

# Intoxication Guidelines in plain English



**It is against the law to serve alcohol to a person who, you believe, is intoxicated.**

In South Australia, licensed premises operate under the *Liquor Licensing Act 1997*. With regard to intoxication, if liquor is sold or supplied on licensed premises to an intoxicated person, the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.

#### Maximum penalty

*Expiation fee: \$1,200*

*First offence \$20,000*

*Second or subsequent offence \$40,000.*

A person is intoxicated if:

- the person's speech, balance, co-ordination or behaviour is noticeable affected and
- it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor or some other substance.

**These Guidelines are designed to assist you in:**

- understanding
  - the law.
  - your responsibilities under the law.
  - the penalties for not obeying the law.
- determining whether a person is intoxicated.

- not discriminating against people who have a condition or a disability that may be confused with intoxication.
- establishing when to refuse the service of alcohol to a person.

#### The law

It is against the law to sell or supply alcohol to:

- an intoxicated person.
- a person who you believe, with reasonable grounds, is intoxicated.

You must have 'reasonable grounds' for your belief that a person is intoxicated. It is alright if you refuse service to a person on the basis of this belief – even if you are wrong.

It is against the law for you to treat people unfairly and to discriminate against a person on the basis of a disability. You must, therefore, consider and rule out any conditions or disabilities that may result in a person displaying symptoms or signs that may be confused with intoxication.

## Your responsibilities under the law

It is against the law for you to treat people unfairly and to discriminate against a person on the basis of a disability. You must, therefore, consider and rule out any conditions or disabilities that may result in a person displaying symptoms or signs that may be confused with intoxication.

This offence extends to the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied. You must therefore be aware of patrons who may be buying alcohol for someone else who is intoxicated.

## The penalties for not obeying the law

Penalties apply to a person who sells or supplies alcohol to an intoxicated person. Penalties also extend to the responsible person and the licensee of the licensed premises.

Employees of licensed premises should be aware that, if they sell or supply liquor to an intoxicated person, they are committing an offence and may be prosecuted.

The maximum penalty for selling or supplying liquor to an intoxicated person is:

### Maximum penalty

*Expiation fee: \$1,200*

*First offence \$20,000*

*Second or subsequent offence \$40,000.*

## Determining whether a person is intoxicated

### Reasonable grounds

You must have 'reasonable grounds' for your belief that a person is intoxicated.

This means that there must be some basis for your belief which can be considered and evaluated by an objective third person. The belief must be one that a reasonable person would have in that particular situation, taking into account the relevant facts and circumstances. It is alright if you refuse service to a person on the basis of this belief – even if you are wrong.

A belief based on reasonable grounds can be derived from several sources of information. For example, from observing the amount and type of alcohol consumed, physical signs and symptoms that a person is exhibiting, or from talking to the person or their friends about how much they have had to drink. An assessment must then be made as to whether such symptoms are the result of alcohol and/or drug consumption or some other condition or reason.

There are many noticeable signs that a person may develop as they become intoxicated. As a person's blood alcohol levels rise, differences can be noticed in their speech, balance, coordination, appearance or overall demeanour.

The table below provides some examples of possible factors to consider when determining whether or not a person is intoxicated and should therefore be refused the service of alcohol.

If you are still uncertain, consider other facts and circumstances. Your observations can help you to form a reasonable belief about whether or not a person is intoxicated. Things to consider could include:

- How much alcohol have you seen the person drinking?
- Does the person smell of alcohol?
- Did the person appear affected by alcohol when they arrived?
- What type of alcohol has the person been drinking?
- Is the person drinking rapidly?
- Has the person been vomiting?

You could also talk to the person, to their friends or to other patrons to gain a better understanding.

### Avoiding discrimination

It is against the law for you to treat people unfairly. For example, you must not discriminate against a person on the basis of gender, race or age. However, it is important to remember that it is an offence to supply liquor to a person who is under the age of 18 years. It is also unlawful to discriminate against a person on the basis that they have a disability.

Therefore, when determining whether or not a person is intoxicated, you must consider and rule out any conditions or disabilities that may cause a person to display symptoms or signs similar to those of intoxication. Keep in mind, you may still assess a person who has a disability to be intoxicated based on other signs of intoxication being displayed.

### Conditions that may exhibit similar symptoms/signs to intoxication

There are a variety of conditions or disabilities that may cause a person to display symptoms or signs similar to those of intoxication.

People who experience physical, intellectual, psychiatric, sensory, neurological or learning disabilities, or have an acquired brain injury, could display difficulties with speech, balance, coordination or behaviour.

It is important to be mindful of the various conditions and disabilities that a person may have when assessing intoxication.

Speech	Balance	Coordination	Behaviour
<ul style="list-style-type: none"> <li>• Slurred words</li> <li>• Incoherent speech</li> <li>• Rambling conversation</li> <li>• Loss of train of thought</li> <li>• Difficulty in paying attention</li> <li>• Difficulty in comprehending a conversation</li> </ul>	<ul style="list-style-type: none"> <li>• Stumbling</li> <li>• Falling into people or furniture</li> <li>• Difficulty walking</li> <li>• Difficulty standing</li> <li>• Unsteadiness on feet</li> <li>• Swaying uncontrollably</li> <li>• Staggering</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of coordination</li> <li>• Spilling drinks</li> <li>• Fumbling with change</li> <li>• Difficulty counting money</li> <li>• Difficulty opening or closing doors</li> <li>• Difficulty putting a glass to their mouth</li> <li>• Glassy eyes and lack of focus</li> </ul>	<ul style="list-style-type: none"> <li>• Disorderly</li> <li>• Offensive</li> <li>• Confused</li> <li>• Overly friendly</li> <li>• Annoying others</li> <li>• Rude</li> <li>• Aggressive</li> <li>• Excessively loud</li> <li>• Overly exuberant</li> <li>• Drowsy or sleepy</li> <li>• Uninhibited</li> <li>• Bad-tempered</li> <li>• Threatening</li> <li>• Physically violent or intimidating</li> </ul>

*This list is not exhaustive and the signs may not be necessarily conclusive of intoxication*

## Helping to prevent your patrons from becoming intoxicated

There are things you can do to help prevent your patrons from becoming intoxicated:

- Promote low or mid-strength alcoholic drinks, non-alcoholic drinks and food.
- Provide free snack food.
- Slow service down for the patron.
- Wait for the patron to re-order, don't automatically top up drinks.

Do not conduct an activity or promotion that will result in patrons engaging in irresponsible, rapid or excessive drinking.

## For more information

- Ask your manager.
- Call Consumer and Business Services on 131 882.

## Refusing to serve a person who you believe, based on reasonable grounds, is intoxicated

- If you have reasonable grounds to believe that someone is intoxicated, you should not serve them alcohol. Be firm but polite, friendly and respectful if you must refuse service. People who feel patronised or belittled can respond with aggression.
- If you encounter any problems refusing service, call for support, notify other bar staff, your supervisor and/or security.

In developing these guidelines, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best known practice. Licensees and employees are reminded that it is their own responsibility to ensure the safety and legality of their actions in relation to the provision of alcohol and that they are responsible for any decision to serve or to refuse to serve alcohol.

The information contained in these resources does not constitute legal advice. Consumer and Business Services recommends that you seek your own legal advice should you require an interpretation of the legislation. Consumer and Business Services will not be liable for any injury, damage or loss sustained by any party engaging in the provision or service of alcohol.