



LIQUOR STORES ASSOCIATION NEW SOUTH WALES



# SUBMISSION

*By the Liquor Stores Association NSW*

**To:** NSW Office of Liquor, Gaming & Racing (OLGR)

**In response to:** Review of the Three Strikes Disciplinary Scheme

**Date:** January 2016

**Liquor Stores Association of New South Wales Incorporated**

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Australian Liquor  
Stores Association*



Monday 18<sup>th</sup> January 2016

NSW Office of Liquor, Gaming & Racing  
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SYDNEY, NSW 2000

Via email: [threestrikes.review@olgr.nsw.gov.au](mailto:threestrikes.review@olgr.nsw.gov.au)

## **LSA NSW SUBMISSION: REVIEW OF THE THREE STRIKES DISCIPLINARY SCHEME**

To Whom It May Concern,

The Liquor Stores Association NSW (LSA) welcomes the opportunity to provide a submission to the NSW Office of Liquor, Gaming & Racing's (OLGR) *Review of the Three Strikes Disciplinary Scheme*.

LSA encourages members to support Government interventions, particularly where those interventions are evidence-based and proven to have real impact on reducing harms from misuse of alcohol, not simply placing more economic pressure on liquor retailers through the regulatory environment.

LSA understands that under Section 144K of the NSW Liquor Act 2007 requires that a review of the Three Strikes Disciplinary Scheme be undertaken as soon as possible after the period of four years from the commencement of the scheme on 01 January 2012, to determine whether the scheme's policy objectives remain valid and whether it's terms remain appropriate for securing those objectives.

As per the background and key issues paper issued by OLGR on 18 November 2015, LSA understands that the review seeks to examine:

- The nature of any positive and negative community impacts of the scheme;
- The impact of the scheme on compliance with provisions of the Liquor Act 2007 that are relevant to the scheme, as well as broader compliance with the law;
- The impact of the scheme on venue practices and behaviour aimed at minimising the risk of incurring strikes, and;
- Financial and other impacts of the scheme on the owners and operators of licensed premises.

Please find LSA's submission enclosed herewith, and I would be happy to provide any further information to support this submission, if required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Waters'.

**Michael Waters**  
Executive Director

# THREE STRIKES DISCIPLINARY SCHEME

## OVERVIEW OF PRESCRIBED STRIKE OFFENCES

The Three Strikes Disciplinary Scheme applies where the following prescribed offences (section 144B of the Liquor Act 2007) are committed, which can result in the incurrance of a strike:

- a) *Sale or supply of liquor outside of the approved trading hours for the licensed premises (section 9)*
- b) *Breach of a licence condition (section 11(2)) relating to:*
  - *conditions imposed under section 144E (i.e. as a result of strikes being incurred)*
  - *clauses 2A–5 or 7 of Schedule 4 (applying to premises included in the violent venues scheme)*
  - *Part 6, Division 3 of the Act - Kings Cross Precinct special licence conditions*
  - *Part 6, Division 4 of the Act - Sydney CBD Entertainment Precinct special licence conditions*
- c) *Permitting intoxication or indecent, violent or quarrelsome conduct (section 73(1)(a) or (b))*
- d) *Selling or supplying liquor to an intoxicated person (section 73(2))*
- e) *Permitting the sale, possession or use of any substance that the licensee suspects of being a prohibited plant or a prohibited drug (section 74(1) (b) or (2))*
- f) *Failure to comply with a direction given by the Secretary of the Department of Justice (section 75(3))*
- g) *Failure to comply with a short-term closure order (section 82 (6))*
- h) *Failure to comply with a long-term closure order (section 84 (7))*
- i) *Failure to comply with a notice issued by the Secretary of the Department of Justice restricting or prohibiting activities that encourage misuse or abuse of liquor (section 102A (2))*
- j) *Selling or supplying liquor to a minor or allowing such sale or supply (section 117 (1), (2) or (8)), and*
- k) *Licensees & managers liable for act of employees in respect of a contravention of sections 73(2), 75(3) or 117(1) or (2) (section 149).*

## OVERVIEW OF STRIKES INCURRED

Since the Scheme came into effect on 01 January 2012, 189 strikes have been incurred (171 first strikes, 15 second strikes and 3 third strikes), with a total of 142 strikes in place as at 13 November 2015.

