

Scheme to regulate licensed premises with high levels of assault and other violent incidents



The violent venues scheme has operated under Schedule 4 of the *Liquor Act 2007* since 1 December 2008.

Historical details about the scheme, including lists of violent venues for each round of the scheme, are available from the Office of Liquor, Gaming & Racing's (OLGR) website: www.olgr.nsw.gov.au/alcohol_restrictions_for_violent_venues.asp.

Scheme overview

Under the scheme, licensed premises with high levels of alcohol-related violent incidents are categorised as **Level 1** (generally 19 or more incidents), **Level 2** (generally 12 to 18 incidents) or **Level 3** (generally 8 to 11 incidents) based on the latest 12 months of alcohol-related violent incident data that is compiled by the NSW Bureau of Crime Statistics and Research (BOCSAR).

Special licence conditions are imposed on Level 1 and Level 2 venues under Schedule 4 of the *Liquor Act 2007*. Level 3 venues are effectively put on notice that they are near the threshold for regulatory intervention under Schedule 4 and are encouraged to develop or review their venue safety plans. They are also directed to the OLGR website to access information on conducting a risk assessment to identify appropriate measures to reduce the risk of alcohol-related violence at their premises.

Important information

This fact sheet provides useful information about the operation of the violent venues scheme under Schedule 4 of the *Liquor Act 2007*. Venues should be aware that this Scheme to regulate licensed premises with high levels of assault and other violent incidents and the procedures outlined in this fact sheet may be modified by the Government at any time. Venues will be notified if this occurs.

Rounds of the scheme commence on 1 June and 1 December each year.

Meaning of 'Alcohol-related violent incident data'

Alcohol-related violent incident data consists of 'violent criminal incidents' that are recorded by the NSW Police Force ('Police') as 'alcohol-related' and as having occurred on 'licensed premises'.

Meaning of 'criminal incidents'

BOCSAR defines a criminal incident as an activity detected by or reported to Police which¹:

- i. involved the same offender(s);
- ii. involved the same victim(s);
- iii. occurred at the one location;
- iv. occurred during one uninterrupted period of time;
- v. falls into one offence category; and
- vi. falls into one incident type (e.g. 'actual', 'attempted' or 'conspiracy').

www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_lga_notes

The recording of criminal incidents by police has been **described by BOCSAR as follows:**

Whenever someone reports a crime to police, or police discover what they believe to be a crime, police generally record it. These records of crimes reported to and recorded by police form the basis of police crime statistics. Among other things, each record contains information on the nature of the recorded crime, the circumstances in which it occurred, the location of the crime, the time it occurred, whether the offender was armed with a weapon, what sort of weapon was involved, whether the offender appeared to be affected by alcohol and, if something was stolen, the nature of any object stolen².

Meaning of 'violent' criminal incidents

Incidents classified by BOCSAR as violent incidents include a wide range of police incident categories that are based on the Australian Bureau of Statistics' Australian and New Zealand Standard Offence Classification (ABS2011 Cat. No. 1234.0).

Violent incidents that are captured under this scheme are listed below.

- Actual bodily harm
- Aggravated indecent assault
- Aggravated sexual assault
- Assault
- Assault officer
- Assault with intent to have sexual intercourse
- Grievous bodily harm
- Indecent assault
- Kidnapping
- Manslaughter
- Murder
- Riot and affray
- Sexual assault
- Shoot with intent to murder
- Violent disorder

1. www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_lga_notes

2. NSW Bureau of Crime Statistics and Research, Uses and abuses of crime statistics, November 2011

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Meaning of 'alcohol-related'

Ordinarily, a violent criminal incident which occurs on licensed premises will be assessed as alcohol-related except where it is apparent that the consumption of alcohol was not a contributor to it. While each case must be considered on its merits, some examples of circumstances in which incidents have previously been assessed as not alcohol-related, despite occurring on licensed premises, include:

- where there is clear evidence that alcohol was not consumed by either the victims or offenders; or
- where the incident occurred at an under-age event at which alcohol is not sold or supplied; or
- where the incident involved persons seeking entry to the venue and the venue's management of the queue and the handling of the incident did not contribute to or exacerbate the incident; or
- where the offender was not a patron of the venue (note: persons seeking entry to a venue are considered patrons); or
- where the incident involved domestic violence or other longstanding family, or inter-personal conflict and alcohol was not a contributing factor; or
- where a patron reports being assaulted by venue security and it is apparent that reasonable force has been used to lawfully escort a patron from the venue and alcohol is not a contributing factor which led to the patron from being escorted from the venue.

