



Lawyers & Consultants

T: (02) 9280 4599 F: (02) 9281 6077 W: www.laslawyers.com.au E: admin@las.net.au

Liquor Accords – “A Wolf in Sheep’s Clothing?”

Formal Recognition in Law

The concept of Liquor Accords is not new, many licensees have experience with or have indeed actively participated in Liquor Accords in the past. So, is there any real difference to the Liquor Accords that you know and are familiar with from past experience and Liquor Accords under the regime of the Liquor Act 2007?

Well, first of all, Liquor Accords now have recognition in the statute – Part 8 of the Liquor Act 2007 deals specifically with Liquor Accords. A Local Liquor Accord is defined in the Liquor Act 2007 as:

"any code of practice, memorandum of understanding or other arrangement that:

- (a) affects the supply of liquor, the opening and closing of licensed premises or other aspects of the management of or conduct of business on licensed premises, and
- (b) is entered into, in accordance with this Part, for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm."

On face value, this is a fairly broad and general description, however with some objectives that are perhaps confronting to say the least given the current environment and public perception regarding late trading venues and the alcohol related harm, violence and anti social behaviour. Section 134 provides a non-exhaustive list of the terms that may be included in a Local Liquor Accord. Section 134(1) is in the following terms:

"Without limiting the terms that may be included in a local liquor accord, an accord may make provision for or with respect to any one or more of the following:

- (a) authorising or requiring any licensee who is a party to the accord:
 - (i) to cease to serve liquor (including take-away liquor) on the licensed premises, or
 - (ii) to restrict the public's access to the licensed premises in a manner and to the extent provided by the accord, or both, from a time of day that is earlier than the time at which, as required by the relevant licence, trading must cease,

(b) authorising or requiring any licensee who is a party to the accord:

- (i) to restrict the use of glass containers, or
- (ii) to maintain an incident register, or
- (iii) to install and operate closed-circuit television or any other security device, or
- (iv) to provide security staff, or
- (v) to do any other thing that may be prescribed by the regulations in order to minimise alcohol-related harm."

What do they mean by all this?

So the terms suggested by the statute relate to cessation of the sale of alcohol by licensees who are parties and restriction of access to the licensed premises by the public – in other words a lock out, or closure prior to the time permitted by the conditions of the licence. Sound familiar? What about the rest of it? Restriction on the use of glass containers, maintaining an incident register, installing and operating a CCTV system and the provision of additional security staff. And you may not even be a "declared premises" in the top 48, nor provide entertainment late at night.

So how does this code of practice or arrangement come into being, what makes it local, and is it compulsory?

While it is not open to just anybody to set up a Local Liquor Accord, section 132 of the Act designates persons eligible to be party to Local Liquor Accords as not only licensees, but numerous government authorities including the Police, Council, the Director-General along with local residents groups and any local business groups such as a Chamber of Commerce. Section 133 of the Act provides that any two or more eligible parties may prepare a draft Local Liquor Accord provided that one of the parties is a licensee.

The Process

A draft Local Liquor Accord must be submitted to the Commissioner of Police and the Director-General of Liquor and Gaming for approval and is to set out the area to which it is proposed to apply.

Section 133(3) provides an insight into the strategy that has been employed by parliament and highlights the important potential role that Local Liquor Accords have in achieving objectives which are currently popular within the community, however could be quite detrimental to hoteliers. The provision is in the following terms:

"The Commissioner of Police and the Director-General are to endeavour to ensure that local liquor accords are prepared for, and apply to, all areas of the State."

Section 133(3) clearly mandates the rolling out of locally based regulating bodies across the State. Again on the face of it, this is not such a problem, and many positives could result, however a deeper analysis reveals serious concerns.

The Sting

Whilst it is not compulsory under the Act to become a party to a Local Liquor Accord (although recent media reports would suggest that this is soon set to change), the combination of factors such as the structure of the legislation, particularly the powers of the Director-General and the requirements of establishing and approving a Local Liquor Accord, and the clear policy objectives of parliament, the Director-General and the Police, have the potential to operate in a manner which either coerces licensees to become members of a Local Liquor Accord, **or be subjected to the conditions in any event.**

To demonstrate this point, it is necessary to examine the structure and legitimisation of a Local Liquor Accord under the Act. Each of the Director-General, the Police and local Council are eligible parties to establish a Local Liquor Accord and the Director-General along with the Police are the parties responsible for the approval of the Local Liquor Accord. That means that the relevant authorities need only obtain the agreement of one licensee to establish a Local Liquor Accord. The licensee need not even be an hotelier.

Once established, the Local Liquor Accord may agree that its members should be bound by some of the terms set out in section 134 of the Act or even others. A restaurant licensee will not be particularly concerned if there is a lock out at midnight, nor may a club, particularly if the lock out does not apply to bona fide members (as exemplified by a matter that we are currently engaged in).

The authorities may also use less overt tactics to coerce membership by either targeting or threatening to specifically target certain premises with compliance operations and breaches in an effort to achieve the goal of having the premises adopt the resolutions of the Local Liquor Accord.

The Director-General

The other significant factor is the power of the Director-General to impose conditions on licences under section 54. The issue of the powers of the Director-General is serious and consequential, and shall be the subject of a future article. However in the context of Local Liquor Accords, it is foreseeable that a Local Liquor Accord approved by the Director-General and the Police could approach the Director-General seeking that non-members of the Accord be bound by its resolutions. The Director-General would have power to impose a condition on the licence of each of the non-member licensees to participate and adopt the resolutions of the Local Liquor Accord.

Alternatively, the Director-General could impose terms that have been adopted by the Local Liquor Accord as conditions on the licence of such premises.

It appears clear that the legislative mechanism of Local Liquor Accords when viewed in the light of the powers of the Director-General, is designed to allow for the imposition of constraints and restrictions on licensed premises by stealth, without the need to go through a rigorous parliamentary process (where issues can be debated and a balanced approach is hoped for). What is more disturbing is that licensees have little if any recourse to challenge decisions of the Local Liquor Accord if the licensee is a member, or the Director-General if the licensee is subject to conditions imposed by him resulting from resolutions of the Local Liquor Accord.

While in the past, a licensee could effectively refuse to participate in an Accord or adopt its resolutions, this may not be possible under the new legislation because of the powers of the Director-General as set out above. If a licensee is aggrieved by the decision of the Director-General to impose conditions on the licence, there is only limited scope for review to the Authority, however there is no primary right for the matter to be subject of a hearing by a Court, which is subject to the rules of evidence and is the logical and appropriate judicial body to deal with such matters.

So what can be done?

Proactive action should be taken to take control of Local Liquor Accords with robust constitutions dictating fair and equitable voting rights, with useful and practical initiatives adopted. A Local Liquor Accord which does not set out any objectives or practices that the Director-General and Police are likely to find appealing or which sets out no policy direction, is unlikely to be approved.

It is important to maintain documentation and diligent reporting of operational matters by staff and security, so as to maintain a body of evidence to contradict any potential future claims by officers of the Director-General, Police and local residents.

Licensees will be able to rely upon well maintained records as evidence to support positions arguing against the imposition of conditions or to demonstrate an absence of a need for the adoption of a particular policy by the Local Liquor Accord. If all else fails, proper records may provide satisfactory evidence for the commencement of an action in the future.

There exists an opportunity for proactive and responsible licensees to take advantage of Local Liquor Accords and implement legitimate and effective strategies to tackle the real issues that contribute to problems in their local area, which may or may not directly relate to licensed premises and which have failed to have been addressed by the general strategies sought to be applied by OLGR.