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INTRODUCTION
The evolution of NSW liquor laws and Responsible Service of Alcohol

While the majority of people consume alcohol responsibly, Governments have always recognised the negative impact that alcohol can have on the community. As a result the sale and supply of liquor is appropriately controlled, and sanctions apply where licensed venues are poorly run and irresponsible liquor serving occurs — such as intoxication (i.e. drunkenness) and minors obtaining liquor.

Responsible service of alcohol has been part of the State's liquor laws for nearly 100 years. Responsible service is not new.

For example in the 1912 Liquor Act, a licensee was prohibited from permitting drunkenness on the licensed premises and the onus was on the licensee and employees to establish that they took all reasonable steps to prevent the drunkenness. This requirement remains an important element of current NSW liquor laws.

Until the 1970s, registered clubs were regulated under the Liquor Act 1912. In 1976, the Registered Clubs Act was introduced in response to community concerns about the management of clubs and the inappropriate use of members' property. The Registered Clubs Act commenced on 1 July 1978. The Act contains an extensive range of controls applying to the management of registered clubs, and the sale and supply of liquor on club premises.

Since the Liquor Act 1982 and the Registered Clubs Act 1976 were introduced, there have been many significant amendments made in response to changing community attitudes and Government policy regarding the sale and supply of alcohol.

Perhaps the most significant changes occurred in 1996 when both Acts were changed to introduce "harm minimisation" (i.e. minimising the harm associated with the misuse and abuse of liquor) as a primary object of both Acts. The move to a harm minimisation approach in the liquor laws followed increasing concern about the extent of alcohol-related crime and violence - particularly in and around licensed venues.

In 2008, new liquor laws commenced, further strengthening harm minimisation controls over the way liquor is sold and consumed and consolidated the regulation of liquor in all premises, including registered clubs, into one Act — the Liquor Act 2007.

In 2012, a new disciplinary scheme, known as the Three Strikes scheme, commenced that enables strikes to be imposed when a licensee or approved manager is convicted of one of a range of the most serious offences under the Liquor Act 2007.

The Act places obligations on the Independent Liquor and Gaming Authority, the Director General, Department of Trade and Investment, Regional Infrastructure and Services, the Commissioner of Police, licensees, and others in regard to responsible practices in the sale, supply, service and promotion of liquor, and the prevention of activities that encourage misuse or abuse of alcohol.

These laws also place greater responsibility on patrons to drink responsibly to minimise alcohol-related violence and anti-social behaviour in and around licensed venues.

The harm minimisation approach — with emphasis on responsible service and consumption of alcohol, and the responsible operation of licensed venues — is justified on public health and safety grounds. When considering reforms to liquor licensing, a balance must be struck between achieving a fairer, simpler regulatory system and consideration of the impact irresponsible liquor consumption can have on local communities, road safety and public health.
The protection of local amenity and the probity of industry participants have been identified as important considerations associated with the sale and supply of liquor. For example, alcohol-related nuisance, violence, crime and noise disturbances could erode the quality of life for people living or working in the vicinity of venues serving alcohol.

The liquor laws therefore seek to protect the interests of local communities by protecting and improving local amenity. As a result, the laws include various public interest provisions that allow local communities, local councils, police and other stakeholders to have a say about the conduct of licensed venues.

Today, RSA training is mandatory for everyone in NSW involved in the sale and supply of liquor to the public. This includes licensees, club secretaries, serving staff and security staff working at licensed venues. There are no exemptions from undertaking the course.

This mandatory training regime also includes volunteers, promotional staff and contract employees as well as directors of registered clubs who have liquor service responsibilities.

Sanctions apply to licensees and staff in cases where RSA training has not been undertaken.

If you are unsure about whether you, or a member of your staff, are required to do RSA training, you should contact the Office of Liquor, Gaming and Racing on (02) 9995 0333.
ELEMENT 1

THE CONTEXT OF

RESPONSIBLE SERVICE OF

ALCOHOL

IN NEW SOUTH WALES
ELEMENT 1

Identify the context of responsible service of alcohol

This element identifies the context in which responsible service of alcohol is to be managed.

Assessment Criteria

Students should be able to identify:

- government and community concerns associated with alcohol abuse and misuse, particularly in relation to crime, violence and anti-social behaviour occurring as a result of excessive drinking, and the effects on the neighbourhoods of licensed venues;

- the impact of alcohol abuse/misuse on the community; and

- the role of key agencies in regulating and enforcing the liquor laws, such as the NSW Office of Liquor, Gaming and Racing, the Independent Liquor and Gaming Authority, the NSW Police Force, the Director General, Department of Trade and Investment, Regional Infrastructure and Services and other Government agencies involved in preventing alcohol abuse.

In this element we will examine Government and community concerns about serving alcohol responsibly, the behaviour of patrons and providing a safe environment for everyone, the Government agencies that have responsibility for the regulation and administration of the liquor laws, and those agencies upon which the liquor laws impact.
Identifying the Context of Responsible Service of Alcohol

(Why do we need to be aware of, study and implement responsible service of alcohol?)

Alcohol is widely used and enjoyed throughout our society, and for many people it forms part of an enjoyable and generally healthy lifestyle that includes good diet and exercise.

