



Review of the Code of Practice for licensed premises

July 2010



Government of South Australia
Office of the Liquor and Gambling
Commissioner

Introduction

The current Code of Practice (the Code) under section 42 of the *Liquor Licensing Act 1997* (the Act) has been in force since September 1997 and must now be reviewed and updated by the Commissioner to reflect legislative changes made last year.

The Code stipulates various measures to minimise harmful use of liquor and promote the responsible sale, supply and consumption of liquor in the following areas:

Practices relating to minors

The Code currently requires that licensees must not promote, advertise or operate the licensee's business in a way that encourages minors to consume liquor. The proposed draft Code will require documented practices that will help minimise breaches of the relevant provisions under the Act.

Licensees must also ensure that minors are appropriately supervised, having regard to the circumstances and the age of the minor.

Practices promoting a responsible attitude to consumption of liquor

The Code requires the licensee authorised to sell liquor for consumption on or off the licensed premises to establish, document and maintain practices to encourage customers to have a responsible attitude to the consumption of liquor. There are several options for discussion including:

Responsible Service of Alcohol (RSA) Training

At present only licensees and responsible persons (those persons responsible for supervising and managing the business of the licence) are required to undertake a Responsible Service of Alcohol (RSA) training course in South Australia. It is proposed to extend this training requirement to **all licensees and staff** involved in the service or supply of liquor at the licensed premises. Upon commencement, section 11A of the Act will authorise the Liquor and Gambling Commissioner¹ to include this requirement in the Code.

Mandatory RSA training is vital to support compliance with liquor licensing requirements. RSA training can have a positive impact on reducing crime and disorder, helping staff to diffuse problems and create a safer environment for patrons and staff.

Exemption from RSA training requirement

It is proposed that the Liquor and Gambling Commissioner have the discretion in some cases to exempt individuals, classes of licence holders or specific licensed premises from the RSA training requirement.

There will also be an exemption for **all small volunteer based community** organisations.

Licensees with other licence types who may be able to demonstrate that they are at low risk of irresponsible drinking practices based on factors such as the type of licence, the limited nature of the business, low alcohol sales and type of alcohol sold may also be considered for exemption.

House policy

The proposed draft Code requires the licensee to develop a policy to promote responsible consumption of liquor and display the policy prominently in all public and staff areas. The policy shall set out the responsibilities and obligations of staff and patrons in accordance with the principles of responsible serving of alcohol. The policy may also address issues of patron behaviour which could assist in areas such as the refusal of entry.

Alcoholic content and standard drinks

It is proposed that the licensee must ensure that customers have access to information about the alcoholic content of liquor including its contents and the number of standard drinks it represents.

Free drinking water and non-alcoholic drinks

The draft Code proposes that the licensee must ensure that customers have access to free cool drinking water, and provide non-alcoholic drinks at the same or lower price than the least expensive alcoholic drink, except where alcoholic drinks are sold for consumption off licensed premises or where liquor is supplied by way of sample only.

Irresponsible drinking practices

The proposed draft Code states that the licensee is **not** permitted to undertake a range of practices that may encourage the rapid or excessive consumption of alcohol by customers.

These include:

- promoting, organising or conducting drinking competitions that involve rapid and/or excessive consumption of alcohol;

¹ with the approval of the Minister for Consumer Affairs

- serving patrons alcohol, participating in drinking games or displaying “honour boards” which show patrons’ names and the quantity of liquor consumed over a period of time such as “100 Pints Club” or “Beer Legends” or similar
- providing “all you can drink” admission charges
- providing unlimited liquor over a period of time for a set price, except in relation to functions pre-booked at least 7 days prior to the date of the function and at which food is provided
- conducting discriminatory promotions or practices such as free or cheaper liquor for a class of persons
- promoting practices that may encourage the rapid and excessive consumption of alcoholic drinks such as ‘laybacks’
- conducting ‘two for one’ or ‘free’ liquor promotions other than where liquor is supplied by way of sample
- serving alcoholic beverages in a container which cannot remain upright on a table or other flat surface without support, such as a test tube
- conducting ‘happy hours’ or similar reduced price alcohol promotions before 3.00pm or after 9.00pm on any day
- conducting ‘happy hours’ or similar reduced price alcohol promotions for more than one 2 hour period in a 24 hour period (food and free drinking water must be available to patrons during this period)
- engaging in a lottery, competition, game or other activity that offers a person a reward if the person is required to purchase more than one standard drink on any one day to win the reward; and/or where prizes of alcoholic drinks are awarded which involve their consumption in the premises.

