



LIQUOR PROMOTION GUIDELINES

July 2013



**Trade &
Investment**
Office of Liquor, Gaming & Racing

Liquor promotion guidelines

Disclaimer

This publication avoids the use of legal language. Information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

This publication is intended as a guide only.
We suggest you seek professional advice when necessary.

NSW Office of Liquor, Gaming & Racing
Level 6, 323 Castlereagh Street, Haymarket NSW 2000

GPO Box 7060, Sydney NSW 2001
Phone: (02) 9995 0894
Email: info@olgr.nsw.gov.au
Website: www.olgr.nsw.gov.au

1st edition 2013 (e-publication only)

© State of New South Wales through NSW Trade & Investment, 2013. This publication is copyright. You may download, display, print and reproduce this material provided that the wording is reproduced exactly, the source is acknowledged and the copyright, update address and disclaimer notice is retained.

ISBN 978 1 74256 508 8

Liquor promotion guidelines



Trade & Investment
Office of Liquor, Gaming & Racing

CONTENTS

Introduction.....	3
The Law	4
The <i>Liquor Act 2007</i>	4
The Liquor Promotion Guidelines	5
Harm minimisation methods.....	7
Section 102A	7
Principle 1: Appeal to minors	8
Explanation.....	8
Examples of unacceptable promotions.....	8
Additional Information.....	8
Principle 2: Indecent or offensive	9
Explanation.....	9
Examples of unacceptable promotions.....	9
Additional Information.....	9
Principle 3: Non-standard measures.....	10
Explanation.....	10
Examples of unacceptable promotions.....	10
Examples of promotions which require harm minimisation measures	10
Additional Information.....	10
Principle 4: Emotive descriptions or advertising.....	11
Explanation.....	11
Examples of unacceptable promotions.....	11
Additional Information.....	11
Principle 5: Extreme discounts	12
Explanation.....	12
Examples of unacceptable promotions.....	12
Examples of promotions which require harm minimisation measures	12
Additional Information.....	12
Principle 6: Irresponsible, rapid or excessive consumption.....	13
Explanation.....	13
Examples of unacceptable promotions.....	13
Additional Information.....	13
Principle 7: Not in public interest.....	14
Explanation	14
Examples of unacceptable promotions.....	14
Additional Information.....	14

Introduction

Licensees and staff are required to have responsible attitudes and practices regarding the promotion and sale of alcohol. The promotion and activities that surround the sale and supply of alcohol can have a significant influence on patrons and the way they consume alcohol and the way they behave.

A range of negative impacts can result from undesirable alcohol promotions or ones which are not appropriately managed. This can include promotions which encourage excessive, rapid or irresponsible drinking, are offensive or indecent, target minors or are out of step with general community standards. These types of promotions can contribute to alcohol-related anti-social behaviour and violence, have negative impacts on the amenity of the local community, and have health impacts for the individual.

It is important that licensees are mindful of and manage the risks and responsibilities associated with running liquor promotions. These Guidelines are not intended to stifle business innovation or healthy competition, but rather assist in the development of a sustainable and responsible liquor industry by defining clear expectations for the conduct of liquor promotions.

MORE INFORMATION

Phone: (02) 9995 0894
Email: info@olgr.nsw.gov.au

For information, or to make a complaint,
about liquor promotions please contact OLGR
Compliance Branch:

Phone: (02) 9995 0837
Email: complaints@olgr.nsw.gov.au

The Law

Section 102 of the *Liquor Act 2007* gives the Director General, NSW Trade & Investment, the power to issue a notice to a licensee who is involved in a liquor promotion which is considered undesirable.

The *Liquor Act 2007*

The Act details the types of promotions that may be restricted or prohibited. The Act states:

The Director General may restrict or prohibit any such activity only if the Director General is of the opinion that:

- a) the promotion is likely to have a special appeal to minors because of the use of designs, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason, or
- b) the promotion is indecent or offensive, or
- c) the promotion involves the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication, or
- d) the promotion involves the provision of free drinks, or extreme discounts or discounts of a limited duration, that creates an incentive for patrons to consume liquor more rapidly than they otherwise might, or
- e) the promotion otherwise encourages irresponsible, rapid or excessive consumption of liquor, or
- f) the restriction or prohibition is otherwise in the public interest.

