

Refusal of entry and patron bans/barring

Factsheet

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Introduction

Patrons of licensed venues in NSW have a right to enjoy safe and responsible drinking environments. The *Liquor Act 2007* supports responsible drinking and provides powers for venues and police to eject and ban troublesome patrons. Licensees also have a common law right to refuse entry, or evict people from their venue.

There are a number of ways that licensees can deal with troublesome patrons, including those that are disruptive, violent, intoxicated or fail to adhere to venue rules and policies.

This fact sheet helps explain how these exclusion provisions work and the circumstances in which they can be used.

The options available to licensees range from refusing entry or removing a person at the time of the incident, barring the person for an extended period of time (single or multiple venues) or seeking a formal banning order against the person.

The diagram below shows the options available to a licensee and the escalated approach that should be taken when dealing with a troublesome patron.

These strategies strengthen the ability of licensees to enforce expected standards of patron behaviour, recognising that everyone deserves to be able to enjoy themselves responsibly and feel safe in and around licensed premises.

All businesses must work within anti-discrimination laws and applicable privacy legislation, so it is recommended that any strategy for refusal of entry, whether it is venue specific or group based, be founded on a strong set of procedures that have been checked with a legal adviser.

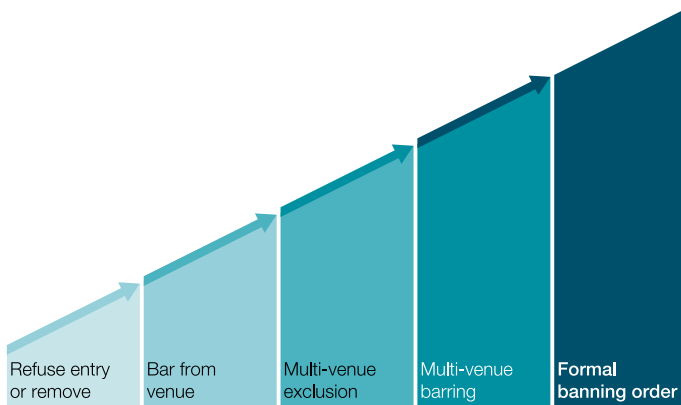


Figure 1: options available when dealing with a troublesome patron

“Barring”: The exclusion of a person from a premises under common law.

“Banning”: The formal exclusion of a person from a premises under the *Liquor Act 2007*.

1 Criteria for refusal of entry

Licensees can have a significant impact on patron behaviour in their venues by setting rules which determine what is acceptable.

It is important that the rules, and decisions around them, are made based on the behaviour of persons and not personal characteristics.

Care should be taken to ensure that when a person is refused entry or ejected from the licensed premises, either under the *Liquor Act 2007* or by common law, it is done within the bounds of the *NSW Anti-Discrimination Act 1977* and the various state and Commonwealth discrimination laws.

Many licensees have developed house policies or patron codes of conduct to outline the rules which determine what is acceptable patron behaviour. Any house policy or code should:

- focus on expected behaviour
- be applied equally
- be prominently displayed, and
- indicate that failure to behave in accordance with the policy or code will result in refusal of entry or removal from the venue (or other sanction).

“Indicate that failure to behave in accordance with the policy or code will result in refusal of entry or removal from the venue.”

Liquor Act 2007

Under the *Liquor Act 2007* licensees, their staff and police officers can refuse to admit, or can eject, any person:

- who is intoxicated, violent, quarrelsome or disorderly
- whose presence on the licensed premises renders the licensee liable to a penalty under the *Liquor Act 2007*
- who smokes within a smoke-free area as defined by the *Smoke-free Environment Act 2000*
- who uses or possesses a prohibited drug while on the premises.

Access to the licensed premises can also be refused if licence conditions allow or under the terms of a liquor accord.

Once a person is refused admission or ejected on any of the above grounds they are committing an offence if they do not leave the licensed premises. A maximum fine of \$5,500 applies.

If a person is refused entry or ejected from licensed premises because they are intoxicated, violent, quarrelsome or disorderly, they are committing an offence if they:

- attempt to re-enter or do re-enter the licensed premises within 24 hours

- remain in the vicinity of the premises (within 50m of the boundary of the premises) without reasonable excuse, or
- re-enter the vicinity of the premises within six hours without reasonable excuse.

Maximum fines of \$5,500 apply for each offence.

A reasonable excuse for a person remaining in or re-entering the vicinity of a licensed premises includes:

- the person reasonably fears for their safety
- the person needs to obtain transport, or
- the person resides in the vicinity of the premises.

Common law

In 2010, the *Liquor Act 2007* was amended to include section 77 (13), which recognises a licensee's common law right to exclude or evict a person from their premises:

Nothing in this or any other section of the Act operates to limit any other right a person has to refuse to admit a person to, or to turn a person out of, licensed premises.

Under common law a patron has an implied licence to enter and remain on the premises – which the licensee can revoke at any time.

This means that licensees can refuse entry or remove persons for reasons other than those specified by section 77 of the *Liquor Act 2007*. Common examples of the use of these rights is through the enforcement of dress codes, voluntary lockouts or barring patrons for behaviour which occurred at another premises or outside the venue.

Essentially licensees can revoke a person's implied common law invitation to enter the premises for any reason so long as it is not discriminatory.

If a patron refuses to comply with a request under common law to leave a venue, they are committing an offence under the *Inclosed Lands Protection Act 1901*, and could also be exposed to civil liability for trespass.

It is recommended that licensees display a sign near the entrance to their venue to the effect of:

This venue has the right to refuse entry to any person, or to withdraw any person's permission to remain on the premises at any time.

Dress codes

Many licensees have dress codes to ensure a minimum standard of clothing is worn. Such codes will normally reflect the nature and/or operation of the licensed venue in an attempt to set the tone, comfort and safety of a venue. For example, dress codes have prevented certain types of footwear or clothing of a particular style or condition, such as thongs, singlets and dirty or torn clothing.

