

GL4002

Prevention of intoxication on licensed premises guidelines

Introduction

Liquor licensees have important obligations to ensure alcohol is served responsibly to help minimise alcohol-related harm. Supporting responsible consumption practices and preventing intoxication lowers the risk of alcohol-related violence and neighbourhood disturbance, and helps to promote a safe venue for customers and staff.

The NSW liquor laws prohibit the sale and supply of alcohol to intoxicated persons. Licensees also have a legal obligation to prevent intoxication from occurring on their premises. Significant penalties – including fines, higher annual licence fees, and possible suspension or cancellation of a licence – apply where alcohol is served to an intoxicated person or intoxication is permitted.

These guidelines include practical steps that licensees can take to manage the risk of intoxication on their premises. They will assist licensees to comply with the liquor laws and the conditions of their liquor licence.

While implementing these steps is not a licence requirement, it is recommended, as the steps provide evidence of what a licensee has done to minimise the risk of intoxication in the event of a prosecution under the liquor laws.

Because liquor is sold in a diverse range of circumstances, licensees and staff should also consider whether other measures – in addition to the steps outlined in these guidelines – are needed to minimise the risk of intoxication.

What is the law?

It is unlawful for a licensee or staff member to sell or supply liquor to an intoxicated person on licensed premises (section 73(2) of the *Liquor Act 2007*). The maximum penalty is \$11,000.

A person is intoxicated if:

- a. the person's speech, balance, co-ordination or behaviour is noticeably affected, and
- b. Separate guidelines have been issued by the Secretary, of the Department of Enterprise, Investment and Trade, to assist licensees and staff in determining whether a person is intoxicated. Please refer to GL4003 'Intoxication guidelines' at liquorandgaming.nsw.gov.au.

It is unlawful for a licensee to permit intoxication on licensed premises (section 73(1)(a) of the *Liquor Act 2007*). The maximum penalty is \$11,000.

A licensee is deemed to have permitted intoxication if an intoxicated person is on the licensed premises (section 73(4) of the *Liquor Act 2007*), unless the licensee can prove:

- a. The licensee or staff:
 - i. asked the intoxicated person to leave the premises, and
 - ii. contacted, or attempted to contact, the police for assistance in removing the person from the premises, and
 - iii. the person was refused further service of liquor, or
- b. The licensee or a staff member had taken the steps set out in guidelines issued by the Secretary of the Department of Enterprise, Investment and Trade, under section 73(5A) of the *Liquor Act 2007*, or
- c. The intoxicated person did not consume liquor on the licensed premises.

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There are other requirements in the case of on premises licenses for vessels.

- a. The licensee of an on premises licence for a vessel will need to prove that:
 - i. the person was not intoxicated when the person boarded the vessel, and
 - ii. the licensee, and the licensee's employees and agents, refused to serve the person liquor after becoming aware the person was intoxicated, and
 - iii. the licensee, or the licensee's employee or agent, contacted, or attempted to contact, a police officer for help in removing the person from the vessel, and
 - iv. if the licensee, or the licensee's employee or agent, contacted a police officer, the licensee and the licensee's employees and agents followed the police officer's instructions, or
- b. the licensee proves that the licensee, and the licensee's employees and agents, took the steps set out in the guidelines issued under Section 73(5A) of the *Liquor Act 2007* to prevent intoxication on the vessel, or
- c. the licensee proves that the intoxicated person did not consume liquor on the vessel.

What is the purpose of these guidelines?

The Secretary of the Department of Enterprise, Investment and Trade, is required to issue these guidelines under section 73(5A) of the *Liquor Act 2007*. Their purpose is to describe the steps that licensees and their staff must take where a licensee wishes to be able to rely upon the defence in section 73(4)(b) to establish that intoxication was not permitted on their licensed premises.

Where a licensee seeks to rely upon this defence, it will be necessary to demonstrate that **all steps** in these guidelines (apart from the 'voluntary best practice measures') were in place at the time that the offence of permitting intoxication was alleged to have occurred.

As an alternative to implementing the steps in these guidelines, licensees also have the option of relying upon sections 73(4)(a) or 73(4)(c) of the *Liquor Act 2007* to defend an allegation that intoxication has been permitted on the licensed premises.