Before the Director General can exercise this power, publicly available guidelines must be made available that indicate the kinds of activities or promotions that may be

the subject of a notice under section 102. These Guidelines fulfil this requirement.

Examples where the Director General has exercised this power include:

- A nightclub promoted a \$30 door charge which included free house spirits, beer, wine and cider from 9pm til 3am;
- A hotel promoted \$10 cocktail buckets where patrons consumed the cocktail directly from the bucket; and
- A restaurant promoted alcohol served in syringes, cocktails served in oversize novelty vessels and jelly shots.



The Liquor Promotion Guidelines

These Guidelines are intended to provide guidance as to what issues are considered important in determining whether a liquor promotion is undesirable and may be subject to a notice.

Information is provided on each category listed in the Act. Each category is described in these Guidelines as a principle. **They are not intended to be a definitive list of what can and cannot be done.** Each case must be considered on its merits and against each of the principles.

The Guidelines provide an explanation of each principle and include examples of unacceptable practices. These examples do not include specific detail, such as allowable numbers of free drinks before a promotion becomes unacceptable. Instead the examples provide a description of the types of practices which are clearly contrary to the principle. It is noted that the word 'unacceptable' is used instead of 'undesirable' when listing some of these examples, as this gives clear guidance to industry on those promotional practices that are problematic and that must not be undertaken.

Where relevant, additional information is provided which may assist certain types of licence holders. In some cases there is also information on additional measures which

can be implemented to assist in ensuring that a liquor promotion is appropriately run.

This approach enables licensees to take an informed view of any proposed promotion, as licensees are best placed to assess risk and apply appropriate controls in their own business environment.

The Guidelines aim to be consistent with other codes and guidelines relating to alcohol promotions and advertising, such as the Alcohol Beverages Advertising (and Packaging) Code, the Australian Association of National Advertisers Code of Ethics and the National Health and Medical Research Council Australian Guidelines to Reduce Health Risks for Drinking Alcohol.

“ *Each case must be considered on its merits and against each of the principles* ”



Liquor promotion guidelines

These Guidelines apply to ALL licensed premises under the *Liquor Act 2007* that run liquor promotions, including:

- Hotels (pubs, taverns, small bars)
- Clubs (RSL, community and sporting clubs)
- On-Premises (restaurants, cafés, nightclubs, theatres, boats, caterers, etc)
- Packaged (Bottle shops)
- Producer/Wholesaler
- Limited licences.

It is recognised that the consumption of alcohol occurs in many different contexts and circumstances, and that there may be different risks associated with promotional activities in different licensed premises.

A distinction can be made between promotions offering alcohol to be consumed immediately on a licensed premises and promotions offering alcohol that which may be stored for consumption later away from the premises. As a result, the extent to which each principle in this document applies to different licence types will vary accordingly.

Some principles apply to promotions operated by all licence types, such as Principle 1 which ensures liquor promotions do not have a special appeal to minors. Other principles, such as Principle 3, relating to the use of non-standard measures that encourage irresponsible drinking, would generally apply more to licence types where alcohol is consumed immediately on the licensed premise. These different circumstances would be recognised as part of the consideration of whether a liquor promotion is undesirable and should be subject to a notice.

The determination of whether a promotion is undesirable and may be subject to a notice is made by the Director General, NSW Trade & Investment, or a delegate, such as the Director, Compliance, Office of Liquor, Gaming & Racing. Before a determination is made, a licensee may be given the opportunity to comment or offer an explanation on why the promotion should not be considered undesirable. An application can be made to the Independent Liquor & Gaming Authority to review any decision.

Harm minimisation methods

While each of the principles and examples provide guidance on liquor promotions that are generally considered undesirable, it is in the interests of venues to ensure that all promotions are conducted with harm minimisation measures in place to prevent unacceptable outcomes.

Even a seemingly harmless or mundane promotion can lead to adverse outcomes if appropriate risk-based measures are not put in place.