Meaning of 'on licensed premises'

Police consider an incident to have occurred on licensed premises if it:

- a) occurs on the licensed premises itself; or
- b) occurs in the immediate vicinity of the premises (e.g. footpath or car park) where there is evidence of direct involvement with the venue.

Notification of alcohol-related violent incident data

In March and September each year, BOCSAR provides OLGR with the latest 12 months of alcohol-related violent incident data. Data provided in March relates to the previous calendar year, while data provided in September relates to the previous financial year.

Prior to the commencement of each round of the scheme, OLGR writes to each licensee of licensed premises which has recorded 8 or more alcohol-related violent incidents in the latest 12 months of data. This advice notifies licensees of their venue's possible categorisation as a Level 1, 2 or 3 venue in the next round of the scheme (depending on the total number of recorded incidents for the venue). For venues with a possible Level 1 or Level 2 category the advice includes further information about each incident, including the event number, time and date of incident and incident category.

The advice is usually provided to licensees in mid to late March and September of each year.

For existing Level 1 and 2 venues, the total number of recorded incidents will include some incidents that were attributed as part of the round of the scheme that is underway at the time. It may also include late reported incidents that occurred during the reporting period.

Licensed premises with 12 or more incidents (i.e. possible Level 1 and 2 venues) will then be invited to review the incidents with Police to assess whether an incident should be attributed to their venue. The approach to attributing incidents and review process is discussed below.

Attributing incidents

The circumstances of incidents vary greatly and each incident must be considered on its merits. Generally, the key considerations assessing whether an incident should be attributed to a particular licensed premises are:

- whether the incident meets the definition of a "criminal incident" referred to above;
- whether the incident falls within one of the categories of violent criminal incidents referred to above;
- whether the incident is 'alcohol-related' within the meaning referred to above; and
- whether the incident has occurred on the licensed premises, applying the Police concept of 'on licensed premises' referred to above.

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Trade & Investment
Office of Liquor, Gaming & Racing

Process for reviewing incidents

Licensees are encouraged to meet with their local licensing police regularly to discuss incidents at their venues and not simply as part of this scheme, particularly if they have concerns about the risk or impact of alcohol-related violence at their venue.

Prior to the commencement of each round, licensed premises with 12 or more incidents in the latest 12 months of alcohol-related violent incident data (i.e. possible Level 1 and 2 venues) can review incidents with local licensing police to assist in assessing whether an incident should be reviewed and attributed to their venue. However, incidents that were reviewed and attributed in the previous round of the scheme cannot be reviewed again and will remain attributed to the venue.

The Police review process is multi-layered and involves input from local licensing police, the Local Area Commander (LAC) and the Police Alcohol and Licensing Enforcement Command (ALEC).

Licensees seeking to review these incidents must submit a completed 'Request for Review' form to their local licensing police within the timeframe advised in their notification letter from OLGR. Review meetings must then be held within the timeframe specified in that letter.

Licensees are encouraged to take any material they believe would be useful to the review meeting, including any incident registers maintained on the premises.

At the review meeting, licensees will be provided with an outline of the information considered by the licensing officer and they will be able to view the COPS records for each incident being reviewed. Due to privacy issues, identifying details are removed and licensees are prevented from viewing COPS records on-screen.

At the conclusion of the meeting, a report (Form B) of the review meeting is completed by the licensing officer and provided to the licensee and the LAC. The LAC is responsible for initially assessing whether or not any reviewed incidents should be attributed to the venue for the purpose of the scheme.

