

Authority decision making and the provision of reasons for decisions



Independent
Liquor & Gaming
Authority

Overview

This Guideline provides information to applicants and stakeholders about the way in which the Authority makes its decisions under the gaming and liquor legislation, the circumstances in which it provides reasons for its decisions and how to access information held by the Authority.

Background

1. The Independent Liquor and Gaming Authority (“**Authority**”) is a statutory authority that is constituted under the *Gaming and Liquor Administration Act 2007* (formerly the *Casino Liquor and Gaming Control Authority Act 2007*). The Authority members are the Chairperson, Deputy Chairperson, Chief Executive and other members.
2. All members of the Authority save for the Chief Executive are appointed on a part time basis. The Authority convenes in ordinary session monthly, usually in the last week of each calendar month. Most of the Authority’s business is transacted at these ordinary monthly meetings, while a very limited number of matters may be addressed between the ordinary meetings, either by email or special meeting. Conferences or hearings on particular matters are also generally scheduled separately from ordinary meetings.
3. The Authority operates in a high volume jurisdiction that requires it and its delegates to process hundreds of applications and other matters arising each year under the *Casino Control Act 1992*, *Liquor Act 2007*, *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*.
4. Relatively complex or contentious matters are determined by the Authority itself. Such matters include, but are not limited to:
 - certain applications for liquor licences requiring an assessment of community impact under section 48 of the *Liquor Act 2007*;
 - certain applications to increase the gaming machine threshold of a venue under section 34 of the *Gaming Machines Act 2001*;
 - certain applications to declare a device to be an approved gaming machine under section 63 of the *Gaming Machines Act 2001*;
 - certain applications to specially approve a gaming machine under Part 10 of the *Gaming Machines Act 2001*;
 - merits reviews of certain liquor, gaming and registered club related decisions under section 36A of the *Gaming and Liquor Administration Act 2007* and section 144I of the *Liquor Act 2007*; and
 - disciplinary complaints/investigations under Part 9 of the *Liquor Act 2007*, Part 8 of the *Gaming Machines Act 2001*, Part 6A of the *Registered Clubs Act 1976* or Parts 2 and 4 of the *Casino Control Act 1992*.
 - “strike” decisions made under Part 9 of the *Liquor Act 2007*.
5. Officers assisting the Authority will case manage the receipt of an application and submissions, respond to enquiries about progress and provide a brief to the Authority, along with all relevant information and papers.
6. Authority Delegates exercise those powers and functions that have been delegated to them by the Authority under section 13 of the *Gaming and Liquor Administration Act 2007*. Delegations are recorded in the Authority’s *Regulatory Delegations Manual*, which is updated from time to time. Any matter that is capable of being determined by an Authority Delegate may, in appropriate circumstances, be considered and determined by the Authority itself.
7. The Authority’s monthly meeting agenda is fixed by the Chief Executive and briefings for matters to be considered by the Authority are generally submitted to Authority members one week in advance of the relevant meeting.
8. Officers case managing an application will usually require all submissions to be received not less than 2 weeks prior to the date of the Authority meeting at which the matter will be considered.
9. Third parties making submissions in relation to an application should observe any relevant legislative time frame. For example, clause 12 of the *Liquor Regulation 2008* requires that persons making submissions to the Authority in relation to a liquor application do so within 30 days of the date on which the application was made, or such shorter period as the Authority may determine.

IMPORTANT NOTICE

Under s.36 *Gaming and Liquor Administration Act 2007* and s.307A *Crimes Act 1900*, it is an offence to provide information to the Authority that is false or misleading.

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10. While the Authority will endeavour to determine applications as efficiently as possible, in some instances the Authority may need to adjourn its consideration of an application, if further information is required. While applications will usually be determined on the papers, the Authority may convene an informal meeting with relevant parties if it considers this necessary to better inform itself on the merits of an application.

