Chapter 14
Identifying intoxication: challenges and complexities

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Introduction

The relationship between drinking in licensed venues and increased risk of alcohol-related violence and injury is well established. For example, drinking at on-licence premises has been identified as a factor in three-quarters of aggressive and violent incidents in public (1) and two-thirds of alcohol-related injuries (2). Therefore, reducing the intoxication levels of patrons in and around licensed premises is likely to reduce the incidence of alcohol-related assault and injury at a population level.

In Australia, preventing intoxication at licensed venues relies on two main strategies: (a) liquor licensing legislation, which prohibits the sale of alcohol to intoxicated patrons, and (b) responsible service of alcohol (RSA) training, which educates servers about the legislation and the potential harms of intoxication. However, these strategies are clearly ineffective, with intoxication levels of young Australians in entertainment districts high on the weekends (3) and convictions for selling alcohol to intoxicated patrons making up a minority of liquor law breaches (4). Current strategies for reducing intoxication around licensed venues are ineffective for the most part because RSA policies are infrequently practised and legislation around intoxication is insufficiently enforced, despite evidence of the effectiveness and cost-effectiveness of these strategies when adequately practised and enforced (5).

This chapter briefly reviews Australian liquor licensing legislation in relation to serving alcohol to intoxicated patrons and research on the effectiveness of RSA. It then explores some of the challenges and complexities of identifying intoxication in licensed venues and the reasons why intoxication legislation and RSA practices are infrequently adhered to. The chapter concludes by discussing strategies for improving compliance with RSA.

Liquor licensing legislation on intoxication

In Australia, each state and territory has liquor licensing legislation that includes a section about the illegality of serving alcohol to intoxicated patrons. The specifics of these laws are presented in the appendix (Table 1), along with the legal definition of ‘intoxication’ or ‘drunk’, as specified in the legislation. A cursory glance at the table immediately highlights some of the challenges for licensees,
serving staff and police in regards to interpreting these laws. In particular, there are problems with the variable use of words such as ‘drunk’ and ‘intoxication’, with a lack of clarity around the wording of the laws, and differences between jurisdictions in the evidence required to prove intoxication.

Taking Victoria as an example, the words ‘state of intoxication’, ‘drunk’ and ‘disorderly’ are all used in the description of the law, but only ‘intoxication’ is defined. In the definition of intoxication in Victoria, the law states that there must be ‘reasonable grounds for believing that this is the result of the consumption of liquor’, but no information is provided about what constitutes reasonable grounds. New South Wales and South Australian legislation, on the other hand, provides more information about the burden of proof that the licensee is required to meet when defending a conviction. Further, while Victoria, New South Wales, South Australia and the Australian Capital Territory all use ‘intoxicated’ as their primary term for describing the state of the patron, Queensland uses the term ‘unduly intoxicated’, while Western Australia, Tasmania and the Northern Territory use the term ‘drunk’. South Australia and Tasmania do not provide a definition of intoxication or drunk; however, in most states and territories both terms are defined in the same way—in terms of a person’s speech, balance, coordination or behaviour being noticeably impaired and it being reasonable to assume this is from liquor. However, ‘unduly intoxicated’ is defined in the Queensland legislation as ‘a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances’. This is very broad and could be interpreted in numerous ways—not to mention that one might wonder how a licensee is supposed to know how particular individuals usually act when not intoxicated from liquor.

Recent Australian research has identified that police experience difficulty in interpreting and enforcing these laws. Drawing on interviews with 60 Australian police officers, Trifonoff et al. (6) identified that dealing with intoxication, both conceptually and practically, is one of the most challenging issues for police. This is due to numerous factors: the inadequate and vague definitions of intoxication, the length of time it takes to adequately identify that a patron is intoxicated, the often insurmountable evidence needed to prove drunkenness in court (including the difficulty of proving that the patron was affected by alcohol and not another drug), the difficulty proving alcohol was consumed at that premises (and not at home beforehand), and having offences heard by magistrates with limited expertise in these matters. Further, the incentive for police to pursue these cases is diminished by the relatively small penalties that often result from these breaches. This is in addition to the problem that each state and territory differs in the ways in which they define intoxication, legislate intoxication-related offences and apply evidentiary burdens.