Although achieving no strike convictions is always the objective, it is worth noting that since the introduction of the scheme, Packaged Liquor Licences (PLL) have incurred just 10 strikes – all being first strikes – equating to around 5% of the total strikes incurred across all liquor licence types.

**Table 1: First strikes incurred by packaged liquor licences**

PLL Name	Strike Incurred Date	Offence Type
North Epping Cellars	29-Sep-15	Licensee sell/supply liquor outside authorised trading hours
Harbourside Cellars	14-Sep-15	Licensee sell/supply liquor not in accordance with authority
Woolloomooloo Liquor Supermarket	12-Sep-15	Licensee/employee sell/supply liquor to intoxicated person
IGA Yarrawarrah	12-Aug-15	Licensee allow liquor to be sold or supplied to minor
Vintage Cellars Darlinghurst	28-Jul-15	Licensee fail to comply with conditions of licence
Liquorland Bondi Junction	17-Jul-15	Sell liquor to a minor on licensed premises
Liquor Stax Terrigal	26-Jun-15	Sell liquor to a minor on licensed premises
Cordeaux Village Cellars	27-Sep-14	Licensee permit intoxication on licensed premises
Colo Vale Village Store	05-Jul-14	Licensee sell/supply liquor outside authorised hours
Cabarita Cellars	30-Apr-14	Sell liquor to a minor

# KEY CONSIDERATIONS

## 1. INDIVIDUAL & SOCIAL RESPONSIBILITY

Individuals in the community need to take responsibility for their own behaviour. Likewise industry members need to take responsibility for their actions and the industry as a whole needs to have an active and passionate commitment to the future of our industry and to the well-being of the communities we serve.

LSA believes that measures to address individual responsibility in the context of alcohol beverage consumption generally fall broadly under the two following areas:

- *Promote and encourage* individuals and communities to take responsibility for alcohol consumption and behave in socially appropriate ways – achieved through education, harm minimisation and treatment initiatives, aimed at intervening early to avoid problematic drinking and associated violence as well as to prevent the recurrence of these behaviours; and
- *Require* individuals through regulation, sanctions and policing of existing legislation to take personal responsibility for their behaviour when consuming or supplying alcohol beverages to others, and also while on or in the vicinity of licensed premises and in public places.

It is proposed that the focus of individual and social responsibility be on the '*promote and encourage*' area above, in line with the following objectives:

- To reduce anti-social behaviour and alcohol-related violence by developing strategies that educate and encourage individuals to be accountable for their behaviour and actions;
- To consider and develop strategies that increase individuals' awareness of their obligations under the law and legal, social and other ramifications of non-compliance.

## 2. LACK OF PROPER APPEALS PROCESS FOR RESPONSIBLE OPERATORS

A liquor store owner may go to great effort to train and instruct staff and have sensible procedures in place to comply with the Liquor Act, however due to no fault of their own a staff member may deliberately or carelessly fail to follow these guidelines, leaving the owner exposed to a staff members' malicious or negligent behaviour.

### **Workplace Health & Safety Act 2011:**

It is worth noting that under the Federal *Workplace Health & Safety Act 2011*, *Section 27: Duty of Company Officer* outlines the responsibilities of Company Officers, and the duty of care required to comply with the WHS Act.

Further, *Section 28: Duty of Workers* also allocates a degree of responsibility to employees for their own actions. For example in a practical sense, under the WHS Act the Company Office holders' responsibilities may include but are not limited to:

- Understand the WHS policies and procedures;
- Maintain records of induction, training, risk assessment, incidents, competency assessments, warnings and disciplinary actions;
- Adequately train and supervise all workers under their control, etc.

