

Guide to Tasmanian Liquor Licensing laws for licence holders

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Guide to Tasmanian Liquor Licensing laws for licence holders

1. Purpose

The purpose of this guide is to provide an overview and assist your understanding of the liquor licensing laws in Tasmania. The guide contains **extracts** from the *Liquor Licensing Act 1990*. A complete copy of the Act can be found on the Liquor and Gaming Branch website at www.liquorlicensing.tas.gov.au.

The relevant sections of the Act will be referenced in this guide to assist you in understanding the law.

2. Licence Types

General licence

A general licence authorizes the sale of liquor on the licensed premises between 5 a.m. and midnight daily, for consumption on or off the premises. Hotels providing bar and bottle shop facilities usually operate under a general licence.

Club licence

A club licence authorizes the sale of liquor on the club's premises between 5 a.m. and midnight daily, for consumption on or off the premises. The sale of liquor is generally limited to club members, guests and people attending the premises for club related activities (refer to prescribed persons at end of this document).

On-licence

An on-licence authorizes the sale of liquor for consumption on the licensed premises between 5 a.m. and midnight daily. Premises such as bars, lounges and nightclubs that do not have take away liquor service (off sales) usually operate under an on-licence.

An on-licence also authorizes the sale of liquor at a restaurant for consumption with or without food. An on-licence in respect of premises operating as a restaurant (where the principal activity is serving food for consumption on the premises) can be issued where the intention of the licensee is to continue to operate as a restaurant.

Off-licence

An off-licence authorizes the sale of liquor between 5 a.m. and midnight daily for consumption off the licensed premises. This licence is usually issued to a person who wishes to operate a bottle shop as a standalone facility or where the bottle shop portion of a hotel premises is to be independently licensed.

Special licence

A special licence authorizes the sale of liquor on the licensed premises between specified times and is subject to specific limitations or restrictions such as the types of liquor that can be sold or the means by which sale takes place. This licence is usually issued to cafés, restaurants, function centres, tertiary institutions, accommodation providers, wine producers, wholesalers or tourist attractions.

The Commissioner may in accordance with section 25B of the Act grant a liquor licence subject to such conditions as the Commissioner thinks fit.

3. Important Definitions

Best interests of the community

In considering an application for a liquor licence under section 24A of the Act or an approval to alter the area of a licensed premises under section 47 of the Act the best interests of the community is determined by either the Commissioner for Licensing or the Tasmanian Liquor and Gaming Commission, after considering the object and scope of the Act, and the interests included in the *Liquor Licensing Regulations 2016* (shown below).

2A. Object of Act

- (1) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –
 - (a) minimise harm arising from the misuse of liquor by –
 - (i) ensuring that the supply of liquor is carried out in a way that is in the **best interests of the community** and does not, as far as practicable, detract from public amenity; and
 - (ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and
 - (iii) encouraging a culture of responsible consumption of liquor; and
 - (b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the **best interests of the community**.
- (2) It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a matter as to further the object set out in subsection (1).

Both the Commissioner and the Commission are independent bodies established under legislation. They take the unique circumstances of each case into account when making a decision. The Regulations make clear that they must take the interests of the whole community into account, not just private interests.

The definition of **best interests of the community** is prescribed in the *Liquor Licensing Regulations 2016* as follows:

- (a) **The general costs and benefits to the community of the supply, or proposed supply, of liquor** considers the nature and type of facilities proposed. Costs of a proposal may include the potential for alcohol-related anti-social behaviour or alcohol-related crime. Benefits may include employment, tourism or recreational benefits that may arise from the proposed activities, such as the responsible development of the hospitality industry.
- (b) **Whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –**
 - (i) reside or work; or
 - (ii) attend schools or other facilities frequented by children; or
 - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
 - (iv) attend places of worship.

Consideration may be given to whether there are hospitals, hospices, aged care facilities, places of worship, child care centres, schools, alcohol free areas, public parks/children's playgrounds or facilities, and support services for people receiving treatment for alcoholism or other addictions located within a specific distance of the proposed premises, and the potential impact that the proposal may have on these.

(c) **Possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor** is quite broad, but may include:

- issues relating to outlet density and whether the proposed premises is located in an area more prone to alcohol-related issues, for example, its proximity to businesses with vulnerable customers (such as an opportunity store that is frequented by a significant number of alcohol dependent customers);
- the availability of safe transport options where the premises is likely to result in late night departures of patrons;
- the incidence of alcohol-related crime in the area; and
- whether the location of the premises is one about which Tasmania Police, the Department of Health and Human Services and /or Local Councils have concerns with regard to increased access to alcohol.

Potential adverse effects on public amenity are among the objects of the Act and would be considered in licence applications. Public amenity includes the nature and character of the local community and how the proposed licence would fit that location. Impacts that may be considered include litter and other pollution associated with the operation of a premises, increases in pedestrian and vehicle traffic, types of local businesses, public services and residences in the vicinity.

Fit and Proper

Under the Act a person must be fit and proper to be qualified to hold a licence or to be an associate of an applicant or licensee. If an associate is not fit and proper, then the applicant or licensee is not considered to be qualified to hold a licence.

The Commissioner for Licensing determines whether a person is fit and proper and whether a person is qualified to hold a licence. The Act requires that all decisions must be made by considering what is in the best interests of the community.

What does fit and proper mean?

Fit and proper means different things depending on the circumstances to which it is applied. Whether a person is fit and proper can depend on: the **activities a person will be performing** and the **ends to be served by those activities**; and **a person's previous behaviour**.

When authorising a person to become a licensee, decision makers are concerned about whether the person knows and understands their legal obligations, and whether they have the ability to act with honesty and integrity to minimise harm arising from the misuse of liquor.