Practices relating to intoxication

The proposed draft Code requires the licensee to establish, document and maintain practices to prevent the sale and or supply of liquor to intoxicated persons and to manage the presence of intoxicated persons on licensed premises.

The Act was recently amended to also make it an offence to serve liquor to a person in circumstances in which the person’s speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.

There is a defence within the Act for bar staff if they believed on reasonable grounds that the person to whom liquor was supplied was not intoxicated and for licensees and responsible persons if the staff member exercised proper care to prevent the sale or supply of liquor in contravention of the provision. The success of this defence will depend in part on the practices established by the licensee in relation to the management of intoxicated persons on the licensed premises.

The Act also provides powers to refuse entry to or remove a person from licensed premises if the person is intoxicated or behaving in an offensive or disorderly manner. Licensees may also remove persons if it is reasonable to suspect they have supplied liquor, or are about to supply liquor, to an intoxicated person or to a person in circumstances where that person’s speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor. Again, proper practices should be developed by the licensee to support compliance with these provisions.

Practices relating to disturbances, disorderly or offensive behaviour

The proposed draft Code requires a licensee authorised to sell liquor for consumption on the licensed premises to establish, document and maintain practices to prevent undue offence, annoyance, disturbance, noise or inconvenience to the community. A licensee must also protect the safety, health or welfare of customers and staff. These provisions reflect the legislative obligations in the Act. Including these provisions in the Code will encourage licensees to take a more proactive role in managing and monitoring the behaviour of patrons in and around the licensed premises and implement practices to address these obligations.

Practices relating to entertainment

Poorly managed entertainment in licensed premises has the potential to cause significant disturbance to the community, particularly if the premises is located in a mixed use or residential area. Licensees must ensure that staff adhere to any licence conditions in relation to the nature of entertainment that may be provided and any time and noise restrictions.

The draft Code requires a licensee authorised to provide entertainment on licensed premises to establish, document and maintain practices to prevent undue offence, annoyance, disturbance, noise or inconvenience to the community resulting from that entertainment. This provision reflects a licensee’s obligations under the Act.

A licensee should also consider whether any additional measures are required for special entertainment events such as dance parties. This may include measures to protect patrons and minimise disturbance to the community.

There are currently no explicit provisions in the Code relating to dance parties and comment is sought about whether this should be addressed.

Adult entertainment

Conditions in relation to adult entertainment are currently added to licences on an ad hoc basis. One option being considered is creating a consistent set of conditions for all adult entertainment venues to ensure the safety of patrons, entertainers and staff. These conditions would apply when entertainment includes nudity or partial nudity, such as:

- the licensee shall ensure signs providing information about the type of entertainment and the hours during which that entertainment is provided are displayed at all entrances to the relevant areas and on the outside of the premises
- persons under the age of 18 must not enter or remain in the area where that entertainment is taking place
- nude or partially-nude entertainers must not be visible from public places other than the areas where the entertainment is being provided
- minors shall not be engaged or employed in or admitted to the relevant areas for the duration of the entertainment
- the audience and entertainers shall not perform on any platform that is not designed for that purpose.

Ideas for tackling alcohol related antisocial behaviour occurring in late night trading venues

The following options are proposed to enable the Commissioner to place conditions on a licensed premises to help manage antisocial behaviour in and around late night trading venues.

Improved security in licensed premises - Closed Circuit Television (CCTV) and Radio Network

CCTV has the potential to be a useful tool in identifying offenders and offences within and around licensed premises.

Studies and surveys show that, generally, the community supports the use of CCTV as a means of preventing crime and social disorder in those areas where there is a 'legitimate expectation of public observation'.

Street Link, currently being trialled in the Adelaide CBD, is a type of radio network that will allow security and staff to share information about incidents which have occurred on their premises and raise an alert about individuals or groups who may be migrating towards the next venue. It is believed that this will benefit an entertainment area by reducing incidents of violence due to the proactive nature of the system, rather than simply relying on security to respond to the situation after it has already escalated.

It is proposed that the Liquor and Gambling Commissioner has the power to order these licensed premises to install scanners and/ or CCTV and /or participate in a radio network as a licence condition.