For the vast majority of adults, the consumption of alcohol is considered a form of relaxation and social entertainment. However, the misuse and abuse of liquor can have a devastating effect on individuals, their families and society in general. Historically, both in Australia and elsewhere, Governments have taken the position that the sale and consumption of liquor should not be left exclusively to market forces.

In fact, all developed countries have liquor laws in place on social policy grounds. They recognize that alcohol is a drug that can have harmful effects and must therefore be regulated.

People who drink regularly at higher levels place themselves at increased risk of chronic ill health and premature death. An episode of heavy drinking places the drinker and others at risk of injury and death. These patterns of drinking also have substantial social and economic implications.
Government and Community Concerns

Because the Government regulates liquor sale and supply, there is an onus on those who are responsible for the retailing of that product to do so responsibly by providing a safe and enjoyable environment for patrons. That onus also means serving liquor to ensure that patrons do not become drunk and subsequently a problem for management, staff and the community.

When poor patron behavior is left unchecked, it has the potential to escalate and can manifest into serious crime, including brawls, affray, sexual assaults and property damage.

In recent years, considerable research has been undertaken in New South Wales by the NSW Bureau of Crime Statistics and Research and others to identify the link between irresponsible serving practices and liquor abuse problems. A summary of this research is contained in Schedule A for reference purposes.

More than 16,000 venues are licensed to sell liquor in New South Wales, making it readily available and enjoyed by many.

People who drink regularly at higher levels place themselves at substantially increased risk of chronic ill health and premature death, while an episode of heavy drinking places the drinker and others at increased risk of injury and death. For some, particularly among younger age groups, such drinking can form part of a wider pattern of risk-taking behavior.

While health is an important issue, the use of liquor, particularly when it is abused and misused, is associated with crime, violence, anti-social and offensive behaviour. You don't have to drink to experience the harm that can be associated with liquor — assaults, road accidents, property damage and excessive noise can all seriously affect the lives of individuals and the community.

Therefore, governments place restrictions on the age at which liquor can be legally purchased and consumed, and determine the controls over liquor such as how, when, where and by whom liquor can be sold and supplied.

The statutory framework for the sale and supply of liquor in NSW is the Liquor Act 2007 and regulates licensed venues and those who operate them, and when and how liquor is sold.

All the various State and Territory Liquor Acts aim to ensure that alcohol is sold by responsible people; that liquor venues are operated in a way that does not disturb other residents, and that the possible harmful effects of alcohol are minimised or avoided.

Therefore, the liquor laws determine:

- WHERE liquor can be sold — on licensed premises.
- WHEN alcohol can be consumed — on licensed premises.
- HOW liquor can be sold — the trading conditions that apply to various types of licensed premises.
- WHO can consume alcohol - adults.

In regulating the sale of liquor, sanctions apply for breaches of the liquor laws that may range from a reprimand, a fine through to a suspension or cancellation of a liquor licence.

Each State and Territory in Australia has its own liquor authority that administers the liquor laws. This includes the implementation of the law, issuing of licences, checking licensees' personal and criminal histories (probity) and enforcing the law. Later in this module, we will examine the principal regulators and administrators of the liquor laws in New South Wales.
The responsible service of alcohol means: complying with the law by serving liquor responsibly and legally; by looking after patrons; and, by being aware of the rights of neighbours and the general community to remain undisturbed by the operation of the venue.

Licensees have an obligation under the liquor laws to:

- Minimise the harm associated with liquor abuse;
- Encourage responsible attitudes towards the sale and consumption of liquor; and
- Ensure the sale and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Working in the hospitality industry carries responsibilities. Responsibility for the general public is not just the concern of the licensee. Staff can also be held accountable for their actions. This statutory training course is designed to ensure that you are aware of your role and responsibilities as well as the penalties that can arise from irresponsible service.

Knowledge of the liquor laws will help you avoid situations caused by alcohol abuse and misuse. It will also help you identify potential compliance risks at your venue, and how to take action to prevent abuses occurring.
The Impact of Alcohol Abuse / Misuse on the Community

In Australia, alcohol is the most commonly used recreational drug. People drink alcohol for a number of reasons, including the relaxing and socialising effects of small to moderate amounts.

In addition to the health issues resulting from alcohol consumption, there are social consequences both to the drinker and the community. These consequences include harm to family members and to friends and colleagues, as well others.

Costs accrue not only to government health and welfare services, but also to industry through absenteeism, premature retirement, and impaired or lost productivity. It has been estimated that alcohol cost Australia about $15.3 billion in 2004-05, when factors, such as crime and violence, treatment costs, loss of productivity and premature death were taken into account.

Abusive behaviour, vandalism, unruly crowds, crime and accidents cause undue stress to the general public and communities as a whole. Additionally, they stretch the limited resources of police and emergency services to attend to calls and complaints.

In 2007, the NSW Bureau of Crime Statistics and Research found that at least $50M a year was spent by the NSW Police Force responding to alcohol-related crime. According to the Bureau, this would fund the annual salaries of around 1,000 constables.

Responding to assaults was the most common police activity, accounting for almost 15 per cent of the total alcohol related crime.

The 2007 National Drug Strategy survey found that alcohol accounted for 27 per cent of the $56.1B economic costs associated with licit and illicit drug use in Australia in 2004-05 (tobacco accounted for 56 per cent, while illicit drugs accounted for 15 per cent).