The provision of statements of reasons

11. For most matters the Authority will inform the applicant of the outcome of an application by way of a concise decision letter that notifies the grant of the application and the conditions imposed, if any, or, if the application is refused, very briefly identifying any legislative requirement that was not satisfied.
12. The Authority is expressly required by legislation to provide reasons in certain circumstances, including when:
 - determining a disciplinary complaint under section 142 of the *Liquor Act 2007*, section 131A of the *Gaming Machines Act 2001*, or section 571 of the *Registered Clubs Act 1976*;
 - it has made a decision under Part 9A of the Act, concerning the “three strikes” regime (*Liquor Act 2007*, section 144G(4));
 - proposing, under section 65 of the *Gaming Machines Act 2001*, to:
 - terminate the investigation of an application to declare a device as an approved gaming machine;
 - refuse an application to declare a device as an approved gaming machine; or
 - revoke the declaration of a device to be an approved gaming machine;
 - notifying disciplinary action against the casino operator or a casino special employee under sections 23 and 59 of the *Casino Control Act 1992* respectively;
 - reporting to the Minister on the suitability of the casino operator under section 31 of the *Casino Control Act 1992*; and
 - giving notice to a person under section 39 of the *Casino Control Act 1992* to show cause why a controlled contract should not be terminated.
 - making those other types of decisions in relation to liquor applications that are prescribed

by section 36C of the *Gaming and Liquor Administration Act 2007* and clause 6 of the *Gaming and Liquor Administration Regulation 2008* as requiring the publication of reasons.

13. The Authority also has a practice of providing reasons when the Authority exercises its power to impose, revoke or vary licence conditions under section 53 of the *Liquor Act 2007* in contentious or complex matters.
14. In all other cases, if an applicant or other interested party makes a written request for detailed reasons in relation to a decision under the *Liquor Act 2007*, *Gaming Machines Act 2001* or *Registered Clubs Act 1976*, the Authority will consider each request on a case by case basis. Applicants and other interested parties should not hold any expectation that a detailed statement of reasons will be provided in circumstances when the Authority is not legally required to provide them.
15. The Authority may, of its own volition, provide detailed reasons if a matter is of significant concern to the community or if the outcome may provide guidance to the industry and other stakeholders but only if resources are available to produce the reasons in a timely manner.
16. Contact details for the officer responsible for a specific application may be sought from the Client Access Unit via email to info@olgr.nsw.gov.au

Information concerning Authority decisions

17. Section 17 of the *Gaming and Liquor Administration Act 2007* prohibits the disclosure of information by a person who acquires the information in the exercise of functions under the gaming and liquor legislation, unless this is done in the course of administering that legislation or other exceptions apply. However, section 17(8) of that Act provides that section 17 does not prevent a person from being given access to information under the *Government Information (Public Access) Act 2009* (“GIPA Act”). There are some exceptions to this right of access, including where access under the GIPA Act could reasonably be expected to prejudice the investigation of any contravention of the law, or would disclose information concerning the business affairs of an applicant for a licence under the *Casino Control Act 1992*.

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18. Due to the volume of submissions it receives, the Authority does not routinely advise persons who have made submissions to it under section 44 of the *Liquor Act 2007*, or otherwise, of its determination of an application. However, the Authority will inform persons who make enquiries to it of the outcome of applications.

19. Persons wishing to obtain further information held by the Authority concerning applications and determinations are advised to apply for that information under the GIPA Act. This allows the Authority to ensure that the sensitive personal, business or commercial information of applicants and others is not released where there is an overriding public interest against its disclosure.

20. Information about the process for seeking information held by the Authority is available on the Authority website www.ilga.nsw.gov.au.

The publication of Authority decisions

21. Since the commencement of its operations on 1 July 2008 the Authority has maintained a practice of publishing on the “Decisions of Interest” section of its website:

- merits review decisions made under the *Liquor Act 2007*, *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*;
- disciplinary complaint decisions made under the *Liquor Act 2007*, *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*;
- significant decisions made by the Authority under section 53 of the *Liquor Act 2007*;
- decisions on banning orders made under section 78 of the *Liquor Act 2007*; and
- decisions under section 34 of the *Gaming Machines Act 2001* on gaming machine threshold increase applications involving a category 2 Local Impact Assessment.

22. Since 1 March 2015, section 36C of the *Gaming and Liquor Administration Act 2007* requires that the Authority publish, as soon as practicable, notice of certain decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

23. The notice must be published on the Authority’s website and is to include (1) a statement of reasons for the decision and (2) details of any penalty or sanction imposed, or any remedial action taken, in relation to the decision.

