

SALE OF LIQUOR VIA THE INTERNET, TELEPHONE, FACSIMILE OR MAIL ORDER IN NSW

The New South Wales liquor laws have been amended to introduce further controls which deny or limit access to alcohol by minors through 'remote' liquor sales – that is liquor sales made via the Internet, telephone, facsimile or mail order.

The new laws have been introduced because 'remote' liquor sales are a potential source of alcohol for minors. The Internet in particular is a relatively new and unregulated access point through which young people may attempt to obtain liquor. It is technology that is particularly attractive to young people, and the remote nature of ordering liquor over the Internet presents new challenges for the liquor laws.

There have also been cases where liquor was delivered to an underage person after it was ordered using a telephone or other 'remote' means (the use of taxis to deliver liquor in this manner is of particular

concern). It has therefore been necessary to tighten the controls over 'remote' liquor sales so they reflect the same standards that apply to 'over the counter' sales.

If you are involved in selling, supplying, delivering, or purchasing liquor through 'remote' sales, you should carefully read this Information Sheet. This includes licensees who operate an Internet site offering liquor for sale, vigneron and retail licensees who operate a mail order home delivery service, and licensees who accept orders over the telephone or facsimile.

Note: The new laws do not apply to wholesale liquor sales - that is any liquor sales made via 'remote' means to a liquor licensee (in NSW or elsewhere), a registered club, or another person authorised to sell liquor.

Existing controls that apply to licensees who sell liquor via orders taken over the Internet

Section 116C – Notices to be displayed

A licensee who holds a liquor licence under the NSW Liquor Act and offers liquor for sale through an Internet site must display the following notice on the site at all times (section 116C(3C), Liquor Act) in a manner so that customers will notice its contents.

LIQUOR ACT 1982

IT IS AN OFFENCE TO SELL OR SUPPLY TO OR TO OBTAIN LIQUOR ON BEHALF OF A PERSON UNDER THE AGE OF 18 YEARS

New controls that apply to licensees who sell liquor via orders taken over the Internet, telephone, facsimile, or mail order

To commence on 1 July 2002

Section 128 – Sale of liquor through Internet or by other communication media

1. A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must display their liquor licence number in any advertisement or information published in writing or electronically in connection with such sales.

Maximum penalty \$2,200.

2. A licensee who sells liquor through an Internet site must prominently display their liquor licence number on the site and in any advertisement or information published in writing or electronically in connection with such sales.

Maximum penalty \$2,200.

3. A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order, or who sells liquor through an Internet site:
 - a. must, at the time at which an agreement for sale is made, require the prospective purchaser to supply his or her date of birth to confirm that they are of, or above, the age of 18, unless the prospective purchaser has previously supplied his or her date of birth to the licensee, and
 - b. ***** (provision omitted)
 - c. must give written instructions to the person responsible for delivering the liquor, requiring that the liquor be delivered:
 - i. to the adult person who placed the order, or
 - ii. to another adult person at the same premises who undertakes to accept it on behalf of the adult person who placed the order, or
 - iii. if the delivery is made on a day after the day the order is taken, or the sale made through an internet site, otherwise in accordance with the customer's instructions (such as to a vacant address or to another address).

Maximum penalty \$2,200.

4. The licensee, and any person by whom the liquor was delivered on the licensee's behalf, are each taken to have committed an offence under section 114(1) of the Liquor Act if delivery of any liquor sold via orders taken over the Internet, telephone, facsimile or mail order is taken by a minor.

Maximum penalty \$5,500, or if circumstances of aggravation exist, \$11,000 or 12 months imprisonment (or both).

The other provisions of section 114 of the Liquor Act also apply.

5. A licensee who, in accordance with (4) above, is prosecuted for an offence under section 114(1) of the Liquor Act has (in addition to any other defence available under section 114) a defence if it is proved that the licensee:
 - a. complied with the requirements of (3) above in relation to the supply, and
 - b. at the time of the alleged offence did not know, and could not reasonably be expected to have known, that the alleged offence was committed.

