

Underage drinking laws

Factsheet

This factsheet outlines underage drinking offences in the NSW liquor laws and the restrictions applying to under 18s in licensed premises.

Important note – under 18s are referred to as “minors” in the liquor laws.

Responsible adults

This fact sheet includes information on the legal obligations of a “responsible adult” when they accompany a minor into licensed premises and in other situations. A “responsible adult” is an adult who is:

- a) a parent, step-parent or guardian of the minor
- b) the minor’s spouse or de facto partner, or
- c) for the time being standing in as the parent of the minor.

Evidence of age documents

The documents listed below are the only documents acceptable as evidence of age under NSW liquor laws. No other documents can be accepted by licensed premises as evidence of age.

- a) a motor vehicle driver or rider licence or permit issued by the NSW Roads & Maritime Services (formerly NSW Roads and Traffic Authority) or by the corresponding public authority of another State or Territory or by another country
- b) a NSW Photo Card issued by NSW Roads & Maritime Services
- c) a Proof of Age card issued by a public authority of the Commonwealth or of another State or Territory (other than NSW)

- d) an Australian or foreign passport, or
- e) a Keypass (over-18) identity card, issued by Australia Post

Obligations on alcohol licensees, staff and members of the public

A maximum court imposed fine of \$11,000 and/or 12 months imprisonment, or an on-the-spot penalty of \$1,100, applies for the following five offences.

1. Selling alcohol to minors

A person (including a parent or guardian) must not sell alcohol to a minor.

2. Supplying alcohol to minors on licensed premises

A person (including a parent or guardian) must not supply alcohol to a minor on licensed premises.

A person can avoid a penalty if he/she proves that the minor was at least 14 years old and had produced an evidence of age document that appeared genuine and indicated he/she was 18 years of age or older.

3. Supplying alcohol to minors on other premises

A person must not supply alcohol to a minor on unlicensed premises, including in a family home or other private setting, unless the person is a parent or guardian of the minor, or a person authorised by the parent or guardian, and the supply is consistent with the responsible supervision of the minor.

The relevant matters relating to responsible supervision which need to be considered by

parents and guardians (and which would be considered by the courts in determining any offences) include the following:

- the minor's age;
- whether the parent, guardian, or authorised person is intoxicated;
- whether the minor is consuming alcohol with food;
- whether the person supplying the alcohol is responsibly supervising the minor's consumption of the alcohol; and
- the quantity and type of alcohol, and the time period over which it is supplied.

The supply of alcohol to a minor who is intoxicated is not, in any circumstances, consistent with responsible supervision.

4. Obtaining alcohol for minors from licensed premises

A person must not obtain alcohol from licensed premises on behalf of a minor unless he/she is the minor's parent or guardian.

A person can avoid a penalty if he/she proves that they were authorised to obtain the alcohol by the minor's parent or guardian.

5. Allowing alcohol to be sold or supplied to minors on licensed premises

A licensee must not allow alcohol to be sold or supplied or served to a minor on licensed premises.

A licensee can avoid a penalty if he/she proves that the alcohol was supplied to the minor by the minor's parent or guardian.

Note: Offences relating to licensees supplying or allowing alcohol to be supplied to a minor on licensed premises do not apply where a licensed caterer supplies alcohol on private domestic premises.

Burden of proof: Parents, guardians and authorised adults

A parent or guardian will need to prove in a court that they are the parent or guardian of the minor. A member of the public will need to prove in a court that he/she was authorised by the parent or guardian to supply alcohol to the minor.

Minors cannot obtain, consume or carry away alcohol from licensed premises

- a minor must not consume alcohol on licensed premises.
- a minor must not obtain, or attempt to obtain, alcohol for consumption on licensed premises.
- a minor must not carry alcohol away, or attempt to carry alcohol away, from licensed premises unless he/she was ordered or requested by another person to do so.
- a minor must not consume alcohol in an unlicensed restaurant unless it is consumed in the company of, and with the permission of, the minor's parent or guardian.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a minor for these offences.

Note: The above offences do not apply where a licensed caterer supplies alcohol on private domestic premises.

Person must not send, order or request a minor to obtain alcohol

- a person must not send a minor to licensed premises to obtain alcohol.
- a person must not order or request a minor to go to licensed premises to obtain alcohol.