And an employee must:

- Take responsibility for their own health and safety;
- Ensure their acts or omissions don't put others at risk;



- Comply with reasonable instructions for health and safety, and;
- Comply with WHS policies and procedures per training.

If a Company Officer can demonstrate that they have complied with their obligations under the Act and done all that is reasonably practicable under the Act, then they are protected under the Act.

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**LSA Recommendation:** *The WHS Act defines reasonably practicable as ‘that which is, or was, at the time reasonably able to be done in relation to ensuring health or safety’, and Sections 27 and 28 of the WHS Act provide a starting point for discussion around consideration of a ‘reasonably practicable’ type of clause to be included in the NSW Liquor Act. It is not unreasonable for the Liquor Act to contain a similar definition and attribute responsibility to both the employer and employee for compliance with the Act and it would not be unreasonable to expect that liquor store owners be afforded a similar level of protection under the Liquor Act if they are able to demonstrate that they have done what can be assessed by the court as being ‘reasonably practicable’ at the time.*

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### 3. ENTITY TO WHICH STRIKES APPLY

Under the operation of the Scheme, a strike is automatically incurred upon conviction for a single offence by an individual, and applied to the liquor licence, regardless of whether the offence was committed by the owner of the business, the licensee, approved manager or a casual staff member.

In a similar vein to point 2 above, a liquor store owner may be able to demonstrate they have sensible procedures in place to comply with the Liquor Act, however due to no fault of their own a staff member may deliberately or carelessly fail to follow these guidelines, leaving the owner exposed to a staff members’ malicious or negligent behaviour.

For example, if an operator under a short term lease (or a lease close to expiry) operates a liquor store without due care, an offence might be committed. However, for the innocent landlord or mortgagee, the strike can significantly reduce the value of their property, or worse, put a freehold owner in breach of mortgage covenants.

LSA understands the legislation was initially enacted so that the strike was attached to the bricks and mortar, so as to avoid bad operators simply ‘turning over’ licensees, and appreciate that this is a legitimate potential concern.

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**LSA Recommendation:** *These competing considerations can be balanced by conferring on ILGA discretion to reset the number of strikes back to zero, in the event that the party truly at fault for the strike offence ceases to be associated with the licensed premises. By conferring such a discretion on ILGA, a strike ‘reset’ can be preserved for those genuine cases where an innocent party takes possession or control of the property to the exclusion of the original party at fault. By conferring discretion to reset to zero, parliament and the community can be assured that a reset only occurs in genuine cases where a genuine break from the previous regime can be demonstrated.*

