

LEGISLATION

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PENRITH/ST MARYS

LIQUOR ACCORD

SECURITY STAFF (Security Industry Act 1997) .....	3
EXCLUSIONS OF PERSONS FROM LICENSED PREMISES .....	4
When can a licensee or staff member refuse to admit to, or turn a person out of a licensed premises? (Sect 77(2)) .....	4
OLGR Link    Fail To Quit / Attempt to Re-enter .....	5
RSA and RCG REQUIREMENTS.....	6
39D Inspection of recognised RSA certification .....	6
OLGR Links Venue Responsibilities – RSA .....	7
INTOXICATION .....	8
Intoxication laws .....	8
How do you know when a person is intoxicated?.....	8
OLGR Link    Intoxication Guidelines.....	9
Steps to preventing intoxication on licensed premises .....	9
OLGR Links    Prevention of Intoxication Guidelines.....	11
Liquor Promotions Guidelines .....	11
SIGNAGE.....	12
OLGR Link Signage Requirements regarding Liquor Only .....	14

## SECURITY STAFF (Security Industry Act 1997)

Security staff do not have any special powers and have the same common law powers as all citizens. This means they are able to detain a person they witness committing a crime until police arrive. Under section 77 of the Liquor Act, security staff, who fall under the definition of an employee, are able to refuse entry to or remove a person from a premises under certain circumstances.

A security guard is only able to exercise a function authorised by their licence. Any abuse of their authority is seen as a serious offence and may result in the revocation of the holder's licence.

A security guard must produce their licence when requested by Police or with any person with whom the licence holder has dealings when carrying on any security activity. Failure to produce a licence when requested may result in a \$550 penalty.

The holder of a security licence must at all times while carrying on a security activity, wear on his or her person, so as to be **clearly visible**, his or her licence, being an original and not a photocopy or other copy. \$550 penalty.

A security incident register and a sign on register must be on hand at any venue where security are employed. It is the responsibility of the security master licence holder to ensure these registers are being maintained.

A person must not carry on any security activity unless they are the holder of an appropriate licence. An unlicensed security guard is liable to a \$5500 penalty.

## EXCLUSIONS OF PERSONS FROM LICENSED PREMISES

The power to remove a person from a licensed premises comes from section 77 of the Liquor Act 2007. Under section 77(1) an authorised person is defined as “a licensee, an employee or agent of a licensee or a police officer.” In other words, staff who are employed directly by a venue are able to refuse people entry to or turn people out of the premises. In the case of a registered club an employee is a person engaged under a contract for services.

- The **vicinity** of the licensed premises means any place less than 50 metres from any point on the boundary of the premises.

### When can a licensee or staff member refuse to admit to, or turn a person out of a licensed premises? (Sect 77(2))

Any person:

(a) who is at the time intoxicated, violent, quarrelsome or disorderly, or

(b) whose presence on the licensed premises renders the licensee liable to a penalty under this Act, or

(c) who smokes, within the meaning of the Smoke-free Environment Act 2000 , while on any part of the licensed premises that is a smoke-free area within the meaning of that Act, or

(d) who uses, or has in his or her possession, while on the premises any substance that the authorised person suspects of being a prohibited plant or a prohibited drug, or

(e) whom the authorised person, under the conditions of the licence or according to a term (of the kind referred to in section 134 or 136D) of a liquor accord, is authorised or required to refuse access to the licensed premises.

- **Sect 77(3)** relates to banning patrons on a more permanent basis and is an ideal section for staff to use with regular patrons who are refused entry or removed from the premises. It states that if a person has been refused admission to, or turned out of a licensed premises for any of the reasons listed above then an authorised person may, **at any time**, refuse to admit that person to the licensed premises or may turn the person out of the licensed premises.

Any person who refused to leave the premises is liable for a \$550 penalty. In this instance police must be called to the venue.

When removing a person from the premises such reasonable degree of force as may be necessary may be used. This means using the minimum amount of force to control the patron.

- **Sect 77(6)**: A person who has been refused admission to, or turned out of, licensed premises in accordance with this section must not re-enter or attempt to re-enter the premises within 24 hours of being refused admission

or being turned out. \$550 penalty.

