

OFFICIAL



NSW Police Force

FAIL TO QUIT (LICENSED PREMISES) - WALKTHROUGH

CRIME PREVENTION COMMAND

OFFICIAL

Summary

- This document aims to provide members of the NSW Police Force with information on offences under Section 77 of the *Liquor Act 2007* and police powers and responsibilities when attending or involved in such matters.
- Sections 77(2)(a) - (e) of the *Liquor Act 2007* allow for an authorised person (including a licensee, an employee, an agent of a licensee or a police officer) to refuse to admit into, or to remove from a licensed premise, any person who meets the criteria set out in the relevant subsections (including individuals who are intoxicated, violent, quarrelsome, or disorderly).
- There are several offences created under subsections following Section 77(3) of the *Liquor Act 2007*, including:
 - Failing to leave the licensed premises ('Fail to Quit') - Section 77(4)
 - Re-entering or attempting to re-enter the licensed premises within 24 hours - Section 77(6)
 - Remaining in or re-entering the vicinity of the licensed premises within 6 hours (without reasonable excuse) - Section 77(8)(a) and (b).

Document Control Sheet

Document Properties

Title	Fail to Quit (Licensed Premises) - Walkthrough
Subject	Police powers and responsibilities in relation to offences under Section 77 of the <i>Liquor Act 2007</i>
Command responsible	Crime Prevention Command
Authorisation	Assistant Commissioner – Northern Region (Corporate Sponsor for Alcohol Related Crime)
Security Classification	OFFICIAL
Publication date	July 2024
Current version number	2.0
Review date	July 2027
Document RMS number	D/2024/874371
Linked RMS folder	D/2024/500967
Copyright statement	© Crown in right of NSW through NSW Police Force 2024
Suitable for Public Disclosure	YES

Modification History

Version #	Version creation date	Author / Position	Summary of changes
1	10/2021	Crime Prevention Command	Original document
2	04/2024	Crime Prevention Command	Update of guidelines to reflect Corporate Procedures template

Table of Contents

SUMMARY..... 2

DOCUMENT CONTROL SHEET..... 3

PURPOSE..... 5

Scope..... 5

Roles & responsibilities 5

SCENARIO..... 5

POLICE POWERS..... 5

POLICE RESPONSIBILITIES..... 6

What role does a member of the NSW Police Force have if requested by a licensee to assist in the removal of a person? 6

What could be a reasonable excuse?..... 6

What action can be taken against a person who commits an offence under Section 77 of the *Liquor Act 2007*? 7

APPENDIX – Flow Chart..... 8

Purpose

This document aims to provide members of the NSW Police Force with information on offences under Section 77 of the *Liquor Act 2007* and police powers and responsibilities when attending or involved in such matters.

Scope

This guidance is provided for the information and guidance of all NSW Police Force officers.

Roles & responsibilities

Assistant Commissioner – Northern Region (Corporate Sponsor for Alcohol Related Crime)	Document approval and document sponsor
Commander – Crime Prevention Command	Document Owner
Crime Prevention Command	<ul style="list-style-type: none">Review these procedures prior to the scheduled review date and ensure content remains up to dateSupport sworn staff by answering queries relating to these procedures as they arise
All Sworn staff	Are encouraged to familiarise themselves with this guidance and follow it when dealing with matters involving offences under Section 77 of the <i>Liquor Act 2007</i>

Scenario

Police attend a complaint at a local licensed premises. An intoxicated male is sitting at the bar. Police have been informed that the male has been asked to leave by the licensee/employee because of his intoxication, and has refused to leave.

Police powers

In accordance with Section 77(2) of the *Liquor Act 2007* an authorised person may refuse to admit, or may turn out of, a licensed premise any person:

- Who is at the time intoxicated, violent, quarrelsome, or disorderly,
- Whose presence on the licensed premises renders the licensee liable to a penalty under the Act
- Who smokes, within the meaning of the *Smoke-free Environment Act 2000*, while on any part of the licensed premises that is a smoke-free area within the meaning of that Act
- Who uses, or has in his or her possession, while on the premises, any substance that the authorised person suspects of being a prohibited plant or a prohibited drug
- Whom the authorised person, under the conditions of the liquor licence or according to a term of a Liquor Accord (of the kind referred to in Sections 134 or 136D of the *Liquor Act 2007*), is authorised or required to refuse access to the licensed premises.