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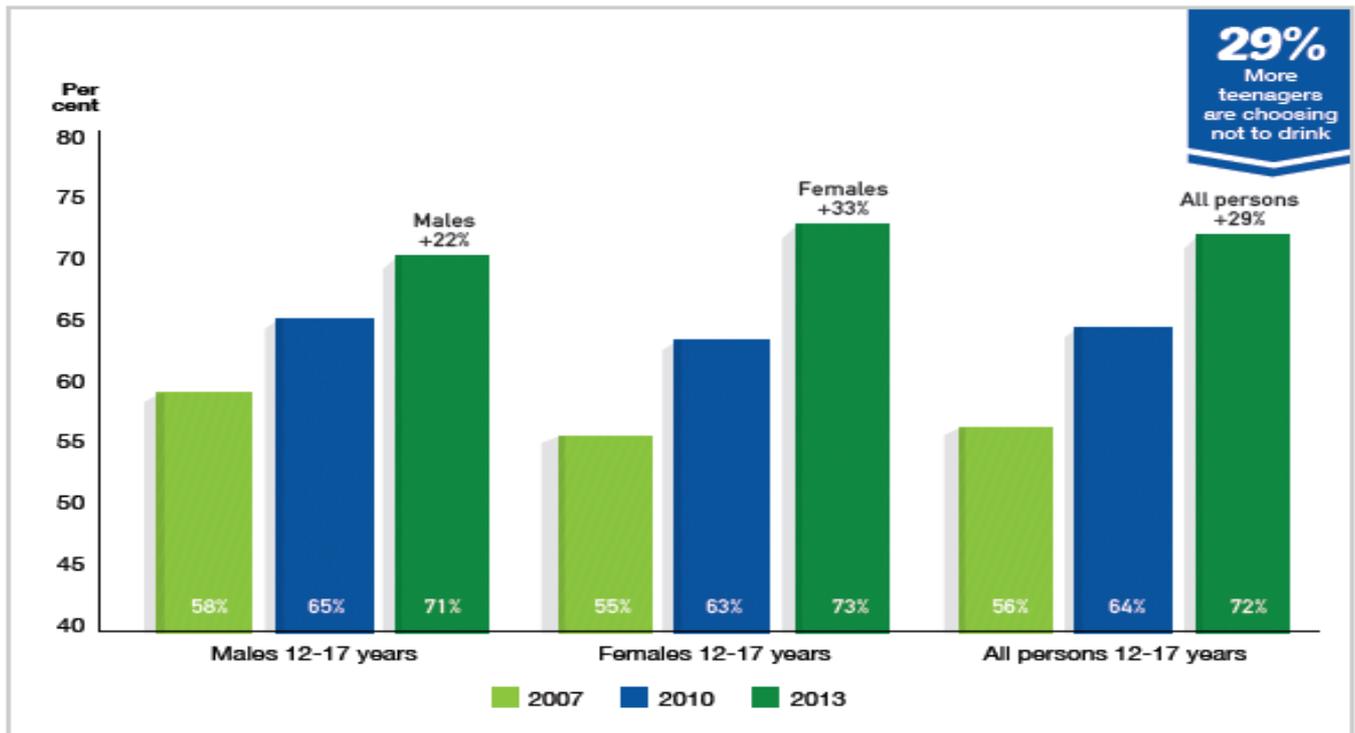
### 4. SALE OF ALCOHOL TO MINORS

#### Underage Drinking:

The most recent data from the Australian Institute of Health & Welfare’s (AIHW) National Drug Strategy Household Survey has encouragingly reported that almost three quarters of all minors drink no alcohol at all.

Since 2007, there has been a 29% increase in abstinence for all young people aged 12-17 years. The increase has been most marked for girls, with a 33% increase in abstinence, compared with a 22% rise for boys.

**Table 2: Young people 12-17 years increasingly abstaining from alcohol (2007 – 2013)<sup>1</sup>**



The AIHW also found that young Australians are delaying their first drink with the average age at which young people between 14-24 years first tried alcohol steadily rising since 1995 from 14.5 years to 15.7 years in 2013.

**Table 3: Supply of first glass of alcohol, recent drinkers and ex-drinkers aged 12 years or older, by age, 2010 to 2013<sup>2</sup>**

First supply	12-17	
	2010	2013
Friend or acquaintance	49.5	47.3
Relative	14.1	11.5
Parent	30.7	34.4
Stole it	*2.9	*3.5
Bought it	**0.4	**0.9
Other	*2.4	*2.4

The evidence demonstrates that it is not inevitable that young people will drink, but for those who do the vast majority of underage drinkers (99.1%) obtain their first serve of alcohol through parents friends or older relatives of legal purchasing age, or by stealing or other measures with only 0.9% of 12-17 year olds obtaining their first supply of alcohol by purchasing from a licensed outlet.

These results come at a time when industry and government have worked to significantly increase youth education campaigns about alcohol in Australia, and educating school age children is vital to ensure teenagers are well armed with knowledge about the dangers of alcohol abuse.

