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## **ALCOHOL PROHIBITED AREAS - AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1993**

The NSW Parliament has passed the *Local Government Amendment (Confiscation of Alcohol) Act 2010*. The Act was assented to by the Governor on 7 December 2010 and its provisions commenced on that date. The purpose of this Circular is to advise councils of the effect of these amendments.

The amendments provide the power to Police and authorised council enforcement officers to confiscate and tip out alcohol in the possession of a person who is in an area where alcohol consumption is prohibited by a notice under section 632 (for existing Alcohol Prohibited Areas) and section 632A (for newly established Alcohol Prohibited Areas) of the *Local Government Act 1993* (the Act).

The effect of these amendments is to provide consistent enforcement powers for both Alcohol-Free Zones and Alcohol Prohibited Areas.

### **Section 632 and 632A notices**

The Act now delineates between notices erected by a council which prohibit alcohol consumption in public places such as parks and beaches (section 632A) and other notices (under section 632) which prohibit other activities (eg, skate boarding, dogs off leash). Under the changes, notices erected by councils prohibiting the consumption of alcohol will no longer be made under section 632 and instead will be made under section 632A(4).

### **Alcohol Prohibited Areas**

Section 632A(4) of the Act will enable councils to declare any public place or part of a place to be an Alcohol Prohibited Area, except those places (public roads, footpaths and car parks) which are to be dealt with under the Alcohol-Free Zone provisions of the Act.

### **Duration of Alcohol Prohibited Areas**

Public places or parts of places may be declared alcohol prohibited at all times, or only for specific days, times or events. For example, a council may choose to make a park alcohol prohibited from dusk until dawn, or for the period 6pm on 31 December to 6am on 1 January each year.

Adequate signs must be erected by Council which make clear any time restrictions, and make clear that the consumption of alcohol is prohibited in that public place (section 632A(7) refers).

### **Existing Alcohol Prohibited Areas previously established under section 632**

Where a council currently has restrictions or prohibitions on the consumption of alcohol in public places by notice under section 632, these will continue to apply under the amended legislation. If the council re-signs the area, it should be mindful that future signage should distinguish between the prohibition of alcohol consumption (now under section 632A of the Act) and the prohibition of other activities (which remain under section 632 of the Act).

The confiscation and 'tip out' powers of the amended legislation now apply to these existing Alcohol Prohibited Areas.

### **Public Housing open space**

Where public housing open space is adjacent to a public place which is to be declared an Alcohol Prohibited Area or Alcohol-Free Zone, the public housing open space may be included by the council in the Alcohol Prohibited Area or Alcohol-Free Zone and the 'tip out' powers will apply.

Artificial boundaries, for example a footpath running between a council park and public housing open space, will not prevent the effective enforcement of the prohibition of alcohol across the whole space.

Public housing open space cannot be included in an Alcohol Prohibited Area without the consent of the NSW Land and Housing Corporation and without the approval of the NSW Commissioner of Police.

In the event that a council is considering the establishment of an Alcohol Prohibited Area adjacent to public housing open space, the council must consult directly with the relevant Area Office of Housing NSW. If Housing NSW agrees to include their public housing open space in the area which is to be established as alcohol prohibited, the council will erect appropriate signs across the whole area where the alcohol prohibition applies.

### **Role of Police Local Area Command**

Section 632A(8) provides that "an Alcohol Prohibited Area cannot be established without the approval of the Local Area Commander of Police for the area in which the proposed Alcohol Prohibited Area is situated". Councils must seek and obtain this approval prior to establishing a new Alcohol Prohibited Area. This process will allow the Local Area Commander to consult with the relevant Community Safety Precinct Committee or similar body to help ensure that the decision to declare an area as alcohol prohibited is done transparently and in consideration of the community's wishes.

## **Special consultation requirements**

Those councils (currently 16) which are identified in the Ministerial Guidelines on Alcohol-Free Zones as being required to inform the NSW Anti-Discrimination Board of their proposal to establish an Alcohol-Free Zone must also comply with the consultation requirements of those Guidelines when seeking to establish new Alcohol Prohibited Areas.

## **Offences and penalties**

Consistent with Alcohol-Free Zones, monetary penalties will no longer apply in relation to the consumption of alcohol in an Alcohol Prohibited Area. Instead, confiscation and 'tip out' powers will apply to Alcohol Prohibited Areas.

It is noted that in circumstances where a person does not cooperate with a request by the Police or an authorised council enforcement officer to hand over alcohol in an Alcohol Prohibited Area or Alcohol-Free Zone, they can be charged with obstruction under the *Local Government Act 1993*, which carries a maximum penalty of \$2,200.

Councils are reminded that monetary penalties will continue to apply in relation to offences under section 632 (such as skateboarding or dogs off leash where this is prohibited).

## **Who may confiscate and tip out alcohol in an Alcohol Prohibited Area**

Consistent with the Alcohol-Free Zone provisions, Police and authorised council enforcement officers have the power to tip out or otherwise confiscate alcohol being consumed in an Alcohol Prohibited Area.

Where councils identify benefits to their community for their officers to enforce Alcohol Prohibited Areas, the General Manager will need to liaise with the Police Local Area Commander to ensure that council officers are suitable for this role. Only authorised employees of a council and not contractors, who may be otherwise engaged by a council to provide regulatory services, can be authorised for this purpose.

## **Ministerial Guidelines**

The *Local Government Amendment (Confiscation of Alcohol) Act 2010* makes reference to the Ministerial Guidelines on Alcohol-Free Zones. These Guidelines may be modified in due course to reflect this legislative change, at which time councils will be notified. The Guidelines may be viewed on the Division's website.



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