



Department
of Industry

Liquor & Gaming

Review of the Liquor Promotion Guidelines

Discussion paper – June 2018

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Have your say – how to make a submission

Your feedback will play an important role in informing this review. Targeted questions and key issues to help inform your feedback are on page 10 of this paper.

Liquor & Gaming NSW (**L&GNSW**) is seeking public submissions from all interested stakeholders until **Wednesday 8 August 2018**. Submissions can be made the following ways:

1. By email to: policy@liquorandgaming.nsw.gov.au
2. Via the Have Your Say website: www.haveyoursay.nsw.gov.au
3. By post to:
The Coordinating Officer
Liquor Promotion Guidelines review
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

The review of the Liquor Promotion Guidelines (**the Guidelines**) will be underpinned by an open and transparent review process. Submissions may be published on the L&GNSW website after the closing date, unless you make a specific request for your submission to be kept confidential. Claims for confidentiality will be considered on a case-by-case basis.

If you need to access a translating and interpreting service please telephone 1300 651 500 or visit the Interpreting & Translation page of the Multicultural NSW website:
http://multicultural.nsw.gov.au/our_services/interpreting_translation/

About this review

About this paper

This paper provides details about the review of the Liquor Promotion Guidelines, and has been prepared to assist you in contributing to this review.

It conveys relevant background about the Guidelines and the related regulatory framework, the principles reflected in the current Guidelines, key facts and figures, and related issues for stakeholder comment.

About the review

In August 2014, the NSW Government released its response to the Statutory Review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007*.

The Government committed to tasking the regulator with regularly reviewing the Guidelines to ensure they remain effective in regulating liquor promotional activities by NSW licensed venues, including takeaway liquor stores. A key aim of the review is to ensure the Guidelines reflect new and emerging industry practices and the use of marketing technology with consumers over time.

Next steps

Liquor & Gaming NSW will assess stakeholder feedback provided in response to the discussion paper and use it to develop recommendations on areas of potential improvement to the Guidelines.

Background

The Regulation of Undesirable Liquor Promotions in NSW

In NSW, liquor promotions may be restricted or banned by the Secretary, Department of Industry where they are deemed undesirable under Section 102 of the *Liquor Act 2007 (the Act)* by issuing a formal notice. Section 102A of the Act also allows the Secretary to restrict or prohibit activities that are likely to encourage the misuse and abuse of liquor.

Liquor & Gaming NSW, within the Department of Industry, investigates promotions and activities by NSW licensees that may be considered irresponsible or undesirable, and takes action as necessary to ensure the promotions they run do not contravene established principles or standards.

These arrangements recognise that promotional activities around the sale and supply of alcohol can significantly impact on patron behaviour and the way people consume alcohol.

To convey clear standards, principles-based guidelines are issued about the kinds of activities and promotions that would be considered undesirable and that may be subject to a notice or other regulatory action. These are referred to as the “Liquor Promotion Guidelines” **(the Guidelines)**.

The Guidelines were first issued in 2009 and were last updated in 2013. They are based around seven important principles for promotions conveyed under Section 102(2) of the Act, for example, that designs, names, motifs, characters, or other aspects of alcohol promotions should not have special appeal to minors.

The Guidelines provide an explanation of each principle, as well as examples of practices that clearly run contrary to them. In some cases, they also provide information about measures that could help to ensure liquor promotions are appropriately run and the risk of any harm is minimised.

The intent is that this enables licensees based in NSW to take an informed view of any proposed promotion, so they can better assess risk and apply appropriate controls in their own business environment.

Other Australian states and territories have comparable measures and guidelines that aim to achieve similar outcomes covering the liquor licensees they regulate. Like NSW, most of these are principles-based and provide a range of relevant examples of unacceptable or irresponsible promotions and activities.

The broader national regulatory framework for alcohol advertising

Broader forms of alcohol advertising by alcohol brands are regulated under a national framework that applies to the broad strategies alcohol brands employ across various formats, and state and territory boundaries, to convey key messages about their products.

In Australia, there is an amalgam of laws and codes of practice which regulate the content and placement of these advertisements. Concerns about general advertising by alcohol brands are typically referred to the relevant national complaints schemes or regulator.

For example, the Alcohol Beverages Advertising Code (ABAC) Scheme and Alcohol Advertising Review Board (AARB) Code both set standards for alcohol marketing and advertising in Australia, including for content and placement. Commercial TV and radio is also covered under relevant Codes of Practices registered with the Australian Communications and Media Authority. Billboard and other forms of outdoor advertising are covered under the Outdoor Media Association Code of Ethics.

It is not the intent of this review to examine broader issues around alcohol advertising or the related national framework. The review is focused on the Guidelines that apply in NSW, which provide guidance to NSW industry about the acceptable standards for promotions run by NSW based licensees.