Adopting harm minimisation measures can reduce risks of harm associated with liquor promotions. Active consideration of possible risks and ways to reduce them is important in developing and running any promotion.

Employing harm minimisation measures does not automatically negate the possibility of liquor promotions being restricted or prohibited, but appropriate management of all promotions is necessary.

It is up to individual licensees to identify, manage and minimise risk within their own business environment for any liquor promotion undertaken and it is up to each licensee to identify which harm minimisation measures are appropriate to reduce potential harms in each circumstance.

A list of harm minimisation measures that may be appropriate include but are not limited to the following:

- RSA marshals
- Service of free food and water is part of the promotion
- Alcohol Management Plan specific to the promotion
- Drink limits
- Signs prominently disclosing the content of mixed alcoholic drinks served to customers
- Appropriate time frame for conduct of promotion
- Alcohol content is measured and discernable
- Limits on the quantity of alcohol that can be purchased at a reduced price.

There are no mitigating measures that will enable examples of promotions identified as being ‘unacceptable’ in these guidelines from being undertaken. For those ‘Examples of promotions which require harm minimisation measures’ identified in this guideline, significant risks are apparent with these types of promotions, and licensees are advised to carefully determine the appropriate harm minimisation measures that should be put in place before this type of promotion is undertaken.

Section 102A

Section 102A of the *Liquor Act 2007* also allows the Director General to restrict or prohibit activities that are

likely to encourage the misuse and abuse of liquor. It is noted that this section does not just apply to promotions, but applies to any activity within a licensed premises which is likely to encourage the misuse and abuse of liquor.

Section 102A does not require guidelines and can consider issues more broadly than just promotions. However, where consideration is being given to issuing a notice under section 102A for a liquor promotion related issue, the principles in these Guidelines will provide some guidance as to acceptable and unacceptable practices.

“ *The principles in these Guidelines will provide some guidance as to acceptable and unacceptable practices* ”

Principle 1: Appeal to minors

The promotion must not have a special appeal to minors, because of the designs, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason.

Explanation

It is illegal to sell alcohol to minors or to supply alcohol to minors on licensed premises.

The effects of alcohol on minors can be significant and can be harmful to their health and physical development as well as having social and emotional effects. The National Health and Medical Research Council outlines research which shows that minors are much more likely than older drinkers to undertake risky or antisocial behaviour connected with their drinking. In addition, alcohol may adversely affect brain development and lead to alcohol-related problems later in life.

For most venues, minors are allowed onto parts of the premises in the company of a responsible adult. As such, venues need to be mindful of the presence of minors on licensed premises when conducting liquor promotions.

Examples of unacceptable promotions

- Promotions which use characters, imagery, motifs, naming or designs which primarily appeal to minors.
- Promotions that include merchandise that primarily appeals to minors.
- Promotions using interactive games or technology predominantly targeted to minors.

Additional Information

Care should be taken in using celebrities or other role models that have a special appeal to minors as part of the liquor promotion as this may be construed as having a special appeal to minors under the Act.



Principle 2: Indecent or offensive

The promotion must not be indecent or offensive.

Explanation

The use of indecent or offensive material in a liquor promotion is in poor taste and is against general community standards. Licensees should also be aware that indecent and offensive promotions may be a catalyst for crime or violence, including sexual violence against women.

Linking the consumption of alcohol with such material or activities is not appropriate for any licensed venue, function or event.

While a determination of what is indecent or offensive is subjective, licensees should be mindful of what would reasonably be considered offensive in the broader community.

Additional Information

It is acknowledged that some drinks have provocative names. While the sale of these products is acceptable and the use of their names in that context is acceptable, branding a promotion with these names is likely to be considered undesirable, as the provocative names in the promotional material could be considered insulting or offensive. In addition, caution should be taken regarding the way that these products are advertised or promoted within or externally to the venue to make sure these provocative names do not cause offense.