What is considered when making an assessment?

Determining whether a person is fit and proper happens on a case-by-case basis, as every person's situation is different. It requires judgement and evaluation.

Considering a person's **character** and **reputation** are important parts of the assessment. Character is important as it reflects a person's moral qualities (their views about what is right and wrong) and suggests how they may act if they become a licensee or an associate. Reputation is important as it reflects what a reasonably-minded member of the public thinks about the person's likely future behaviour, regardless of their character.

The Commissioner is able to make inquiries to assist the assessment, including requesting a report from the Commissioner of Police (although this is not always necessary). A national police check is always undertaken.

Matters of interest in a fit and proper assessment

- Any major convictions within a given period.
- A consistent pattern of convictions that suggest a disregard for the law.
- Any convictions against the Act.
- Failing to discharge financial obligations or debts owing to the Crown under the Act.
- Good repute, integrity and character, no history of behaviour that would cause the person to be unsuitable to hold a licence, or be an associate of a licensee.

When would a person not be considered fit and proper?

A person would not be considered fit and proper if they are a member of a criminal organisation, or associated with a criminal organisation. Other examples of matters that would be closely examined under a fit and proper assessment include:

- prison terms;
- the committing of a serious offence, including violence, corruption or drug related offences;
- the committing of many smaller offences, such that a pattern of disregard for the law or for public safety is displayed;
- having been bankrupt, or entered into an arrangement or composition with creditors; and
- a history of non-compliance under the liquor legislation.

What if a licensee or an associate is no longer considered fit and proper?

The Commissioner is likely to consider taking disciplinary action, which may include the suspension or cancellation of a licence.

Associates

3A. Meaning of "associate"

- (1) For the purposes of this Act, a person is taken to be an associate of an applicant for a liquor licence or liquor permit, or of a licensee or permit holder if –
 - (a) the person holds, or will hold, any relevant financial interest, or is, or will be, entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in the business of the applicant, licensee or permit holder and, by virtue of that interest or power, is able, or will be able, to exercise a significant influence over, or with respect to, the management or operation of that business; or
 - (b) the person holds, or will hold, any relevant position, whether in right of the person or on behalf of any other person, in the business of the applicant, licensee or permit holder; or
 - (c) the person is a relative of the applicant, licensee or permit holder; or
 - (d) the Commissioner is satisfied that the person could exercise a significant influence over the applicant, licensee or permit holder.

"relative" means a spouse, partner, parent, child or sibling (whether full blood or half- blood).

"relevant financial interest", in respect of a business, means –

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business.

"relevant position", in respect of a business, means –

- (a) the position of director, manager or other executive position or secretary, however that position is designated in that business; or
- (b) if that business is conducted in premises in respect of which a liquor licence is in force, the licensee; or
- (c) if that business is conducted in premises in respect of which a permit is in force, the permit holder.

"relevant power" means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others –

- (a) to participate in a directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position.

Intoxication

The Act makes it an offence to sell or serve liquor on licensed premises to a person who, you believe on reasonable grounds, is intoxicated. Fines of up to 50 penalty units may be issued to people where liquor is served to an intoxicated person. Licensees may also be fined 100 penalty units for allowing persons authorised by them to supply liquor to an intoxicated person.

3B. Meaning of "intoxicated"

- (1) For the purposes of this Act, a person is intoxicated if –
 - (a) the person's speech, balance, coordination or behaviour is noticeably affected; and
 - (b) it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor or other substances.

Signs of intoxication

Not all people are affected by liquor in the same way. Factors such as the amount of liquor consumed, general state of health, gender, body weight, medications and food intake affect the rate at which a person becomes intoxicated.

Things you could do to help assess whether someone is intoxicated

Things you can do to help decide whether someone is intoxicated:-

- observe the amount and type of liquor they have consumed;
- observe their behaviour;
- talk to them and/or their friends; and
- get a second opinion from your work mates and/or supervisor.

Tips for preventing intoxication

- Make sure you are familiar with and follow your house policy on the responsible service of alcohol.
- Promote low or mid-strength alcoholic drinks, non-alcoholic drinks and food.
- Serve free water with drinks and ensure free water is constantly available for patrons.
- Provide free snack food.
- Do not automatically fill up drinks, wait for the patron to re-order.
- Slow service down for the patron.
- Alert other staff to a patron showing signs of intoxication;

- Talk to patrons to gauge the level of intoxication.
- Do not conduct an activity or promotion that will result in patrons engaging in irresponsible, rapid or excessive consumption of liquor.

Refusing service to someone who is intoxicated is a legal requirement. It is a responsibility that all people who serve liquor must accept as part of their job and their duty of care to patrons, their workmates and themselves.

This is not a grey area, if you have reasonable grounds for the belief that someone is intoxicated, you must not sell or serve them liquor.

Tips for refusing service

- Early intervention - Take notice of the patron's behaviour early, before it becomes a problem. Give early warnings so the patron knows where they stand and has an opportunity to behave better.
- Offer an alternative - Refusing service of liquor is not a total ban on service if caught early enough. Offer a soft drink, coffee, water or a break from drinking altogether.
- Deliver the message to the patron without an audience and use open body language - Do not give the patron an opportunity to "make a scene" as well as allowing them to "save face". Explain your concern without prejudice, letting them know that their welfare, and the welfare of others is your first concern.
- Use the law as a defence - Take yourself out of the argument by letting them know that you have no choice under the law. If you need to repeat firmly that by law they cannot be served another drink.
- Stay calm and get assistance if you need to - Ensure that you have backup from other staff, supervisors and management.
- Once you have refused service to the person notify the manager, licensee, supervisor or security.
- Consider a short term ban if necessary - Management are able to impose a short-term ban where they believe it is required.

