
Tunnel Australia Pty Ltd: queuing obligations

Memorandum of Advice

- 1 The City of Melbourne (“the council”) is proposing to amend its Activities Local Law 2009 (“the local law”) to govern queuing outside licenced premises. I am asked to advice.
- 2 The local law governs many aspects of activities in and adjacent to public places within the municipal district.
- 3 The council proposes to amend the local law “to provide for security in respect to queuing in public places outside of licenced premises to improve safety in public places”.
- 4 The amended local law would contain the following:

Queuing at Licenced Premises

2.15 Where the licensee of licensed premises allows queuing of patrons to occur outside his or her licenced premises, the licensee must provide such security as it necessary to monitor and control the behaviour of those waiting in the queue.

- 5 Clause 14.15 of the existing local law allows an authorised officer to serve a “Notice to Comply”. This notice may require various things that are directed at compliance with the local law. It is proposed to add to the matters that can be included in a Notice to Comply the following matter:
where the breach is of clause 2.15, direct the licensee to disperse the queue.
- 6 The proposed law would also involve penalties for non-compliance.

Advice

Overview

- 7 Typically, licenced premises are subject to patron limit. Hence popular premises sometimes are required to refuse patrons entry to ensure that the patron limit is not exceeded. Often queues develop, including on the public footpath.
- 8 The licensee has limited control over those in a queue. The licensee cannot eject a person from a public place, including a queue in a public place. The licensee cannot discipline a person in a public place, including a queue in a

public place. All that the licensee can do is refuse the disorderly person entry into the licensed premises.

- 9 The proposed law provides that where the licensee *allows* queuing of patrons to occur outside the licenced premises, the licensee must provide such security as it necessary to monitor and control the behaviour of those waiting in the queue. This law is predicated on the licensee “allowing” queuing. I have difficulty with this concept. The notion of “allowing” only makes sense if the licensee can “disallow” queuing. But if, as I have observed, a licensee has no power to disperse a queue on public land, it is difficult to see how he could stop persons queuing. All the licensee could do is ignore the queue for the purposes of deciding who could enter (and that would be a recipe for chaos and violence); but even such a practice would not amount to disallowing a queue to form. Thus I doubt that the proposed amended local law can work.
- 10 In any event, even if a licensee can “allow” a queue to form, the obligation under the proposed local law would be to provide such security as it necessary to monitor and control the behaviour of those waiting in the queue. Provided such security was provided, there would be no basis for a dispersal order, even if some of the proposed patrons in the queue were disorderly. (There would be a basis to direct the disorderly proposed patrons to leave, but this would only apply to such proposed patrons, not the remaining proposed patrons in the queue.)

Local Government Powers

- 11 Section 3F of the *Local Government Act* sets forth the powers of councils as follows:
 - (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions.
 - (2) The generality of this section is not limited by the conferring of specific powers by or under this or any other Act.
- 12 However, as observed in *Benson Development Pty Ltd v Monash CC* [2005] VCAT 194

... the *Local Government Act* requires that section 3F be interpreted so as to promote consistency between provisions of the *Local Government Act* and other legislation. Where particular legislation is intended to cover the field in relation to a particular matter, the interpretation of a general power so as to embrace the field so covered would not promote consistency. Rather consistency is promoted by having regard to implied limitations or restrictions imposed by the specific legislation; and regarding these as a constraint upon the scope of the general power.

- 13 Indeed, a local law must not be inconsistent with any Act: see s 111(2) of the *Local Government Act 1989*; and is inoperative to the extent that it is inconsistent with any Act: see s 111(3) of the *Local Government Act 1989*. In this context a relevant Act is the *Liquor Control Reform Act 1998*.
- 14 In my opinion, if the *Liquor Control Reform Act 1998* deals with a matter in a manner that were inconsistent with the proposed local law, that part of the local law would be inoperative.
- 15 This principle would extend to the content of a licence under the *Liquor Control Reform Act 1998*. Hence, if a licence governed queuing security and it was clear that such provisions were intended to comprehensively deal with the matter, the local law would be inoperative. I have little doubt that this is the case in respect of some liquor licences.
- 16 Obviously the spectre of dual controls, with doubts about the validity of one type of control, is to be avoided. I would have thought that the issue of public safety outside licenced premises was best left to the *Liquor Control Reform Act 1998*.

Stuart Morris

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