The LAC's assessment is then forwarded to ALEC for finalisation of the Police assessment. ALEC's involvement in the incident review process ensures the incidents are assessed in a consistent manner.

The final Police assessment will indicate whether there is any change to the number of incidents attributable to your venue and will include an outline of the information considered in the assessment.

ALEC then sends a copy of the final Police assessment to licensees and the Office of Liquor, Gaming and Racing to inform the Office's advice to the Government for the purpose of categorising venues under the scheme.

Where the final Police assessment indicates that an incident the subject of the review remains attributed to a licensed premises, ALEC will provide copies of the relevant records from the COPS database (with any third party personal information and health information deleted). Licensees do not need to submit an application under the Government Information (Public Access) Act 2009 to obtain this information.

Submission to the Office of Liquor, Gaming & Racing

In the event that licensees do not agree with the final Police assessment, licensees can make a submission to the Executive Director of OLGR setting out the reasons why they disagree. The Executive Director will consider the submission, having regard to the approach described above for attributing incidents, in providing advice to the Government for the purpose of categorising a venue under the scheme.

However, the Executive Director will only consider submissions about incidents which have been previously raised with Police in accordance with the review process above and which have not previously been reviewed and attributed to the venue.

Licensees should have regard to this fact sheet and include any supporting material in their submissions that may assist the Executive Director's consideration. Supporting material such as CCTV footage should be indexed to identify relevant information for consideration.

In most circumstances, the Executive Director will not disturb the final Police assessment in providing advice to the Government unless a licensee is able to provide evidence or information that demonstrates that an incident should not have been attributed to the licensed premises based on the approach described above.

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The final Police assessment will generally not be disturbed where the licensee's submission is based on one or more of the following arguments:

- the extent of any injury that arises from an assault is or is not significant,
- the nature of an assault is purported to be trivial,
- Police did not investigate or prosecute the incident,
- the offender was not identified,
- CCTV footage is determinative,
- the reporting of the incident to Police was delayed,
- the venue has no record of the matter, or
- CCTV records have not been retained by the venue.

Licensees must send their submissions within the timeframe specified in the notification letter to the Compliance Branch (safe.premises@olgr.nsw.gov.au), Office of Liquor, Gaming & Racing, GPO Box 7060, Sydney NSW 2001.

Categorising venues

Following the incident review process, the Government will generally categorise a licensed premises as:

- a **Level 1 venue** if it has 19 or more incidents attributed to it; or
- a **Level 2 venue** if it has between 12 and 18 (inclusive) incidents attributed to it; or
- a **Level 3 venue** if it has between 8 and 11 (inclusive) incidents attributed to it.

Existing Level 1 and 2 venues

For existing Level 1 and 2 venues, the Government will also consider the adequacy of their venue safety plan and compliance history, particularly when determining whether a venue should be removed from Schedule 4 because it has between 8 and 11 incidents attributed to it.

The purpose of the venue safety plan is to set out how the risk of alcohol-related violence will be reduced at the licensed premises. Existing Level 1 or 2 venues that do not provide an adequate venue safety plan, which has been revised from the previous round to identify the key risk factors that would be affected if the special licence conditions were removed, may be retained on Schedule 4 as a Level 1 or 2 venue.

Venue safety plans

All licensees that receive notice of their venue's possible categorisation as a Level 1 or Level 2 venue are required to submit a venue safety plan. Ideally, the plan will be succinct but will comprehensively list the key risk factors for the venue and how it is proposed to address them.

In developing a venue safety plan, licensees should take into account areas identified for improvement and the venue's compliance history so that the plan can specifically address the highest risks. Licensees should review the effectiveness of their venue safety plans after three months and again at least every six months.

The format of the plan is a matter for licensees. However, to simplify the process, template venue safety plans have been developed by the industry peak bodies. These templates are available from the OLGR website: www.olgr.nsw.gov.au/alcohol_restrictions_for_violent_venues.asp.

Venue safety plans must be submitted within the timeframe specified in the notification letter sent to licensees.