In order to ensure no discrimination is applied, a dress code should be displayed at the venue's main entrance, have similar standards applying for men and women and be applied equally.

Restrictions on persons wearing gang related clothing is a form of dress code which has successfully been adopted by licensed premises and local liquor accords throughout the state. The benefits of adopting the strategy through a local liquor accord are that it is a united and consistent approach that deflects the decision away from the individual licensee.



Signage is available at:

www.liquorandgaming.justice.nsw.gov.au

“Licensees can revoke a person’s implied common law invitation to enter the premises for any reason so long as it is not discriminatory.”

Case study 1: ‘No Excuse!’ campaign

In 2005 the Albury Liquor Accord noticed an increase in aggression when people were refused service, asked to leave or refused entry. At that time the *Liquor Act 1982* had the ‘failure to quit licensed premises’ legislation. However many licensees and patrons were not aware of the existence of this legislation which included powers to remove or refuse entry – and penalties for patrons not obeying requests to leave.

In response, the accord developed a ‘Fail to Quit’ patron information campaign designed to educate patrons about the law and the penalty for failing to leave a venue when requested.

The program was implemented in Albury in four stages.

1. Surveys of patron knowledge about the issue
2. A media campaign – posters, newspaper, radio and television advertising
3. Enforcement, with licensees reporting incidents and police issuing tickets where needed
4. Evaluation.

Results

The evaluation showed there were fewer recorded alcohol related assaults in the Albury CBD between November 2005 and January 2006 compared with the previous year, with a significant decrease in assaults recorded in hotels during the same time.

In 2007 the ‘Fail to Quit’ program was updated to the ‘No Excuse!’ campaign to reflect the changes to the *Liquor Act 2007*. Due to the success of the initiative, Liquor & Gaming NSW (formerly the NSW Office of Liquor, Gaming and Racing) obtained the rights to the material and made it available to all liquor accords across the state.

The “No Excuse” campaign is now a common message in most venues across the state and is available in a variety of formats (poster, postcard and in-venue screens) and languages (Chinese, Korean and Thai).

As Albury Liquor Accord Coordinator, Darryl Betteridge stated, *“The clearly defined consequence of not obeying the directive and the fact that you are breaking the law is a message that needs to be constantly sent. The Albury Liquor Accord is proud of this initiative and takes pride in the effective implementation of this across other accords.”*



NO EXCUSE!
\$550 on the spot fine

You will be refused entry or asked to leave this venue immediately if you are:

- intoxicated
- violent
- quarrelsome
- disorderly
- smoking in a smoke-free area
- using or in possession of prohibited drugs

If you are refused entry or asked to leave for being intoxicated, violent, quarrelsome or disorderly, you must:

- leave the vicinity of the premises (more than 50 metres)
- not re-enter or attempt to re-enter the premises within 24 hours
- not re-enter the vicinity of the premises for six hours

If you don't comply you're committing a crime.

NSW Justice Liquor & Gaming NSW

어떤 변명도 통하지 않습니다!
현장에서 \$550 즉시 벌금이 부과됩니다!

別找藉口!
\$550 即時罰款

ไม่มีข้อแก้ตัว!
ปรับ 550 บาท

2 Patron barring/banning

Whilst most patrons behave responsibly and are warmly welcomed back to venues, there are, unfortunately, a minority of people who demonstrate violent or significantly inappropriate behaviour.

If a person is refused entry or ejected from licensed premises because they are intoxicated, violent, quarrelsome or disorderly, they are temporarily banned from the premises for 24 hours under the *Liquor Act 2007*. However, the licensee can impose a longer or indefinite barring period under common law. This is also the case for other forms of inappropriate behaviour.

In order for licensees to have any meaningful impact on patron behaviour they need to:

- establish clear guidelines for acceptable and unacceptable behaviour
- determine the consequences of unacceptable behaviour (i.e. patron barring terms)
- communicate these clearly to patrons, and
- apply them resolutely and consistently.

The benefits of a barring strategy are:

- it sends a strong message to trouble makers
- it defines and reinforces acceptable standards of behaviour in local venues
- patrons feel safer so are likely to spend more time at your venue
- less disruption for staff
- a safer work environment
- a more relaxing and enjoyable atmosphere.

“The benefit of developing strategies through a local liquor accord is that it sets a consistent approach for all venues in the accord to follow.”

Where possible, standard barring terms should be agreed upon and adopted by all members of the local liquor accord. The benefit of developing strategies through a local liquor accord is that it sets a consistent approach for all venues in the accord to follow. This helps patrons understand the expectations from all venues in an area, making it easier for them to comply.

Case study 2: Singleton patrons face life ban for anti-social behaviour

Singleton Liquor Accord members agreed to implement a barring policy at each of their venues to send the clear and united message that anti social behaviour by patrons is unacceptable.

The barring framework, which is limited to the establishment at which the incident has occurred, has the capability of barring patrons from a period of three months to life depending on the offence committed.

The policy has been actively promoted by the local media together with posters displayed in member venues.

Hunter Valley Local Area Command licensing officer senior constable Derek Hain says, “If someone is going to act in an intoxicated or anti-social way they will be held accountable.”

The barring policy is supported by the No Excuse campaign, where problem patrons can be issued with an on-the-spot fine of \$550 by police if they refuse to leave the premises when directed.

3 Multi-venue strategies

Through multi-venue barring strategies, venues are better able to protect the safety and well-being of their staff and patrons, eliminate or reduce occurrences of violent and anti-social behaviour and promote the industry's responsible image in the community.

Where a person has engaged in more serious acts of violence or anti-social behaviour, or has repeatedly been troublesome, either in the same or other venues (or vicinity of), venues can unite to bar the person from all venues. A multi-venue barring is intended to assist licensees to protect their staff and patrons from the behaviour of the person concerned.

Multi-venue barring is another example where a licensee uses their common law right to exclude a person from their venue. Where an accord bars a person from all accord venues, they are in effect informing the person that each licensee will exercise their right of refusal if an attempt is made to enter the venue.