There are also likely to be other reasons (aside from concerns about the specificities of the legislation) that these laws are so infrequently and inconsistently enforced. For example, it has also been reported that police are overburdened by responsibilities that they consider more pressing than enforcing liquor licensing breaches, meaning that it is low on their priority list; and some police have reported that they feel an educational approach to licensees is more effective than enforcement (7).
Some police believe monitoring and enforcement of intoxication laws are best undertaken by specialised police (7). Another option is enforcement by civilian liquor licensing inspectors, which Australian jurisdictions generally also use to monitor whether licensed venues are conforming to the relevant Act. As with police, these inspectors are able to monitor whether licensees are adhering to the conditions of their licences, are displaying the appropriate paperwork, and are practicing responsible service of alcohol through not serving alcohol to minors and intoxicated patrons. If a licensee is found breaching any of these conditions, they are either given a warning or an infringement notice. A recent study that involved analysis of data from civilian liquor inspections, as well as interviews with inspectors and licensees in Victoria, concluded that although civilian inspectors had improved adherence to regulatory frameworks, breaches in relation to the sale of alcohol to intoxicated patrons remained insufficiently enforced (8), suggesting a need to rethink the duties and procedures of civilian licensing inspectors.

**Responsible service of alcohol**

RSA programs are mandatory for staff working in licensed venues in every state and territory in Australia, except South Australia. RSA programs typically involve educating bar staff about the effects of alcohol, blood alcohol concentration (BAC), signs of intoxication, laws and regulations in relation to serving alcohol to intoxicated patrons, legal liability, strategies for dealing with intoxicated patrons and ways of refusing service to intoxicated patrons. However, even in states where RSA requirements are mandatory, there is evidence to suggest that not all licensed venue staff receive RSA training, and evidence to suggest that the length and depth of training varies by location and also between approved training organisations (7).

Recent research has identified that RSA is infrequently practised in licensed venues in Australia. Approximately 900 hours of observational research in licensed venues was undertaken by trained fieldworkers in five Australian cities over a period of eight months (3). This study found that by 2 am the average proportion of patrons exhibiting signs of intoxication was 74 per cent, with 17 per cent of patrons judged by fieldworkers as appearing too intoxicated to remain in the venue at this time; however, 85 per cent of those judged as being too intoxicated to be in the venue continued to be served alcohol.

Such findings are common across countries and over time. In a Western Australian study from the mid-1990s that examined the serving practices of 23 licensed venues over 120 visits and 350 drink orders by trained actors posing as intoxicated customers, only 12 service refusals were made; there were also four ‘soft’ refusals, such as offering food or low- or no-alcoholic drinks (9). A Swedish study similarly found that actors pretending to be drunk were served in 87 of the 92 licensed premises they visited in Stockholm in 1996 (10). A more recent study undertaken in the Netherlands found that of the 58 visits by trained actors, six entry refusals were made by bouncers, one service refusal was made by a bartender and, on one occasion, the bartender served the patron a non-alcoholic beer (but did not tell the patron it was non-alcoholic). In this study, when asked later about the incident, 93 per cent of servers said they thought the patron was intoxicated (11), suggesting that identifying intoxication was not the primary reason for not practising RSA.
Although research demonstrates that compliance with RSA is poor, there is some evidence to suggest it has improved over time. For example, in the aforementioned Swedish study (10), only 5 per cent of attempts to purchase alcohol by intoxicated actors in 1996 resulted in a refusal, but following a community intervention program that involved widespread RSA training and alcohol policy work, this increased to 47 per cent in 1999 (12). The authors suggested that these results were likely to be the result of a combination of factors, including alcohol policy changes at the community level, RSA training and changes in the enforcement environment. A time-series analysis also showed a significant reduction in violent crimes in the district in which this community intervention program was initiated, compared with a control district (13).