A maximum court imposed fine of \$3,300, or an on-the-spot penalty of \$1,100, applies for these offences.

Note: The above offences do not apply where a licensed caterer supplies alcohol on private domestic premises.

Responsible adult not to allow minor to consume alcohol on licensed premises

A responsible adult who is accompanying a minor must not allow the minor to consume alcohol on licensed premises.

A maximum court imposed fine of \$3,300, or an on-the-spot penalty of \$330, applies to a responsible adult for this offence.

To avoid a penalty, the person must prove that he/she was not the responsible adult in relation to the minor at the relevant time.

Licensee not to allow minors to sell or supply alcohol on licensed premises

A licensee who wishes to allow a minor to sell, supply or serve on licensed premises must first obtain approval from the Independent Liquor & Gaming Authority (ILGA).

A maximum court imposed fine of \$5,500, or an on-the-spot penalty of \$550, applies to a licensee if approval is not obtained.

Minors on licensed premises

What is a “bar area” in a hotel or registered club?

A “bar area” means any part of the hotel or club premises in which alcohol is ordinarily sold or supplied for consumption on the premises. However, a “bar area” does not include:

- a dining area in a hotel or club, or
- any part of a hotel in which alcohol is sold or supplied exclusively to residents (not including an area in respect of which a residents’ bar authorisation is in force), or
- any part of a hotel where a minors area authorisation or minors functions authorisation is in force at the particular time, or
- any part of club premises where a non-restricted area is in force, or
- any part of club premises where a junior members authorisation or a club functions authorisation is in force at the particular time.

Minor not to enter or remain in hotel and club bar areas

A minor must not enter or remain in the bar area of a hotel or registered club.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a minor for this offence.

A minor can avoid a penalty if he/she proves that they believed on reasonable grounds that a minors functions authorisation was in force for the hotel bar area.

Minors performing in a bar area

A minor can enter or remain in a bar area of a hotel or registered club while in the company of a responsible adult if he/she is performing in a show or other live entertainment performance held in the bar area.

Minors travelling through a bar area

A minor can enter or remain in a bar area of a hotel or registered club while in the company of a responsible adult for as long as is reasonably necessary to access another area of the hotel or club premises that the minor may lawfully enter.

Minors attending weddings in a club bar area

A minor can be in the bar area of a registered club to attend a wedding reception for a member of the club, or for a child or parent of a member of the club, or for someone whom a member of the club has acted as a guardian. The minor must have been formally invited to the reception.

Apprentices and trainees

A minor can enter or remain in a bar area of a hotel or registered club if he/she:

- is an apprentice or trainee as defined in the *Apprenticeship and Traineeship Act 2001* and is receiving trade training (cannot be training in the sale, supply or service of alcohol), or
- is receiving training and instruction in the servicing, repair or maintenance of gaming machines under the supervision of a licensed gaming machines technician.

Minors in hotels in the company of a responsible adult – Minors area authorisation

A hotel licensee may apply for a minors area authorisation to enable a minor to use a part of the hotel while in the company of a responsible adult. An application form is available from www.liquorandgaming.justice.nsw.gov.au.

A minors area authorisation can apply to an area of a hotel that would otherwise be a bar area.

Minor must be accompanied by a responsible adult in certain hotel areas and public entertainment venues

A minor must not:

- enter or remain in a part of a hotel where a minors area authorisation is in force unless he/she is in the company of a responsible adult, or
- or remain in a licensed public entertainment venue unless he/she is in the company of a responsible adult, or a function is being held in the venue in accordance with a minors functions authorisation.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a minor for this offence.

Minors attending a function

A minor can avoid a penalty if he/she proves that they believed on reasonable grounds that a minors functions authorisation was in force for the hotel bar area.

This offence does not apply to a licensed public entertainment venue that is a cinema or theatre.

Apprentices and trainees

A minor can enter or remain in a part of a hotel in respect of which a minors area authorisation is in force or in a licensed public entertainment venue without being in the company of a responsible adult if he/she:

- is an apprentice or trainee (within the meaning of the *Apprenticeship and Traineeship Act 2001*) and is receiving trade training that is not training in the sale, supply or service of alcohol, or

- is receiving training and instruction in the servicing, repair or maintenance of gaming machines under the supervision of a licensed gaming machines technician.