The NSW Office of Liquor, Gaming and Racing, the Department of Health, the Roads and Maritime Services and NSW Police Force play a significant role in trying to reduce these costs. They facilitate liquor accords, conduct advertising campaigns; produce educational material and training programs as preventative measures to educate both the public and liquor industry to help minimise alcohol abuse problems in the community.

Key Agencies

Independent Liquor and Gaming Authority

Liquor and gaming licence applications (including applications to extend trading hours) and disciplinary matters are considered by the Independent Liquor and Gaming Authority.

Anyone can make a submission to the Authority, and those submissions must be taken into account by the Authority when making a licensing decision.

Reviews of disciplinary decisions made by the Authority are determined by the Administrative Decisions Tribunal.

NSW Office of Liquor, Gaming and Racing (OLGR)

The OLGR is part of NSW Trade & Investment and is responsible for the regulation of the NSW liquor industry. Through its various functions, the OLGR provides leadership and strategic direction to the liquor industry through rigorous enforcement, compliance, investigative, monitoring and field education programs. OLGR is also responsible for implementing the Government's liquor reform process.
OLGR works with other agencies such as the NSW Police Force to promote practices that ensure the minimisation of harm, often associated with the operations of the liquor venues, as well as facilitating the development and monitoring of compliance strategies — e.g. the State's liquor accord program.

OLGR is also responsible for administering the responsible service of alcohol and responsible conduct of gambling training schemes, as well as administering the photo competency card that is issued to students undertaking these training programs.

OLGR also provides administrative support to the Authority in determining licensing proposals and its other regulatory functions.

OLGR also offers a free eNews service to its stakeholders, including staff and managers working in the liquor industry. The service aims to keep stakeholders up to date on changes which impact them. Anyone can subscribe, go to www.olgrnsw.gov.au/website subscribe form.asp

More information about OLGR and its activities can be found in the NSW Trade & Investment Annual Report which can be viewed or downloaded from the web —www.trade.nsw.gov.au
Compliance Officers

OLGR compliance officers undertake inspections and other enforcement functions under delegation from the Director General, Department of Trade and Investment, Regional Infrastructure and Services. Inspection of licensed venues can result from:

- complaints received from the public or other licensed venues;
- investigating matters referred to the Office;
- inspection programs to determine compliance;
- allegations concerning the suitability of licensees and club secretaries;
- liquor and gambling harm minimisation enforcement programs; and
- covert inspections of licensed venues.

Legislated powers include:

- entering a licensed venue at any time (with or without a police officer) if it is considered reasonable grounds exist that a breach has been, or is being, committed;
- requiring the licensee/secretary to produce all books and records relating to the operation of the venue;
- seize documents and make copies or take extracts from them;
- request identification from a young person suspected of being under 18; and
- interview any person at the venue in relation to any relevant matter.

It is an offence to obstruct or refuse admission to a compliance officer. A maximum penalty of $5,500 applies for this offence.

Compliance officers can undertake desk audits of liquor licences and certificates of registration. They also conduct operations in association with the NSW Police Force.

Director General, Department of Trade and Investment, Regional Infrastructure and Services

The Director General, Department of Trade and Investment, Regional Infrastructure and Services is a statutory officer under the NSW liquor and gaming machines laws who can take disciplinary and prosecution action and make submissions in respect to the grant or variation of a liquor licence.

In addition, the Director General, Department of Trade and Investment, Regional Infrastructure and Services can also impose conditions on a licence and issue written directions that require a licensee or staff to address a problem or improve compliance in a venue.

Specific statutory powers also enable the Director General, Department of Trade and Investment, Regional Infrastructure and Services to take action in relation to:

- banning undesirable liquor products and promotions;
- determining noise disturbance complaints against venues; and
- approving courses and course providers in relation to responsible service of alcohol and responsible conduct of gambling training.
The Director General, Department of Trade and Investment, Regional Infrastructure and Services is also required to publish guidelines to assist the industry in relation to the indicators of intoxication and the types of liquor promotions that are likely to result in disciplinary action being taken.

**NSW Police Force**

Police have wide ranging enforcement powers under the liquor laws. Police can issue penalty notices for breaches of the liquor laws. Police can prosecute a licensee, a staff member or a patron for breaches of the law, or they can take disciplinary action against a licensee on certain grounds prescribed by the liquor laws.

Short term closures of licensed venues are also an effective tool that police can use to prevent serious liquor-related problems escalating in a licensed venue.
SUMMARY

- Alcohol is a drug. It is second only to tobacco in drug-related deaths and hospitalisation.

- Its harmful effects are well documented and the liquor laws recognise the harm associated with its abuse.

- Liquor is tightly controlled by government because of the potential for its misuse and abuse.

- Liquor licensees and staff must comply with the liquor laws by selling, supplying and serving liquor responsibly.

- In exercising their functions under the liquor laws, regulators and others must have due regard to liquor harm minimisation.
ELEMENT 2

LEGISLATIVE FRAMEWORK FOR THE RESPONSIBLE SERVICE OF ALCOHOL
ELEMENT 2

This element identifies legislative measures and public interest issues relevant to RSA.

Assessment Criteria

Students should be able to identify relevant legislative provisions including:

- harm minimisation and public interest provisions of the liquor laws;
- intoxication provisions; and
- underage provisions.
Identify The Legislative Framework For The Responsible Service Of Alcohol

What types of liquor licences can be issued?