Improvements over time in RSA practices are also evident in Australia; however, the effects are less sizeable. A telephone survey was undertaken with young adults from New South Wales in 2002, 2006 and 2011. Participants were asked about their drinking at licensed premises, how many visible signs of intoxication they displayed last time they attended a venue, and whether they experienced or observed any RSA practices. Participants reported experiencing an increase in RSA practices over time: 10.4 per cent of those reporting that they had displayed at least one visible sign of intoxication last time they attended a licensed venue received an RSA intervention in 2002, 15.4 per cent in 2006 and 18.9 per cent in 2011. Of those who reported displaying at least three visible signs of intoxication, 11.5 per cent received RSA interventions in 2002, 27.5 per cent in 2002 and 24.8 per cent in 2011. In particular, of those displaying any signs of intoxication, refusal of alcohol service increased linearly over the three time periods, as did suggestions from staff members that patrons switch to low- or non-alcoholic drinks or purchase food. Of those displaying three or more signs of intoxication, requests for patrons to leave the premises increased linearly over the ten-year time period. There was also an increase in the number of RSA interventions observed by non-intoxicated customers over the three time periods (4, 14, 15).

It is difficult to tell from the aforementioned research whether improvements in RSA were the result of RSA training or other policy, community or environmental changes. Research has generally demonstrated that RSA programs improve knowledge and attitudes of bar staff; however, the extent to which such programs influence serving practices and reduce alcohol-related harm is less clear. In reviewing the evidence on RSA, Babor et al. (16) concluded that RSA programs have been shown to decrease servers’ engagement in bad serving practices (such as refilling half-empty glasses) and increase ‘soft’ interventions such as slowing service or promoting food and water; however, there is no strong evidence that it increases refusal of service to intoxicated patrons. A Cochrane Review of 20 studies of server interventions implemented in licensed venues concluded that there is no reliable evidence that server interventions are effective in reducing alcohol-related harms because compliance with interventions appears to be a problem (17). The main issue with RSA is that it is infrequently and inconsistently enforced. In their review, Babor et al. (16) argue that there is stronger evidence of the effectiveness of RSA laws when enforcement is increased. There is good evidence that bar staff refuse service more often when enforcement has increased and also evidence that alcohol-related injuries decrease in populations when enforcement of RSA laws is increased.
Barriers to RSA

A recent study that involved online surveys with 141 alcohol servers in Western Australia identified a number of reasons why RSA practices are not always adhered to. Some of these include broader environmental and social factors, such as the social acceptability of intoxication in Australia and the belief that licensed venues are places where intoxication occurs, is permitted and is inevitable. More specific reasons that RSA is sometimes not practised are because:

- staff are often young and drink heavily themselves, and so identify with patrons (and do not want to ruin other people’s fun)
- staff have personal relationships with patrons
- the threat of enforcement is low
- staff receive inadequate training in identification of intoxication
- staff fear confrontation and want to avoid conflict
- economic issues prevail (such as managerial pressure to generate profit and concerns about loss of gratuities).

There are also issues specific to the drinker, such as an ability to mask intoxication or purchase drinks with the help of other patrons. As with police, serving staff have also identified that the wording and requirements of alcohol laws are confusing and intoxication is subjectively perceived (7).

This research found that servers were most likely to refuse service to patrons when they exhibited negative behaviours such as aggression, violence, rudeness, abuse or harassment or became threatening. The second most commonly reported reason for refusing service was if patrons exhibited behaviour such as slurring words, loss of balance and drowsiness. The third most commonly reported reason for refusing service was fear of breaching laws and receiving fines. Importantly, factors that influenced servers’ likelihood of adhering to RSA included supervisor modelling, the venue’s specific culture and the threat of enforcement. It was noted by some participants that supervisors often bent the rules for friends, locals, regulars and attractive patrons, and these practices were then followed by staff (7).