- **Sect 77(7):** After the 24-hour period ends in relation to any such person, an authorised person is not prevented from exercising the powers under subsection (3) in relation to the person.
- **Sect 77(8):** A person who has been refused admission to, or turned out of, licensed premises in accordance with this section must not, without reasonable excuse:
  - (a) remain in the vicinity of the premises, or
  - (b) re-enter the vicinity of the premises within 6 hours of being refused admission or being turned out. \$550 penalty
- **Sect 77(9):** A person has a reasonable excuse for remaining in, or re-entering, the vicinity of the licensed premises if:
  - (a) the person reasonably fears for his or her safety if he or she does not remain in, or re-enter, the vicinity of the premises, or
  - (b) the person needs to remain in, or re-enter, the vicinity of the premises in order to obtain transport, or
  - (c) the person resides in the vicinity of the premises.

The burden of proof falls on the patron for showing they had a reasonable excuse.

- **Sect 77(13):** Nothing in this or any other section of this Act operates to limit any other right a person has to refuse to admit a person to, or to turn a person out of, licensed premises. This section can be used when refusing a person entry to your venue as they don't comply with the dress code.

**OLGR Link**

**Fail To Quit / Attempt to Re-enter**

[http://www.olgr.nsw.gov.au/liquor\\_patrons.asp](http://www.olgr.nsw.gov.au/liquor_patrons.asp) - patron barring

## RSA and RCG REQUIREMENTS

### 39D Inspection of recognised RSA certification

- (1) A police officer or inspector may require any of the following persons to produce their recognised competency card or interim RSA certificate to the officer or inspector for inspection:
- (a) a licensee of licensed premises,
  - (b) a staff member of licensed premises who is involved in the sale, supply or service of liquor by retail on the premises,
  - (c) a person employed or engaged to carry out activities as a crowd controller or bouncer on or about licensed premises.
- (2) A person must not, without reasonable excuse, refuse to comply with a requirement of a police officer or inspector under subclause (1).

Most staff members these days have an RSA and/or RCG competency card. There are, however a small number of people who obtained their RSA certificate between 1 Jan 2010 – 21 August 2011.

The RSA certificate for this group of people will expire on 30<sup>th</sup> June 2016. As a result any Licensee employing staff who gained their RSA qualification within this period must continue to maintain an RSA/RCG register until the 30<sup>th</sup> June, 2016.

The onus to produce their RSA certificates lies with the Licensee and as a result any Licensee who is unable to produce a certificate when requested by police or OLGR inspectors is liable for a penalty of \$1100.

Whilst it will no longer be a requirement to keep an RSA or RCG register after the 30<sup>th</sup> June it is recommended that licensed premises continue this practice so they are able to keep track of their staff and assist police and OLGR inspectors when necessary.

Competency cards differ in that the onus is on the person who holds the RSA/RCG qualification to produce the card when requested by police or OLGR inspectors. Details of offences (Liquor Regulations 2008) relating to RSA and RCG competency cards are listed below:

- Staff fail to produce RSA certification (clause 39D)- \$55
- Permit staff to sell liquor without current RSA card or certificate (clause 40) - \$550 (expired) otherwise \$1100.
- Staff sell/supply/serve liquor without current recognised RSA certification (clause 41)- \$110.
- Employ crowd controller without current recognised RSA certification (clause 42) - \$550

Once a person completes the required RSA training they will be provided with an RSA interim certificate. Once the interim certificate expires they can no longer sell, supply or serve liquor.

- An interim RSA certificate can be used until expiry date.
- Prior to the interim certificate expiring the person should attend Australia Post to have their photo taken. They will need 100 points of ID for this.
- Their RSA competency card will be sent within 10-15 days.

#### **OLGR Links Venue Responsibilities - RSA**

[http://www.olgr.nsw.gov.au/liquor\\_community\\_rr.asp](http://www.olgr.nsw.gov.au/liquor_community_rr.asp) - rights and responsibilities

[http://www.olgr.nsw.gov.au/courses\\_students.asp](http://www.olgr.nsw.gov.au/courses_students.asp) - RSA training information

[http://www.olgr.nsw.gov.au/courses\\_rsa\\_courses.asp](http://www.olgr.nsw.gov.au/courses_rsa_courses.asp) - approved RSA training providers

[http://www.olgr.nsw.gov.au/courses\\_fines.asp](http://www.olgr.nsw.gov.au/courses_fines.asp) - fines relating to RSA

## INTOXICATION

Section 3 of the Liquor Act 2007 outlines the objects of the Act. Of particular importance is the requirement for each person who exercises functions under this Act to have due regard to the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor.