The following table outlines the categories of liquor licence that can be issued under the *Liquor Act 2007*.

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<th>Type of activity</th>
<th>Community Impact Statement Required</th>
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<tr>
<td>Hotel (including a general bar licence)</td>
<td>Hotel, bar, tavern</td>
<td>Yes</td>
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<tr>
<td>Club</td>
<td>A registered club selling liquor to members and their guests</td>
<td>Yes</td>
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<tr>
<td>On-premises</td>
<td>Can be tailored for one or more types of business activities including a restaurant, entertainment venue, motel, function centre and other settings where liquor is consumed on the premises</td>
<td>Yes, but only where the on premises licence relates to a restaurant or a public entertainment venue (other than a cinema or theatre).</td>
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<tr>
<td>Packaged liquor</td>
<td>Liquor stores, internet operators selling liquor to the public</td>
<td>Yes</td>
</tr>
<tr>
<td>Producer/wholesaler</td>
<td>Brewer, distiller, winemaker, wholesaler</td>
<td>No</td>
</tr>
<tr>
<td>Limited</td>
<td>Functions held by non profit organisations, as well as special events and trade fairs</td>
<td>No</td>
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All liquor licensing applications are determined by the Independent Liquor and Gaming Authority. In many cases, a liquor licence application must be accompanied by a community impact statement (CIS).

A community impact statement allows the Independent Liquor and Gaming Authority to be aware of the impact that granting an application will have on the local community. It does this by ensuring the potential applicant consults with the local community — including the local council — before deciding to go ahead with making an application. The CIS summarises the results of consultation between the applicant and the local community about any issues and concerns with a proposed application.

Trading Hours

The standard trading period for hotels, on-premises licences (except vessels), wine producers and packaged liquor licences is outlined below.
Harm Minimisation and Public Interest Provisions of the Liquor Laws

The NSW liquor laws contain extensive harm minimisation provisions to minimise the potential for the misuse and abuse of alcohol.

Those who exercise statutory functions under the Liquor Act, including the Director General, Department of Trade and Investment, Regional Infrastructure and Services, the Independent Liquor and Gaming Authority and police, must:

- have regard to the need to minimise alcohol-related harm;
- encourage responsible attitudes towards drinking in the community; and
- ensure alcohol sales and drinking does not detract from the amenity of the community.

Apart from these overarching provisions, there is a raft of specific measures in the liquor laws designed to minimise liquor abuse problems and ensure venues are operated responsibly and in the public interest. Offence provisions apply in relation to underage drinking/entry and intoxication offences, while powerful enforcement tools can be used to fix serious problems associated with the irresponsible management and operation of a venue.

The fundamental RSA provisions of the liquor laws are that, on licensed premises, liquor cannot be served to minors or intoxicated persons. These provisions are supported by a range of regulatory requirements to complement these measures and provide clear guidance to patrons and industry on the responsible drinking rules.

These offence and public interest measures are outlined below.

Public Interest and Venue Conduct

The liquor laws recognise the serious problems that can be caused when premises are operated unlawfully and irresponsibly and when those venues endanger the amenity of the neighbourhood, patrons and the community.

Police, the Director General, Department of Trade and Investment, Regional Infrastructure and Services and local councils have extensive powers to deal with serious alcohol related problems that have an adverse impact on the community. Experience has shown that many of these problems are linked to irresponsible serving practices, poor patron behaviour (which is often a by-product of the irresponsible practices) and / or a lack of proper management and control of the venue.

Statutory powers that can be used include the temporary closure of a venue and noise disturbance complaints to the Director General, Department of Trade and Investment, Regional Infrastructure and Services. These provisions, and their relevance to RSA training, are outlined below.

Disturbance Complaints

A complaint about undue disturbance caused by the conduct of a licensed venue and/or its patrons can be made to the Director General, Department of Trade and Investment, Regional Infrastructure and Services NSW by police, councils, residents and others.
Many noise disturbance complaints stem from serious problems relating to the management and operation of the venue, or violent, anti-social or criminal activity involving patrons in the vicinity of the venue. Disturbances and criminal activity involving patrons can often be linked back to their levels of intoxication and the questionable serving practices of the venue in the first instance.

Where a complaint is established, conditions can be imposed on a venue to restore the amenity of the neighbourhood and to ensure the venue operates in the public interest. These conditions often call for additional security, a reduction in trading hours / entertainment and requiring management to adopt further responsible serving practices.

In those cases where conditions have been imposed and enforced, and responsible serving principles are followed, there is usually a reduction in noise and associated anti-social behaviour.

**Disciplinary Complaints**

A disciplinary complaint can be lodged by the Director General, Department of Trade and Investment, Regional Infrastructure and Services and police with the Independent Liquor and Gaming Authority against a venue operator on prescribed grounds. A number of these grounds are used to take action where the venue has been operated unlawfully and / or where liquor has been served in a way that is likely to lead to excessive consumption and intoxication.

Those grounds relevant to RSA training include:

- breach of licence condition;
- licence not exercised in the public interest eg. allowing patrons to conduct drinking competitions;
- intoxicated persons have frequently been on or leaving the premises;
- the licensee / manager has engaged in activities likely to encourage liquor abuse eg. irresponsible liquor promotions such as all you can drink offers; and
- acts of violence involving patrons have frequently occurred on or near the premises.