Examples of unacceptable promotions

- Promotions which use images, including human bodies, that may be considered offensive to a reasonable adult.
- Promotions which offer free or discounted drinks for participating in an activity that may be offensive to a reasonable adult present on the licensed premises, for example, encouraging participants to remove items of clothing.
- The use of insulting or offensive language in the promotional material.
- Promotions that involve any form of discriminatory, demeaning or vilifying language or imagery.

Principle 3: Non-standard measures

The promotion must not involve the use of non-standard measures that encourages irresponsible drinking and is likely to result in intoxication.

Explanation

A standard measure is the level of alcohol used to work out safe drinking levels. Standard measures enable individuals to clearly assess their alcohol intake. Where standard measures aren't used the likelihood of irresponsible drinking is increased as the alcohol content of the drink is unknown.

Where a well recognised vessel, such as a schooner glass, wine glass, tumbler, is not used, consideration needs to be given to whether the vessel itself encourages irresponsible consumption of alcohol or limits the ability of the person to judge how much they have consumed, based on the design (such as a water-pistol, test tubes, jam jars or teapots with no cups).

Promotions which involve the serving of alcohol in ways which encourage skolling, repeated quick consumption of alcoholic drinks or free pouring of alcohol are not acceptable and clearly encourage irresponsible drinking. Free pouring is also contrary to national trade measurement laws which require a range of alcoholic products to be sold by volume measure only.

It is important that alcohol is always served with responsible service of alcohol principles in mind. Where a promotion is being undertaken where a particular alcoholic drink is being promoted and being sold in large volume (such as jugs) or 'novelty' drink ware it is appropriate that the following approach is taken:

- Accurate standard measures are used to pour the drink into the vessel.
- If the drink is meant to be shared, then appropriately sized vessels should be provided to pour the drink into.
- Patrons are clearly made aware of the alcohol content of the drink. (This can be established before the promotion using the standard measures that would be used to make up the drink. Details of the number of standard drinks should be included on the drinks menu or other suitable promotional material on the licensed premises, for example, posters promoting the drink.)

Examples of unacceptable promotions

- A promotion encouraging the consumption of alcohol in a yard glass for skolling.
- A promotion encouraging the consumption of laybacks, slammers, blasters, bombs or consumption from a water pistol.
- A promotion which encourages an individual to purchase and consume on their own an alcoholic drink intended to be shared (that is, a drink containing a significant number of standard drinks).
- A promotion encouraging the consumption of multiple shooters or shots by an individual.

Examples of promotions which require harm minimisation measures

- Promotions where the service of alcohol is in non-standard measures such as teapots or jam jars, where the alcohol content of the drink is not apparent or easily discernable.

Additional Information

Where a company wishes to conduct a product promotion involving jugs of mixed spirits, beer, cider or wine, it is important that the company takes responsibility for ensuring that the promotion does not encourage irresponsible drinking. Developing an alcohol management plan for the promotion, can assist in ensuring that the promotion is consistent with the principles in these Guidelines. It is noted that the use of an alcohol management plan is considered best practice.

This principle predominantly focuses on promotions offering alcohol to be consumed immediately on the licensed premises. There are separate requirements that apply to packaged liquor sales to ensure standard drink information is clearly stated on liquor products (Food Standards Australia New Zealand) and to restrict undesirable liquor products which may encourage irresponsible drinking (section 101 of the *Liquor Act 2007*)

Principle 4: Emotive descriptions or advertising

The promotion should not use emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication.

Explanation

The aim of this principle is to restrict the use of emotive descriptions in a liquor promotion which encourage irresponsible drinking.

Encouraging or glorifying excessive consumption of alcohol is inappropriate. A promotion which primarily focuses on irresponsible drinking is not in the public interest and goes against all responsible service of alcohol principles.

A promotion which focuses on drinking irresponsibly or uses emotive descriptions to encourage excessive drinking can influence actions of consumers and increase the likelihood of intoxication. This then has ramifications for the health and wellbeing of the patron and can increase the risk of anti-social behaviour and violence.