<sup>1</sup> Source: Australian Institute of Health & Welfare 2014: National Drug Strategy Household Survey 2013 (Table 4.5)

<sup>2</sup> Source: Australian Institute of Health & Welfare 2014: National Drug Strategy Household Survey 2013 (Table 4.26)



The results strongly indicate that responsible drinking education campaigns are working, with fewer young people drinking to risky levels and more young people choosing to abstain from alcohol, and are complimented by the DrinkWise cultural change campaigns such as “*How to Drink Properly*” and ALSA’s *ID-25* campaign to discourage underage attempts of purchase.

ALSA’s *Don’t Buy It For Them* campaign is also designed to alert adults to their responsibility to re-think before they consider providing alcohol beverages to minors.

**Australians support targeted measures to curb alcohol abuse:**

Results from the AIHW found that Australians support targeted measures rather than whole of population control measures to curb alcohol abuse.

Public support for alcohol policy measures clearly favour targeting high risk behaviours and activities with 84%<sup>3</sup> of Australians believing there needs to be stricter enforcement on adults who supply alcohol to minors and 85% supporting more severe legal penalties for drink driving.

This demonstrates that the greatest level of community support for measures to curb alcohol abuse is the enforcement of penalties that target the high risk behaviour of offenders.

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***LSA Recommendation:** Any evidence based approach should be focused on the major problem area, which in this instance is the secondary supply of alcohol to young people by parents, friends, acquaintances or relatives therefore LSA recommends enhanced community education campaigns, particularly targeting parents and guardians of their responsibility to not supply alcohol to minors. LSA supports enforcement of existing laws, but does not recommend new or additional legislative interventions when the current legislative tools are not being enforced, nor reinforced with the community.*

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**Prescribed offence – selling or supplying liquor to a minor or allowing such sale or supply:**

One of the prescribed offences, which can result in the incurrance of a strike is *selling or supplying liquor to a minor or allowing such sale or supply (section 117 (1), (2) or (8))*.

LSA understands that the escalating sanctions regime for the offence of ‘*sale of alcohol to a minor on licensed premises*’ introduced in February 2014 is not within scope for this review, however LSA is concerned that its introduction has resulted in an effective ‘doubling-up’ of penalties for this particular offence.

For example, under the Three Strikes Disciplinary Scheme a first offence can result in:

- A court conviction;
- Payment of a penalty notice of \$1,100, or penalty notice enforcement order;
- A \$3,000 ‘compliance history ‘risk loading’ applied to their annual licence fee, and;
- A strike placed on the licence for a period of three years from date of offence.

*Note – if the licence is situated in either the Sydney CBD Entertainment Precinct or Kings Cross Precinct, an additional \$2,000 ‘location risk loading’ will apply where a compliance risk loading is incurred.*

Under the ‘escalating sanctions regime’, the following additional penalty for a first offence is now applicable:

- A possible licence suspension of up to 28 days;

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<sup>3</sup> Source: Australian Institute of Health & Welfare 2014: *National Drug Strategy Household Survey 2013 (Table 9.11)*



As the Three Strikes Disciplinary Scheme was established as part of a comprehensive plan to specifically tackle alcohol-related violence and anti-social behaviour, designed to target repeat offenders, LSA questions:

1. Whether this particular offence is appropriate within the framework of the Scheme, and;
2. Whether having an additional penalty regime, operating in tandem with the Scheme, is necessary.

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**LSA Recommendation:** *The relatively low number of strikes incurred (13 in total) for this particular offence across all licence types in NSW (less than 7% of total strikes) in the four years since the Scheme's introduction, supports the evidence that young people purchasing alcohol from licensed premises (i.e. sale of alcohol to minors on licensed premises) is not the major problem area, or where regulatory efforts should be focussed. LSA recommends the unnecessary 'doubling-up' of legislative penalties be reviewed to assess its appropriateness and modified or removed to prevent duplication.*

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## 5. LOCAL LIQUOR ACCORDS

Local liquor accords are voluntary industry-based partnerships working in local communities to introduce practical solutions to liquor-related problems. They reach agreements on ways to improve the operation of licensed venues so that venues and precincts are safe and enjoyable.