Where a disciplinary complaint is upheld, heavy sanctions can be imposed. Among the sanctions that can be imposed is the cancellation or suspension of the licence and disqualification of the licensee / club secretary. Further conditions can also be imposed, while the Authority also has the option of imposing penalties of up to $22,000.

**Temporary Closure Orders**

The Independent Liquor and Gaming Authority or a magistrate can order the closure of a licensed venue for up to 72 hours where it is considered there is a threat to public health or safety, a risk of serious property damage or a risk of serious breaches being committed on the premises.

While the temporary closure provisions are often used to address drug dealing and other criminal activity occurring in a venue, they are also used where serious alcohol related incidents occur or are likely to occur, such as brawls, violence and affray.

In more extreme cases, closure orders can be made for up to six months.
Declared Premises

In 2009 a new scheme was introduced to regulate venues that have recorded a high number of assault incidents. The scheme divides venues into three categories based on the number of assaults recorded in a twelve month period.

Category 1 venues are venues that have 19 or more assaults and are subject to the following conditions:

- A mandatory 2am lockout of patrons (except members of a registered club);
- Cessation of alcohol service 30 minutes prior to closure;
- No glass containers to be used after midnight;
- No shots and drink limitations after midnight;
- 10 minute alcohol sales timeout every hour after midnight or active distribution of water and/or food, and
- Additional security measures.

Category 2 venues are venues with 12 to 18 assaults and are subject to three conditions:

- No glass containers to be used after midnight;
- 10 minute alcohol sales time out every hour after midnight or active distribution of water and/or food, and
- Cessation of alcohol service 30 minutes before closing.

Category 3 venues are venues that have 8 to 11 assaults and are provided with additional support from OLGR to strengthen alcohol and security management.

Intoxication

The liquor laws provide a broad framework designed to prohibit intoxication in licensed venues. Under these provisions, an intoxicated person cannot be admitted or allowed to remain in a licensed venue, nor can they be served liquor.

There are two key intoxication offences in the NSW liquor laws:

- permitting intoxication; and
- Serving liquor to an intoxicated person.

Penalties of up to $11,000 can be imposed for intoxication offences, while police and inspectors also have the option of issuing $1100 penalty notices for these types of breaches.

If an intoxicated person is detected in a venue the licensee can be liable for the offence of permitting intoxication on their premises.
This means the onus is on the licensee and staff to remove an intoxicated person immediately. Of course, policies should be implemented to prevent intoxication in the first instance. Strategies for preventing intoxication are outlined in module 4.

To avoid prosecution for the offence of permitting intoxication, the licensee must be able to prove that the intoxicated person was not served any alcohol on the premises, and as a minimum, took the following steps:

- asked the person to leave the licensed premises;
- contacted, or attempted to contact, police for assistance in removing the person from the premises; and
- refused to serve the person any alcohol after becoming aware that the person is intoxicated.

Additional steps should also be in place that can be used in mitigation for permitting intoxication that shows the venue is committed to the responsible service of alcohol. Such steps could include:

- being an active member of the local liquor accord;
- ensuring compliance with all regulatory requirements;
- providing ongoing training to staff in implementing the venue's responsible serving house policy (in addition to mandatory RSA training);
- not conducting promotions or entertainment likely to encourage liquor abuse;
- having quality food available whenever liquor is served; and
- promoting the venue as one that is committed to the responsible service of alcohol.

Where liquor is served to an intoxicated person in a licensed venue, an offence is committed. This offence can apply to anyone — a licensee, a staff member, a club director or volunteer (who has liquor service responsibilities) or a patron.

There is no statutory defence or mitigating steps available for the offence of serving liquor to an intoxicated person.

*How am I supposed to know if someone is intoxicated when I can be prosecuted for intoxication offences?*

This is one of the most common questions asked across all levels of the liquor industry.

**Intoxication Defined**

The liquor laws contain a definition of intoxication to assist industry comply with their responsible serving obligations and enhance enforcement efforts by police and inspectors.

For the purposes of the liquor laws, a person is considered to be intoxicated if:

- the person's speech, balance, coordination or behaviour is noticeably affected; and
• it is reasonable, in the circumstances, to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.

In addition to this statutory definition of intoxication, the Director General, Department of Trade and Investment, Regional Infrastructure and Services must also issue guidelines to further assist the industry determine whether a person may be intoxicated. Those guidelines are attached in Schedule B.

The Director General's guidelines for determining whether a person may be intoxicated include the following:

**Speech** - Slur words, talk in rambling or unintelligible sentences, are incoherent or muddled in their speech.

**Balance** - Are unsteady on their feet, stumble or bump into people or objects, sway uncontrollably or cannot stand or walk straight.

**Coordination** - Fumble to light a cigarette, have difficulty in counting money or paying, spill or drop drink, have difficulty in opening or closing doors.

**Behaviour** - Become rude, aggressive, or offensive, are unable to concentrate or follow instructions, become boisterous or pester others.

Notwithstanding the prescribed definition and the availability of the Statutory guidelines, a degree of judgement is still required by licensees, serving staff and security officers in determining whether a person is intoxicated, or approaching the point of becoming intoxicated.

