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NSW Police Force

ALCOHOL FREE ZONES (STREET DRINKING) - WALKTHROUGH

CRIME PREVENTION COMMAND

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Summary

- This document aims to provide members of the NSW Police Force with information on alcohol free zones and police responsibilities when attending or involved in such matters.
- The governing legislation for alcohol free zones is Section 642 of the *Local Government Act 1993*.
- If a person is found drinking and/or with alcohol in an alcohol free zone, the only action police can take is to confiscate the alcohol. Discretion should be exercised when determining an appropriate method of disposal for the alcohol seized.
- Police should ensure their COPs entry includes information about the start and finish date of the specific period for which the alcohol free zone is in operation, a brief description of the person of interest (since no particulars can be obtained), particulars relating to the incident (including alcohol confiscated and tipped out or seized), and location and details if any seized alcohol is to be returned.

Document Control Sheet

Document Properties

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1	11/2021	Crime Prevention Command	Original document
2	04/2024	Crime Prevention Command	Update of guidelines to reflect Corporate Procedures template

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Purpose

This document aims to provide members of the NSW Police Force with information on alcohol free zones and police 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 alcohol free zones

Scenario

Whilst on a routine foot patrol of their PAC/ PD, police notice a group of people in a public area carpark and notice that the area is within a signposted 'Alcohol Free Zone'. Two of the group have open bottles of beer in their hands and another is holding an unopened beer bottle. There is also an opened carton of beer on the ground in the middle of the group.

Police Responsibilities

Can police proceed with any legal action against the persons consuming alcohol contrary to the alcohol free zone sign?

No - despite the signs indicating that consumption is prohibited, there is no offence or provision in the governing legislation (s.642 of the *Local Government Act 1993*) for a person to face legal action. The only action police can take is to confiscate the alcohol.

Can police issue a warning?

There is no requirement for police (or an enforcement officer) to warn individuals prior to seizing the alcohol. However, police have discretion as to whether or not they seize alcohol from persons drinking within a signposted alcohol free zone.

In appropriate circumstances, police may provide a warning to seek compliance, and should do the following:

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- In accordance with s.202 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA), inform the individuals of the reason for the exercise of their power (i.e., s.642 of the *Local Government Act 1993*)
- Inform the individuals that the alcohol in their possession may be confiscated if they continue or attempt to drink within the alcohol free zone
- Record the warning (e.g. Body Worn Video, notebook)

If compliance is achieved with the warning, there is little justification to seize the remaining unopened alcohol.

If a person has been warned and is in the same alcohol free zone on the same day that the warning was issued, and commences or continues to drink alcohol, they will face a continuation of the offence in breach of s.642 of the *Local Government Act 1993* (e.g., alcohol not previously seized may now be seized).

Can police immediately seize the alcohol?

Yes - any alcohol (and the bottle, can, receptacle or package in which it is contained) that is in the immediate possession of a person in an alcohol free zone can be seized by police or enforcement officers, if they have reasonable cause to believe that the person:

- Is drinking
- Is about to drink
- Has recently been drinking alcohol in the alcohol free zone

Confiscation and disposal of alcohol

The preferred method of disposal for a seized open container of alcohol is to immediately tip out the contents. Any packages of liquor which have not been opened should be disposed of in accordance with directions given by the Commissioner of Police or the Council (as the case requires).

Discretion should be exercised when determining an appropriate method of disposal for the alcohol seized and will depend on a number of factors, including the amount of alcohol seized, place of seizure, and the disposition of persons involved.

What course of action may be taken if individuals become violent and/or prevent police from confiscating the alcohol?

If a person refuses to hand over the alcohol, they can be charged with 'obstruction' under s.660 of the *Local Government Act 1993*.

There is currently no infringement notice police can issue in this situation, therefore action must be initiated by way of a court attendance notice. Therefore, careful consideration should be given to the seriousness of this offence prior to putting the matter before the court.

In more serious circumstances, consideration should be given to the offence of 'hinder police in execution of their duties' in accordance with s.60 of the *Crimes Act 1900*.

Can police remove the individuals from the area?

Yes - police still retain their authority to exercise their powers under Part 14 of LEPRA to give directions generally in public places (s.197) or to move on intoxicated persons (s.198) or a group (s.198A). In all cases the circumstances of any given situation will determine the appropriateness of

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exercising the power. If a direction is appropriate, police will need to comply with LEPRAs safeguards under Part 15.

A failure or refusal to comply with any of the above direction may be an offence and a penalty notice for 'refuse / fail to comply with direction' under s.199(1) of LEPRAs may be applicable.

What powers do police or enforcement officers have to obtain the person's details for the purposes of recording the incident?

None - since no offence has been committed, police have no power under any Act to demand particulars.

Police should ensure they record the following information for a COPS entry:

- The start and finish date of the specific period for which the alcohol free zone is in operation
- A brief description of the person of interest
- Record particulars relating to the incident, including alcohol confiscated and tipped out or seized
- Provide location and details if seized alcohol is to be returned