A final barrier that has been identified to both adherence of RSA and enforcement of intoxication legislation is that police are required to prove that intoxication is the consequence of the consumption of liquor and that the liquor was sold at the venue. The issue of pre-drinking—that is, drinking in a private space prior to attending the venue—adds an extra layer of complexity to the enforcement of these laws: patrons may enter a venue before the signs of intoxication from alcohol they have consumed in a private space become apparent, and only one or two drinks at a licensed venue can be enough for the signs to become more visible. Interviews with 6800 patrons in night-time entertainment districts across Australia found that two-thirds reported pre-drinking before attending a venue, making this a very real problem for both licensees and police in adhering to RSA and enforcing these laws (3). Further, this same research, which also involved observational data gathered in licensed venues by trained fieldworkers, identified that by 2 am, 22 per cent of nightclub
Patrons exhibited signs of illicit drug use. Given fairly high levels of drug use in some licensed venues, licensees can potentially use the argument when defending a conviction for serving an intoxicated patron that the patron’s behaviour was the result of drug use, not alcohol consumption.

Challenges of identifying intoxication

One primary criticism that has been levelled at RSA and liquor licensing legislation is the difficulty in accurately identifying intoxication. As per the Victorian and New South Wales liquor legislation (Table 1), state governments are required to issue guidelines containing information about how to determine whether a person is in a state of intoxication. As with the liquor licensing legislation, the guidelines (Table 2 in the appendix) differ from state to state. In addition, while some signs of intoxication are clearly likely to be related to over-consumption of alcohol, such as ‘spilling drinks and the inability to find one’s mouth with the glass’, others, such as ‘exuberance’, ‘not hearing or understanding what is being said’ and even being ‘offensive’ may not in any way be related to the over-consumption of alcohol. As such, it has been noted by the Ministerial Council on Drug Strategy that there is no consistent or formally agreed upon definition of intoxication (18). This is true both in Australia and elsewhere, and essentially means that assessing intoxication is a complex interpretive exercise (19).

The complex nature of interpreting intoxication, defined in the Australian state guidelines in terms of behavioural checklists, has been supported by a substantial body of empirical work. An emergency room study that involved measuring the BAC of 4798 patients across 12 countries and matching it with clinician assessments of the severity of intoxication found that raw agreement between the two measures was 86 per cent, but lower among those who had reported drinking in the six hours prior to injury (39 per cent raw agreement). The authors concluded that clinical assessment of intoxication was moderately concordant with levels of BAC, but much of that agreement was among patients who had not been drinking at all. Among those who had been drinking, there was much less correlation between BAC level and clinical judgment of intoxication (20).

These findings are concordant with other research. For example, using fieldworkers to assess intoxication, McGuire (21) reported that 93 per cent of those judged as sober had a BAC of 0 but only 20.1 per cent of those with a BAC over 0.1 were judged as intoxicated. A United Kingdom study (22) that involved the subjective analysis of intoxication by trained surveyors found that they were mostly able to identify individuals with a BAC of 0.15 or higher through observing signs such as staggering gait, glazed eyes and slurred speech. However, women displayed these behaviours at a lower BAC than men and surveyors were much less accurate at lower BAC levels. In a review of the international literature, Rubenzer (23) concluded that there is no evidence that police officers, bar staff, mental health workers or alcohol clinicians can accurately assess intoxication at low to moderate levels, and even extensive experience serving drinkers does not substantially improve skills in this regard.

It has been argued that numerous factors might influence judgment of intoxication, including:
• the extent of experience of the person making the assessment
• the opportunity, time and circumstances in which the individual can be observed
• the extent of the patron’s tolerance of alcohol
• cross-cultural variations in intoxicated behaviour
• culturally influenced assumptions about intoxication and sobriety of the person making the assessment (20, 24).

Further, accurately identifying these signs of intoxication may be difficult in crowded licensed venues where lighting is poor and noise levels are high, and where bar staff have very brief encounters with patrons (25).

The research literature thus suggests that the current Australian approach of using behavioural guidelines to identify intoxication is difficult to make workable, except perhaps at very high levels of intoxication.

An alternative approach: defining intoxication by BAC?