Multi-venue barring requires high levels of communication and cooperation between local venues and detailed policies and procedures around its operation. This will generally require an agreement or constitution (detailing membership and voting rights), an executive or governing body, regular meetings and establishing communication channels. For these reasons local liquor accords are the most appropriate mechanism to implement a multi-venue barring strategy, as these governance aspects will already be in place.

“A multi-venue barring is imposed by licensees to protect their staff and patrons from the behaviour of the person concerned.”

In order to be successful, a multi-venue barring strategy needs to be a participant-driven effort facilitated and supported by other stakeholders, but operated and owned by venues that the program exists to serve.

There are two types of multi-venue strategy:

- **Multi-venue exclusion** where a patron is immediately barred from multiple venues, and only for 24 hours.
- **Multi-venue barring** where a longer term barring is put in place.

Multi-venue exclusion

Multi-venue exclusion may occur when a person is refused entry or removed for being intoxicated, violent, quarrelsome or disorderly on or near a venue. The licensee may then immediately notify all the surrounding venues who also refuse entry to that person.

This strategy aims to deal with the immediate risk posed by the patron and only applies for the trading period in which it occurred, i.e. no more than 24 hours. Any barring that extends beyond the immediate trading period should be considered under a normal multi-venue barring policy.

Fundamental to the success of this strategy is the effectiveness of the communication system. Traditional systems employ a telephone ring round system, which normally works in one of two ways:

- in a “round robin” system, venues pass on messages in an agreed order;
- in a “pyramid” or “cascade” system one venue telephones two venues in order to increase the odds of a message reaching all members.

Each accord should decide on the communication system that works best in their area.

In recent years many accords have adopted electronic pagers, radios or linked ID scanners. Although more expensive than telephones, they have considerable advantages in terms of speed and reliability, allowing instant communication to the entire group.

Multi-venue barring

Under a standard multi-venue barring system, licensees work in partnership through a local liquor accord and agree on a system where troublesome patrons are barred from all venues in an area. If, after consideration by the accord, a decision is made to bar a person, then they are barred from all accord venues for the specified period. Essentially this means that each licensee agrees to exercise their common law right to refuse entry for the exclusion period.

In most cases, multi-venue barring is not imposed for one incident (unless serious) but is usually the culmination of a series of incidents over a period of time. These will usually be accompanied by repeated warnings from individual licensees.

Important Note: Different circumstances apply for members of Registered Clubs – see page 11 for more detail.

“In most cases, multi-venue barring is not imposed for one incident (unless serious) but is usually the culmination of a series of incidents over a period of time.”

Multi-venue strategy

Accords should establish a clear set of procedures for patron barring, and how they will be determined. Key questions to consider include:

1 When are patrons barred?

Develop a list of behaviours that may lead to a multi-venue barring and agree upon the minimum barring period that relates to each offence. This can also be used by licensees as a guide for individual venue barring and to ensure consistency across the accord.

The list should detail:

- The specific types of behaviour that will result in a person being barred.
- The barring period for each offence.
- Any increased periods for multiple or repeat offences.

Case study 3: Bundaberg & Bargarra multi-venue barring system

The Bundaberg and Bargarra Liquor Accord in Queensland received two highly commended awards in the Australian Safer Communities Awards Program for education on safe drinking levels and their accord banning process. The accord introduced a two-step banning process.

The initial step, a **Type One Ban**^{*}, involves the accord issuing the person with a Notice to Stay Off Licensed Premises, which prohibits them entering the issuing licensed premises only. The accord's police representative records the banning notice and reviews the reason for the ban.

A **Type Two Ban** prohibiting a person from entering all accord premises is issued as a result of a patron seriously assaulting or threatening another patron or an employee of the premises, or being issued with two or more banning notices in the accord area. The person is sent a Notice of Consideration – Type Two Ban which offers the opportunity to meet with the accord to explain their circumstances. The person's response is taken into consideration before a final decision is made. The notice is accompanied with help referral information (such as anger management counselling).

The initiative has been welcomed by the local community, with local print media championing the initiative with numerous reports on its success. Since the initiative was introduced in 2008 the number of patrons banned each year has decreased significantly.

^{*} *The use of the term 'ban' is quoting the terminology used in QLD. The term 'barring' is preferred for use in NSW when using common law.*

Setting an agreed list of behaviours that have been checked by legal advisors helps to ensure anti-discrimination laws will not be breached.

2 Who will determine whether to bar a person?

Accords will need to establish who decides whether to bar a person. This could include:

- The accord executive.
- A specially formed disciplinary panel.
- The full membership of the accord (licensees only).

3 How will the multi-venue barring strategy operate?

Clear procedures will need to be developed and documented, including:

- Who can make the application?
- What information is required?
- When will it be considered – next accord meeting, special meeting of the panel or considered remotely by each panel member?
- Is there a review/appeal option in place?

The strategy should be adopted as a term of the accord. The policy is more likely to be effective if it has full support from all local venues. Take time to meet and consider feedback from all members.

This is a good time for a membership drive as licensees who are not currently liquor accord members may want to join the accord to participate in multi-venue barring.

4 How will you tell the barred person about the rules of the barring?

They need a formal notification so they can understand what the barring involves. This could be done through:

- Written information.
- Meeting with the local licensing officer.
- Attendance at a liquor accord meeting.

It's useful to have a central person coordinate the barring notifications. Decide who will be responsible for notifying the patron about the terms of the barring.

5 How will information be shared?

All staff at participating venues need to be told when a patron is barred. A system should be put in place to let staff know who the barred patron is, how long for and when a barring period is complete.

It's important to consider how personal information is used and secured. For example, details of a barred person should not be on display where they can be seen by patrons in the venue. Any staff handling personal information should be privacy trained.

Depending upon whether a venue is bound by the *Privacy Act 1988* (Cth), additional requirements or limitations on the sharing of information may also apply – see page 14.