This judgement should be based on observations of the person's behaviour, coordination, appearance and speech. Further information on the common indicators of intoxication is outlined in element 4.

**Voluntary Exclusions**

The law provides for people with a drinking problem to exclude themselves from licensed premises in a similar manner to people with a gambling problem who can exclude themselves from gambling venues.

In the case of venues that are part of a liquor accord, this exclusion can extend to other venues that are part of that accord if they are specified in the agreement.

Licensees are obligated to comply with a request from a person to be self excluded from a venue.

**Fail to Leave**

As described above, the NSW liquor laws provide a framework that prohibits intoxicated patrons being served liquor, as well as people who are intoxicated being admitted to a venue.

At the same time, patrons also commit an offence where they are drunk or disorderly and refuse to leave the premises, or the vicinity of the premises, when asked to by police or venue staff.

The vicinity of the premises is defined to include a radius of 50 metres from the boundary of the licensed premises, but provides exemptions for people remaining in the vicinity for a lawful purpose eg. waiting for transport or where they live near the venue.
These fail to leave provisions, which carry penalties of a $5,500 fine or a $550 penalty notice, provide a safety net to licensees in certain circumstances where drunk people attempt to enter the premises before being detected by staff and are then immediately asked to leave.

In these situations, where police are called for assistance and are satisfied that an offence has occurred, the patron will be issued with a $550 penalty notice.

These provisions also prohibit the person from re-entering, or attempting to re-enter, the premises for 24 hours. Also, the person must not re-enter the vicinity of the premises within 6 hours.

This does not override the intoxication provisions of the liquor laws. In simple terms, an offence is still committed where an intoxicated patron continues to be served liquor, but is only asked to leave for other reasons, such as acts of violence or anti-social behaviour.

In these instances, police could obtain evidence to determine whether the patron was intoxicated while liquor was still being served to that person, and what steps, if any, were taken at the time by staff to remove the patron.

This enables police to consider the merits of taking disciplinary action against the venue (or its staff) for intoxication offences and against the patron for the fail to leave offence.

If police are continually called to the same premises to assist in removing drunken patrons or enforcing the fail to leave offence, a disciplinary complaint can be taken on the ground that intoxicated persons have frequently been on the premises or have been seen frequently leaving the premises.

Banning orders

Where a person has been excluded from a licensed premises for being reportedly drunk, violent or disorderly an application can be made by a licensee, who is a member of the local liquor accord, to the Authority for the person to be barred for up to six months.

In imposing a ban on a patron, the Authority must be satisfied that that the person has been repeatedly drunk, violent, quarrelsome or disorderly on or in the immediate vicinity of the premises.

A person banned by the Authority commits an offence if they attempt to enter, or remain in, the licensed premises to which the order relates.

Minors

There is a general prohibition applying to the supply of liquor to a person who is under 18 years of age (a minor) in a licensed venue. In most instances, this prohibition also extends to private settings. In a licensed venue, those liable for the offence of supplying liquor include the licensee, staff, and other patrons, including minors (where liquor is supplied to other minors).

Penalties of up to $11,000 (or $1,100 penalty notices) and/or 12 months imprisonment apply to adults convicted of underage liquor supply offences. Minors are also liable for the offences of purchasing and drinking liquor in a licensed venue.

Statutory defences for the offence of supplying liquor to a minor are available in certain circumstances. The statutory defences are:

• if the minor was over 14 and produced evidence of age (that could be reasonably accepted) that indicated they were over 18;
• the licensee has a defence against prosecution if the liquor is supplied to a minor by their parent or guardian;

• the liquor was supplied to the minor on licensed premises by the parent/guardian;

• that a person was authorised by the parent/guardian to obtain liquor from licensed premises for a minor; and

• a person has a defence if they are the parent/guardian of the minor, or are authorised by the parent/guardian and the alcohol was not supplied on a licensed premises (eg. at home).

The law imposes sanctions on minors attempting to purchase liquor from a licensed premises and drinking alcohol on a licensed premises. Penalties of up to $2,200 apply.

Second Party Sales

Second party sales occur when a person purchases liquor on behalf of a minor. The person supplying the liquor to the minor (either on a licensed premises or elsewhere) is committing an offence which can attract penalties up to $11,000 (or $1100 penalty notice) and/or 12 months imprisonment.

Liquor Sales by Minors

By law, minors are prohibited from serving liquor on licensed venues. For example, a minor working in a licensed restaurant cannot take an order for, or deliver, alcohol to patrons. But the minor could take food orders.

The law does not stop minors from doing other things within the premises - such as stocking shelves in a bottleshop or serving meals in a restaurant.

While approval can be given to allow a minor to serve liquor in a venue, approval would normally only be granted in limited circumstances and subject to stringent supervisory conditions.

A similar provision also applies to registered clubs, where a offence is not committed if the sale, supply or service of liquor by the minor occurred in a dining room or other non-restricted area of the club and regulatory approval has been obtained.

These statutory controls recognise the potential problems associated with minors serving liquor, that include a minor's lack of understanding of the liquor laws and the peer pressure that can be applied to enable liquor to be served to a minor's friends.

Penalties of $5,500 apply to a licensee if a minor serves liquor without approval.

Remote Sales

The remote liquor sales provisions provide a regulatory framework for liquor sold to the public via the Internet, telephone, facsimile and mail orders.