The difficulty of enforcing a definition of intoxication in the alcohol sales environment based on behavioural guidelines is highly reminiscent of the position of drink-driving legislation in the 1930s. At that time, drink-driving prohibitions were stated in terms of ‘driving while intoxicated’, and apprehensions and convictions were few. The situation was transformed by the transition to defining drink-driving prohibitions in terms of a BAC level. The shift was backed up by the development of measurement tools for BAC and by experimental and epidemiological studies of the strong relationship between crash and injury risk to the driver’s BAC (26).

In response to the challenges inherent in identifying intoxication, setting a maximum BAC level for legal service of alcohol to patrons would offer a greater level of certainty that a patron could indeed be deemed intoxicated. The question is whether this would be justified by the research literature on the relationship between BAC and harm. The epidemiological literature shows clearly that alcohol consumption in the event is related to the whole range of injuries, and apparently slightly more related to non-motor-vehicle injuries, particularly intentional injuries (27). The experimental literature also shows a relationship between alcohol dose and aggressive behaviour, with one study (28) showing elevated risk of aggression at a BAC of 0.11 per cent. However, it is unclear from this study whether aggression would have continued to rise at higher BACs given that ethical constraints in experimental research prohibit doses of alcohol that exceed a BAC of around 0.1 per cent. It is also important to note that there are some experimental studies where the relationship between alcohol and aggression has been less clear (see 28 for a review).

In an interesting policy development, the New South Wales Government introduced a suite of new laws in January 2014 in an attempt to curb alcohol-related violence in the night-time economy, including the presumption of intoxication at a BAC level of 0.15 per cent (29). It is unclear how this
Threshold was determined and whether there is appropriate justification for setting intoxication at this level; however, the forthcoming legal arguments stemming from this law might advance Australia’s approach to identifying or defining intoxication in the coming years.

In the meantime, before setting a maximum BAC level for legal service of alcohol to patrons is considered, more research is needed to determine the appropriate BAC threshold. In addition, research into the viability of such measures and their effectiveness in reducing alcohol-related harm is also required.

**The way forward**

This chapter has identified some of the challenges and complexities of identifying intoxication and enforcing RSA legislation, but this is not to say that there are not steps that can be taken to improve the way RSA is implemented and the sale of alcohol to intoxicated patrons is enforced.

First, it is important to note that focusing on servers and licensees is a worthwhile approach to reducing alcohol-related harms in and around licensed venues, rather than punishing individual patrons. There is some evidence to suggest that police and licensing inspectors focus more on the behaviour of patrons and not licensees (25), and there is compelling evidence that punishing the ‘bad apples’ is unlikely to be an effective approach to reducing alcohol-related harms (16).

Recently, Graham et al. (5) have argued that there are important lessons we can draw from random breath testing that could be applied to the enforcement of liquor legislation in relation to serving intoxicated patrons. Random breath testing has been extremely effective in reducing drink-driving, and Graham et al. argue that there are five key reasons for this:

- a clear, measurable and accepted definition of the violation exists
- perceived risk of enforcement is high
- enforcement is unbiased
- the consequences of enforcement are clear, and (perhaps most importantly)
- there is strong political will for the law and its consequences.

Graham et al. argue that current intoxication laws must be more widely publicised and regularly enforced, including random checks from police or licensing inspectors, particularly focused on high-risk licences. Penalties must be significant enough to act as a deterrent; for example, not just monetary fines, but risk to the licence (5). Finally, political will and the availability of resources is necessary for these laws to be more regularly and efficiently enforced; however, at present, this is lacking, which is one of the key challenges in this area (5). Stockwell (30) suggests that the support of local community groups around deterring the serving of alcohol to intoxicated patrons cannot be underestimated. A range of things can be done to generate or maintain a groundswell of support for this issue, such as having alcohol advocacy groups generate and maintain publicity about the issue, ensuring researchers feed data into local and state governments and to licensees (one avenue for the sharing and discussion of such data could be at liquor licensing accord or alcohol management plan meetings), and generating media coverage and campaigns about the issue.
Conclusions

This chapter outlines some of the challenges inherent in identifying intoxication, and some of the limitations of RSA and the laws that are designed to prevent the sale of alcohol to intoxicated patrons. These challenges notwithstanding, steps can be taken to improve adherence to RSA in Australia.

