



BY KENNETH YARDY

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Discrimination

THE FINE ART OF MANAGING THE PATRON MIX

Q. Our bar has just been refurbished. We spent a lot of money and are now looking for the return. We've had a few problems with the people that are coming to our bar. We aren't getting a good mix of patrons, but we know we can't discriminate. What can we do?

A. Getting the right mix of patrons is an important part of managing a bar. But there are significant legal restrictions as to how managers can control who enters the premises. Even though it may be your premises, there are certain things you can't do. There has been considerable recent media coverage about certain venues that were seeking to have the manager's discretion to exclude certain types of members of the public from entering the premises.

Historically, drinking venues used to discriminate on the basis of sex and race. Remember the days of 'ladies parlours' in hotels, when men and women couldn't drink together? Some venues had different sections of bars reserved for different races, if they served them at all. Some towns had venues segregated along racial or religious lines. Now that conduct is clearly illegal, as anti-discrimination laws over the last 50 years have created the offence of discriminating on the basis of gender, race, skin colour, religion or sexual preference.

Recently, a hotel applied to their

discrimination commissioner to allow their hotel to be used and advertised as a predominately male gay venue, with management having the discretion not to admit or to eject straights and lesbians if they saw the need to do so. Whilst it generated cries of "reverse discrimination", it was approved on the basis that there were other venues in the area and that there were police concerns about public order and violence if such a power was not granted to the licensee. So now the licensee can discriminate – within a certain framework – lawfully.

However, there have always been complaints about venues and staff exercising unlawful discrimination. This is when complaints get made, bad publicity occurs and large fines get slapped on venues. Some venues have reportedly implemented blanket rules to stop certain racial groups from entering venues on the basis of security concerns and racial profiling. This is not only clearly unlawful, but bad business practice. Most people accept that outright discrimination is bad, but it is a manager's responsibility to ensure that staff are not unlawful in their actions.

House Policies, Management Plans and Security Standing Orders should all be non-discriminatory and these should be communicated effectively to all staff and patrons, with appropriate signs at the entry outlining dress and behaviour codes.

“There are significant legal restrictions as to how managers can control who enters the premises”

Simple rules such as no hoods or caps on the premises will allow you to identify persons when it is deemed necessary and create a less oppressive atmosphere in the bar.

Get a professionally prepared plan created rather than relying on verbal instructions to protect you and your staff legally. Security and bar staff should be educated in uniformly applied dress codes and house policies and staff should not be tempted into discriminating on the basis of race, sexuality, gender or background, resulting in legal action against you.

If you have any liquor licensing questions, contact Yardy Legal at 497 Elizabeth Street, Sydney, NSW 2010. T: 02 9318 2288 www.yardy.com.au Questions are published anonymously.

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