

Authority decision making and the provision of reasons for decisions



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*. The board includes the Chairperson, Deputy Chairperson, and other members.
2. All members of the Authority are appointed on a part time basis. The Authority convenes in ordinary session monthly and publishes a schedule of meetings at liquorandgaming.nsw.gov.au. Most of the Authority’s business is transacted at these ordinary monthly meetings, while a limited number of matters may be addressed between the ordinary meetings, either by email or special meeting.
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. Liquor & Gaming NSW officers 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.
5. Relatively complex, contentious and/or higher risk matters are determined by the Authority itself.
6. Liquor & Gaming NSW officers 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 and available at liquorandgaming.nsw.gov.au. 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 Authority’s Chairperson 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 30 of the Liquor Regulation 2018 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.
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.

Public interest considerations

11. The Authority is required, when making decisions under the *Liquor Act 2007* or the *Gaming Machine Act 2001*, to have regard to the public interest, which is informed by the statutory objects and considerations prescribed respectively by section 3 of each Act. When assessing the merits of applications, the Authority may have regard to relevant sociodemographic information, crime data, public health data, peer-reviewed research, or other information pertaining to a specific venue or the community that is serviced and impacted by a venue. Applicants are recommended to ensure that any supporting submissions address those public interest issues.
12. Examples of potentially relevant research are provided in Authority Guidelines 6 and 16, but the research and data available to the Authority may vary from case to case and over time. Applicants will be given an opportunity to comment on any new research and evidence that is not specified in a relevant Guideline.
 - ii. refuse an application to declare a device as an approved gaming machine
 - iii. revoke the declaration of a device to be an approved gaming machine
 - d. notifying disciplinary action against the casino operator or a casino special employee under sections 23 and 59 of the *Casino Control Act 1992* respectively
 - e. reporting to the Minister on the suitability of the casino operator under section 31 of the *Casino Control Act 1992*
 - f. 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
 - g. 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.

The provision of statements of reasons

13. Liquor & Gaming NSW officers will inform the applicant of the outcome of an application by way of a concise decision letter or email 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.
14. The Authority is expressly required by legislation to provide reasons in certain circumstances, including when:
 - a. 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*
 - b. it has made a decision under Part 9A of the *Liquor Act 2007*, concerning the imposition and removal of demerit points
 - c. proposing, under section 65 of the *Gaming Machines Act 2001*, to:
 - i. terminate the investigation of an application to declare a device as an approved gaming machine
15. 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.
16. 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.
17. 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.
18. Contact details for the officer responsible for a specific application may be sought from Liquor & Gaming NSW at contact.us@liquorandgaming.nsw.gov.au.

Information concerning Authority decisions

19. 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*.
20. 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.
21. 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.
22. Information about the process for seeking information held by the Authority is available on the Department of Customer Service website at nsw.gov.au/customer-service.

The publication of Authority decisions

23. 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 the *Gaming and Liquor Administration Regulation 2008*.
24. The notice must be published on the Authority’s website and is to include:

- a. a statement of reasons for the decision, and
 - b. details of any penalty or sanction imposed, or any remedial action taken, in relation to the decision.
25. The statement of reasons is to include:
- a. the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
 - b. the decision-maker’s understanding of the applicable law, and
 - c. the reasoning process that led the decision-maker to the conclusions that were made.
26. As of the date of this Guideline the types of decisions that must be published include:
- a. a decision in relation to the review of a decision made by the Secretary under section 36A of the *Gaming and Liquor Administration Act 2007*
 - b. a decision in relation to a disturbance complaint made under section 81 of the *Liquor Act 2007*
 - c. a decision relating to a short-term closure order of licensed premises made under section 82 of the *Liquor Act 2007*
 - d. a decision relating to a long-term closure order of licensed premises made under section 84 of the *Liquor Act 2007*
 - e. a determination of a disciplinary complaint by the Authority under section 141 of the *Liquor Act 2007*
 - f. a determination of an application to remove a disqualification of more than 3 years under section 154 of the *Liquor Act 2007*
 - g. a decision made in relation to an application for the granting or removal of:
 - i. a packaged liquor licence
 - ii. a hotel licence
 - iii. a club licence
 - iv. a small bar licence
 - v. an on-premises licence relating to a restaurant which includes an application for an authorisation
 - vi. an on-premises licence relating to a karaoke bar, catering service, vessel or public entertainment venue (other than a cinema or a theatre)

- vii. a producer/wholesaler licence which includes an application for a drink on-premises authorisation
 - viii. an ongoing extended trading authorisation in relation to a hotel, club, small bar, packaged liquor or on-premises licence
 - h. a decision in respect of an application that is required to be accompanied by a category B CIS
 - i. an application to vary or revoke a condition of a licence imposed by the Authority that would result in trading after midnight
 - j. an application to increase a gaming machine threshold under section 34 of the *Gaming Machines Act 2001* that is required to be accompanied by a class 2 Local Impact Assessment.
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 & Gaming Applications Notice Board

29. For information about liquor and gaming applications and the 30 day period for making public submissions see the Liquor & Gaming Application Noticeboard that is accessible via the home page at liquorandgaming.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 at liquorandgaming.nsw.gov.au.

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 at liquorandgaming.nsw.gov.au.

Appeal Rights

32. Some, but not all decisions made by the Authority are subject to a right of review by the NSW Civil and Administrative Tribunal (NCAT) pursuant to section 13A of the *Gaming and Liquor Administration Act 2007* and clause 7 of the *Gaming and Liquor Administration Regulation 2016*. In NSW 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

12 May 2021



PHILIP CRAWFORD
Chairperson