If using an ID scanning system special considerations need to be in place. See details from The Office of the Australian Information Commissioner on page 15.

6 Ensure staff are trained

They will need to know:

- The process for barring a patron.
- How to deal with a barred patron entering the premises.
- How to remember when a barring notification is complete and the patron is welcome to enter again.

7 Removal of barring

A person may be barred until the end of the agreed term, or earlier than that if agreed to and voted on by all participating venues.

The inclusion of a condition, such as attendance at anger management counselling, could be considered before removal of the barring.

8 Seek legal advice

Once the accord has agreed on a draft policy, it is important to seek legal advice before finalising the document.

It is particularly important to check that your policy meets privacy and anti-discrimination laws. Check that the penalties and procedures for implementing any barring are legally enforceable before putting them in action. Fines could apply.

The Anti Discrimination Guidelines for the Hotel and Accommodation Industry, produced by the Anti-Discrimination Board with the AHA(NSW) and Tourism Accommodation Australia (NSW), is a valuable reference for legal requirements when it comes to anti-discrimination laws.

Case study 4: Northern NSW man formally banned from 8 premises

A liquor accord in northern NSW voted unanimously to apply for a banning order against a patron after seventeen incidents were reported to police over a two year period. These incidents ranged from move on directions and fail to quit offences, to malicious damage and assault.

A local police inspector made the application providing a list of venues in the area and descriptions of the incidents in which the man had been intoxicated, violent, quarrelsome or disorderly.

In determining the matter Independent Liquor & Gaming Authority consulted with venues in the area and found that: four venues had already banned the man for life due to his behaviour at their venue; and another only allowed the man attend their hotel to have a meal with his employer (and not consume alcohol).

Independent Liquor & Gaming Authority was satisfied that the man was frequently intoxicated, violent and quarrelsome on or in the immediate vicinity of licensed premises and issued an order under section 78 of the *Liquor Act 2007* prohibiting him from entering eight premises for six months.

9 Publicise it!

It's only fair to give patrons advance notice that the multi-venue barring strategy is being put in place. Consider the following promotion opportunities:

- Local media – see the media release template at Attachment D.
- In-venue signage.
- Promote in community centres – police station, library etc.
- With the displayed conditions of entry or other signage at the door.
- Accord and venue websites.

Promoting through local community centres can help improve understanding and boost support from all sectors of the community. It may even help promote your venues as a safe, friendly place to be.

10 Evaluate

It is important to review the strategies regularly at first. Move to more long term reviews (e.g. yearly) once the program is established.

Evaluation questions to consider:

- Effectiveness of each penalty time – too short, too long?
- Offences that should be added or removed.
- Communication processes between participating venues.
- Staff issues – do all staff understand the process?
- Is it working – are barred patrons finding any loopholes?
- Response from the general community?
- Police data.
- Number of patrons requiring barring? (Ideally this should decrease as patrons become aware of the system.)

A sample multi-venue policy is included at Attachment A. To assist with your planning, a worksheet of these questions is included at Attachment B.

“The inclusion of a condition, such as attendance at anger management counselling, could be considered before removal of the barring.”

4 Banning orders

Through formal banning orders, patrons who are continually troublesome can be held to account.

Barring strategies that draw on common law rights are generally sufficient to deal with disruptive patrons. However, the option to apply for a formal banning order is also available to licensees.

A formal banning order may be appropriate where:

- A person continually disregards a barring period imposed under common law (either single or multi venue).
- There is no liquor accord in place to implement a multi-venue barring strategy.
- Agreement cannot be reached by all venues to bar a patron.
- The patron has been significantly disruptive to warrant formal regulatory intervention.

Under section 78 of the *Liquor Act 2007*, a person who has been repeatedly intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises can be banned for up to six months from multiple licensed venues.

An application for a banning order can be made by The Secretary of NSW Department of Justice, NSW Police or a licensee who is a party to a local liquor accord.

A person subject to a banning order must not enter, attempt to enter or remain on the licensed premises. A maximum penalty of \$5,500 applies.

Additional information on banning orders:
www.liquorandgaming.justice.nsw.gov.au

Place Restriction Orders

For serious matters that lead to prosecution, a Place Restriction Order under the *Crime (Sentencing Procedure) Act 1999* is another approach that could be considered in consultation with police. This provision can be applied during the sentencing process. A person may be prohibited from certain places for 12 months when they are convicted for a minimum sentence of 6 months – including while on bail, or community service. Speak to your local licensing officer for further details.

5 Choosing the right strategy

There are a number of ways that a licensee can exclude a person from their venue, and effectively, other venues.

It is important that licensees give careful consideration to the conduct and behaviour of the person and the harm that this presents when determining which strategy to apply. Any policy that is pursued or adopted must be balanced, fair and reasonable in order to gain broad approval from the community and other licensees – and to reduce the risk of civil litigation.

For example, it would be appropriate to remove an intoxicated person from your venue and implement a multi-venue exclusion in order to prevent the person from gaining entry to another premises whilst intoxicated. However, it may be viewed as harsh or extreme to bar that person from your premises, or others, unless there were aggravating circumstances, e.g. fail to leave when asked, or aggressive behaviour. The matrix below may provide some guidance in determining which strategy to adopt in each case.