4. Obligations of Licensees (as at 1 July 2016 one penalty unit is \$157)

46. Licensees and permit holders to retain control on sale and consumption of liquor

A licensee or permit holder must ensure that the business carried out on the licensed premises or permit premises is carried on in such a way that the licensee or permit holder can exercise effective control over the sale and any consumption of liquor on the premises.

Penalty: Fine not exceeding 50 penalty units.

46A. Licensees and permit holders to ensure responsible sale and service of liquor

(1) A licensee must not allow a person to sell or serve liquor on the licensed premises unless the person –

- (a) has successfully completed an approved course; or
- (b) has been an employee of the licensee for, in aggregate, less than 3 months and is –
 - (a) undertaking an approved course; or
 - (b) formally enrolled in an approved course that is scheduled to start within 3 months from the day on which the person is permitted to serve the liquor.

Penalty: Fine not exceeding 20 penalty units.

- (2) To demonstrate compliance with subsection (1) or (1A), a licensee or permit holder must –
 - (a) keep such records on the licensed premises or permit premises as the Commissioner, by written notice served on the licensee or permit holder, may from time to time require; and
 - (b) produce all or any those records to the Commissioner or an authorized officer on demand.
- (3) The Commissioner may exempt the holder of a special licence from the requirements of this section if satisfied that it is not against the public interest to do so.
- (4) In this section –

"approved course" means a course of instruction or training in the service of liquor, approved by the Commissioner.

"employee" includes a person engaged under a contract for services.

46B. Licensees and permit holders to ensure seller and server of liquor meets minimum age requirements

A licensee or permit holder must not allow a person to sell or serve liquor on the licensed premises or permit premises if that person does not meet the minimum age requirement prescribed for the purposes of this section.

Penalty: Fine not exceeding 50 penalty units.

46C. Sale and consumption of liquor not to cause undue annoyance, disturbance or disorderly conduct

A licensee or permit holder must ensure that the sale and consumption of liquor on the licensed premises or the permit premises does not –

- (a) cause undue annoyance or disturbance to –
 - (i) people living or working in the neighbourhood of the premises; or
 - (ii) customers or clients of any business in the neighbourhood of the premises; or
 - (iii) people conducting or attending religious services or attending a school in the neighbourhood of the premises; or
 - (iv) people lawfully on the premises; or
- (b) cause the occurrence of disorderly conduct –
 - (i) in the premises; or
 - (ii) in the neighbourhood of the premises.

Penalty: Fine not exceeding 50 penalty units.

46D. Sale of liquor through internet or by other communication media

- (1) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must cause the licence number to be prominently displayed in any advertisement or information published, whether in writing or electronically, in connection with such sales.

Penalty: Fine not exceeding 20 penalty units.

- (2) A licensee who sells liquor through an internet site must ensure that –
 - (a) the licence number is prominently displayed on the site and in any advertisement or information published, whether in writing or electronically, in connection with such sales; and
 - (b) a notice in a form approved or provided for the purpose by the Commissioner is displayed prominently on the site at all times.

Penalty: Fine not exceeding 20 penalty units.

The following notice has been issued by the Commissioner for the purposes of S46D.(2)(b).

WARNING

Under the *Liquor Licensing Act 1990* it is an offence:

for liquor to be delivered to a person under the age of 18 years.

Penalty: Fine not exceeding 20 penalty units

for a person under the age of 18 years to purchase liquor.

Penalty: Fine not exceeding 10 penalty units

- (3) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order, or who sells liquor through an internet site must –
- (a) at the time at which an agreement for sale is made, require the prospective purchaser to supply the purchaser's date of birth unless it has previously been supplied to the licensee; and
 - (b) give written instructions to the person responsible for delivery of the liquor, requiring that the liquor be delivered –
 - (i) to the adult person who placed the order; or
 - (ii) to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order; or
 - (iii) if the sale was made through an internet site, in accordance with the customer's instructions.

Penalty: Fine not exceeding 20 penalty units.

- (4) If delivery of any liquor in a manner described in this section is taken by a person under the age of 18 years, the licensee, and any person who delivers the liquor on the licensee's behalf is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

Evidence of age

A licensee who sells liquor through an internet site or takes orders over the telephone, facsimile or by mail order must, at the time at which the agreement for sale is made, confirm that the prospective purchaser is of or above the age of 18 years of age. This can be achieved by:

- A purchaser provides their date of birth (in order to evidence that they are of or above the age of 18 years of age). This only needs to occur at the time of the first sale, a regular purchaser is not required to supply their date of birth for each sale.

Delivery

A licensee who sells liquor through an internet site or takes orders over the telephone, facsimile or by mail order must, at the time at which the agreement for sale is made, give written instructions to the person responsible for delivery of the liquor requiring that the liquor be delivered:

- (i) to the adult person who placed the order; or
- (ii) to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order; or
- (iii) if the sale was made through an internet site, in accordance with the customer's instructions.

Failure to adhere to the above delivery requirements may lead to a fine not exceeding 20 penalty units.

Delivery must not be taken by a minor. If a minor takes delivery of liquor the licensee and any person by whom the liquor was delivered on the licensee's behalf are guilty of an offence which may lead to a fine of up to 20 penalty units.

The Act also requires that a person must not order or request a person under the age of 18 years to take delivery of liquor sold over the internet, by telephone, facsimile or mail order. Doing so may result in a fine of up to 20 penalty units.

47. Licensee not to alter area of licensed premises without approval

- (1) A licensee must not alter the area of the licensed premises without the Commissioner's approval.