Plans must be sent to the Compliance Branch (safe.premises@olgr.nsw.gov.au), Office of Liquor, Gaming & Racing, GPO Box 7060, Sydney NSW 2001.

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Level 1 and 2 venues

Licensed premises that are categorised as a Level 1 or 2 venue by the Government are listed in Schedule 4 of the Liquor Act 2007 and are required to comply with the special licence conditions as set out in Table A below.

Level 3 venues

Level 3 venues are encouraged to develop or review their venue safety plans and should conduct a risk assessment to support the development of appropriate measures to reduce the risk of alcohol-related violence at their premises.

Imposition of special licence conditions before midnight

The Secretary of NSW Trade & Investment can impose the special licence conditions, including the glass and drink restrictions, on Level 1 and 2 venues from 10pm (or later) on any day of the week. This may occur where the Secretary is satisfied that alcohol-related violence has occurred on the premises during that period and day of the week.

If such action is taken by the Secretary, the licensee will be served with a written order that specifies the period and day(s) when the specified special licence conditions must be complied with.

Exemption from special licence conditions

Following categorisation as a Level 1 or 2 venue under Schedule 4, licensees can seek an exemption from the Secretary of NSW Trade & Investment, from one or more of the special licence conditions for the whole licensed premises or a specified part of the licensed premises.

To be considered for an exemption for the whole licensed premises, a licensee must propose an alternative condition(s) that will be more effective in reducing the risk of alcohol-related violence in or about the premises than the condition for which the exemption is sought. The exemption will be granted and remain in force if the alternate condition(s) are imposed by the Secretary, NSW Trade & Investment.

Table A. Incident numbers, levels and special licence conditions

19 or more incidents	Level 1	<ol style="list-style-type: none"> 1 A mandatory 1.30am lockout of patrons (except members of registered clubs). 2 Cessation of alcohol service 30 minutes prior to close. 3 No glass containers to be used after midnight. 4 No shots and drink limit restrictions after midnight. 5 Ten minute alcohol sales time out every hour after midnight or active distribution of water and/or food. 6 One or more additional security measure.³
12 to 18 incidents (inclusive)	Level 2	<ol style="list-style-type: none"> 1 Cessation of alcohol services 30 minutes prior to close. 2 No glass containers to be used after midnight. 3 Ten minute alcohol sales time out every hour after midnight or active distribution of water and/or food.

All Level 1 and Level 2 venues must maintain a standard trading period incident register in accordance with section 56 and clause 7A, Schedule 4 of the *Liquor Act 2007*.

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To be considered for an exemption for part of a licensed premises, a licensee must demonstrate to the Secretary that:

- a) the risk of alcohol-related violence is low in that part of the premises,
- b) an exemption would not increase the risk of alcohol-related violence in that part of the premises, and
- c) adequate measures will be in place to minimise the risk of alcohol-related violence occurring in that part of the premises.

When considering an exemption that applies to part of a licensed premises, the Secretary will generally have regard to the type of business offerings provided in the specified part of the venue, any attributed incidents that have previously occurred in that area, and any information that is provided by the Police in respect to the exemption request.

While each exemption request will be considered on its own merits, exemption requests for part of a licensed premises will generally only be granted where the offering and risk indicators are clearly distinguished. This may include dedicated function rooms (for bona fide functions) and small boutique lounge and bar areas where it is demonstrated that low risk business offerings are provided and violent incidents have not usually occurred.

Withdrawal of an exemption

Licensees should be aware that the Secretary may consider withdrawing an exemption for part of a licensed premises in some circumstances. Circumstances may include, but are not limited to, where:

- a) there is a spike in alcohol-related violence that is recorded by Police; or
- b) the risk of alcohol-related violence has increased in the exempted part of the premises due to a change in the way the venue is operated.

When considering such action, regard will be had to information that is provided by the NSW Police Force, the Office of Liquor, Gaming & Racing and the licensee of the premises.

Further information

Enquiries about the operation of the scheme or any aspect of it should be directed to the Compliance Branch (safe.premises@olgr.nsw.gov.au) at the Office of Liquor, Gaming & Racing.