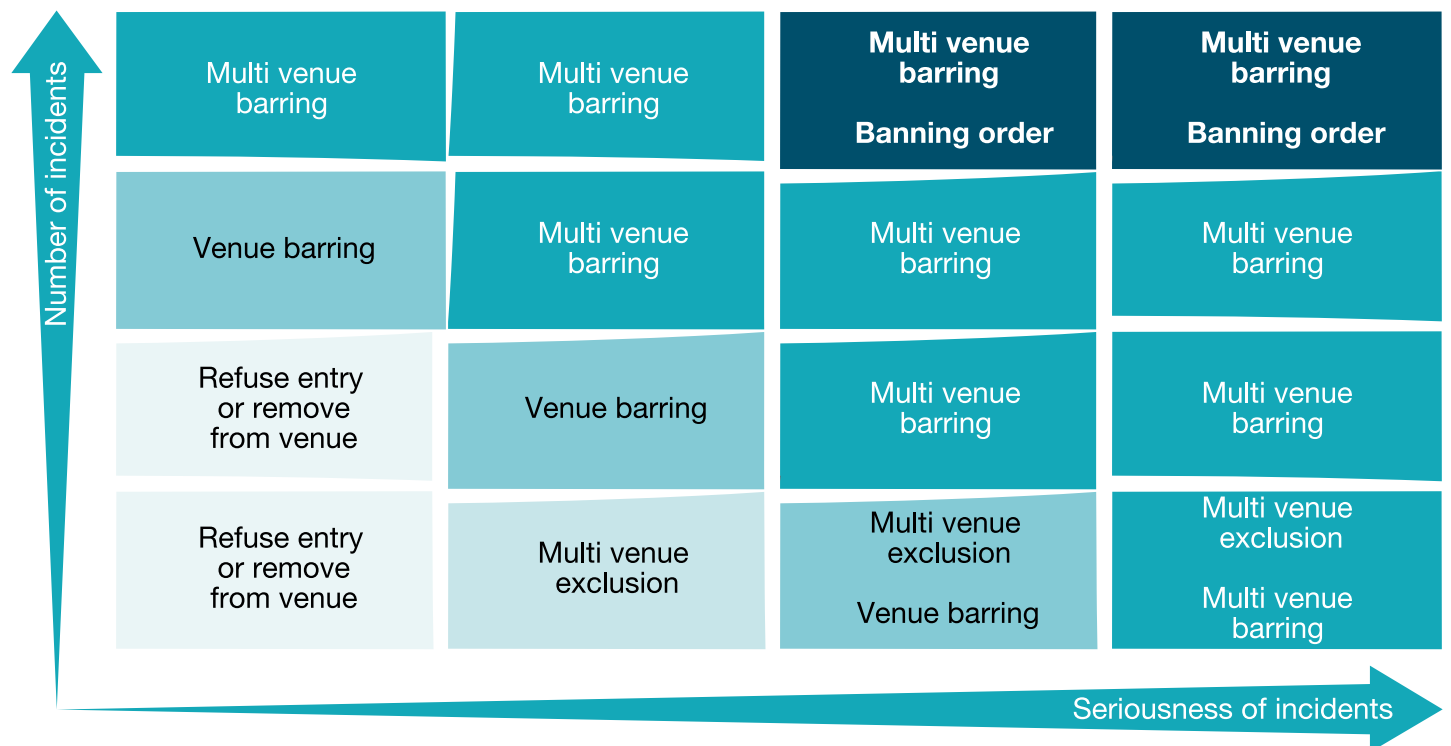


Figure 2: incident matrix

“Any policy that is pursued or adopted must be balanced, fair and reasonable.”

6 Registered clubs

Registered Clubs share the same common laws rights as other licensees for any member of the public. However, the position in relation to club members is different.

Members of a registered club have a membership interest in the club and have a right to enter and use the premises subject to the rules of the club. As such, a club member can only be refused entry or removed from the premises where provided for by the *Liquor Act 2007* or in circumstances provided for in the club rules – and in accordance with any procedures laid down in the rules.

Generally speaking, clubs would ordinarily be expected to have rules governing the expulsion or suspension of members from the club premises, and the conditions under which this may take place. However, existing rules are unlikely to encompass the behaviour of members on other licensed premises or outside of the club. Unless club rules include such provisions (or similar), a member could not be excluded from entry by virtue of a multi-venue barring policy.

Whilst it may be possible for a registered club to participate in a multi-venue barring strategy through changes to its club rules, there are a number of issues that will need to be considered and it is recommended that specific advice is sought from ClubsNSW or a legal practitioner before doing so. Key considerations include:

- the adequacy of existing grievance procedures
- the mechanism under which club rules can be changed (usually only by special resolution)
- whether a barring through the accord results in a bar from the club – or instead triggers the club's own grievance procedure
- whether or not a barred member would be entitled to a refund of their membership fee on a pro rata basis for the barring period.

In addition, clubs which are co-operatives usually have more substantial grievance procedures for issues arising between members and the club under applicable legislation. In these instances, any changes to the grievance procedure would need to meet the requirements of the specific legislation that applies to co-operatives.

Registered clubs should contact ClubsNSW on (02) 9628 3000 for further information.

7 Anti-discrimination

Anti-discrimination laws are an important consideration when barring or banning patrons.

When determining banning orders, Independent Liquor & Gaming Authority must not take into consideration the person's race or ethnic or national origins – section 78(7). Licensees should do likewise when considering patron barring and ensure that decisions are made based on the behaviour of persons and not personal characteristics.

Licensees should be aware that any decision relating to patron barring must be made in accordance with the *Anti-Discrimination Act 1977* (NSW) and the various Commonwealth and state legislation relating to discrimination.

“Ensure that decisions are made based on the behaviour of persons and not personal characteristics.”

Venues should apply rules consistently and fairly. For example, if a customer is barred for six months for disorderly behaviour, all other customers should be barred for the same length of time for the same behaviour and not be given a heavier penalty for personal reasons or because they are part of a minority group.

Setting up procedures for all staff to follow before barring any patrons is one way to help avoid discrimination. Check the procedures with a legal advisor to be absolutely sure they are enforceable.

Anti Discrimination Guidelines for the Hotel and Accommodation Industry is a document produced by the Anti-Discrimination Board of NSW, the AHA (NSW), and Tourism Accommodation Australia (NSW) and explains the rights and responsibilities of licensees and their employees under anti-discrimination law. You can obtain it from www.antidiscrimination.justice.nsw.gov.au/Documents/hotel_guidelines.pdf

To formalise this process you may want to issue the patron with a notice indicating the details of the offence they have committed and the length of time they are barred for.