Penalty: Fine not exceeding 20 penalty units.

- (2) The Commissioner is not to approve an alteration to the area of licensed premises unless he or she is satisfied that it is in the best interests of the community to do so.

48. Licensee to notify Commissioner of alteration to designated area

A licensee must –

- (a) give the Commissioner written notice at least 30 days before altering the boundaries of an area designated under section 84(1) or (2); and
- (b) give the Commissioner such information about the proposed alteration as the Commissioner may require.

Penalty: Fine not exceeding 20 penalty units.

53. Licence or permit to be produced on demand

A licensee or permit holder must produce a licensee's liquor licence or the permit holder's permit to a police officer or authorized officer when required to do so.

Penalty: Fine not exceeding 20 penalty units.

54. Licence to be displayed

A licensee must display the licensee's liquor licence in a conspicuous position on the licensed premises.

Penalty: Fine not exceeding 20 penalty units.

54A. Authority to act as licensee to be displayed

The holder of an authority to act as licensee must display the authority in a conspicuous position on the licensed premises.

Penalty: Fine not exceeding 20 penalty units.

55. Permits to be displayed in licensed premises

A licensee must display in a conspicuous position on the licensed premises any liquor permit granted in respect of the premises.

Penalty: Fine not exceeding 20 penalty units.

60. Licensee to display notice prohibiting or restricting entry of young people

A licensee must ensure that there is displayed in a conspicuous position at each entrance to any part of the licensed premises designated in accordance with section 84(1) or (2) (entry of young people prohibited or restricted) a notice provided or approved for that purpose by the Commissioner giving notice of the prohibition or restriction that applies in that part.

Penalty: Fine not exceeding 20 penalty units.

61. Licensee to prohibit or restrict entry of young people to certain parts of licensed premises

A licensee must ensure that a person under the age of 18 years does not -

- (a) enter or remain on any part licensed premises designated section 84(1); or
- (b) enter or remain on any part of the licensed premises designated under section 84(2) except –
 - (i) to have a meal; or
 - (ii) in the company of a responsible adult.

Penalty: Fine not exceeding 20 penalty units.

"responsible adult" means a person of or above the age of 18 years who, in relation to a person under the age of 18 years (the *minor*), belongs to one or more of the following classes of persons:

- (a) parent, step-parent or guardian of the minor;
- (b) the spouse or partner of the minor;
- (c) a person who, for the time being, has parental responsibility for the minor;

62. Licensees and permit holders to require certain people to leave licensed premises or permit premises

A licensee or permit holder must require a person who –

- (a) is acting in a violent, quarrelsome or disorderly manner; or
- (b) is using disgusting, profane or foul language to leave the licensed premises or permit premises.

Penalty: Fine not exceeding 20 penalty units.

63. Liquor not to be consumed on off-licensed premises

The holder of an off-licence must not allow liquor purchased on the licensed premises to be consumed on those premises unless the consumption is authorized by an on-permit.

Penalty: Fine not exceeding 20 penalty units.

64. Liquor not to be removed from on-licensed premises

The holder of an on-licence must not allow liquor purchased on the licensed premises to be taken off those premises to be consumed elsewhere unless consumption of the liquor off the premises is authorized by an off-permit.

Penalty: Fine not exceeding 20 penalty units.

65. Licensee to restrict people on licensed premises outside authorized hours

- (1) A licensee must not allow a person to enter or remain on any part of the licensed premises where liquor is normally sold at anytime between –
- (a) 15 minutes after the time when the sale of liquor on the premises under the authority of a liquor licence or permit ceased; and
 - (b) the next time when liquor may be sold on the premises under the authority of a liquor licence or permit.

Penalty: Fine not exceeding 20 penalty units.

66. Licensee to notify Commissioner of prolonged absence from licensed premises

- (1) A licensee must not be absent from the licensed premises for a period exceeding 14 days unless before the absence, the licensee gives the Commissioner written notice specifying –
- (a) the period during which the licensee will be absent; and
 - (b) the name and address of the person who will be in charge of the premises during the licensee's absence, being a person who is 18 years of age or older.

Penalty: Fine not exceeding 20 penalty units

5. Notifying the Commissioner of Change

Licensees must notify the Commissioner in writing within 14 days of a number of changes including:

- contact details change, for themselves or any associates, such as name and address;
- an associate is added; and
- they or an associate, is found guilty of an offence in Tasmania or any other jurisdiction, whether or not a conviction was recorded (excluding traffic offences for which the maximum penalty is limited to a fine only).

Failure to comply could result in disciplinary action and the suspension or cancellation of a liquor licence.

49. Licensee and permit holders to notify Commissioner of change

- (1) Whenever a change of a kind specified by the Commissioner in writing, served on a licensee or permit holder, takes place in the situation existing in relation to that licensee or permit holder, the licensee or permit holder must, in a form approved or provided for the purpose by the Commissioner, notify the Commissioner of the change within 14 days after it takes place.
- (2) The Commissioner may require a licensee or permit holder to supply the Commissioner with such further particulars of a change in situation (including information about any associates) as the Commissioner considers necessary.

6. Offences (as at 1 July 2016 one penalty unit is \$157)

68. Prohibited or restricted advertising or promotion

- (1) The Commissioner may serve a notice on a licensee or permit holder that prohibits or restricts the advertising or promotion of the sale of liquor by the licensee or permit holder if, in the opinion of the Commissioner –
- a) the advertising or promotion, or the proposed advertising or promotion, is likely to encourage irresponsible consumption of liquor; or
 - b) it is otherwise in the public interest to do so.
- (2) A licensee or permit holder on whom a notice under subsection (1) is served must comply with the notice.