Examples of unacceptable promotions

- Promotions or events which focus principally on the excessive consumption of alcohol (e.g. Mad Monday, Round the world).
- Labelling or titling of promotions that suggest irresponsible or excessive consumption of alcohol (e.g. 'Drink like a fish', 'Drink 'til you drop').
- The engagement of a person who, as part of the promotion, enthusiastically talks up excessive consumption of alcoholic beverages, encourages intoxication or irresponsible or illegal behaviour.
- A promotion which encourages consumers to get drunk. This may include the use of language, images or slogans such as 'Drink 'til you drop'.

Additional Information

Product promotions by producers and distributors often focus on the consumption of alcohol (as a particular alcoholic product is being promoted). However, it is important that this type of promotion does not encourage irresponsible drinking or be likely to result in intoxication. This can be achieved by using an alcohol management plan to address risks and appropriate responsible service of alcohol procedures which all venues running the promotion must follow. Particular care should be taken in determining whether the name of the promotion or any promotional material used contains descriptions which encourage irresponsible drinking. It is noted that the use of an alcohol management plan is considered best practice.

In undertaking a promotion, consideration should be given to how this principle applies to your venue, as it is recognised that there may be variability in how this principle applies depending on your business model.

Principle 5: Extreme discounts

The promotion should not involve the provision of free drinks or extreme discounts, or discounts for a limited duration that creates an incentive for patrons to consume liquor more rapidly than they otherwise might.

Explanation

Discounting alcohol can be used as a marketing tool for licensees to encourage people into the venue and to stay in the venue or to try a new product or to run down stock of a particular product. However, it is important that in running any such promotion consideration is given to whether the promotion will encourage people to consume more rapidly than they may otherwise have, which could lead to irresponsible drinking and intoxication.

In particular, caution should be exercised when undertaking a promotion involving free drinks. Careful management of the number of free drinks provided to each individual is important to reduce the risk of rapid consumption and intoxication.

The term 'extreme discounts' is not specifically defined in this document. The influence of the level of discount on creating an incentive for patrons to rapidly consume alcohol depends on a range of things, including the type of product being discounted. For example a 75% discount on a bottle of wine may have a different effect to a 75% discount on shots. Generally, a promotion involving a discount over 50% should be undertaken with caution and risks should be properly assessed in relation to whether it will encourage rapid consumption of alcohol.

Examples of unacceptable promotions

- Promotions providing free drinks which encourage rapid consumption of alcohol (e.g. All you can drink in a limited time frame).
- Drink cards, promotional cards, vouchers or 'shopper docket' which encourage rapid consumption of alcohol over a short period of time (e.g. \$50 voucher redeemable between 9pm and 10pm).
- Happy hours encouraging or facilitating the rapid consumption of alcohol.

Examples of promotions which require harm minimisation measures

- Promotions linked to unpredictable events (e.g. free drinks until the first points scored).
- Promotions that encourage the purchase of large amounts of alcohol with rewards of free or discounted drinks (e.g. buy six drinks and get 2 free drinks) to be redeemed within the same trading period.
- 'Buy one, get one free' offers promoted through discount vouchers, cards or 'shopper docket' offers without purchase limits or other suitable controls in place.
- Promotions operating for very short periods which create an incentive to consume liquor more rapidly than customers should.
- Promotions where significant discounts are provided over an extended period of time e.g. over two hours.
- All you can drink offers for a set price or excessive periods of free drinks (e.g. \$50 entry and free drinks all night). See additional information section in relation to functions.
- Promotions involving discounts of greater than 50% off the normal retail price.

Additional Information

Across the hospitality industry, there are a range of businesses which offer function packages that include all drinks for a set price (such as wedding packages, corporate functions etc). The Guidelines do not seek to prevent this type of operation, however, it is the responsibility of the licensee to ensure that any such function is run appropriately and that there is responsible service of alcohol and that patrons do not become intoxicated.

Where product promotions involve the provision of free or discounted drinks, it is important that these promotions do not create an incentive for patrons to consume alcohol more rapidly than they otherwise might. The use of an alcohol management plan to assess the risks in any liquor promotion and provide clear guidance for those undertaking the product promotion is an important tool for ensuring the promotion is undertaken appropriately. It is noted that the use of an alcohol management plan is considered best practice.