8 Privacy obligations with multi-venue strategies

Many people have concerns about the possible misuse of personal information.

They worry that stored personal information could be hacked, stolen or inappropriately accessed or misused, causing harm through financial, credit card or identity fraud.

Both State and Federal laws exist to deal with these concerns, and licensees should ensure that they only collect information so far as it is necessary to implement the multi-venue barring policy.

Different legislation may apply to each different type of accord member and each licensee. Regardless of whether there is binding legislation, it is good practice for all venues to take steps to protect the privacy of patrons to help lower the risk of privacy complaints being lodged against them. This is particularly the case when collecting and sharing information about a person who has been barred.

The following provides general information on both state and federal privacy laws; however, it is ultimately a matter for each licensee to determine their own privacy obligations.

It is strongly recommended that an accord or licensee seeks independent legal advice before implementing a barring system.

Privacy and Personal Information Protection Act 1998

The NSW *Privacy and Personal Information Protection Act 1998* (PPIPA) applies only to public sector agencies. As such individual licensees are not bound by it and may collect, use and disclose personal information without breaching its terms. The NSW Police Force is also exempt from compliance with the PPIPA, except in relation to its administrative and educative functions.

This means that a licensee who is party to a local liquor accord that bars a person from the venue may disclose the name of the person and a photograph (if available) to other licensees who are parties to the liquor accord, without breaching the *PPIPA* (however, Commonwealth law may apply – see page 14).

Public sector agencies that are eligible parties to the accord, such as the Secretary of NSW Department of Justice and local councils will need to ensure that any dealings with personal information about barred persons accords with the PPIPA. In these circumstances it is recommended that you exclude these agencies from this information.

Commonwealth Privacy Act 1988

Whilst NSW privacy laws are not generally applicable, some licensees may have obligations under the *Commonwealth Privacy Act 1988*. Under the *Privacy Act*, licensees with a turnover of more than \$3 million are required to comply with the National Privacy Principles (NPP) that restrict the collection and disclosure of personal information (schedule 3 to the Act).

The Office of the Australian Information commissioner has developed a **Privacy Checklist for Small Business** for determining whether or not a business is exempt from the *Privacy Act*. The checklist is available from www.oaic.gov.au

Regardless of whether a venue is bound by the *Privacy Act*, the NPPs provide a framework of good practice for all business and should be considered as part of any barring strategy.

How to comply with the Privacy Act

Complying with the *Privacy Act* means that you should:

- Tell people when you collect personal information what you expect to do with it.
- Use personal information only for the reason you collected it, or in ways people would think reasonable, unless you have their consent, have given them an opportunity to opt-out or the use is authorised by another law.
- Pass on personal information only for the reason you collected it, or in ways people would think reasonable, unless you have consent or the disclosure is authorised by another law.
- If people ask, give them a chance to see any information you hold about them and keep personal information secure, accurate and up-to-date.
- Take reasonable steps to secure the information and destroy or de-identify the information when it is no longer required.

Of particular relevance, under NPP 2 an organisation is prohibited from using or disclosing personal information about an individual for a purpose other than the primary purpose of collection. Where a multi-venue barring policy is in place, venues may be able to use and disclose an individual's details provided that the information was primarily collected in order to implement this policy. To remove any doubt and to comply with other aspects of the NPPs, patrons should be informed of this at the time of collection.

Ultimately it will be up to each individual licensee to assess whether they are required to comply with the NPPs and, if so, to determine what steps need to be taken in this regard. However, there is nothing to prevent the accord participants agreeing that certain measures be taken to protect the privacy of the barred person, so far as possible, even if not legally required. As previously stated, licensees should seek independent legal advice when developing their barring procedures.

You should also note that there are proposed changes to the Privacy Act (Cth). Accordingly, you should review the legislation regularly to ensure that you are up to date with your privacy obligations.

“ID scanning may provide an effective mechanism to implement a multi-venue barring policy.”

ID Scanners

An increasing number of licensed venues have introduced ID scanners as a security measure. By linking these systems between venues, ID scanning may provide an effective mechanism to implement a multi-venue barring policy. While the recording of personal information can deter anti-social behaviour and improve compliance, use of ID scanners must take into account the same privacy considerations detailed above.

It is essential for each licensee to seek legal advice on their individual privacy requirements to ensure that they comply with the law. For example, NPP 10 states that consent is needed to collect sensitive information, Organ donor information on a driver's licence is considered to be sensitive information.

Compliance tips

The following tips come from the Office of the Australian Information Commissioner:

- Only collect the identity information you need. Limit to what is necessary.
- You are not allowed to collect information simply because you think it may be useful in the future.
- You are not allowed to collect information simply because it is convenient.
- Consent is needed to collect 'sensitive' information. NB: Driver's licences contain sensitive information.
- Even if you have consent, the information still needs to be necessary before you are allowed to collect it.
- Consider giving your patrons an option if they don't want their ID scanned.
- Patrons must know that their information is being collected and what will be done with it.
- All staff that handle personal information should be privacy-trained.
- The information you have scanned and stored must be accurate, complete and up-to-date.
- Don't collect Australian Government identifiers. This means not collecting, scanning or copying identifiers such as passports or Medicare numbers.

This information is summarised from: **Information Sheet (Private Sector) 30 – ID scanning in pubs and clubs**, available from www.oaic.gov.au/privacy-law/privacy-archive/privacy-resources-archive/information-sheet-private-sector-30-2010-id-scanning-in-clubs-and-pubs

Further resources



Liquor Accords

The Liquor Accord Delivery Unit is a specialist unit within Liquor & Gaming NSW which provides support and assistance to accords, including setting up an accord and strategy implementation and evaluation.