The provisions recognise that remote liquor sales, particularly via the Internet, are a potential source of supply for minors and that added controls are needed to prevent liquor being supplied to minors.

Statutory requirements for remote liquor sales include:
• display of the liquor licence number in any published or electronic advertising; and

• display of the liquor licence number and the statutory notice (stating the offence of supplying liquor to a minor) on the website where liquor is being sold.

When taking a telephone, facsimile or mail order, the licensee must ensure that the prospective buyer provides a date of birth to confirm that the client is an adult (unless the details have been provided when placing a previous order).

The licensee must then give written instructions to the person delivering the order, such as a courier, requiring the liquor to be delivered:

• to the adult who placed the order; or

• another adult accepting the delivery on behalf of the adult who placed the order; or

• in accordance with the customers instructions — eg. delivery to a vacant residential address, if the delivery occurs on a day after the order is placed.

Penalties of up to $2,200 apply if a licensee commits any of these offences. A penalty of up to $3,300 applies to a person who requests a minor to take delivery of a remote sale. A penalty of $2,200 applies if a minor takes delivery of a remote sale.

Entry into Licensed Premises by Minors

The liquor laws allow minors to enter most licensed premises under certain circumstances.

Hotels

Whilst most parts of a hotel are a bar area (ie. minors are not permitted under any circumstances), there are some areas where a minor can enter provided certain conditions are met.

For instance, an unaccompanied minor is allowed to be in the dining room of a hotel, provided that the dining room is serving meals by waiter service, or in the accommodation area of the hotel.

The hotel may also have an area known as a minors area approved for use by minors (with a responsible adult) such as a bistro or lounge area. (see page 27 for the definition of a responsible adult).

The licensee is liable for fines of up to $5,500 ($550 penalty notice) if a minor is found in a bar area of the premises. A minor can be fined up to $2,200 ($220 penalty notice) if they enter a bar area, or are in a minors area without a responsible adult.

A ‘walk through’ defence provision exists, which provides a statutory defence where a minor passes through a bar area to access a minors area, provided that the minor is with a responsible adult and does not stop while in the bar area. For example, a minor may pass through a bar area to use the bathroom facilities if they are with a responsible adult.

Other defences also include:

• Both the licensee and minor have a defence if the minor is an apprentice and was in the bar area for the purpose of receiving training.
The licensee also has a defence if the minor was over 14 years of age, and prior to the minor entering the bar area, the minor produced documentary evidence (driver licence, Photo Card, etc) that could reasonably indicate that the minor was over 18.

The licensee has a defence if the minor is performing in a show or as part of a performance in the bar area.

A minor has a defence if they believed that they were on a part of the premises in which a minor's functions authority was in force.

Registered Clubs

Minors are prohibited from being in certain parts of a registered club such as bar and gaming machine areas. However, like hotels, there are circumstances where minors may be in a registered club if certain conditions are met.

A minor can be admitted into a registered club's non restricted area if:

- They are accompanied by a member (who is over 18) of the club; or
- In the case of a temporary member, they are in the company and immediate presence of that member (who must be a responsible adult).

A 'walk through' defence provision exists, which provides a statutory defence where a minor passes through a restricted area to access an authorised area, provided that the minor is with a responsible adult and does not stop while in the restricted area.

Other defences also include:

- Both the secretary and minor have a defence if the minor is an apprentice and was in the bar area for the purpose of receiving training.
- The secretary also has a defence if the minor was over 14 years of age, and prior to the minor entering the bar area, the minor produced documentary evidence (drivers licence, photo ID card) that could reasonably indicate that the minor was 18 years or older.
- The licensee has a defence if the minor is performing in a show or as part of a performance in the bar area.
- A minor has a defence if they believed that they were on a part of the premises in which a minor's functions authority was in force.

Other Premises

<table>
<thead>
<tr>
<th>Premises Type</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>On premises licence</td>
<td>In most cases, unrestricted to minors. The exception to this is where the on premises licence relates to a public entertainment venue. In this instance, minors must be with a responsible adult.</td>
</tr>
<tr>
<td>Packaged liquor licence</td>
<td>Unrestricted to minors.</td>
</tr>
</tbody>
</table>
### Responsible adult

A responsible adult is defined as an adult who is:

- a parent, step-parent or guardian of the minor;

- the minor’s spouse or de facto partner; or

- for the time being, standing in as the parent of the minor.

Note: A person standing in as the parent could include a relative such as a grandparent, aunt/uncle, or a person in charge of an organised sporting or school group.

### Evidence of age

If you are in doubt as to a person's age, you must ask for evidence of age.

The Liquor Regulation prescribes that acceptable forms of identification are:

1. current motor vehicle driver's or rider's licence, or permit issued by the Roads and Maritime Services (RMS), or interstate equivalent;

2. current passport issued by the Commonwealth or corresponding authority in another country; or

3. a NSW Photo Card, issued by the RMS or a proof of age card issued by an interstate authority.

However, it is up to licensees and their staff to determine that the document's that are presented are valid and demonstrate that the person presenting the ID is over 18.

### Checklist for evidence of age

When you accept one of the documents as evidence of age, it is important to satisfy yourself that it is authentic. Remember — the final decision rests with you — if you are suspicious you should refuse access or purchase.

- **Check the photo**
  - Does it match the person?