Most local liquor accords include members from the local business community, local councils, police, government departments and other community organisations.

Section 52(3) of the *NSW Liquor Act 2007* provides that, the Independent Liquor & Gaming Authority (ILGA) and/or the Secretary can impose a special licence condition, requiring the licensee participate in, and to comply with, a local liquor accord.

LSA understands ILGA regularly impose this condition when granting applications, whether this is a new PLL or for administrative changes to an existing licence (e.g. transfers or removals). LSA also understands that the Secretary is also imposing this special licence condition in the instance of a first strike conviction.

### Key areas of concern:

- If membership of a local liquor accord is indeed 'voluntary', LSA questions the appropriateness of licensees being forced to join, be an active and compliant participant;
- There are over 140 local liquor accords across NSW, each run with varying levels of professionalism and governance, and in many instances the accord coordinator or secretary is not a licensee;
- The majority of 'strategies' developed and implemented by local liquor accords are written specially for the on premise environment and as such are inappropriate and irrelevant when considering how they would be applied in the retail liquor environment;

Given the above-mentioned points, LSA is concerned that a PLL licensee may be exposed to further unnecessary burden or face possible additional regulatory penalties in the event they refused to support or participate in a particular accord initiative, or were to decide to discontinue their ongoing membership of the accord.

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**LSA Recommendation:** *In the event of a strike conviction, LSA recommends consideration is given to discontinuing the requirement for licensees to participate and comply with their local liquor accord. However, if it is Government's intention to continue imposing this 'special licence condition', LSA would strongly advocate the addition of a further condition, requiring that the licensee join their applicable industry association.*



*This would ensure that the licensee was able to access specialised industry sector specific information, expert advice, support, training, tools, resources and guidance.*

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## **6. BANK LOAN CONTRACTS**

An ongoing issue for business owners and operators, and an unintended consequence, which has become paramount since the introduction of the Three Strikes Disciplinary Scheme, is banks adding specific 'terms and conditions' to loan contracts, such as triggering a 'default clause' applicable in the event of a strike conviction, or event which places the business in financial jeopardy.

LSA is unsure what, if anything can be done in this regard, however its existence obviously makes borrowing more difficult for business owners and operators.



## About the Liquor Stores Association NSW (LSA):

**LSA has been the consistent voice of the NSW Retail Liquor Industry since 1961, and is a united industry body representing all NSW packaged liquor retailers, whether they are an independent retailer, licensed general store or supermarket, corporate chain or online only liquor retailer.**

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Our charter is *'to create and promote a responsible, sustainable and diverse off-premise liquor sector in NSW, by effective and relevant engagement of all stakeholders'*.

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The Association has over 1,200 members, representing over 75% of the NSW stand-alone take-away packaged liquor market. Non-retailer members represent some of the most respected companies in the industry, including banner groups, wholesalers, beverage manufacturers and suppliers, and other service providers.

Our sector alone directly employs over 13,000 people in NSW, including many trainees and apprentices who go on to make a career in liquor retailing, and also underpins additional indirect employment by suppliers and service industry activity in NSW estimated at in excess of an additional 7,000 people.

The retail liquor industry in Australia employs and supports 165,000 jobs and is a significant contributor to the economy with an annual turnover of \$20<sup>4</sup> billion, generating an estimated \$5 billion in alcohol taxation and over \$1.6 billion in GST revenues. This is before State payroll taxes and State liquor licensing fees, company taxes and income tax on the 165,000 direct and indirect employees supported by the retail liquor sector.