Phone 02 9995 0312, email accords@olgr.nsw.gov.au, or visit www.liquorandgaming.justice.nsw.gov.au



Anti Discrimination Guidelines for the Hotel and Accommodation Industry

Produced by the Anti-Discrimination Board of NSW, the AHA (NSW) and Tourism Accommodation Australia (NSW), it explains the rights and responsibilities of hoteliers and their employees under anti-discrimination law. Although developed for hoteliers, the document provides useful guidance to all licensees.

www.antidiscrimination.justice.nsw.gov.au/Documents/hotel_guidelines.pdf



Australian Government

BUILDING OUR FUTURE

Privacy

Comprehensive information on all areas of privacy law is available from the Office of the Australian Information Commissioner, including:

- Guidelines on the National Privacy Principals (NPP)
- Privacy Checklist for Small Business
- 10 Steps Guide to Protecting Your Personal Information

www.oaic.gov.au



Australian Government

BUILDING OUR FUTURE

ID Scanning – Privacy

The Office of the Australian Information Commissioner also provides information in relation to the use of ID scanners at licensed premises:

- Information Sheet (Private Sector) 30 – ID scanning in pubs and clubs
- Information Sheet 20 – 2007 Scanning ‘Proof of Identity’ documents
- Frequently asked questions – ID Scanning

www.oaic.gov.au



Intoxication guidelines

The guidelines are aimed at assisting licensees and their staff determine whether a person is intoxicated. The guidelines have been developed to support the objectives of the *Liquor Act 2007*.

www.liquorandgaming.justice.nsw.gov.au



Posters: No Excuse!

Posters in English, Chinese, Thai and Korean, as well as a postcard (English only) communicate the circumstances under which patrons can be refused entry or be asked to leave, and the cost if they do not comply.



Poster: Gang colours not permitted

This A4 poster informs people wearing any form of clothing, jewellery or other accessory associated with a Gang that they will be refused entry or removed from a licensed venue. This initiative aims to support venues and liquor accords that have adopted a 'no colours' policy.



Poster: Behave or be barred

This poster informs patrons that the venue is participating in a multi-venue barring strategy, and troublesome behaviour may result in being barred from all venues in the area. The poster can be customised to include the names of the accord area.



Poster: Still on the Spot?

This poster explains the requirement for patrons to leave the 50 metre vicinity of the premises when ejected or refused entry for being intoxicated, violent, quarrelsome or disorderly.



Staff memo: Refusing entry or removing a patron

This easy to read memo provides staff of licensed premises clear and simple information on refusing entry or removing patrons from the premises.

You can download the above posters and find further information on www.liquorandgaming.justice.nsw.gov.au

Glossary

Banning Order: Formal order made under section 78 of the *Liquor Act 2007*.

Ban/Banning: The formal exclusion of a person from a premises under the *Liquor Act 2007*.

Bar/Barring: The exclusion of a person from a premises under common law.

Common law: A venue operator's inherent right to revoke an invitation for a person to enter or remain on their premises.

Discrimination: The unfair treatment of a person because they belong to a particular group of people or have a particular characteristic.

Fail to Quit: An offence under section 77 of the *Liquor Act 2007* for failing to leave a licensed premises (or vicinity of) when requested.

House Policy: Rules which set out acceptable patron behaviour.

Liquor accord: Industry-based partnerships between licensees and other stakeholders to introduce practical solutions to liquor-related problems in a local community.

Multi-venue barring: Where a person is barred (under common law) from multiple premises for an extended period in accordance with a set policy.

Multi-venue exclusion: Where a person is immediately barred from multiple premises for that trading period i.e. no more than 24 hours.

NPP: National Privacy Principles established under the *Privacy Act 1988* (Commonwealth).

Place Restriction Order: A court order that prohibits the subject from entering specific places or districts for a specified term

PPIPA: *Privacy and Personal Information Protection Act 1998* (NSW).

Privacy Acts: *Privacy and Personal Information Protection Act 1998* (NSW) and *Privacy Act 1988* (Commonwealth).

Vicinity: Within 50 metres of the boundary of a licensed premises.

Multi-venue barring policy

The [insert] Liquor Accord has implemented the following 'Multi-venue barring policy' to reduce alcohol related violence, anti-social behaviour and other alcohol related harm in and around licensed premises.

- 1** Persons who are involved in any of the following behaviour on or near accord venues may be subject to a barring under this policy:
 - a. violent, threatening or aggressive behaviour
 - b. anti-social or disorderly behaviour
 - c. vandalism, malicious damage or repeated disturbance
 - d. repeated intoxication
 - e. refusing to leave a venue when requested
 - f. use, possession or distribution of illegal drugs (or reasonable suspicion of), or
 - g. any criminal activity.
- 2** Any accord member can make an application to have a person barred from all accord venues by making a request to the Accord Chairperson. The request should include the name and address (if known) of the person for which the barring is sought and the details of the circumstances leading to the request. Where possible, the request should be accompanied by supporting evidence such as incident register logs, CCTV or witness statements.
- 3** Each case will be considered on its merits and determined by a panel of licensees ("the Panel"). Accord members who are from public sector agencies, as defined by the *Privacy and Personal Information Protection Act 1998*, will not participate in the Panel, or be provided information regarding the details of barred persons.
- 4** When considering whether to bar a person, the Panel will take into account:
 - a. the seriousness of each incident
 - b. the cumulative impact of all incidents
 - c. the acceptance or not of wrongdoing by the person
 - d. the likelihood of further incidents
 - e. any restitution or penalty already paid by the person, and
 - f. any other information which is relevant.
- 5** Any barring period will be determined in consideration of the guidelines adopted by the [Insert] Accord and attached to this policy. However, these are a general guide and should not be regarded as inflexible. Where appropriate longer or shorter periods may be agreed upon.
- 6** Each licensee of the [insert] Accord agrees to exercise their common law right to refuse entry or remove the person for the period determined by the Panel. This does not prevent licensees from implementing a longer barring period for their individual venue.
- 7** Barred persons will be notified in writing by the Accord Chairperson and given an opportunity to have the decision reviewed. Where the address of the barred person is not known, the accord will take all reasonable steps to ascertain the address and notify the person of the barring.
- 8** Any request for a review must be made in writing within 30 days of the date of the notification, addressed to the Accord Chairperson and include supporting statements/material. The barring period remains in effect until the review is determined.
- 9** The request will be determined by the Panel who may choose to invite written or verbal submissions from any relevant person.
- 10** The original requesting accord member will not sit on the review panel; however they will be given an opportunity to respond to any submission made by the barred person.
- 11** In reviewing the barring period, the Panel will give consideration to all relevant information in accordance with point 4 of this Policy. The Panel will then determine whether to uphold, remove or vary the barring. This could include increasing the barring period.
- 12** The barred person will receive written notification of the review decision, including confirmation of any barring period in effect.
- 13** A notice, as agreed upon by the Accord, will be displayed prominently near each entrance of all participating venues to notify persons of this Policy.
- 14** Any amendments to this Policy can only be made through the consensus of members of the [Insert] Accord, as detailed in the accord constitution.