- **Check the birth date**
  - Does it confirm the person is over 18 years?

- **Check for any alterations**
  - Have any numbers been altered — particularly the last digit of the date of birth.

- **Check the hologram**
  - For NSW drivers licence and photo card

You should refuse admission to anyone you suspect of using false evidence of age.
Mandatory signs

Liquor signs for all licensed premises

For most hotels and registered clubs, only two or three types of liquor signage are required to be displayed, while for on-licences operating as a restaurant, only one mandatory sign may be needed.

Sign No.1 - Minors not to be served liquor

This sign must be obtained from the Office of Liquor, Gaming and Racing and be displayed wherever liquor is sold on licensed premises ie. at each bar and counter. Where there is no bar or counter eg. a small restaurant, the sign must be prominently displayed at each entrance to the premises.

Sign No.2 - Bar areas of hotels and clubs

This sign must be obtained from the Office of Liquor, Gaming and Racing and be displayed in each...
bar area of a hotel and club. A bar area is defined as any area of a hotel or club where liquor is served, except those areas where minors are lawfully permitted to enter eg. a bistro/dining area.
Sign No.3 - Minors Area Authorisation sign - hotels

This sign must be obtained from the Office of Liquor, Gaming and Racing and be displayed in areas of the hotel that have been approved to allow minors to enter with a responsible adult.

Sign No.4 - Breath testing sign — all premises

This sign, which partly indemnifies a licensee from civil action, must be clearly displayed next to a breath analysis machine.
Sign No.5 - Liquor not to be sold to minors sign - all Internet operators

**IT IS AGAINST THE LAW TO SELL OR SUPPLY ALCOHOL TO, OR TO OBTAIN ALCOHOL ON BEHALF OF, A PERSON UNDER THE AGE OF 18 YEARS**

This sign must be displayed wherever liquor is sold via the Internet.

**Sale of Undesirable Liquor Products**

The law enables liquor products to be banned by the Director General, Department of Trade and Investment, Regional Infrastructure and Services it is considered, on one or more of a number of grounds, that the products should be banned.

Targeted action can be taken by the Director General against specific venues where undesirable liquor products are sold that:

- are indecent or offensive by virtue of its name, design or packaging;
- encourage rapid consumption of the product by virtue of its name, design or packaging;
- are likely to be attractive to minors or have special appeal to minors;
- are likely to be confused with soft drink or confectionery; or
- are not in the public interest to be sold.

Undesirable liquor products can also be banned from sale in all licensed premises in NSW under regulation making powers on the same grounds above.

The maximum penalty for selling an undesirable liquor product is $5,500.

Products already banned from sale under the NSW liquor laws include:

- **Alcoholic iceblocks**
- **Alcohol aerosol products**
- **Alcoholic milk**
- **Alcohol vapour**

**Prohibiting Undesirable Liquor Promotions**

Under the liquor laws the Director General, Department of Trade and Investment, Regional Infrastructure and Services may issue a written order to a licensee prohibiting them from carrying on, or being involved in, a particular liquor promotion. An order may be issued if the Director General considers that:
• the promotion is likely to have a special appeal to minors:

• because of the use of designs, motifs or characters in the promotion that are, or are likely to be, attractive to minors, or

• it is indecent or offensive; or

• involves the supply of liquor in non-standard measures or the use of emotive marketing that encourages irresponsible drinking likely to cause intoxication; or

• involves the supply of free alcohol, or extreme discounts, or discounts that are only available for a short period of time and create an incentive for patrons to drink rapidly

• the promotion is not in the public interest. Maximum penalties of $5,500 apply for not complying with an order issued by the Director General

The Director General, Department of Trade and Investment, Regional Infrastructure and Services has issued guidelines to indicate the types of liquor promotions and activities that are likely to result in an order being issued against a licensee. Those guidelines are attached in Schedule C.

Three strikes disciplinary scheme for licensed premises

Under the Three Strikes scheme, strikes can be imposed where a licensee or approved manager is convicted of one of a range of the most serious offences under the Liquor Act.

A strike can be incurred for a number of offences, including permitting intoxication or violence, serving liquor to a minor and selling liquor outside approved trading hours.

Where staff commit a three strikes offence, the licensee may be liable under the scheme and a strike may be incurred by the venue's licence.

A first strike is automatically incurred upon conviction for a single offence and is active for three years from the date of the offence. A second and third strike is discretionary, and can be incurred upon conviction for further offences committed within three years of the first offence. Conditions can be imposed where strikes are incurred.

A third strike can result in the imposition of licence conditions, licence suspension for up to 12 months, licence cancellation and a moratorium on a new liquor licence being granted for the same business operators at the venue for up to 12 months, and/or disqualification of a licensee for any period of time.

For registered clubs, a third strike can result in imposition of licence conditions, disqualification of a club secretary, dismissal of any or all of the club directors, and/or the appointment of an administrator to manage the club.

ELEMENT 3

ALCOHOL GUIDELINES FOR

LOW-RISK DRINKING
ELEMENT 3
Identify the Impact of Alcohol Abuse

This element addresses the impact of alcohol and includes safe levels of drinking, standard drinks and the impact of alcohol consumption (short and long term).

Assessment Criteria

Students should be able to identify:

- Low-risk drinking guidelines;
- Short and long term effects of alcohol; and
- Standard drinks.