



Who is the applicant?

For new licence applications, the applicant is the entity that will become the licensee once the application has been granted. Therefore correct details of the applicant must be provided on the application form.

The applicant can be one of the following entities:

- Individual (sole trader)
- Partnership (this can be formed by groups of individuals, two or more companies or a combination of individuals and companies)
- Company.

Either one of these entities can act as a trustee for a trust.

In order to determine the correct applicant details, the following should be considered:

- The applicant should be the entity that is entitled to possession of the premises, i.e. freeholder, lessee etc
- Who is the registered owner of the business name? (individual, partnership or company)
- How is the business to be operated for taxation purposes? (individual, partnership or company)
- Is a Family or Unit Trust involved in the business? If so who is the Trustee of each trust involved?

Note: It is advisable that you seek professional advice regarding the most appropriate entity to hold the licence. Most importantly, all those who will be involved in the operation of the business to be conducted under the licence, other than employees, must be identified on the application.

Entities

Individual (also known as sole trader or sole proprietor)

A sole trader is personally responsible for all business debts and has exclusive control and tenure, including all business proceeds.

Partnership

- An agreement between two or more entities to operate a business in a particular ratio, i.e. 50:50, 40:60 etc.
- All partners are legally bound by the actions of the other partner(s).
- Like a sole trader, the partnership is jointly responsible for all the business debts and has shared control and tenure, including all business proceeds.
- Partnership agreements identify and protect the interests of each partner.

Company

- A company is established as a legal entity under the *Corporations Act 2001*.
- A company comprises directors, shareholders, a secretary and public officer.
- Private companies (Pty Ltd) and public companies (Ltd) are registered through the **Australian Securities & Investment Commission (ASIC)**.

Trusts

Trusts are a structure where a trustee operates a business in trust for the benefit of the trust beneficiaries. The trustee holds the assets including the licence and the business in trust on behalf of the beneficiaries.

Details of all trust beneficiaries must be provided and 'Personal Information Declaration' forms must be completed by all adult beneficiaries. A beneficiary under a trust cannot receive proceeds from the business conducted under the licence unless approved by the licensing authority.

Please continue overleaf



Forms required

When lodging details of the applicant, a copy of one or more of the following documents may be required:

Where the applicant is a company:

- **Australian Securities and Investment Commission (ASIC) Search Extract**
This document contains details of the company including directors and shareholders. If the shareholding of a company has changed before the upcoming annual return (usually 31 January) has been lodged with ASIC, the shareholding on the ASIC extract will not be current. Applicants must, in those circumstances, provide the relevant share allotment or transfer certificates.
- **Registration of an Australian Company (ASIC form 201)**

Where the applicant is a company and the ASIC Search Extract is not current:

- **Notification of Change of Company Details (ASIC form 484);**
- **Notification of Resolution (ASIC form 205).**

Where the applicant is a partnership:

- **Partnership agreement**

Where a Trust is involved:

- **Trust Deed(s)**

Note: This information is not provided as expert advice on company or trust structures. Professional advice should be obtained before deciding on the appropriate structure for your business.

Profit Sharing - Section 99

Profit sharing is an arrangement between two or more parties, where one of the parties is nominated as a licensee of the licensed premises and the other is an unlicensed person.

Profit sharing occurs when the unlicensed person receives a percentage of the proceeds of the business conducted at the licensed premises.

For example, an agreement may be made where a licensee of a hotel does not have the expertise to operate the dining facility and enters into an agreement with a chef to run the kitchen. Instead of paying the chef as an employee, the parties agree to share the proceeds of the kitchen operation. This type of arrangement is prohibited under the Act unless approved by the licensing authority.

When a profit sharing agreement exists, the agreement will need to be approved by this Office and the following documents will need to be lodged:

- A 'Personal Information Declaration' form for persons receiving funds from the agreement
- A copy of the agreement
- Application fee.

If further information is required, please contact this Office.

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