



Northern Territory Branch AUSTRALIAN HOTELS ASSOCIATION

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Anti Discrimination Act

The Australian Hotels Association NT Branch (AHANT) is the peak employer representative of the Northern Territory's hospitality industry. Our 160 Members comprise of accommodation hotels, taverns, wayside inns, restaurants, and community clubs located throughout the Northern Territory, including many regional areas of the Territory.

Over the years the AHANT has been involved in:

- Liquor Accords in Alice Springs, Tennant Creek, Katherine, Nhulunbuy, Kakadu and Darwin;
- Liquor and licensing hearings dealing with variation of licenses;
- Liquor Commission matters involving Anti Discrimination Commissioner objecting to variation of licence conditions based on indirect discrimination;
- NT Police issues around directions to nominees on restrictive trading that are discriminatory;
- Objecting to NT Police and local government calls for licensees to voluntarily enforce discriminatory measures not supported by legislation or exemptions from Anti Discrimination Commissioner;
- Advising members on discrimination exposure for enforcing voluntary accord measures or "voluntary" directions from NT Police or NT Licensing inspectors;
- Handling and providing advice on discrimination claims made upon licensees.

Through this body of work it is quite apparent that there is no simple process for parties to adopt a discriminatory measure which is focused on reducing alcohol related harm and has some protection from discrimination claims.

Liquor Accords and other measures

The AHANT is supportive of and actively facilitates our Members and other licensees participating in Liquor Accords all throughout the Territory.

The Liquor Accord process involves the good intentions of licensees, NT Police, local councils, NT Licensing and other stakeholders discussing measures that could assist in reducing alcohol-related harm in their local community.

The Liquor Accords are developed in accordance with Part XA of the *Liquor Act* and are approved by the Director-General of Licensing under the Liquor Act. This approval process was regulated to ensure that licensees were protected from ACCC disciplinary action in regards to contraventions to the *Competition and Consumer Act 2010 (Cth)*. Of concern to our association and its members was the sanctioning and fining of licensees for the introduction of minimum pricing in a Nhulunbuy liquor accord to address issues around high risk drinking. This price fixing was deemed to contravene the Commonwealth competition legislation notwithstanding that the purpose was focused on harm minimization objectives. Accordingly, the amendments to the Liquor Act now provide protection for licensees and liquor accords wanting to introduce “contravening measures”.

However, the AHANT is concerned that there are no such similar protections for licensees entering a Liquor Accord and agreeing to undertake specific accord measures from direct or in-direct discrimination actions particularly for licensees participating in Accords that are not a measure of an Alcohol Management Plan developed under Commonwealth laws. It is arguable that those measures under an Alcohol Management Plan developed under Commonwealth Laws are exempt from Anti-Discrimination laws.

The current lack of protection causes confusion and frustration for Accord stakeholders, including the Police and local government representatives coordinating Accords, who often wrongly assume that the protection of Liquor Accords under the Liquor Act extends to cover both competition issues concerning the ACCC and direct or in-direct discrimination action. This is particularly in the context of measures being mooted after discussions of problems associated with indigenous itinerants and consumption of takeaway alcohol.

In addition to Liquor Accords, there are other circumstances when individual licensees receive a request from NT Police to not serve certain indigenous members of a local community certain products over a specified period of time in order to reduce alcohol-related harm. These requests come in all forms, some are quite informal others are in writing or via email.

Although not a licence condition, licensees often act in good faith and comply with these requests, refusing to serve particular community members, above and beyond what their liquor licence requires and what is provided in the *Liquor Act*. Some managers act following the order or instruction of NT Police assuming that in exercising this power the NT Police have the power to make such orders.

We have previously discussed this matter with the NT Anti-Discrimination Commissioner who confirmed it is correct for us to have concerns on both discriminatory practices and the need for Accord members, licensees and staff to follow due process for discrimination exemptions.

When discriminatory measures are adopted in good faith then it is the licensee or their staff who is exposed to the discrimination liability and not those who have urged the measure such as Local Government delegate, NT Police, NT Licensing, NT Transit Police, NGO Health organisations or Shopping Centre Managers.

Registration of Discriminatory Measures

Accordingly the AHANT seeks that the revised Anti Discrimination Act provide some protection for parties who wish to restrict or cease providing services to a particular class of persons for the purpose of preventing or minimizing harm from alcohol and alcohol related incidences. Approvals for the restrictive alcohol measure would be registered with the NT Anti-Discrimination Commissioner pursuant to the Anti-Discrimination Act and parties could be afforded limited protection against discrimination claims by relying on the registered measure.

In the alternative, the Liquor Act could be amended to provide for the registration of restrictive alcohol measures which could satisfy the exemption procedures of the Anti Discrimination Act. This would be similar to the procedure in the current Liquor Act dealing with measures that may contravene the Competition and Consumer Act 2010.

Education

Given that very few persons appear to understand discrimination issues and processes we believe it would be appropriate that within the education role of the agency implementing the Anti Discrimination Act that it work with the liquor industry, local government, Licensing NT and NT Police to develop clear guidelines on the development of liquor licence conditions , Liquor Accord measures or NT police directives which may be discriminatory in nature and the circumstances where such measures could be exempt from the application of the Anti Discrimination Act. Whilst this education role is implied in the draft Anti Discrimination Act it should be specifically included in the legislation.

Objects

The objects of the legislation should also state that the objects of the Act are to provide exemptions to discrimination in certain circumstances. This clarifies that it is the intention of this legislation to provide exemptions.

Conclusion

The 2017 Alcohol Legislation and Policy Review highlights the enormous task facing the industry, the government and the community with respect to problems with alcohol. In order to address these issues it is anticipated that liquor regulators, local government, NT Police, liquor licensees and community will wish to implement measures which will contravene discrimination laws as either direct or in-direct discrimination. Where these measures are appropriate then we need an Anti Discrimination Act that provides a reasonable level of protection to the licensee and their staff who are carrying out such discriminatory behavior in good faith. Failure to provide this will mean that licensees will not agree to implement harm minimization measures that would otherwise be discriminatory.

Please contact the writer should you wish to further discuss this matter.

Yours sincerely,


Des Crowe
Chief Executive Officer
Australian Hotels Association (NT Branch)