Significant penalties, including fines, higher annual licence fees, and possible suspension or cancellation of a licence, may apply where alcohol is served to an intoxicated person or intoxication is permitted.

The practical steps that are outlined in the guidelines, while not a requirement, perform an important function in providing evidence of what a licensee has done to minimise the risk of intoxication in the event of a prosecution under the liquor laws.

Licensees and staff should also consider what other steps can be taken, in conjunction with the guidelines, to prevent intoxication on their premises.

### Intoxication laws

It is unlawful for a licensee or staff member to sell or supply liquor to an intoxicated person on licensed premises (section 73(2) of the Liquor Act 2007). The maximum penalty is \$11,000.

Under section 5 of the Liquor Act 2007 a person is intoxicated if:

- (a) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
- (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.

### How do you know when a person is intoxicated?

There are many indicators displayed by a person who is intoxicated. They include but are not limited to the following:

- **A noticeable change in behaviour** – aggressive, bad tempered, using offence language, loud, boisterous, disorderly, physically violent, incoherent, slurring their speech, argumentative.
- **A lack of judgement** – careless with money, annoying other persons (including employees), drinking quickly, exhibiting inappropriate sexual behaviour.
- **Loss of coordination** – swaying, staggering, falling down, bumping into furniture or other people, spilling drinks, fumbling for items including money and cigarettes.
- **Decreased alertness** – drowsiness, dozing, rambling conversation, difficulty paying attention, lack of focus.
- **Physical appearance** – bloodshot/glassy eyes, smell of intoxicating liquor on their breath, untidy appearance including stained clothing.



Guidelines have been issued by the Secretary, NSW Trade & Investment, to assist licensees and staff in determining whether a person is intoxicated.

[OLGR Link](#)                      [Intoxication Guidelines](#)

[www.olgr.nsw.gov.au/pdfs/intox\\_guidelines.pdf](http://www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf)

It is unlawful for a licensee to permit intoxication on licensed premises (section 73(1)(a) of the Liquor Act 2007). The maximum penalty is \$11,000. A licensee is deemed to have permitted intoxication if an intoxicated person is on the licensed premises (section 73(4) of the Liquor Act 2007), unless the licensee can prove:

- (a) The licensee or staff:
  - asked the intoxicated person to leave the premises, and
  - contacted, or attempted to contact, the police for assistance in removing the person from the premises, and
  - the person was refused further service of liquor, or
- (a1) The licensee or a staff member had taken the steps set out in guidelines under section 73(5A) of the Liquor Act 2007, or
- (b) The intoxicated person did not consume liquor on the licensed premises.

## **Steps to preventing intoxication on licensed premises**

### **1. Selling, supplying and promoting liquor responsibly**

The steps are:

- (a) the requirement to not sell or supply liquor to an intoxicated person (under section 73(2) of the Liquor Act 2007) is complied with,
- (b) obligations relating to responsible service of alcohol training and the availability of free water (under clauses 40, 42, 42A, 42B and 51 of the Liquor Regulation 2008) are complied with,
- (c) any conditions imposed on the liquor licence or any requirements under the Liquor Act 2007 which restrict the times, type or quantity of alcohol sold or supplied on the licensed premises are complied with, and
- (d) liquor is not sold, supplied or promoted in a manner that is inconsistent with the Liquor Promotion Guidelines issued by the Secretary, NSW Trade & Investment, under section 102(4) of the Liquor Act 2007.

## **2. Monitoring liquor consumption and patron behaviour**

The steps are:

- (a) the licensed premises is operating under the direct supervision of the licensee or appropriately experienced supervisory staff whenever liquor is being sold and supplied,
- (b) liquor consumption by all patrons is actively monitored by the licensee or staff,
- (c) intervention occurs when the licensee or a staff member becomes aware that a patron is consuming liquor irresponsibly and in a manner likely to result in intoxication,
- (d) intervention occurs when the licensee or a staff member becomes aware that a patron is intoxicated to prevent the person from consuming liquor and to request that person to leave the premises,
- (e) patrons entering the licensed premises between midnight and 5am are actively monitored and assessed for intoxication at the time of entry, and f. any conditions imposed on the liquor licence, requirements under the Liquor Act 2007, or requirements of a development consent or approval under the Environmental Planning and Assessment Act 1979, relating to the engagement and duties of security personnel and/or RSA marshals are complied with.