In undertaking a promotion, consideration should be given to how this principle applies to your venue, as it is recognised that there may be variability in how this principle applies depending on your business model.

Principle 6: Irresponsible, rapid or excessive consumption

The promotion should not otherwise encourage irresponsible, rapid or excessive consumption of liquor.

Explanation

Licensees should always be mindful that any liquor promotion undertaken does not encourage patrons to drink irresponsibly, rapidly or excessively. Consideration needs to be given to the way alcohol is consumed as part of the promotion (water pistols, yard glasses) or whether it involves competitions or games which involve excessive or rapid consumption of alcohol.

Other more general promotions such as the operation of happy hours can also impact on irresponsible, rapid or excessive consumption of alcohol. A happy hour promotion should not create an incentive to drink in greater amounts than a customer otherwise would. This can include extreme discounts for limited periods where drinks are consumed immediately or can be stockpiled.

Similarly, happy hours which are run near the end of the trading period can encourage patrons to continue drinking where they may otherwise have stopped. This may be particularly problematic if the patrons have already been drinking for a significant period of time.

Examples of unacceptable promotions

- The promotion involves the use of drinkware which encourages rapid consumption, such as test tubes, water pistols, yard glasses.
- The promotion involves drinking games, competitions, challenges, dares, lotteries or games of chance that involve the rapid or excessive consumption of liquor (such as skolling games, boat races, flip and win, 'around the world', 60 shots in 60 minutes', pub golf).
- A promotion in which a consumer is challenged or dared to drink a particular alcoholic drink because of its higher alcohol content.
- Happy hours occurring late into the trading period (or in the early hours of the morning, for those premise operating 24 hours) which encourage patrons who have been drinking for a significant period of time to continue drinking.
- Promotions that encourage the stockpiling of drinks.

Additional Information

Competitions and games can be a marketing tool for licensees and can add to the atmosphere of a venue. Licensees are encouraged to operate promotions such as these, but offering prizes other than liquor, such as meals, movie tickets or other products. Where liquor is offered as a prize the process should be conducted in a responsible manner.

Consideration also needs to be given to the appropriateness of any promotion for discounted packaged liquor sales. Licensees should be aware of the risk where the promotion of extreme discounts may encourage irresponsible or excessive consumption of alcohol due to the increase in volume purchased, where it is likely to be consumed within a short time frame. Consideration needs to be given to how discount promotions can be responsibly managed, including purchase limits (e.g. two per customer) or other measures to reduce the risk that the promotion will encourage people to drink alcohol excessively or irresponsibly.

In undertaking a promotion, consideration should be given to how this principle applies to your venue, as it is recognised that there may be variability in how this principle applies depending on your business model.

Principle 7: Not in public interest

The promotion should not be otherwise considered to not be in the public interest.

Explanation

A range of liquor promotions may not necessarily promote rapid or excessive consumption of alcohol, or meet other principles in the Guidelines, but may still be considered undesirable as they are not in the public interest.

Generally, if something is not in the public interest, it goes against general principles of fairness, equity, decency or lawfulness in society. Public interest is linked to the well being of the community or the risk of detriment to the community at large. It is important that licensees be mindful of whether a particular promotion may be discriminatory or demeaning to a group or individual, whether it promotes or encourages unlawfulness, whether it is misleading or if it inappropriately targets vulnerable groups or individuals.

While a determination of what is in the public interest is subjective, licensees should be mindful of what would reasonably be considered inappropriate to the broader community.

Examples of unacceptable promotions

- Promotions which use images or messages which could be seen to be encouraging or condoning breaking the law or other anti-social behaviour.
- Promotions which use images or messages which link the promotion of alcohol with illicit drugs or allude to drug taking behaviour.
- A promotion which associates liquor consumption with aggressive or violent behaviour towards other people.
- Any discriminatory promotion (e.g. women drink free).

Additional Information

The examples provided above apply equally to all licence types. Careful consideration of promotions of packaged liquor sales is required to ensure that it is in the public interest and does not encourage excessive consumption of alcohol due to an increase in the volume purchased where it is likely to be consumed within a short timeframe.