

Detached **Bottleshops**

CURT SCHATZ



Detached bottleshops are very important to many hotel businesses. They represent an opportunity for hoteliers to acquire an income stream from a business that operates with a physical independence from the main hotel. They are of course linked by law to the main premises under the provisions of the Liquor Act, but are independent in many other ways.

Importantly, they do not carry the same risk as on-premises consumption, given that consumption on bottleshop premises is not allowed (except for wine tastings).

Another important characteristic of a detached bottleshop under the Liquor Regulation 2002 is that it must not have direct access from any other business. For example a bottleshop cannot be linked via a doorway to a coffee shop. In addition, the detached bottleshop must have direct access from a public place and must not have any drive-in or drive-through facility.

The maximum number of detached bottleshops that may be endorsed on a Commercial Hotel Licence is currently three.

Lease Requirements

Generally, the lease commencement date should not precede the date when the Tenant is lawfully authorised to



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Nature of a Detached Bottleshop

A detached bottleshop may only be operated under the authority of a Commercial Hotel Licence under Section 60 of the Liquor Act 1992. It is not a stand alone permit or authorisation in itself and cannot exist independently of a Commercial Hotel Licence.

However, detached bottleshop authorisations can be transferred from one Commercial Hotel Licence to another and can also be relocated within the same shopping precinct, subject of course to approvals.

Probably the most significant characteristic of a detached bottleshop is that it must not be more than 10km by road from the hotel that holds the Commercial Hotel Licence. Under the Liquor Regulation 2002, this can be measured in different ways and there are exceptions for remote locations where no other licensed premises exist in the area.

conduct the permitted use, otherwise the Tenant is likely to be in breach of any provision in the Lease obliging it to comply with relevant laws and obtain all necessary approvals.

With regard to fitout it is important that all approvals are in place, including those relating to application appeals or review periods, both of which have applicable timeframes. A Tenant will not be able to recover the expense of a fitout if the bottleshop is not approved or was approved but an application for review was successful in the tribunal.

Valuers – How do they treat Detached Bottleshop Businesses?

Valuers will treat the detached bottleshop as a separate and independent business with separate and independent value. This is imperative for the transfer of detached bottleshops to another hotel's Commercial Hotel Licence.

If anyone has any queries in relation to detached bottleshops, in relation to the liquor application or to the Lease for the premises, please do not hesitate to give me a call.

DISCRIMINATION IN THE WORKPLACE.

Can you avoid liability?

NIGEL INGLIS



The recent very public claims of unfair treatment by several David Jones employees have seen a surge in discrimination and sexual harassment claims. This article addresses how you can minimise your risk of liability as an employer by taking steps to put policies in place and training staff.

Discrimination and harassment in the workplace

What is discrimination? Discrimination is the act of treating someone unfairly due to a particular characteristic, for example, his or her sex or race. Both Federal and State anti-discrimination legislation prohibits

discrimination on a number of grounds and in a number of relationships, including the employment relationship. Harassment, including sexual harassment, is also prohibited.

Employers may be held responsible for the unlawful actions of their employees unless they can show they took reasonable steps to stop it from occurring. The purpose of this article is to discuss how an employer may be able to rely on the defence of "reasonable steps" under Queensland and Federal legislation.

Employer's liability under legislation

All anti-discrimination legislation prohibits conduct that is discriminatory in nature, including sexual harassment. The legislation also provides that an employer may be vicariously liable for the actions of its employees towards others while they are working. As such, if the actions of employees are found to be in contravention of the legislation, the employer will usually be responsible and may have to pay damages for the employee's conduct.

However, the employer may have a defence if, on the balance of probabilities, the employer can show that it took "reasonable steps" (the Commonwealth legislation requires all reasonable steps) to prevent the employee acting unlawfully. What is "reasonable" will include a consideration of the size of the workforce, plus the structure and activities of the business. Such steps usually include having discrimination and workplace harassment policies, training on appropriate behaviour for all employees and effective grievance procedures.

Reasonable steps – What can you do?

To minimise the chance of an employer being responsible for the actions of their employees it is necessary that they comply with the requirement to take all reasonable steps to prevent employees engaging in unlawful conduct.

These steps include:

- The development of separate and individual policies on the different areas of discrimination, as well as sexual harassment. It may be prudent to include an anti-bullying policy. Taking appropriate steps to counter workplace bullying may reduce exposure to workers' compensation and damages claims for psychiatric injury.
- The development of a training program for all employees and agents to enable them to identify discriminatory behaviour, sexual harassment and bullying. Regular "refresher" training is also recommended.
- The development of a grievance procedure to enable your employees and agents to report incidents of discrimination, sexual harassment and/or bullying.
- The development of a remedial procedure, which would include a step-by-step procedure for dealing with a complaint.
- The creation of a positive workplace environment. This may include the removal of offensive materials, a policy prohibiting inappropriate use of the Internet and email, plus monitoring of discrimination, sexual harassment and bullying.

We have developed a formal package to assist you in developing your staff policies and procedures. For further information please contact Nigel Inglis at ninglis@mullinslaw.com.au or on 07 3224 0364.



CURT SCHATZ
EDITORIAL

We continue to operate within a trading environment that is filled with change.

Since the last Hospitality Newsletter, the Queensland Government has provided an outline of its intended formal response to the Queensland Parliament's Law, Justice and Safety Committee Report on alcohol related violence.

Some of the key points include:

- 1 There will be no change to trading hours, lockout provisions, glassware requirements, physical security measures or licence fees for hotels.
- 2 The Government aided by the Queensland Police Service and Liquor Accord Groups will introduce Drink Safe Precincts (DSP) in Queensland Entertainment Precincts and hotspots starting with Fortitude Valley, central Surfers Paradise and Flinders Street East in Townsville. Others may be established over time. These DSPs are intended to be safe zones with physical and moral support provided to patrons. Experienced community workers will staff them and more police will be rostered in these precincts.
- 3 It will also be mandatory for venues to provide or offer fresh free drinking water to patrons.

These measures are believed to be a targeted and rational response to the report.

In this edition, I have written an article on detached bottleshops. This article highlights bottleshops as a very large part of the commercial fabric of hotels and simply covers some of the major features worth considering.

Nigel Inglis, an associate in our employment division has also contributed an article on discrimination. Discrimination and harassment in the workplace has been very much in the public eye over the last few months. This article addresses some steps that can be taken by all employers in order to better educate their staff and limit liability.

Some of the steps that Nigel recommends should be considered very seriously. It is important to continue training in your workplace and ensure that you have comprehensive policies and training that is current.

Our Hospitality Law Group continues to lead the way in the local and state sector in the area of Liquor and Gaming Law, and I look forward to assisting anyone who requires our services.



Level 21, Riverside Centre
123 Eagle Street
Brisbane Qld 4000

GPO Box 2026
Brisbane Qld 4001

Telephone 07 3224 0222

Facsimile 07 3224 0333

email: cschatz@mullinslaw.com.au
www.mullinslaw.com.au

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