Existing controls that apply to couriers and delivery people who deliver liquor purchased via orders taken over the Internet, telephone, facsimile, or mail order

In most circumstances, the sale or supply of liquor to minors has been an offence for many years. Under

section 114 of the Liquor Act, any person who sells or supplies liquor to a minor is committing an offence, with a maximum penalty of \$5,500, or if circumstances of aggravation exist, \$11,000 or 12 months imprisonment (or both). This provision applies to couriers and delivery persons in the same way that it applies to liquor licensees and staff in licensed venues.

It is also an offence for a person to obtain liquor from licensed premises on behalf of a minor (the above penalties also apply). This provision is especially relevant if a minor requests a taxi or courier to deliver alcohol.

Certain defences apply where liquor is sold or supplied in the above circumstances. These are also contained in section 114 of the Liquor Act, and apply where a parent or guardian authorises the sale or supply of liquor to a minor.

New controls that apply to couriers and delivery people who deliver liquor purchased via orders taken over the Internet, telephone, facsimile, or mail order

To commence on 1 July 2002

Section 128 – Sale of liquor through Internet or by other communication media

Any person who delivers liquor sold via orders taken over the Internet, telephone, facsimile or mail order is taken to have committed an offence under section 114(1) of the Liquor Act if that delivery of liquor is taken by a minor. The maximum penalty for this offence is \$5,500, or if circumstances of aggravation exist, \$11,000 or 12 months imprisonment (or both). The other provisions of section 114 of the Liquor Act – including certain defences for parents or guardians – also apply.

A person (referred to as the defendant) who is prosecuted for the above offence has a defence if it is proved that:

- the person to whom the liquor was delivered was of or above the age of 14 years; and
- before the liquor was delivered, that person produced documentary evidence to the defendant that might reasonably be accepted as applying to that person and as proving that person was of or above the age of 18 years; and
- at the time of the alleged offence the defendant did not know, and could not reasonably be expected to have known, that the alleged offence was committed.

- the defendant was a parent or guardian of the minor to whom the liquor was sold or supplied, or was authorised to sell or supply liquor to the minor by their parent or guardian.

This defence does not apply where the sale or supply takes place on licensed premises (such as a hotel, restaurant, club or liquor store).

Controls that apply to minors and parents/guardians where liquor has been sold via the Internet, telephone, facsimile, or mail order

To commence on 1 July 2002

Section 128 – Sale of liquor through Internet or by other communication media

A minor must not take delivery of any liquor sold via the Internet, telephone, facsimile or mail order.

The maximum penalty for this offence is \$1,100. A minor has a defence if it is proved that he or she was ordered or requested by his or her parent or guardian to take delivery of the liquor.

A person – including a parent or guardian – must not order or request a minor to take delivery of liquor sold via the Internet, telephone, facsimile or mail order. The maximum penalty for this offence is \$2,200.

Frequently asked questions

When will these new arrangements commence?

The new 'remote' liquor sales provisions will commence on 1 July 2002.

What information is being provided to the community about the introduction of these new laws?

This Information Sheet is being provided to all liquor licensees and registered clubs, and all persons who receive the March 2002 *Liquor and Gaming Bulletin* from the Department of Gaming and Racing. It will also be sent to liquor industry associations and certain companies involved in the courier and delivery industry.

The Department has also prepared a business-envelope sized *Information Flyer* which can be provided by licensees to couriers, delivery persons and customers.

The Flyer is available from the Department of Gaming and Racing. Call 02 9995 0333 for an order form, or download the form from www.dgr.nsw.gov.au - Publications - Resource Material.

Where must I display my liquor licence number?

If you sell liquor by taking orders over the telephone, facsimile or by mail order, or sell liquor through an

Internet site, you will need to display your liquor licence number on any advertisement or information that you publish in writing or electronically.

Examples include the Internet website itself, an advertisement displayed on the Internet (on your website or another website), an advertisement in a newspaper or magazine, a flyer or catalogue delivered to a mail box or address, and an advertisement aired on television or the radio.