The strategy with the best evidence base for increasing adherence to RSA, and one that is also likely to be cost-effective, is to increase enforcement of these laws either through specialised police or civilian liquor inspectors who are willing to spend time in licensed venues at peak times (such as Sunday mornings at 3 am) and who are prepared to enforce breaches of these laws in high-risk venues. It is widely regarded that in studies of alcohol policy, enforcement—or at least a genuine threat of enforcement—is just as important in the success of a law (understood in terms of a reduction in alcohol-related harm) as the law itself (16). As noted by Stockwell (30), in some jurisdictions the introduction of mandatory RSA training has resulted in population decreases in alcohol-related harm, indicating it is an important component of a holistic approach, but RSA training must be combined with a targeted enforcement program and general deterrence generated through strict penalties to licensees, as well as ongoing publicity about the laws and their application. It is important that penalties for violating RSA laws are not only perceived to be real, but the penalties significant, reflecting the magnitude of the breach of the duty of care to the customer on the part of the licensee.

Another important step, which may require more time and resources, is to ensure that RSA training requirements, the definition of intoxication, liquor licensing legislation and evidentiary burdens are made consistent across the nation so that licensees, bar staff, police and liquor inspectors cannot use the excuse that they are confused by the specificities of these laws. Exploring the way in which serving alcohol to customers who have engaged in pre-drinking or appear intoxicated by drugs other than alcohol might be legislated is also worthy of further research in order to reduce the obstacle of licensees using these as reasons for not adhering to RSA when defending convictions.

Other strategies that might be useful in increasing adherence to RSA include building the importance of supervisor modelling into RSA training and the development of positive harm-reduction programs that reward licensed premises and their staff for reducing alcohol-related harm through incentives and disincentives (7).

In the meantime, researchers have an important role to play in assisting the development of consistencies around RSA training, around defining intoxication in enforceable terms and, more generally, around liquor licensing legislation and evidentiary burdens, including:

- further developing the evidence on the relationship between BAC and harms from alcohol
- evaluating the cost-effectiveness of increased enforcement of RSA
- designing and evaluating programs that reward licensed premises and their staff for reducing alcohol-related harm through incentives and disincentives (5, 7)
• evaluating the feasibility and effectiveness of breathalysing patrons in the alcohol sales environment.

Acknowledgments

Thank you to Robin Room for his conceptual advice and contribution to this chapter.

Appendix

Table 1: Australian state and territory laws pertaining to serving ‘intoxicated’ or ‘drunk’ patrons and legal definition of ‘intoxication’ or ‘drunk’

<table>
<thead>
<tr>
<th>State</th>
<th>Law</th>
<th>Definition of intoxication or drunk</th>
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<tbody>
<tr>
<td>Victoria: Liquor Control Reform Act 1998</td>
<td>A licensee or permittee: (a) must not supply liquor to a person who is in a state of intoxication; (b) must not permit drunken or disorderly persons to be on the licensed premises or on any authorised premises (s. 108(4)).</td>
<td>For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor. The Commission must issue guidelines containing information about how to determine whether a person is in a state of intoxication for the purposes of this Act (s. 3AB).</td>
</tr>
<tr>
<td>New South Wales: Liquor Act 2007</td>
<td>A licensee must not permit: (a) intoxication, or (b) any indecent, violent or quarrelsome conduct, on the licensed premises. A licensee or an employee or agent of a licensee must not, on the licensed premises, sell or supply liquor to an intoxicated person. If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves: (a) that the licensee, and the licensee’s employees or agents, took the steps set out [below] or all other reasonable steps to prevent intoxication on the licensed premises, or that the intoxicated person did not consume alcohol on the licensed premises. The following are the relevant steps: (a) asked the intoxicated person to leave the premises, (b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,</td>
<td>For the purposes of this Act, a person is ‘intoxicated’ if: (a) the person’s speech, balance, co-ordination or behaviour is noticeably affected, and (b) 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. The Director-General is to issue guidelines to assist in determining whether or not a person is intoxicated for the purposes of this Act (s. 5).</td>
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</table>
(c) refused to serve the person any alcohol after becoming aware that the person was intoxicated (s. 73).