## **3. Implementing harm minimisation measures**

The steps are:

- (a) the availability of free drinking water is actively promoted to patrons throughout the licensed premises,
- (b) action is taken to make patrons aware of the availability of non-alcoholic and low strength alcoholic beverages in the licensed premises,
- (c) any requirements under the Liquor Act 2007 relating to the provision of food on the licensed premises are complied with in a manner consistent with the reasonable requirements, expectations and demands of the patrons of the premises, and
- (d) the following drinks are not sold or supplied between midnight and 5am: i. any drink (commonly referred to as a 'shot', a 'shooter' or a 'bomb') that is designed to be consumed rapidly, ii. any ready to drink beverage with an alcohol by volume content of more than 5%, and iii. any drink prepared on the premises that contains more than 30 ml of spirits or liqueur, other than a cocktail that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly.

#### **4. Planning to prevent intoxication on the licensed premises**

The steps are:

- (a) a written document (such as a plan or house policy) is prepared which:
  - i. details the measures in place to prevent intoxication on the licensed premises (including the method of complying with the steps set out in these guidelines)
  - ii. describes how staff are instructed and trained to prevent intoxication on the licensed premises, and
  - iii. is provided to police and inspectors upon request.
- (b) all staff receive instructions and training on the contents of the document referred to in step 4(a) above before they commence working on the licensed premises

**OLGR Links**

**Prevention of Intoxication Guidelines**

[olgr\\_intox\\_guidelines.pdf](#)

**Liquor Promotions Guidelines**

[http://www.olgr.nsw.gov.au/pdfs/Liquor\\_promotion\\_guidelines.pdf](http://www.olgr.nsw.gov.au/pdfs/Liquor_promotion_guidelines.pdf)

## SIGNAGE

Sign 1 – Under 18s not to be served alcohol – all premises

This sign must be displayed wherever alcohol is sold on licensed premises i.e. at each bar and counter.

Where there is no bar or counter (eg a restaurant), the sign must be prominently displayed at each entrance of the premises.



Sign 2 – Bar areas of hotels and clubs, and gaming machine areas of clubs

This sign must be displayed in each bar area of a hotel or club.

A bar area is defined as any area of a hotel or club where liquor is served, except those areas where a person under 18 are allowed by law to enter eg. dining area, authorised minors area in a hotel. This sign is also required to be displayed in the gaming machine areas of clubs.



Sign 3 – Under 18 authorisation sign – hotels and public entertainment venues

This sign must be visible from each entrance to areas of a hotel where a minors area authorisation is in place. A minors area authorisation allows under 18s into an area of a hotel when in the company of a responsible adult.

In the case of an on-premises licence that relates to a public entertainment venue (not a cinema or theatre), this sign must be visible from each entrance to any area where entertainment is provided.



Sign 4 – Breath testing sign in premises with breath analysis machines

This sign must be clearly displayed next to a breath analysis machine, where one is installed.

This sign does not have to be purchased from the Office of Liquor, Gaming and Racing but cannot be reproduced without express permission. Venues wishing to produce their own sign must use the same wording prescribed by law.



Sign 5 – PSA Sign – Restaurants with a primary service authorisation Only licensed restaurants which have applied for and been granted a primary service authorisation (PSA) by the Casino, Liquor and Gaming Control Authority can serve alcohol

without a meal. The primary purpose of licensed restaurants must continue to be the provision of food/meals - including those which have been granted a primary service authorisation.

Only licensed restaurants, and other venues which have been granted a PSA, can and are required by law, to display a PSA sign at or near every entrance to the premises.



Sign 6 – Under 18s not permitted during liquor trading hours – small bars

This sign applies to small bar licences and must be displayed so that it can be seen by a person entering the premises.

By law this sign must be purchased from the Office of Liquor, Gaming and Racing and cannot be reproduced.



Sign 8: Front of premises sign – all premises

A sign must be displayed at the front of the premises that shows the name of the premises, the type of liquor licence held and the name of the licensee.

On-premises licences must also indicate the type of business or activity carried out on the premises e.g. restaurant, and for Hotels designated as a general bar, it must indicate that it is a general bar licence.

The sign must be displayed so that it can be read by a person from outside of the front of the premises.

**Railway Hotel**

**Hotel Licence**

**William JOHNSON**

**OLGR Link Signage Requirements regarding Liquor Only**

**[http://www.olgr.nsw.gov.au/signs\\_signs.asp](http://www.olgr.nsw.gov.au/signs_signs.asp)**