Liquor Promotion Guidelines

To help inform your submission to the review, you can find a full copy of the Guidelines at:

<https://www.liquorandgaming.nsw.gov.au/Documents/liquor/serving-alcohol-responsibly/gl4001-liquor-promotion-guidelines-FA.pdf>

A brief summary of the seven key principles covered in the Guidelines for liquor promotions run by NSW licensees, and relevant explanations, is provided below.

1: Appeal to Minors

- *Promotions must not have a special appeal to minors, because of the design, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors, or for any reason.*
- This principle reflects that certain forms of promotions may appeal to minors, leading to increased levels of alcohol-related harm in this vulnerable group.

2: Indecent or offensive

- *Promotions must not be indecent or offensive. This includes promotions that use images or language that a reasonable adult may find offensive.*
- This reflects that the use of indecent or offensive material in a liquor promotion is in poor taste and is against general community standards.

3: Non-standard measures

- *Promotions must not involve the use of non-standard measures that encourage irresponsible drinking and are likely to result in intoxication.*
- A standard measure is the level of alcohol used to work out safe drinking levels. Standard measures enable customers to make informed decisions about their alcohol intake.

4: Emotive descriptions or advertising

- *Promotions should not use emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication.*
- This reflects that emotive descriptions in liquor promotions may encourage irresponsible drinking. For example, promotions that encourage patrons to get drunk such as “drink ‘til you drop”.

Principle 5: Extreme discounts

- *Promotions should not involve the provision of free drinks or extreme discounts, or discounts for a limited duration that create an incentive for patrons to consume liquor more rapidly than they otherwise might.*
- While the liquor laws do not seek to ban any discount on alcohol, as a product that can be lawfully sold and consumed, it is important that discounts aren't excessive to the point where a promotion could lead to irresponsible drinking and intoxication (e.g. example, promotions offering free or heavily discounted drinks).

6: Irresponsible, rapid or excessive consumption

- *Promotions should not otherwise encourage irresponsible, rapid or excessive consumption of liquor.*
- This reflects that licensees should always be mindful that any liquor promotion does not encourage patrons to drink irresponsibly, rapidly or excessively. This principle extends to promotions like drinking games, competitions and others that can encourage stockpiling of drinks.

7: Not in the public interest

- *Promotions should not otherwise be considered to not be in the public interest.*
- A range of liquor promotions may not necessarily promote rapid or excessive consumption of alcohol, or meet other principles in the Guidelines, but may still be considered undesirable as they are not in the public interest. For example, this includes promotions that use images or messages which could be seen as encouraging or condoning breaking the law or other anti-social behaviour.

Restrictions and bans on undesirable liquor activities and promotions

Action in response to liquor promotions

The figures below provide an overview of the number of matters investigated and notices issued to restrict or prohibit activities under Sections 102 and 102A of the Act.

The investigated matters are taken as a snapshot for the four financial years since the last review of the Guidelines. In most cases, matters are brought to the attention of Liquor & Gaming NSW by NSW Police or are identified proactively through Liquor & Gaming NSW compliance activities.

Matters investigated by the Secretary under Sections 102 & 102A of the Liquor Act

	Total Identified	Total Decided	Notices issued
Financial Year 2013 – 2014	96	106	67
Financial Year 2014 – 2015	86	106	44
Financial Year 2015 – 2016	110	112	12
Financial Year 2016 – 2017	31	33	5

A small number of matters considered by the Secretary towards the end of one FY may not be determined until the following financial year. For example, a matter may have been investigated and a decision made in June 2014, with the Secretary issuing a notice to restrict that activity in July 2015. This would be documented as decided in FY14/15, with issuing of the notice recorded in FY15/16.

Observations about undesirable liquor promotions over time

There has been a notable decline in the total number of identified matters and notices issued over time. This has been driven by improved awareness among industry members of the Guidelines, and Liquor & Gaming NSW's adopting a more outcomes focused approach to enforcing them.

Rather than issuing a formal notice in every case, Liquor & Gaming NSW has increasingly sought to adopt more collaborative industry approaches over time by:

- educating licensees of their obligations under the Guidelines;
- working with licensees to ensure that any promotions, including any harm minimisation measures, meet the licensee's obligations under the Guidelines; and
- negotiating with licensees for promotions to either be changed or cancelled without a formal notice issued.

This approach helps address concerns at the outset, and allows licensees to proactively make changes to remove promotions or address undesirable aspects before a formal notice is needed. For more serious or sustained breaches of the Act, enforcement action is taken.

This approach is consistent with Liquor & Gaming NSW's broader risk-based compliance and enforcement approach, which focuses engagement and supervisory effort on higher risk conduct, business models and locations.

Key Issues for Stakeholder Comment

You are invited to give feedback to Liquor & Gaming NSW on any of the questions listed below. Note that some of the questions relate directly to the experience of licensees rather than broader stakeholders. However, you are also welcome to provide feedback on any additional matters about the Guidelines you consider relevant.

1. Are the objectives of the Guidelines still appropriate, and do the Guidelines in their current form remain appropriate for securing those objectives?