24. The statement of reasons is to include:

- the findings on material questions of fact, referring to the evidence or other material on which those findings were based;
- the decision-maker’s understanding of the applicable law; and
- the reasoning process that led the decision-maker to the conclusions that were made.

25. As of the date of this Guideline the types of decisions that must be published include:

- a decision in relation to the review of a decision made by the Secretary made under section 36A of the *Gaming and Liquor Administration Act 2007* or section 144I of the *Liquor Act 2007*;
- a decision relating to a short-term closure order of licensed premises made under section 82 of the *Liquor Act 2007*;
- a decision relating to a long-term closure order of licensed premises made under section 84 of the *Liquor Act 2007*;
- a determination of a disciplinary complaint by the Authority under section 141 of the *Liquor Act 2007*;
- a decision to impose a third strike against a licensed premises under the Three Strikes disciplinary scheme made under section 144D(3) of the *Liquor Act 2007*;
- a determination of an application to remove a disqualification of more than 3 years imposed by the Authority made under section 154 of the *Liquor Act 2007*; and
- a decision by the Authority relating to an application for a licence, authorisation or approval, where a category B community impact statement (CIS) is required under clause 10 of the *Liquor Regulation 2008*.

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26. A category B CIS is required if the relevant application is:

- for a hotel licence;
- for a club licence;
- for a small bar licence if the applicant has not met CIS exemption requirements under section 48(3A) of the *Liquor Act 2007*;
- for a packaged liquor licence (other than a licence that is limited to the sale or supply of liquor through an Internet site);
- for an on-premises licence that relates to a public entertainment venue other than a cinema or a theatre;
- for an ongoing extended trading authorisation in relation to a hotel, club, small bar, packaged liquor or on-premises licence;
- for approval to remove a hotel, club, small bar, packaged liquor or on-premises licence under section 59 of the *Liquor Act 2007*;
- for an ongoing extended trading authorisation in relation to an on-premises licence if the authorisation operates to authorise the sale of liquor at any time between midnight and 5 am;
- for an ongoing extended trading authorisation in relation to a producer/wholesaler licence if the authorisation operates to authorise the sale of liquor by retail (otherwise than to the residents of the licensed premises and their guests) at any time between midnight and 5 am; and
- required by the Authority under paragraph (f) of the definition of relevant application in section 48 (2) of the *Liquor Act 2007* to be accompanied by a category B CIS.

27. The Authority may, on an ad hoc basis, publish on its website decisions on other matters arising under the *Liquor Act 2007*, *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*. While the Authority does not publish individual determinations under the *Casino Control Act 1992*, it does publish reports on its reviews conducted under section 31 of that Act and may publish other reports or information relating to casino matters from time to time.

28. Applicants and any other persons making submissions to the Authority on matters arising under the *Liquor Act 2007*, *Gaming Machines Act 2001* and the *Registered Clubs Act 1976* should be aware that their identity and the nature of their submission may be published or otherwise disclosed. If any submission is made in whole or part upon a confidential basis then the relevant document(s) should clearly indicate which part of the submission is confidential and why.

Liquor Applications Notice Board

29. For information about new liquor applications and the 30 day period for making public submissions see the Liquor Applications Noticeboard that is accessible via the home page of the OLGR website www.olgr.nsw.gov.au.

30. Aggregated information and statistics regarding the Authority's casino, liquor and gaming machine operations are provided in the Authority's Annual Reports. These documents are prepared pursuant to the *Annual Reports (Statutory Bodies) Act 1984* with regard to each preceding financial year and published on the 'Annual Reports' section of the Authority's website.

Reports on certain gaming machine applications

31. Brief reports on the outcome of applications for gaming machine threshold increases (involving category 1 or category 2 local impact assessments) are also available on the Authority website.

Appeal Rights

32. There is no statutory mechanism for review on the merits of most categories of decisions made by the Authority under the gaming and liquor legislation. In New South Wales judicial review of administrative action is available only at common law, which is accessed via section 69 of the *Supreme Court Act 1970*.

Review of this Guideline

33. The Authority may review the operation of the Guideline from time to time and may update the Guideline as and when considered appropriate.

APPROVED by the Independent Liquor & Gaming Authority



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On **30 April 2015**

Chris Sidoti

Chairperson