Penalty: Fine not exceeding 20 penalty units.

69. False applications

A person must not knowingly make a false or misleading statement in an application made for the purposes of this part.

Penalty: Fine not exceeding 50 penalty units

69A. Liquor not to be sold or served by a person who is intoxicated

- (1) A person must not sell or serve liquor on licensed premises or permit premises if he or she is intoxicated.

Penalty: Fine not exceeding 20 penalty units

- (2) A licensee or permit holder is guilty of an offence if a person authorized by the licensee or permit holder to sell or serve liquor on a licensed or permit premises sells or serves liquor whilst intoxicated.

Penalty: Fine not exceeding 50 penalty units

70. Liquor not to be sold or served to young people

- (1) A person must not sell or serve liquor to a person under the age of 18 years on licensed or permit premises.

Penalty: Fine not exceeding 50 penalty units

- (2) A licensee or permit holder is guilty of an offence if a person authorized by the licensee or permit holder to sell or serve liquor on the licensed premises or permit premises sells or serves liquor to a person under the age of 18 years.

Penalty: Fine not exceeding 100 penalty units.

71. Liquor not to be supplied to young people on licensed premises or permit premises

A person shall not supply liquor to a person under the age of 18 years on -

- (a) licensed premises; or
- (b) permit premises.

Penalty: Fine not exceeding 50 penalty units.

72. Young person not to enter, &c., certain parts of licensed premises, &c.

- (1) A person under the age of 18 years must not enter or remain on any part of licensed premises designated as a Prohibited area where a notice specifying the prohibition is displayed in accordance with section 60.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person under the age of 18 years must not enter or remain on any part of licensed premises designated as Restricted where a notice specifying the restriction is displayed in accordance with section 60 except -
- (a) to have a meal; or
 - (b) in the company of a responsible adult.

Penalty: Fine not exceeding 20 penalty units.

- (3) Subsections (1) and (2) do not apply to a person working on the licensed premises.

72A. Young person not to produce false evidence of identity

A person under the age of 18 years must not use a false document in order to do, or attempt to do, anything that a person under that age is prohibited from doing by or under this Act.

Penalty: Fine not exceeding 10 penalty units.

73. Liquor not to be purchased by young people

A person under the age of 18 years must not purchase liquor.

Penalty: Fine not exceeding 10 penalty units.

75. Young person not to be given possession or charge of liquor on licensed premises, &c.

- (1) A licensee or permit holder, or a person acting on behalf of the licensee or permit holder must not give to a person under the age of 18 years possession or control of liquor on the licensed premises or permit premises or allow a person under the age of 18 years to have or retain possession or control of liquor on the licensed premises or permit premises.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply in respect of a person under the age of 18 years who –
- (a) has possession or charge of liquor in the course of work; and
 - (b) is working under the direct and personal supervision of a person who has attained the age of 18 years.

76. Young person not to consume liquor on licensed premises or permit premises.

A person under the age of 18 years must not consume liquor on -

- (a) licensed premises; or
- (b) permit premises.

Penalty: Fine not exceeding 10 penalty units.

77. Young person not to have possession or control of liquor on licensed premises or permit premises.

- (1) A person under the age of 18 years must not have possession or control of liquor on -
- (a) licensed premises; or
 - (b) permit premises.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply in respect of a person who -
- (a) has possession or charge of liquor in the course of work and;
 - (b) is working under the direct and personal supervision of a person who has attained the age of 18 years.

78. Liquor not to be sold or served to intoxicated people

(1) A person must not sell or serve liquor on licensed premises or permit premises to a person who is intoxicated.

Penalty: Fine not exceeding 50 penalty units.

(2) A licensee or permit holder is guilty of an offence if a person authorized by the licensee or permit holder to sell or serve liquor on the licensed premises or permit premises sells or serves liquor to a person who is intoxicated.

Penalty: Fine not exceeding 100 penalty units.

79. Liquor not to be supplied on licensed premises or permit premises to intoxicated people

A person must not supply liquor to a person who is intoxicated on -

- (a) licensed premises; or
- (b) permit premises.

Penalty: Fine not exceeding 50 penalty units.

79A. Licensee and permit holder to prevent offences on licensed premises and permit premises

A licensee or permit holder who knows or has reason to believe that an offence under this or any other Act is being, or is about to be, committed on the licensed premises or permit premises must take reasonable action to prevent the commission of the offence.

Penalty: Fine not exceeding 100 penalty units.

80. Person to leave licensed premises when requested to do so, &c.

(1) A person must leave licensed premises when required to do so by -

- (a) the licensee or a person acting with the authority of the licensee; or
- (b) a police officer –

acting in accordance with this Act.

Penalty: Fine not exceeding 50 penalty units.

(2) A person who -

- (a) has left licensed premises in compliance with subsection (1); or
- (b) has been removed from licensed premises by a police officer acting in accordance with this Act -

must not re-enter or attempt to re-enter those premises within the period of 24 hours immediately after leaving or being removed from the premises.

Penalty: Fine not exceeding 50 penalty units.

(2A) A person to whom subsection (1) applies must not, without reasonable excuse, remain in the vicinity of those licensed premises for –

- (a) the remainder of the day's trading for the licensed premises; or
 - (b) 6 hours from being required to leave the premises -
- whichever is the longer period.

82. Authorized officer not to be hindered, &c.

A person must not -

- (a) hinder an authorized officer carrying out the authorized officer's duties under this Part; or
- (b) fail to comply with any requirement of an authorized officer made in accordance with this Part; or

- (c) fail to provide an authorized officer with reasonable assistance in the exercise of any power under this Part.

