



# 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. Additionally, these guidelines include voluntary steps that can be taken to prevent drink spiking on their premises.

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:

- the person's speech, balance, coordination or behaviour is noticeably affected, and
- separate guidelines have been issued by the Secretary, of the Department of Creative Industries, Tourism, Hospitality and Sport to assist licensees and staff in determining whether a person is intoxicated and how to manage drink spiking incidents on their premises. Please refer to GL4003 'Intoxication guidelines' at [liquorandgaming.nsw.gov.au](http://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 Creative Industries, Tourism, Hospitality and Sport, under section 73(5A) of the *Liquor Act 2007*, or
- C** The intoxicated person did not consume liquor on the licensed premises  
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

- ii the licensee, and the licensee's employees and agents, refused to serve the person liquor after becoming aware the person was intoxicated
- 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
- 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 Creative Industries, Tourism, Hospitality and Sport, 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 food is made available whenever liquor is sold or supplied on the premises, if this is a requirement of the licence under the *Liquor Act 2007* or any associated licence conditions
- c obligations relating to responsible service of alcohol training and the availability of free water (under the *Liquor Regulation 2018*) are complied with
- d 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
- e 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 Creative Industries, Tourism, Hospitality and Sport under section 102(4) of the *Liquor Act 2007*.

Please refer to GL4001 'Liquor Promotion Guidelines' at [liquorandgaming.nsw.gov.au](http://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
- e patrons entering the licensed premises between midnight and 5am are actively monitored

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- 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
  - 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 and drink spiking 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%
  - 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.

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:

- iv** 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
- v** actively promote late night food options to customers and offer food to customers who are ordering drinks
- vi** 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
- vii** if it isn't practical to offer a full menu all night, offer a limited menu later in the evening.

### Steps to prevent drink spiking on licensed premises

Drink spiking is when someone deliberately adds alcohol or another drug to someone's drink without their knowledge. This can lead to negative consequences such as assault and sexual violence, with one in three drink spiking incidents being associated with sexual assault.

Drink spiking is illegal in all Australian states and territories. In NSW, drink spiking is an offence under section 38A of the *Crimes Act 1900* which carries a maximum penalty of 2 years in prison.

The most common ways to spike a drink is by adding alcohol to a non-alcoholic drink or adding extra alcohol (double/triple shots). A range of drugs can also be used to spike a drink which is added to alcohol to act as a powerful sedative. The majority of victims are unable to detect they that their drink has been spiked though sight, smell or taste because these substances are often colourless and odourless.

Everyone who works in a licensed premises, including security staff, has a part to play in preventing drink spiking. It is important to be aware of signs that someone's drink has been spiked. Symptoms will vary for a variety of reasons. For a drink spiking incident with alcohol, it will depend on how much alcohol was consumed prior to the incident, current prescriptions, tolerance levels, the venue environment, and the drink spiking dosage. With a drink spiking incident with drugs other than alcohol, it is dependent on the type of drug used. Look out for a sudden or extreme intoxication inconsistent with the amount of alcohol they have consumed.

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

- a** Encouraging staff to monitor the environment and report any suspicious behaviour to management.
- b** Removing unattended glasses from the bar area and surrounds, as well as other areas like bathrooms.
- c** Being aware of unusual requests such as double/triple shots or requests to add alcohol to another person's drink.
- d** Responding to requests for assistance from patrons who report feeling unsafe by asking them if they wish to be taken to a secure part of the premises, assessing the situation and working out the best course of action, including seeking medical assistance if appropriate.
- e** Encouraging your staff to trust their instincts — if something feels wrong but they're unsure how to manage the situation, make sure they report it to you or your approved manager.
- f** Recording incidents of drink spiking in your venue's incident register (if required to keep one) including the date and time when this occurred, name and description of the customer/s and staff members involved, description of the incident and the actions taken by you and/or your staff members.
- g** Review and save CCTV footage of alleged incidents.
- h** Call police if you witness drink spiking.
- i** Do not let the victim of drink spiking leave the venue alone or with anyone you are suspicious about. You should ensure they have a planned journey home and are accompanied by someone they know and trust, once they have been attended to by the police, and evidence has been gathered.
- j** If possible, secure the drinking vessel (e.g. glass) alleged to have been used in the offence, including any liquids for analysis.
- k** Instruct security guards to report if anyone leaving the venue exhibiting behaviours which could indicate their drink has been spiked.

**In addition**, it may be useful to keep a list of local services handy for quick reference in the event a drink spiking incident occurs. These can include:

- Triple Zero (000)
- Police Assistance (131 444)
- Crime stoppers (1800 333 000)
- Your local police station's direct number
- Local taxi services
- Counselling services 1800RESPECT
- Poisons Information Centre on 13 11 26