<table>
<thead>
<tr>
<th>South Australia: Liquor Licensing Act 1997</th>
<th>Liquor not to be sold or supplied to intoxicated persons if: (a) liquor is sold or supplied on licensed premises to an intoxicated person; or (b) liquor is sold or supplied on licensed premises to a person in circumstances in which the person’s speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor. If the defendant is the person by whom the liquor was sold or supplied, [the defendant must prove]: (a) that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or (b) that the defendant believed on reasonable grounds that the impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor; or (c) if the defendant is the licensee or responsible person for the licensed premises and did not personally sell or supply the liquor, that the defendant exercised proper care to prevent the sale or supply of liquor (s. 108).</th>
<th>None provided.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory: Liquor Act 2010</td>
<td>A person commits an offence if the person is a licensee or permit-holder; and the person or an employee of the licensee or permit-holder supplies liquor to another person; the other person is intoxicated; and the supply happens at the licensed premises (s. 105).</td>
<td>For this Act, a person is intoxicated if: (a) the person’s speech, balance, coordination or behaviour is noticeably affected; and (b) it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor (s. 104).</td>
</tr>
<tr>
<td>Queensland: Liquor Act 1992</td>
<td>A person must not, on premises to which a licence or permit relates: (a) supply liquor to; or (b) permit or allow liquor to be supplied to; or (c) allow liquor to be consumed by a person who is a minor or is unduly intoxicated or disorderly (s. 156).</td>
<td>Unduly intoxicated is defined as: a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances (s. 4).</td>
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<tr>
<td>Western Australia: Liquor Control Act 1988</td>
<td>A person shall not, on licensed premises or regulated premises: (a) sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person; (b) allow or permit a drunk person to consume liquor; or (c) obtain or attempt to obtain liquor for consumption by a drunk person; or (d) aid a drunk person in obtaining or consuming liquor. Where a licensee, whether personally or by an employee or agent: (a) permits drunkenness, or (b) violent, quarrelsome, disorderly or indecent A person is ‘drunk’ for the purposes of this Act if: (a) the person is on licensed premises or regulated premises; and (b) the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and (c) it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor. If an authorised officer or a person on whom a duty is imposed under section 115</td>
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behaviour to take place on the licensed premises; that licensee, and the employee or agent concerned, commits an offence (s. 115).

decides, in accordance with subsection (1), that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunk at that time (s. 3A).

Tasmania: 
Liquor Licensing Act 1990
A person must not sell liquor to a person who appears to be drunk. A licensee is guilty of an offence if a person authorised by the licensee to sell liquor on the licensed premises sells liquor to a person who appears to be drunk (s. 78).

Northern Territory: 
Liquor Act (2007)
A licensee or an employee of a licensee must not sell or otherwise supply liquor to a person who is drunk (s. 102).

A person is drunk if: (a) the person’s speech, balance, coordination or behaviour appears to be noticeably impaired; and (b) it is reasonable in the circumstances to believe the impairment results from the person’s consumption of liquor (s. 7).