Multi-venue barring policy

Use this worksheet as a guide to developing your liquor accord's multi-venue barring policy.

When are patrons barred?

- 1** Which behaviours may lead to multi-venue barring, and what is the minimum barring period for each offence?

- 2** Is there any increased barring period for multiple/repeat offences?

How will the barring take place?

- 3** Who determines if a person is to be barred?

- 4** Who can make a barring application?

- 5** What information will be required?

- 6** When will applications be considered?

- 7** Will there be a review/appeal option?

Information sharing

- 8** How will the barred person be informed of their barring and the rules?

- 9** Who will coordinate barring notifications?

- 10** How will barring details be communicated to venue staff?

- 11** How will the privacy of the barred person be protected?

Staff training

- 12** How will staff training cover the process for barring?

- 13** How will staff be trained to remember when barring is complete and patrons are able to enter again?

Removal of barring

- 14** Are there any conditions to be completed by the patron before removal of barring?

Once the policy is written

- 15** What legal advice will be sought to check the policy?

- 16** How will the policy be communicated to patrons before and during its operation?

- 17** How, and how often, will the policy be evaluated?

Other questions

Use this space to record other questions or issues which arise in the meeting to develop the barring policy.

Attachment C: Sample multi-venue barring letter



[Name & Address of Liquor Accord]

[Date]

[Name & Address of person being barred]

Dear [Mr/Mrs/Ms] [Name]

Local licensees, through the [insert] Liquor Accord have been working to reduce alcohol-related violence, anti-social behaviour and other alcohol-related harm in and around their venues.

To help reach these objectives, the Accord has implemented a multi-venue barring policy. Under the policy, patrons involved in acts of violence, crime or serious anti-social or disruptive behaviour on or near their venues will be excluded from all Accord venues.

As a result of your behaviour, and in accordance with the multi-venue barring policy, Accord members have agreed to bar (exclude) you from their premises for a period of [months/years/indefinitely]. This barring takes effect from the date of this letter until [date].

The incident/s giving rise to the barring is/are:

Date	Location	Details

During this exclusion period each licensee will exercise their common law right to refuse you entry or remove you from their premises. A list of participating premises is attached for your information.

Should you be aggrieved by this decision then you can request a review by the Accord. Any request for review should be made in writing and sent to the above address. Please note that the barring period remains in effect until the review has been determined.

Yours sincerely

[Accord Chairperson]

Notes:

- This letter may be amended to suit the individual requirements of your accord, including accord logo.
- Do not use Police or any Government agency logos on your letters.
- Attach a listing of accord premises to your letter.
- An electronic version of this letter is available from www.liquorandgaming.justice.nsw.gov.au



Media release

[Date]

[INSERT LOCATION] LICENSEES CLAMP DOWN ON BAD BEHAVIOUR

Hotels and clubs belonging to the [Insert location] Liquor Accord have agreed to ban troublemakers across all member venues under a multi-venue barring policy announced today.

[Insert location] Liquor Accord Chairman [Insert name] said licensees were teaming up to ensure a safe and enjoyable environment for patrons.

“While most patrons behave responsibly in licensed premises there is unfortunately at times a minority of people who demonstrate significantly inappropriate behaviour,” [Mr/Ms Name] said.

“[Insert location] Liquor Accord members are committed to providing a safe, relaxing and enjoyable atmosphere for the vast bulk of responsible patrons by stamping out bad behaviour.

“As a result, a new multi-venue barring policy is being implemented across all liquor accord venues to allow licensees to protect both patrons and staff from troublesome behaviour.

“This means that problem patrons can be barred from all [insert location] venues under the local liquor accord either for a 24 hour period or longer if deemed necessary, including lifetime bans in extreme cases.

“The multi-venue barring policy aims to reinforce acceptable standards of behaviour in local venues and send a strong message to troublemakers – behave yourself or you’re out the door – from all venues in [insert location].”

[Mr/Ms Name] said under the multi-venue barring policy a person may be ejected or refused entry to all licensed premises in [insert location] if they display:

- Threatening or aggressive behaviour
- Anti-social or disorderly behaviour
- Vandalism, malicious damage or repeated disturbance
- Repeated intoxication
- Refusing to leave a venue when requested
- Use, possession or distribution of illegal drugs
- Any criminal activity

“If a person is ejected or refused entry under the multi-venue barring policy and fails to comply they are committing an offence under the *Liquor Act 2007* and may be issued with a \$550 penalty notice or face a potential maximum court penalty of up to \$5,500,” [Mr/Ms Name] said.

“The message is simple,” [Mr/Ms Name] said. “Behave or be barred.”

This policy builds on previous initiatives by [insert location] Liquor Accord. [Insert details].

The next local Liquor Accord meeting will be held on [Insert date] at [Insert location] at [Insert time] [am/pm].

[Insert contact details]

Disclaimer

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

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1st edition 2012 – updated February 2016 (branding only)

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