This list is not exhaustive, and there may be other instances where you will need to include your liquor licence number – the best policy is to always include it!

When do I need to ask for a person's date of birth?

Under the new provisions, you will need to ask for a person's date of birth the first time you sell liquor to them via a 'remote' sale. You do not need to ask for date of birth again if that information has been previously provided to you.

Do I need to ask for date or birth information each time I sell liquor via a 'remote' sale?

Only if you have not previously asked for the purchaser's date of birth. You will need to keep a record of a purchaser's date of birth to be sure you comply with this requirement.

Does a delivery person or a courier commit an offence if they deliver liquor to a minor?

Yes. This has been the case for many years.

Does a licensee commit an offence where liquor is delivered to a minor?

Yes. This has been the case for many years. The new provisions also introduce new offences.

When can liquor purchased by 'remote' sale be delivered to an empty address?

Liquor can only be delivered to an empty address if the liquor is delivered at least the day after the order is taken and the customer has requested that this occur. It cannot be delivered in this way on the same day as the order is taken.

What are the new offences contained in the amendments?

New offences apply to 'remote' liquor sales where:

- a licensee does not display their liquor licence number in advertisements or information in connection with a 'remote' liquor sale;
- a licensee does not display their liquor licence number on a website where liquor can be purchased;
- a licensee does not comply with the new requirements concerning date of birth information and delivery of liquor in connection with a 'remote' liquor sale;

- a minor takes delivery of liquor via a 'remote' sale (a defence applies where the minor was requested by their parent or guardian); and
- a person (including a parent or guardian) orders or requests a minor to take delivery of liquor purchased via a 'remote' sale.

Can a parent or guardian request a minor take delivery of liquor purchased via a 'remote' sale?

No. In this case, the parent or guardian commits an offence, with a maximum penalty of \$2,200.

Do the new 'remote' liquor sales provisions apply to liquor sales between different licensees, or between licensees and registered clubs?

No.

What information must a licensee give a courier or delivery person?

Under the new laws, licensees must give written instructions to the courier or delivery person requiring the liquor be delivered:

- to the person who placed the order,
- to another adult person at the same premises who undertakes to accept it on behalf of that person, or
- if the liquor is delivered the day after the order is taken, in accordance with the customer's instructions.

Note: One way this can be done is by providing a copy of the *Information Flyer* prepared by the Department of Gaming and Racing to the delivery person.

What type of proof of age documents should a courier or delivery person ask for if they think that a customer may be under 18 years of age?

The three proof of age documents referred to in the liquor laws are a passport, a driver's licence, and a Proof of Age Card. Either one of these documents is suitable, as long as the delivery person is satisfied that they apply to the person receiving the liquor. The document must include the person's name, date of birth, and a photograph.

Checklist for Liquor Licensees - New 'Remote' Liquor Sales Laws

1. Make sure the 'minors' notice and the licence number is displayed on my website.
 2. Make sure the licence number is displayed on all advertising for 'remote' liquor sales.
 3. Obtain date of birth from all customers who purchase liquor via the Internet, mail order, telephone or facsimile
 4. Keep a record of customer's date of birth (otherwise obtain it again when they make another order)
 5. Give written instructions to the delivery person requiring the liquor be delivered:
 - to the person who placed the order,
 - to another adult person at the same premises who undertakes to accept it on behalf of that person, or
 - if the liquor is delivered the day after the order is taken, in accordance with the customer's instructions.
- Note:** One way this can be done is by providing a copy of the *Information Flyer* prepared by the Department of Gaming and Racing to the delivery person.
6. Include a copy of the *Information Flyer* with the tax invoice or order for the customer.

Checklist for Couriers and Delivery Persons - New 'Remote' Liquor Sales Laws

1. Obtain written instructions from the licensee on how the liquor is to be delivered
2. Do not deliver the liquor to a minor
3. Ask for proof of age documentation if you think someone might be under 18 years of age
4. Do not deliver the liquor to empty premises until at least the day after the customer orders the liquor

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