Table 2: Guidelines for identifying intoxication

<table>
<thead>
<tr>
<th>Victoria and Queensland (31, 32)</th>
<th>Noticeable changes in behaviour</th>
<th>Noticeable loss of coordination and other physical signs</th>
<th>Noticeable decrease in alertness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noticeable changes in behaviour</td>
<td>Noticeable loss of coordination and other physical signs</td>
<td>Noticeable decrease in alertness</td>
<td></td>
</tr>
<tr>
<td>Becoming loud, boisterous and disorderly</td>
<td>Spilling drinks</td>
<td>Rambling conversation</td>
<td></td>
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<tr>
<td>Becoming argumentative</td>
<td>Fumbling and difficulty in picking up change</td>
<td>Loss of train of thought</td>
<td></td>
</tr>
<tr>
<td>Annoying other patrons and staff</td>
<td>Swaying and staggering</td>
<td>Difficulty in paying attention</td>
<td></td>
</tr>
<tr>
<td>Becoming incoherent, slurring or making mistakes in speech</td>
<td>Difficulty walking straight</td>
<td>Not hearing or understanding what is being said</td>
<td></td>
</tr>
<tr>
<td>Becoming physically violent</td>
<td>Bumping into furniture and other customers</td>
<td>Drowsiness, dozing or sleeping while sitting at a bar or table</td>
<td></td>
</tr>
<tr>
<td>Becoming bad tempered or aggressive</td>
<td>Glassy eyes and lack of focus</td>
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</tr>
<tr>
<td>Using offensive language</td>
<td>Falling down</td>
<td></td>
<td></td>
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<tr>
<td>Exhibiting inappropriate sexual behaviour</td>
<td>Vomiting</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

New South Wales, South Australia and Australian Capital Territory (33–35)

<table>
<thead>
<tr>
<th>Speech</th>
<th>Balance</th>
<th>Coordination</th>
<th>Behaviour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slurring words</td>
<td>Unsteady on feet</td>
<td>Lack of coordination</td>
<td>Rude</td>
</tr>
<tr>
<td>Rambling or unintelligible conversation</td>
<td>Swaying uncontrollably</td>
<td>Spilling of drinks</td>
<td>Aggressive</td>
</tr>
<tr>
<td>Incoherent or muddled speech</td>
<td>Staggering</td>
<td>Dropping drinks</td>
<td>Belligerent</td>
</tr>
<tr>
<td>Becoming bad tempered or aggressive</td>
<td>Difficulty walking straight</td>
<td>Fumbling change</td>
<td>Argumentative</td>
</tr>
<tr>
<td>Being incoherent, slurring or making mistakes in speech</td>
<td>Cannot stand or falling down</td>
<td>Difficulty counting money or paying</td>
<td>Offensive</td>
</tr>
<tr>
<td>Being physically violent</td>
<td>Stumbling</td>
<td>Difficulty opening or closing doors</td>
<td>Bad tempered</td>
</tr>
<tr>
<td>Becoming bad tempered or aggressive</td>
<td>Bumping into or knocking over furniture or people</td>
<td>Inability to find one’s mouth with a glass</td>
<td>Physically violent</td>
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<tr>
<td>exhibiting inappropriate sexual behaviour</td>
<td></td>
<td></td>
<td>Loud/boisterous</td>
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<td>Disorderly</td>
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<td>Confused</td>
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<td>Exuberant</td>
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<td></td>
<td>Using offensive language</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Annoying/pestering others</td>
</tr>
</tbody>
</table>
Overly friendly
Loss of inhibition
Inappropriate sexual advances
Drowsiness or sleeping at a bar or table
Vomiting
Drinking rapidly

Northern Territory (36)

- Spilling drinks and the inability to find one’s mouth with the glass
- Rambling conversation, loss of train of thought
- Annoying other customers and employees
- Swaying and/or dozing while sitting at bar or table
- Becoming loud, boisterous and making comments about others
- Crude behaviour
- Clumsy, uncoordinated
- Aggressive or belligerent
- Inappropriate sexual advances
- Change in gait, stumbling
- Becoming agitated or argumentative
- Becoming careless with money, buying rounds for strangers
- Difficulty moving around objects, bumping into or knocking over furniture
- Making irrational or nonsensical statements
- Inability to light a cigarette
- Falling down
- Glassy eyes, lack of eye focus, loss of eye contact
- Letting cigarette burn in ashtray without smoking it
- Altered speech patterns, such as slurred speech
- Inability to pick up change from table/bar

*No guidelines for Western Australia and Tasmania could be identified

References


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