### **Our Network:**

LSA works closely with all stakeholders involved in the retail liquor industry - retailers, banner groups, wholesalers, beverage manufacturers and suppliers, as well as other industry associations (AHA NSW, ClubsNSW, Restaurant & Catering NSW, NSW Small Bars Association), and the many other service providers associated with the sector.

In addition, the Association is in constant communication with all State Government departments concerning the packaged liquor sector, including the NSW Office of Liquor, Gaming & Racing (OLGR), the Independent Liquor & Gaming Authority (ILGA), NSW Police, Industrial Relations, Fair Work Ombudsman, Small Business, Health, etc.

### **National Affiliations:**

LSA is a member of the [Australian Liquor Stores Association \(ALSA\)](#), representing the national interests of the NSW retail liquor industry.

Through ALSA's founding membership to Alcohol Beverages Australia, LSA is affiliated with all peak bodies representing the various sectors of Australia's alcohol beverage industry including being a foundation board member of [DrinkWise Australia](#).

LSA is also a member of the [National Retail Association](#), Australia's largest and most representative retail industry organisation, providing additional professional services to the LSA and our members.

LSA NSW is a member of [Associations Forum](#) - Australia and New Zealand's leading organisation, assisting associations and charities in governance, operations, membership and finances.

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<sup>4</sup> Euromonitor International *Alcoholic Drinks in Australia*, June 2015



### **Self-Regulatory Initiatives:**

LSA encourages and supports a responsible approach to the service and consumption of alcohol by all stakeholders, including our retailer members and the communities they serve, and have developed a range of self-regulatory initiatives for the retail liquor industry.

*ID-25 & Don't Buy It For Them* – LSA and our members do not support service to underage people nor to those adults who would make secondary purchase on behalf of, or supply to underage persons. We support social and individual responsibility for all consumers, introducing two related national initiatives *ID-25* and *Don't Buy It For Them* to reinforce and educate customers of their individual responsibility.

*ALSA Product Ranging Guidelines* – The ALSA Guide for Responsible Product Ranging Decisions was launched in 2010 to assist liquor store operators to make product ranging choices to minimise potential misuse and subsequent harm related to excessive consumption of alcohol.

*High Strength Alcohol Warning Labels* – To compliment the ALSA Product Ranging Guidelines' key ranging considerations, and to minimise the potential for misuse and subsequent harm related to rapid and excessive consumption of alcohol, LSA has developed High Strength Alcohol Warning Labels (HSAWL), and encourages members and liquor store operators to move alcohol products +70% ABV from general display to behind counters or cabinets, and place a HSAWL on bottles, to draw attention to the product's high alcohol nature.

*ID Compliance Audit* – in light of the new sanctions for the offence of 'sale of alcohol to a minor on licensed premises', and to provide members with greater certainty around their store's performance against this requirement, LSA has developed this new service for members, to test their store's ID policy, demonstrate due diligence to authorities, and improve staff and customer awareness.

*Compliance Health Check* – With Government regulators placing more focus on compliance, and with significant penalties for licensees who are found to be in breach, LSA offers members a free Compliance Health Check, which assesses how compliance their business is against all compulsory and self-regulatory requirements, and gives them the tools to ensure they remain compliant.

*Mystery Shop Evaluation Report* – as part of LSA's annual Retail Liquor Industry Awards for Excellence Program, each member store that nominates is 'mystery shopped' by an independent expert, assessing the overall customer shopping experience, with a key criteria focusing on compliance and adherence to mandatory signage and ID checking, as well as our industry self-regulatory initiatives such as *ID-25* and *Don't Buy It For Them*.

*Harm Minimisation Policy* – is designed to provide members, staff and their customers with a clear understanding of the store's commitment to providing a safe, pleasant and welcoming environment.

*Workplace Health & Safety Checklist & WHS Manual* – was developed to assist members to understand the new federal WHS laws which commenced in 2012, to ensure the workplace, employees and customers are as safe as possible, and to comply with the required obligations.