Burden of proof: Responsible adults

If a responsible adult is charged with an offence, he/she will need to prove they were the responsible adult in relation to a minor.

Functions for minors in hotels and public entertainment venues – Minors functions authorisation

A hotel or public entertainment venue licensee may apply for a minors functions authorisation to enable minors to attend a function in a part of the licensed premises. An application form and fact sheet are available from www.liquorandgaming.justice.nsw.gov.au.

An authorisation is not required to allow unaccompanied minors into a cinema or theatre.

The following conditions apply to a minors functions authorisation:

- at least 7 days notice must be given to the local police before any function is held
- the notice must specify the name and nature of the function, the number of minors attending, the number of adult supervisors, and details of the security arrangements
- the licensee and person conducting the function must comply with any directions given by the local police or ILGA
- alcohol must not be sold, supplied, disposed of or consumed in the function area
- gaming machines and tobacco vending machines must not be located in the function area, and
- any area in which gaming machines or tobacco vending machines are located must not be accessible to any minor attending the function.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies if these conditions are not complied with.

Licensee not to allow minors to enter or remain in hotel and club bar areas

A licensee is guilty of an offence if a minor enters a bar area of a hotel or club premises.

A licensee is also guilty of an offence if a minor is not immediately removed from a bar area of a hotel or club premises.

A maximum court imposed fine of \$5,500, or an on-the-spot penalty of \$1,100, applies to a licensee for these two offences.

Minors performing in a bar area

These offences do not apply where a minor is in a bar area of a hotel or club premises while in the company of a responsible adult and is performing in a show or other live entertainment performance held in the bar area.

Minors travelling through a bar area

These offences do not apply where a minor is in a bar area of a hotel or club premises while in the company of a responsible adult for as long as is reasonably necessary to access another area of the hotel or club premises that the minor may lawfully enter.

Minors attending weddings in a club bar area

These offences do not apply where a minor is in the bar area of club premises to attend a wedding reception for a member of the club, or for a child or parent of a member of the club, or for someone who a member of the club has acted as a guardian. The minor must have been formerly invited to the reception.

Apprentices and trainees

These offences do not apply where a minor is in a bar area of a hotel or club premises if he/she is an apprentice or trainee (within the meaning of the *Apprenticeship and Traineeship Act 2001*) and is receiving trade training that is not training in the sale, supply or service of alcohol.

Licensee not to allow minors to enter or remain in certain hotel areas and public entertainment venues

A licensee is guilty of an offence if a minor who is not in the company of a responsible adult enters:

- a part of a hotel in respect of which a minors area authorisation is in force, or
- a licensed public entertainment venue.

A licensee is also guilty of an offence if a minor who is not in the company of a responsible adult is not immediately removed from:

- a part of a hotel in respect of which a minors area authorisation is in force, or
- a licensed public entertainment venue.

A maximum court imposed fine of \$5,500, or an on-the-spot penalty of \$1,100, applies to a licensee for these two offences.

These offences do not apply to a licensed public entertainment venue that is a cinema or theatre.

These offences do not apply if the minor:

- was at least 14 years old and had produced an evidence of age document that appeared genuine and indicated the minor was 18 years of age or older,
- is an apprentice or trainee (within the meaning of the *Apprenticeship and Traineeship Act 2001*) and is receiving trade training that is not training in the sale, supply or service of alcohol,
- has entered, or is on, the licensed premises concerned for such purposes, or in such circumstances, as may be approved by ILGA and are specified in the licence,
- is in a hotel or club bar area and is performing in a show or other live entertainment performance held in the bar area and is in the company of a responsible adult.

Minors attending a function

These offences do not apply where a minor is in a licensed public entertainment venue to attend a function in accordance with a minors functions authorisation.

Burden of proof: Licensees

A licensee will need to prove in court that a person was the responsible adult in relation to a minor.

Responsible adult not to leave minor unaccompanied on licensed premises

A responsible adult must not leave a minor unaccompanied on licensed premises without first informing the licensee or an employee or agent of the licensee.

A maximum court imposed fine of \$3,300, or an on-the-spot penalty of \$330, applies to a responsible adult for this offence.