The key objectives of the Guidelines are to:

1. Provide clarity on unacceptable liquor promotions and activities;
2. Provide guidance as to what is considered by the Secretary when determining whether a liquor promotion or activity is irresponsible or undesirable and may be subject to a restriction or ban or other regulatory action;
3. Provide guidance on harm mitigation measures that may reduce the risk of harm associated with irresponsible or undesirable liquor promotions or activities; and
4. Assist in the development of a sustainable and responsible liquor industry, by defining clear expectations for the conduct of liquor promotions.

- Are the objectives of the Guidelines appropriate and does the current form of the Guidelines remain appropriate for securing the objectives?
- What improvements, if any, could be made to the Guidelines to better achieve their policy objectives?

2. Do the Guidelines effectively facilitate the responsible promotion of liquor at licensed venues, including takeaway liquor stores, in NSW?

The Guidelines regulate promotional activities conducted by licenced venues and liquor stores in NSW by providing guidance as to what would be considered an undesirable promotion. Licensees must be mindful of and manage the risk and responsibilities associated with running liquor promotions.

- Do the Guidelines provide adequate guidance to licenced venues on what would be considered an undesirable promotion?
- Do licenced venues find it simple to apply the Guidelines when determining if a proposed liquor promotion would be deemed undesirable?
- Is the community satisfied that the Guidelines effectively facilitate responsible liquor promotions by NSW licenced venues, including takeaway liquor stores?

3. Does the current Guideline format assist licensees in managing and addressing the risks associated with running liquor promotions?

The original Guidelines issued in 2009 provided a list of high and low risk activities. This required venues to assess the risk associated with a prospective alcohol promotion to determine whether an activity or promotion was acceptable.

In 2013, the Government released new Guidelines which adopted a principles based approach for determining what promotions would be considered inappropriate. The updated format provided clear guidance for venues and improved the consistency of their application by the Regulator and Industry.

- Does the current format continue to assist licensees in managing and addressing the risks associated with running liquor promotions?

- Do stakeholders find the format of the guidelines clear and simple to follow?
- What improvements, if any, could be made to the Guidelines' format?

4. Do the seven principles of undesirable liquor promotions and activities remain appropriate?

The Guidelines reflect the principles of 'undesirable liquor promotion' conveyed in section 102 of the Act. The seven principles of the Guidelines are outline on page 5 & 6.

- Do the principles adequately cover all common types of liquor promotions conducted by licenced venues? If not, why?
- Are the principles effective in assisting licensees and others in determining what would be considered an undesirable liquor promotion?
- Is the principles-based approach to the Guidelines effective in ensuring they can be applied across a broad range of promotional materials (e.g. materials at point of sale, online, social media, shopper dockets, and so on)?

5. Are the examples of unacceptable promotions and harm minimisation measures included with each principle useful?

With each principle, the Guidelines provide examples of what would be considered unacceptable practice. The examples do not include specific details, such as an allowable number of free drinks before a promotion becomes unacceptable. Instead, the examples describe the types of practice which are clearly contrary to the principle.

For instance, for Principle 2 'Indecent or offensive', an example provided is the 'use of insulting or offensive language in the promotional material'. The examples are intended to provide additional context for each principle. It is important that they are clear and provide effective guidance to licenced venues.

- Do the examples provide effective guidance for licensees to determine what would be deemed an undesirable promotion or practice for each principle?
- Is it clear what types of premises the examples apply to (e.g. on-premises versus packaged liquor venues), and where the examples would be relevant? If not, how could it be made clearer?
- Are more specific or concrete examples of harmful practices needed? If so, why, what type of examples and what is the evidence in support?
- What improvements, if any, could be made to the examples in the Guidelines?

6. Do the Guidelines effectively capture harmful liquor promotions and practices by licenced venues, including takeaway liquor stores, in NSW?

The Guidelines apply to all licenced venues in NSW, including takeaway liquor stores and are intended to capture all forms of promotional activities conducted by venues at the point of sale level. For the Guidelines to continue to be effective, it is important they capture promotional activities and practices by NSW licensees.

- Do the Guidelines effectively capture all harmful liquor promotions and practices by licenced venues, including takeaway liquor stores, in NSW?
- Are there any types of liquor promotional activities conducted by licenced venues that are not captured by the Guidelines?

7. Do the Guidelines effectively capture new forms of marketing and developing technologies, including social media?

The Guidelines apply to all forms of existing marketing used by licenced venues in NSW, including takeaway liquor stores. To ensure that the Guidelines remain relevant, they should cover new or developing promotional methods.

- Are there any forms of promotional activities using new technologies that are not effectively captured by the Guidelines?
- Are there any developing technologies that are not yet in use, but could be used in future that would not be captured by the Guidelines?

8. Have the Guidelines had any unintended positive or negative impacts on the community or industry?

The Guidelines are not intended to stifle business innovation or healthy competition, but rather to assist in the development of a sustainable and responsible liquor industry by defining clear expectation for the conduct of liquor promotions.

- Has industry or the community been impacted by the Guidelines in a manner that is not consistent with their intent?