References

Any reference to a licensee in these guidelines includes a reference to a manager as defined in section 4 of the *Liquor Act 2007*.

Any reference to staff or a staff member in these guidelines includes a reference to any person undertaking duties related to the sale and supply of alcohol on the licensed premises, including security personnel and RSA marshals.

Steps to prevent intoxication on licensed premises

1. Selling, supplying and promoting liquor responsibly

The steps are:

- a. the requirement to not sell or supply liquor to an intoxicated person (under section 73(2) of the *Liquor Act 2007*) is complied with,
- b. obligations relating to responsible service of alcohol training and the availability of free water (under the *Liquor Regulation 2018*) are complied with,
- c. any conditions imposed on the liquor licence or any requirements under the *Liquor Act 2007* which restricts the times, type or quantity of alcohol sold or supplied on the licensed premises are complied with, and
- d. liquor is not sold, supplied or promoted in a manner that is inconsistent with the Liquor Promotion Guidelines issued by the Secretary, of the Department of Enterprise, Investment and Trade under section 102(4) of the *Liquor Act 2007*.

Please refer to GL4001 'Liquor Promotion Guidelines' at liquorandgaming.nsw.gov.au.

2. Monitoring liquor consumption and patron behaviour

The steps are:

- a. the licensed premises is operating under the direct supervision of the licensee or appropriately experienced supervisory staff whenever liquor is being sold and supplied,
- b. liquor consumption by all patrons is actively monitored by the licensee or staff,
- c. intervention occurs when the licensee or a staff member becomes aware that a patron is consuming liquor irresponsibly and in a manner likely to result in intoxication,
- d. intervention occurs when the licensee or a staff member becomes aware that a patron is intoxicated to prevent the person from consuming liquor and to request that person to leave the premises,

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- e. patrons entering the licensed premises between midnight and 5am are actively monitored and assessed for intoxication at the time of entry, and
- f. any conditions imposed on the liquor licence, requirements under the *Liquor Act 2007*, or requirements of a development consent or approval under the *Environmental Planning and Assessment Act 1979*, relating to the engagement and duties of security personnel and/or RSA marshals are complied with.

3. Planning to prevent intoxication on the licensed premises

The steps are:

- a. written document (such as a plan or house policy) is prepared which:
 - i. details the measures in place to prevent intoxication on the licensed premises (including the method of complying with the steps set out in these guidelines),
 - ii. describes how staff are instructed and trained to prevent intoxication on the licensed premises, and
 - iii. is provided to police and inspectors upon request.
- b. all staff receive instructions and training on the contents of the document referred to in step 4(a) above before they commence working on the licensed premises.

Voluntary Best Practice Measures

The following recommended harm minimisation measures apply voluntarily and are not a requirement under the *Liquor Act 2007*. These measures set a voluntary higher standard that NSW licensees can follow to further minimise the risk of intoxication at licensed premises. These best practice measures go beyond existing requirements under the *Liquor Act 2007* and will not prevent the defence provision under section 73(4)(b) being available to a licensee if they are not implemented.

The voluntary best practice measures recommended by Liquor & Gaming NSW are:

- a. the availability of free drinking water is actively promoted to patrons throughout the licensed premises,
- b. action is taken to make patrons aware of the availability of non-alcoholic and low strength alcoholic beverages in the licensed premises,

- c. the following drinks are not sold or supplied between midnight and 5am:
 - i. any drink (commonly referred to as a 'shot', a 'shooter' or a 'bomb') that is designed to be consumed rapidly,
 - ii. any ready to drink beverage with an alcohol by volume content of more than 5%, and
 - iii. any drink prepared on the premises that contains more than 30 ml of spirits or liqueur, other than a cocktail that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly.
- d. In addition to the requirement to ensure that food is available when alcohol is being sold or supplied (under section 27 of the *Liquor Act 2007*), Licensees and Approved Managers are encouraged to:
 - a. Check your venue has food available, and that staff understand food needs to be available to customers when alcohol is sold and supplied, even when the kitchen is closed.
 - b. Actively promote late night food options to customers and offer food to customers who are ordering drinks.
 - c. Explore your options for providing food - you could partner with a local food delivery service or encourage customers to make use of food delivery apps by advertising them throughout the venue.
 - d. If it isn't practical to offer a full menu all night, offer a limited menu later in the evening.