Penalty: Fine not exceeding 100 penalty units.

83. Name, address and date of birth to be given to police if lawfully requested

A person must give the person's name, address and date of birth if required to do so by a police officer acting in accordance with this Part.

Penalty: Fine not exceeding 50 penalty units.

7. Barring orders

Under the Act a Barring Order may be used to prohibit a person from **entering** or **remaining** on a licensed premises for a period of up to 6 months.

A **licensee** (or person acting with their authority) or a **police officer** (acting with the authority of a senior police officer) may bar a person.

81. Barring orders

- (1) In this section –

"barred person" means a person on or to whom an order under subsection (2) or (4) is served or given;

"senior police officer", in relation to a barring order, means –

- (a) In the case of a barring order in force for a period of less than 72 hours.
A police officer of or above the rank of sergeant; and
- (b) In the case of a barring order in force for a period of 72 hours or more,
a police officer of or above the rank of inspector.
- (2) A licensee, a person acting with the authority of the licensee, or a permit holder, may by order in writing served on a person, bar that person from entering or remaining on the licensed premises or permit premises for a specified period not exceeding 6 months –
- (a) if the barred person is intoxicated or acting in a violent or quarrelsome manner on the licensed premises or permit premises; or
- (b) if the licensee, person acting with the authority of the licensee, or permit holder, reasonably believes that the safety of the barred person or any other person on the licensed premises or permit premises is at risk because of the behaviour of the barred person as a result of his or her consumption of liquor; or
- (c) on any other reasonable ground.
- (3) An order served under subsection (2) must be in a form approved by the Commissioner.
- (4) A police officer may, with the authorisation of a senior police officer, by order given to a person in the prescribed manner, bar the person from entering or remaining on –
- (a) specified licensed premises or permit premises; or
- (b) licensed premises or permit premises of a specified class within a specific area; or
- (c) all licensed premises or permit premises within a specific area -
for a specified period not exceeding 6 months.

- (5) A police officer may give an order under subsection (4) –
 - (a) If the police officer is satisfied that the welfare of the barred person is seriously at risk as a result of the barred person's consumption of liquor; or
 - (b) If the barred person commits an offence, or behaves in an offensive or disorderly manner, on the licensed premises or permit premises or in an area adjacent to the licensed premises or permit premises; or
 - (c) on any other reasonable ground.

8. Administrative Information

General

84. Areas of licensed premises may be designated to prohibit or restrict entry, &c., of young people

- (1) The Commissioner may from time to time designate any part of licensed premises as an area where a person under the age of 18 years cannot enter or remain. **(PROHIBITED AREA)**
- (2) The Commissioner may from time to time designate any part of licensed premises as an area where a person under the age of 18 years cannot enter or remain except –
 - (i) to have a meal; or
 - (ii) in the company of a responsible adult. **(RESTRICTED AREA)**
- (3) The designation of an area under subsection (1) or (2) may be limited to apply between specified times.
- (4) An area may be designated under both subsection (1) and (2) if the designations apply at different times.
- (5) A designation under subsection (1) or (2) may apply to the whole of the licensed premises.

"responsible adult" means a person of or above the age of 18 years who, in relation to a person under the age of 18 years (the *minor*), belongs to one or more of the following classes of persons:

- (a) parent, step-parent or guardian of the minor;
- (b) the spouse or partner of the minor;
- (c) a person who, for the time being, has parental responsibility for the minor;

93. Power to restrict entry to licensed or permit premises

- (1) A licensee or a person acting with the authority of the licensee may –
 - (a) prohibit the entry of any person onto the licensed premises; or
 - (b) require a person to leave the licensed premises.

Employing young people where liquor is sold

Employees must be at least 16 years of age to serve liquor and must be 18 years of age in some circumstances

Employees who sell or serve liquor must be at least 16 years of age and hold the appropriate Responsible Service of Alcohol course accreditation attained from an approved

Registered Training Organisation (see website www.liquorlicensing.tas.gov.au for approved RTO's).

Serving includes the person taking the drink order, the staff member preparing the drinks or the staff member taking the drink order to the table.

Employees who are under 18 years of age must be under direct adult supervision at all times and can only serve in areas in which they are legally permitted to enter and remain. If an area is designated as a prohibited area under section 84(1) of the Act, then staff who are selling, serving or supplying liquor must be at least 18 years of age. The minimum age of 16 applies in all other areas (including those designated as a restricted area under section 84(2) of the Act).

The Commissioner for Licensing may determine that it is appropriate to employ a person under 16 years to sell or serve liquor

An application may be made to the Commissioner for Licensing for a person under 16 years to sell or serve liquor as part of their employment on licensed or permit premises. The application must be made by a licensee or permit holder using the **Application to employ a person under 16 years to sell or serve liquor form** provided at www.liquorlicensing.tas.gov.au. It is then assessed by the Commissioner to determine whether or not **that** young person may be employed to sell or serve liquor on **that** premises. The application must not relate to an area designated as a prohibited area under section 84(1) of the Act.

Advertising and promotion of liquor

Licensees must advertise and promote liquor in a way that supports responsible service and consumption principles.

Section 68 of the Act enables the Commissioner to prohibit or restrict the advertising or promotion (or the proposed advertising or promotion) if they are likely to encourage irresponsible consumption of liquor, or if it is otherwise in the public interest to do so.

To prohibit or restrict advertising or promotion, the Commissioner will serve a written notice on a licensee.

Minimising the risk of harm from liquor advertising and promotion in your premises

Advertising and promotion are commonly used by licensees and permit holders to attract patrons. However you should always assess the risks before you go ahead. In many cases the risk that is raised by one element, can be offset or reduced by adjusting another element of the promotion. If you are in doubt contact the Liquor and Gaming Branch.