OFFICIAL

If a person has been refused admission to, or has been turned out of, licensed premises, an authorised person may, at any time, refuse to admit that person to the licensed premises or may turn the person out of the licensed premises, in accordance with Section 77(3) of the *Liquor Act 2007*. This Section also creates several offences:

- **Fail to leave the licensed premises** ('Fail to Quit') - Section 77(4)
- **Re-enter or attempt to re-enter the licensed premises within 24 hours** - Section 77(6)
- **Remain or re-enter the vicinity of the licensed premises within 6 hours** (without reasonable excuse) - Section 77(8)(a) and (b).

Under this Section:

- **Authorised Person** means a licensee, an employee, or agent of a licensee (e.g. security), or a police officer.
- **Employee** includes, in the case of a registered club, a person engaged under a contract for services.
- **Vicinity** of licensed premises means any place less than 50 metres from any point on the boundary of the premises.

Police responsibilities

What role does a member of the NSW Police Force have if requested by a licensee to assist in the removal of a person?

Where a member of the NSW Police Force is requested by a licensee, his/her employee or agent to turn out, or to assist in turning out, a person who the licensee is entitled to turn out, that police officer may, for that purpose, use such reasonable degree of force as may be necessary.

It is important to ascertain that the licensee, his/her employee or agent have actually asked the person to leave the premises. An offence under **Section 77(4)** of the *Liquor Act 2007* is only committed **after** the person fails to adhere to the request by any authorised person and remains on the premises.

Further offences that may have been committed by a person who has been refused admission to, or turned out of, licensed premises in accordance with **Section 77(2)** of the *Liquor Act 2007* are as follows:

- Re-entering or attempting to re-enter the premises within 24 hours of being refused admission or being turned out because the person was intoxicated, violent, quarrelsome, or disorderly (**Section 77(6)**)
- Remaining in the vicinity of the premises or re-entering the vicinity of the premises within 6 hours of being refused admission, or being turned out (due to intoxication, violence, quarrelsome, or disorderly behaviour), without a reasonable excuse (**Section 77(8)**)
- It is not uncommon for a licensee, an employee, or an agent of a licensee, to nominate that an individual was asked to leave due to them 'approaching intoxication'. **Police should be aware that 'approaching intoxication' does not fall within Section 77(2).**

What could be a reasonable excuse?

- A reasonable fear held by a person for their safety if they do not remain in, or re-enter the vicinity of the premises

OFFICIAL

- The need to remain in, or re-enter the vicinity of the premises to obtain transport
- The person resides in the vicinity of the premises

The burden of proving that a person had a reasonable excuse for remaining in, or re-entering the vicinity of the licensed premises concerned, is on the person charged.

What action can be taken against a person who commits an offence under Section 77 of the *Liquor Act 2007*?

Before taking action, police must ensure one (or more) of the circumstances set out in Section 77(2) exists and ensure that the request to leave was made to the person by an authorised person.

Police do not need to be present when the request was made, nor does the request need to be repeated. Alternately, if police make the request, the licensee, an employee, or agent of the licensee do not need to be present.

If an authorised person has requested police to remove a person, police must document what circumstances pursuant to Sections 77(2)(a)-(e) are applicable and must have independently satisfied themselves that one (or more) of the circumstances pursuant to those subsections can be established.

Police should ensure they provide the following information when removing a person:

- Their identity - rank, name, and station
- Provide the person with the reason for the request (i.e., Section 77(2) of the *Liquor Act 2007*)
- Explain that they are required to leave the licensed premises and must not return for at least 24 hours
- Explain that they must not be within 50 metres of the boundary of the licensed premises for at least 6 hours (unless they have a reasonable excuse)
- Explain that it is an offence if the individual fails to comply with this request

If any of the details above were not provided in a non-voluntary exclusion, seek legal advice regarding pursuing offences under Section 77.

In the person refuses to leave on being required to leave the premises by an authorised person, they are committing an offence and for the purpose of Section 77, such reasonable degree of force as may be necessary may be used to turn a person out of a licensed premises.

Offences under Section 77 can be dealt with through the issue of a penalty notice, a field/future service court attendance notice, or the individual can be arrested and usual court attendance notice proceedings commenced, in appropriate circumstances.