These conditions would be subject to appropriate protections for personal information and mandate that CCTV footage be produced for compliance and enforcement investigations.

Queue management

Congestion and crowding around licensed premises can increase the level of incidental physical contact between patrons (either former, existing or potential) or passers by in public spaces and result in violence and antisocial behaviour. It is important that the space outside the licensed premises is managed to accommodate all users of the area and minimise the potential for violence.

Use of public space must be approved by both the local council and the Liquor and Gambling Commissioner. Licensed premises must also obtain council consent to establish a queue arrangement outside the premises.

It is proposed that the Liquor and Gambling Commissioner will work with councils, police and licensees to introduce queue management systems through the imposition of licence conditions. This strategy will include initiatives to ensure the safety of patrons who have been refused entry or turned out of a licensed premises and who are awaiting transportation out of the area.

Restricting liquor sales during late night trading

There are several initiatives being considered by the Commissioner which deal with the service of liquor during late night trading in venues where antisocial behaviour arises, including:

- limiting the type and number of drinks which may be served
- imposing a condition to cease service of alcohol 30 minutes prior to close of trade.

Prohibiting glasses and breakable containers

Some violent offences in licensed premises involve the use of glass receptacles as weapons. Police had stated that in the year ending November 2009, there were 90 incidents of assault in the Adelaide CBD in which the weapon used was described as a bottle or a glass². One harm minimisation measure to address such assaults is to replace standard glass in venues with tempered glass or polycarbonate products.

In New South Wales, the banning of glass and other breakable plastic containers was one of the conditions imposed on venues they classed as high risk late trading. New South Wales Police have reported that the incidence of glassings dropped by 23 per cent in the year 2008-2009 compared to 2007-2008. There was an 86 per cent reduction in glassings in premises in the top 48 list of most violent venues, following imposition of licence restrictions on these venues from 1 December 2008. This dramatic reduction in glassings cannot be wholly attributed to the introduction of plastic/polycarbonate containers. Nevertheless, it is clear that there has been a significant reduction in the number and severity of glassing injuries.

It is proposed that the Liquor and Gambling Commissioner have the power to order late night trading venues that have glass-related injuries to move to polycarbonate products during specified trading hours, where it can be demonstrated that glass is being used as a weapon. It is considered that regular glass is appropriate for continued use in licensed restaurants and venues such as community clubs.

Induction and refresher training

It is proposed to require a licensee to provide induction and refresher staff training (at least every two years) on all of the mandated practices set out in the Code. The licensee must also maintain records of training provided to staff. The purpose of this training is to support greater compliance with the Act and the Code. It is not intended that staff undertake formal RSA training every two years.

A prudent licensee should also undertake in-house induction training on the specific operation and conditions applicable to their premises to ensure staff have a clear understanding of the licensee's legal obligations and expectations of staff. It is not intended to replace the Responsible Service of Alcohol training that a responsible person or licensee may be required to complete.

It is also in the interest of licensees and their staff to have clear documented practices and records of staff training in the event the licensee or staff member is required to defend any prosecution for breaching the relevant provisions under the Act. In-house refresher training must be held no less than every two years but may be held more frequently if the licensee considers it necessary.

Penalties for breaching the Code of Practice

The Code forms part of the mandatory licence conditions for licensees³. Licensees may be subject to disciplinary action or prosecution if found in breach of the Code. Court proceedings can be lengthy and expensive for both the licensee and the enforcement agency. An expiable offence may be a more efficient and timely response to the majority of breaches under the Code where the breach is easily identified.

It is proposed that specific provisions of the Code to be expiated will be determined once the Code is finalised.

² Alcohol and Crime - Late Night Trading and the Real Cost of a Big Night Out In the Adelaide CBD - South Australia Police (December 2009).
The data does not indicate if the glassing occurred in a licensed premises.

³ Section 42(1) of the *Liquor Licensing Act 1997*.
"It is a condition of every licence that the licensee must comply with the Commissioner's codes of practice (see section 11A)."

How to make a comment

Interested parties are encouraged to make comments on these or any other related matters. Comments can be sent by e-mail or post, but must be received by **Friday 3 September 2010**.

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facsimile: 08 8226 8512

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Comments should include contact details of the person. Please note that comments may be placed on the OLG website and/or quoted in subsequent policy and/or consultation papers.

Additional copies of this Paper can be obtained from www.olg.sa.gov.au.