Elements to consider are:

- Offer lower strength liquor products rather than products with a high alcohol content. For example, limiting the number of shots added to cocktails.
- When providing free sampling, consider limiting the number of samples and providing an offset by limiting the discount of liquor during a promotion, ensuring that reduction in price is not extreme and likely to encourage rapid or excessive consumption.

- Place reasonable limits on the duration of the promotion, for example a happy hour should not extend for more than two hours. Be aware that time limits can also encourage rapid or excessive consumption.
- Limit the number of drinks that can be purchased by a single person in a single transaction during the promotion. For example, two drinks per person per transaction during happy hour.
- Avoid games, dares, challenges and competitions that may create an incentive for patrons to drink more.
- Consider limiting the number of promotions that are held during a single trading period.
- Check that the proposed advertisement is not in conflict with the standards for alcohol marketing set out in the *ABAC Responsible Alcohol Marketing Code*. All advertisements for alcohol beverages are required to comply with this Code and any complaints alleging breaches are formally examined by the ABAC Adjudication Panel. Further information is available at www.abac.org.au.

9. Overview of Disciplinary action

The Act aims to minimise harm arising from misuse of liquor by ensuring that the supply of liquor is carried out in a way that is in the best interests of the community. Failure by licensees to meet obligations may be considered an offence under the Act and result in disciplinary action.

What are disciplinary actions?

In addition to a number of offences and penalties that are enforceable by Tasmania Police, there are a number of actions the Commissioner can take where a breach of obligation has happened.

The form of disciplinary action taken will depend on the seriousness of the non-compliance, ranging from a warning for minor breaches to the cancellation of a liquor licence or permit for severe circumstances. Other forms of action include issuing fines, varying the conditions or imposing a condition on a liquor licence or permit and suspension of a licence or permit for a specific period.

What if the licensee does not agree with the disciplinary action?

Licensees will be notified in writing when the Commissioner is considering taking disciplinary action and the reasons why. After receiving the notice, the licensee has 14 days to make a written response to the Commissioner explaining why the disciplinary action should not be taken.

The Commissioner will consider the response and may decide to take no further action if appropriate. Where the Commissioner decides to take action, a notice detailing the decision including any disciplinary measures is served on the licensee.

The licensee has a right to appeal the decision to the Tasmanian Liquor and Gaming Commission. An appeal needs to be lodged within 14 days of being notified of the decision or within such further period as the Commission considers is appropriate in the interest of natural justice.

When does the disciplinary action start?

The notice will state the date on which the disciplinary action is to start, for example, the timeframe when a suspension is in place or the date by which a fine must be paid.

Even in the event that immediate disciplinary action takes place, for example, in response to serious circumstances, the licensee has a right to appeal (as noted in the previous section).

The Commissioner may remove or reduce a suspension at any time.

98. Disciplinary Action

“disciplinary action” means any one or more of the following:

- (a) the cancellation of a liquor licence or permit;
- (b) the suspension, for a specified period, of a liquor licence or liquor permit;
- (c) the variation of a liquor licence or liquor permit;
- (d) the imposition of a fine not exceeding 100 penalty units;
- (e) the issuing of a letter of censure;

“variation”, in relation to a liquor licence or liquor permit, includes but is not limited to the following;

- (a) a variation of the times at which the liquor licence or liquor permit authorises the sale of liquor;
- (b) a variation of the size or perimeter of the licensed premises or permit premises;
- (c) a variation of the conditions of the liquor licence or liquor permit (including omitting, amending, substituting or adding a condition).

99. Grounds for disciplinary action

Each of the following is a ground for disciplinary action in relation to a liquor licence or liquor permit:

- (a) the licensee or permit holder has contravened a provision of this Act;
- (b) the licensee or permit holder has contravened a condition to which the licence or permit is subject;
- (c) the licensee or permit holder is no longer qualified to hold a liquor licence or liquor permit;
- (d) failure to comply with a written notice under section 40;
- (e) the licensee or permit holder has been convicted of an offence, either in Tasmania or elsewhere, and the Commissioner is satisfied that it is not in the public interest that the licensee or permit holder continues to hold a liquor licence or liquor permit;
- (f) the licensee or permit holder is serving a term of imprisonment;
- (g) the licensee or permit holder has failed to discharge financial obligations or debts owing to the Crown under this Act;
- (h) the licence or permit was obtained by means of a false or misleading statement or by a failure to disclose relevant information;
- (i) the sale of liquor on the licensed premises or permit premises –
 - (i) is causing undue annoyance or disturbance to –
 - A. people living or working in the neighbourhood of the premises; or
 - B. customers or clients of any business in the neighbourhood of the premises; or
 - C. people conducting or attending religious services or attending a school in the neighbourhood of the premises; or
 - D. people lawfully on the premises; or

- (ii) is causing the occurrence of disorderly conduct –
 - A. in the premises; or
 - B. in the neighbourhood of the premises;
- (j) an associate of the licensee or permit holder who is a natural person with any influence over the management of the business carried on under the licence or permit is not, or is no longer, a fit and proper person to be an associate of a licensee or permit holder;
- (k) the licensee or permit holder can no longer exercise effective control over the sale or consumption of liquor on all or any part of the licensed premises;
- (l) the licensee or permit holder is no longer using or intending to use the licensed premises or permit premises for all or any of the activities authorized by the licence or permit;
- (m) in the case of a club licence –
 - (i) the rules or constitution of the club have been changed without the Commissioner's approval; or
 - (ii) the rules or constitution of the club are not being observed; or
 - (iii) the club has failed to comply with, or has contravened, any applicable regulations or conditions specified in the licence; or
 - (iv) the principal activity of the club is the sale or consumption of liquor –
 - and, as a result, in the Commissioner's opinion it is inappropriate that liquor should continue to be sold on the club's premises;
- (n) the area of the licensed premises or permit premises has been altered without the Commissioner's approval.

