under "Trading Hours" for consumption on those premises.

This approval is only in effect for the period of the Australian Open tennis tournament. The supply of liquor in the authorised premises under this approval must be in accordance with the endorsed Alcohol Management Plan.
Section 120(2)(e) Unaccompanied minors on licensed premises. Persons under the age of 18 years are permitted on the licensed premises other than in the company of their parent, spouse or guardian except during rave or dance parties or equivalent function.

1. If the licensee and the Police Licensing Inspector agree that an event at the licensed premises is a rave or dance party or an equivalent event and unaccompanied young persons (under 18 years) are to be admitted to the event, the supply and consumption of liquor is to be restricted to separate enclosed areas of the licensed premises.

2. Such separate enclosed areas are to be agreed between the licensee and the Licensing Inspector and marked on a plan of the premises approved by the Licensing Inspector. No liquor is to be removed from these areas and no unaccompanied young persons may be present on such areas.

3. If the licensee and the Licensing Inspector disagree on the nature of the event or on the details of the proposed separate enclosed areas the matter will be referred to the Victorian Commission for Gambling and Liquor Regulation for determination.

Section 106 Consent to permit another person to carry on business of supplying liquor on the licensed premises. The terms and conditions of the consent given to the licensee under section 106 are incorporated as terms and conditions of the licence as if set out here in full.

This approval for Delaware North Companies Australia Pty Ltd to carry on a business of supplying liquor on the licensed premises expires on 6 August 2018.

End of Conditions - Printed on 16/12/2016
Restaurant and cafe Licence

Licence No. 32235774

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2016

Licensee: DELAWARE NORTH FOOD SERVICES PTY LTD
Address: LEVEL 2
for service: 630 CHURCH STREET
of notices: RICHMOND 3121
Licensed premises: GATE A
address: CNR ANDERSON STREET & ALEXANDER AVE
Trading as: ROYAL BOTANIC GARDENS TEA ROOMS & TERRACE FUNCTION CENTRE

TYPE OF LICENCE
This licence is a restaurant and cafe licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

RESTAURANT & CAFE CONDITIONS
This licence is subject to the following conditions:
(a) the predominant activity carried out at all times on the licensed premises must be the preparation and serving of meals for consumption on the licensed premises; and
(b) tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at any one time; and
(c) the licensee must not permit -
   (i) the live performance of any musical works; or
   (ii) the playing of any recorded musical works - on the premises at higher than background music level at any time outside ordinary trading hours.

Condition (c) does not apply to music performed or played on the licensed premises outside ordinary trading hours as part of a function that is held in an area of the premises that is set aside for the exclusive use of persons who have booked a table in that area and their guests, and is attended only by those persons and their guests.

AMENITY
The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

TRADING HOURS
Sunday: Between 10 a.m. and 11.30 p.m.
Good Friday and Anzac Day: Between 12 noon and 11 p.m.
On any other day: Between 7 a.m. and 11.30 p.m.

End of Conditions - Printed on 16/12/2016
On-Premises Licence  Licence No. 32262917

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2016

Licensee  THE SOVEREIGN HILL MUSEUMS ASSOCIATION
Address for service of notices  SOVEREIGN HILL POST OFFICE BALLARAT 3350
Licensed premises address  HORSEHILL ROAD ELAINE 3334
Trading as  "NARMBOOL" ELAINE

Additional person(s) endorsed on licence
JEREMY WILLIAM MARK JOHNSON - approved as nominee, and is liable as if the licensee, until ceasing to manage and control the licensed premises.

TYPE OF LICENCE
This licence is an on-premises licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

AMENITY
The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

TRADING HOURS
Sunday  Between 10 a.m. and 1 a.m. the following morning.
Good Friday & Anzac Day  Between 12 noon and 11 p.m.
On any other day  Between 7 a.m. and 1 a.m. the day following.

APPROVALS/CONSENTS
Section 120 Persons under the age of 18 years are permitted on the licensed premises other than in the company of a responsible adult during the trading hours but no later than 11pm on any day.
Section 106 Consent to permit another person to carry on a business of supplying liquor on the licensed premises. The terms and conditions of the consent given to the licensee under section 106 are incorporated as terms and conditions of the licence as if set out here in full.
This approval for Delaware North Venue Services Pty Ltd to carry on a business of supplying liquor on the licensed premises expires on 30 June 2023.
End of Conditions - Printed on 16/12/2016