APPENDIX – Flow Chart

A Shared Approach to Decision Making

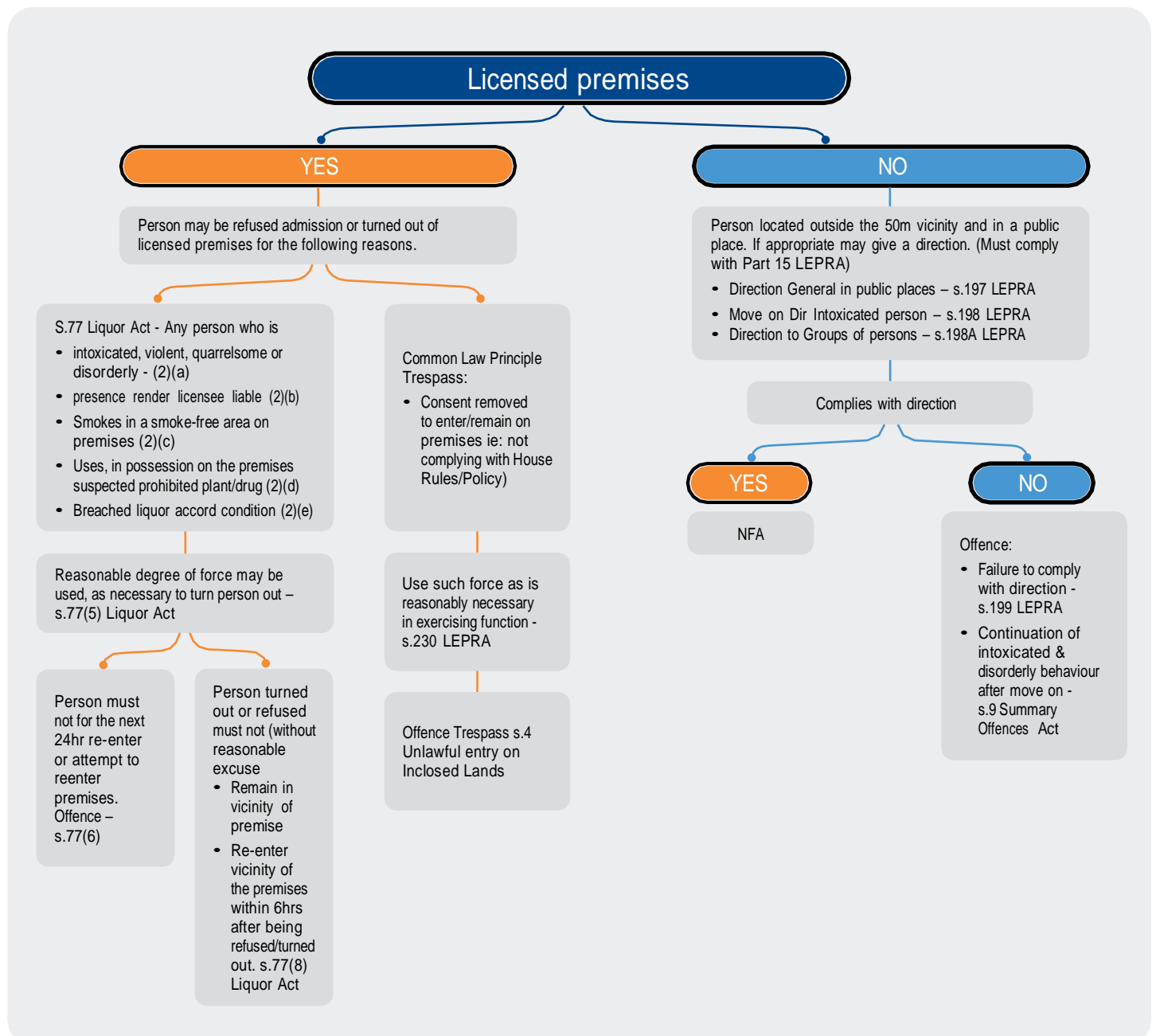
S.77 NON VOLUNTARY EXCLUSION FROM LICENSED PREMISES

FAIL TO QUIT

CRIME PREVENTION COMMAND

SCENARIO

When attending a licensed premises what powers are available to deal with persons in or within the vicinity of that location. (vicinity of licensed premises means any place less than 50 metres from any point on the boundary of the premises).



PENALTIES

s.4 Inclosed Lands Protection Act 1901

14996 JNR

Enter inclosed land (not prescribed premises) without lawful excuse

Individual
\$350

PENALTIES

s.9 Summary Offences Act

75587 VPI

Continuation of intoxication & disorderly behaviour following a move on direction

Individual
\$1100

PENALTIES

s.77 Liquor Act 2207

15264 ZKA

Excluded person fail to leave premises when required

15265 ANN

Excluded person re-enter/attempt to re-enter premises

Individual
\$550

15266 LUI

Excluded person remain in vicinity of licensed premises

15267 MOP

Excluded person re-enter vicinity of licensed premises

PENALTIES

s.199 LEPPR

12228 NNG

Refuse/fail to comply with direction under Part 14

Individual
\$220