Burden of proof: Responsible adults

If a person is charged with an offence, he/she will need to prove they were not the responsible adult in relation to a minor.

Minors must be refused entry to licensed premises

If a “responsible person” for a hotel/club/licensed public entertainment venue is aware that a suspected minor is attempting to enter the premises, and the presence of that person if he/she is under the age of 18 years would be an offence, the responsible person must refuse entry unless the person produces an evidence of age document that appears genuine and indicates the person is 18 years of age or older.

A maximum court imposed fine of \$5,500, or an on-the-spot penalty of \$550, applies to the responsible person for this offence.

A “responsible person” means all of the following persons:

- the licensee
- the manager of the premises
- an employee or agent of the licensee or manager, and
- a person acting or purporting to act on behalf of the licensee or manager.

Alcohol sales via the internet or other media

A licensee who sells alcohol by retail by taking orders over the telephone, by facsimile or by mail order must display their licence number in any advertisement or published information.

A licensee who sells alcohol by retail through an internet site must prominently display their licence number on the site and in any advertisement or published information.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a licensee for these offences.

A licensee who sells alcohol by retail by taking orders over the telephone, by facsimile or by mail order, or who sells alcohol through an internet site, must require the buyer to supply his/her date of birth to confirm they are at least 18 years of age. A buyer need only supply their date of birth once if the licensee records it for subsequent purchases.

The licensee must also give written instructions to the person responsible for delivery of the alcohol requiring it be delivered:

- to the adult person who placed the order, or
- to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order, or
- if the delivery is not made on the same day as the order is taken or the sale is made, in accordance with the customer’s instructions.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a licensee for these offences.

Delivery of alcohol received by a minor

Delivery of alcohol sold via the internet, telephone, facsimile or mail order to a minor is an offence. The licensee, and any person who delivers the alcohol on the licensee's behalf, are taken to have committed an offence.

A maximum court imposed fine of \$11,000 and/or 12 months imprisonment, or an on-the-spot penalty of \$1,100, applies to a licensee and a person who delivers alcohol for these offences.

A licensee can avoid a penalty if he/she proves that:

- he/she complied with the requirements referred to above (i.e. required the purchaser to state his/her date of birth and provided written instructions to the person responsible for delivery of the alcohol), and
- at the time he/she did not know, and could not reasonably be expected to have known, that the offence was committed.

A person (not a licensee) can avoid a penalty if he/she proves that:

- the person to whom the alcohol was delivered was at least 14 years old and had produced an evidence of age document that appeared genuine and indicated he/she was 18 years of age or older, and
- at the time he/she did not know, and could not reasonably be expected to have known, that the offence was committed.

A minor must not take delivery of any alcohol sold over the telephone or by facsimile or by mail order or through an internet site unless he/she was ordered or requested by his or her parent or guardian.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a minor for this offence.

A person must not order or request a minor to take delivery of alcohol sold over the telephone or by facsimile or by mail order or through an internet site.

A maximum court imposed fine of \$3,300, or an on-the-spot penalty of \$330, applies to a person for this offence.

Requesting information and evidence of age from minors

Minor required to provide information to licensee, police, etc

A licensee, their employee or agent, a police officer or an inspector may require a person who is reasonably suspected of being a minor and is attempting something unlawful under the alcohol laws to state their full name, residential address and date of birth. The person may also be required to produce there and then, or at a police station within a reasonable time, an evidence of age document.

When requested, the person must not:

- refuse or fail to state his or her full name, residential address and date of birth, or
- unless they have a reasonable excuse, refuse or fail to produce an evidence of age document that may reasonably be accepted as applying to the person.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a person for this offence.

Minor must not use false evidence of age

A minor who uses any false evidence of age document in order to gain entry to, remain in, or obtain alcohol from, licensed premises, is guilty of an offence.

A maximum court imposed fine of \$2,200, or an on-the-spot penalty of \$220, applies to a minor for this offence.

A minor who uses fake ID may also have his or her provisional driver licence extended for an additional six months (from 36 to 42 months).

Signs in licensed premises

Information about signs that must be displayed on licensed premises in relation to minors is available in our factsheet available from www.liquorandgaming.justice.nsw.gov.au.