Tasmania Police play an important role in the enforcement provisions of the Act. The Liquor Licensing (Infringement Notices) Amendment Regulations 2016 provide for police to issue infringement notices (with monetary penalties) for offences under the Act.

10. Important Information

Out-of-hours Permit

An out-of-hours permit authorizes the sale of liquor on the licensed premises for any period between midnight and 5 a.m. subject to any condition(s) specified in the permit.

34. Requirements for permits

- (1) In considering an application for a permit, the Commissioner must make a decision which, in his or her opinion, is in the best interests of the community.
- (2) The Commissioner must not grant an out-of-hours permit in respect of licensed premises unless the licensee satisfies the Commissioner that the sale of liquor on those premises in accordance with the permit sought would not –
 - (a) cause undue annoyance or disturbance to –
 - (i) people living or working in the neighbourhood of the premises; or
 - (ii) customers or clients of any business in the neighbourhood of the premises; or
 - (iii) people conducting or attending religious services or attending a school in the neighbourhood of the premises; or
 - (b) cause the occurrence of disorderly conduct –
 - (i) in the premises; or

(ii) in the neighbourhood of the premises.

On / Off-Permit

13. On-permit

An on-permit authorizes the sale of liquor –

- (a) on premises (being premises specified in an off-licence); and
- (b) between any times; and
- (c) subject to compliance with any condition –
specified in the permit for **consumption on those premises**.

14. Off-permit

An off-permit authorizes the sale of liquor –

- (a) on premises (being premises specified in an on-licence); and
- (b) between any times; and
- (c) subject to compliance with any condition –
specified in the permit for **consumption off those premises**.

Transfer of licence

If a licensee is intending to sell/lease the business to another person, transfer application documents should be obtained and lodged in good time prior to the proposed settlement.

A person is not qualified to hold a liquor licence unless the person has attained the age of 18 years and has satisfied the Commissioner that the person is fit and proper and will be able to exercise effective control over the service and any consumption of liquor on the premises to which the licence relates.

Evidence of age

The Act requires that evidence of age documents are used to prove that a person is 18 years of age or over and is legally able to purchase liquor and/or remain in restricted and prohibited areas of a licensed premises.

All proof of age documents must include a **photo** and be **current**. Acceptable documents include:

- Driver licence issued in Australia;
- Firearms licence;
- Passport;
- Keypass identity card; or
- A document issued by a Federal, state or territory government department that shows the holder's name, photograph and age.

Annual Liquor licence fee

A licensee must pay a prescribed annual licence fee. The fee relates to the period of 12 months starting on 1st January each year and is payable by not later than 31st March in that year.

If a licensee fails to pay the prescribed annual liquor licence fee by 31st March an additional fee of 10 per cent of the amount due is payable.

If the fee is not paid within one month of 31st March the licence may be suspended.

If a liquor licence is transferred, any pro-rata of licence fee is a matter to be settled between the outgoing and incoming parties.

Trading Hours – Christmas and New Year

The Commissioner for Licensing has authorised opening hours to be extended for premises holding **general, club, and on-licences** as follows:

- **Christmas Eve** – midnight until 2 am on Christmas Day.
- **New Years Eve** – midnight until 3 am on New Year’s Day.

Club Licence – Standard Conditions

1. The club must ensure that the following records are kept at the premises:
 - a. A membership register providing the full name and address of each current member.
 - b. A Visitors Book. (Visitors include travellers, guests in the company of club members and guests of the club).
 - c. A Functions Book.
 - d. A current roster in the case of a club at which the principal purpose or activity relates to participation in a rostered sporting activity.
2. The club shall ensure that each visitor (aged 18 years and above), entering the licensed club premises records that day's date, their name, address and sign their name in the Visitors Book; other than when entering the club to attend a function referred to in clause 3 of these conditions or when the visitor can produce identification that establishes that he or she is a member of another club that has a reciprocal membership arrangement in place with the club being visited.
3. The club shall ensure that the following functions are recorded in the Functions Book with such record to include that days date, the type of function, the name of the hosting member or organization as the case may be and the numbers of persons attending:
 - a. A pre-booked private function hosted by a member of the club specified in the licence.
 - b. A function held at the club and conducted by a not for profit organization (limited to one function each month for that organization) at which persons other than club members attend.
 - c. A meeting of a community service club (for example, Lions, Rotary, Apex).
 - d. An event conducted or hosted by the club specified in the licence at which competitors or spectators attend.
4. The club must keep records of entries made in the Function Book & Visitors Book for a minimum period of 12 months from the date of the respective entry.
5. It is a condition of this licence that the Commissioner may from time to time amend the abovementioned conditions.

Prescribed persons

For the purposes of section 10 of the Act, the following persons are prescribed persons:

- (a) a member of the club;
- (b) a guest of a member of the club;
- (c) a visitor to the club;
- (d) a member of another club which has a reciprocal membership arrangement with the club;
- (e) a competitor in an event conducted or hosted by the club on that day;
- (f) a spectator of an event conducted or hosted by the club on that day;
- (g) a person who is attending a meeting of, or a function conducted by, an organisation which the Commissioner is satisfied is not operated for profit.



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Disclaimer:

This publication is issued in good faith as a guide only and the relevant legislation should be referred to if further information is required.