

Guideline for Decision Making under Part 4 Division 9 of the *Liquor Act 1992*

1. Purpose

The purpose of this guideline is to provide guidance to affected persons on the attitude the Chief Executive is likely to take on matters relevant to a decision about whether all or part of a licensed premises is 'high risk' under Part 4 Division 9 of the *Liquor Act 1992* (the Act).

2. Application of Guideline

This guideline applies generally and is to be read and applied in conjunction with all other relevant material for a particular case. The Chief Executive will consider each case on its individual merits and the guideline may be set aside according to the circumstances of each case.

3. Effective Date and Transitional Arrangements

This guideline is effective from 11 July 2011. It supersedes the guideline 'Banning Use of Regular Glass' (Superseded Guideline) first issued on 15 October 2009.

If the Chief Executive has not issued a Consideration Notice to a particular licensee prior to 11 July 2011, this guideline will apply to any new decision under Part 4 Division 9 of the Act. If the Chief Executive has issued a Consideration Notice prior to 11 July 2011 but is yet to make a Classification decision, the Superseded Guideline will continue to apply to a Classification decision. This guideline applies to any decision to revoke a Classification notice made after 11 July 2011.

4. Definitions

Classification Notice means a notice issued under section 99B of the Act.

Consideration Notice means a notice issued under section 98 of the Act.

Licensed Premises means the premises to which a licence relates, and includes premises approved under s 125 for Sale of Liquor.

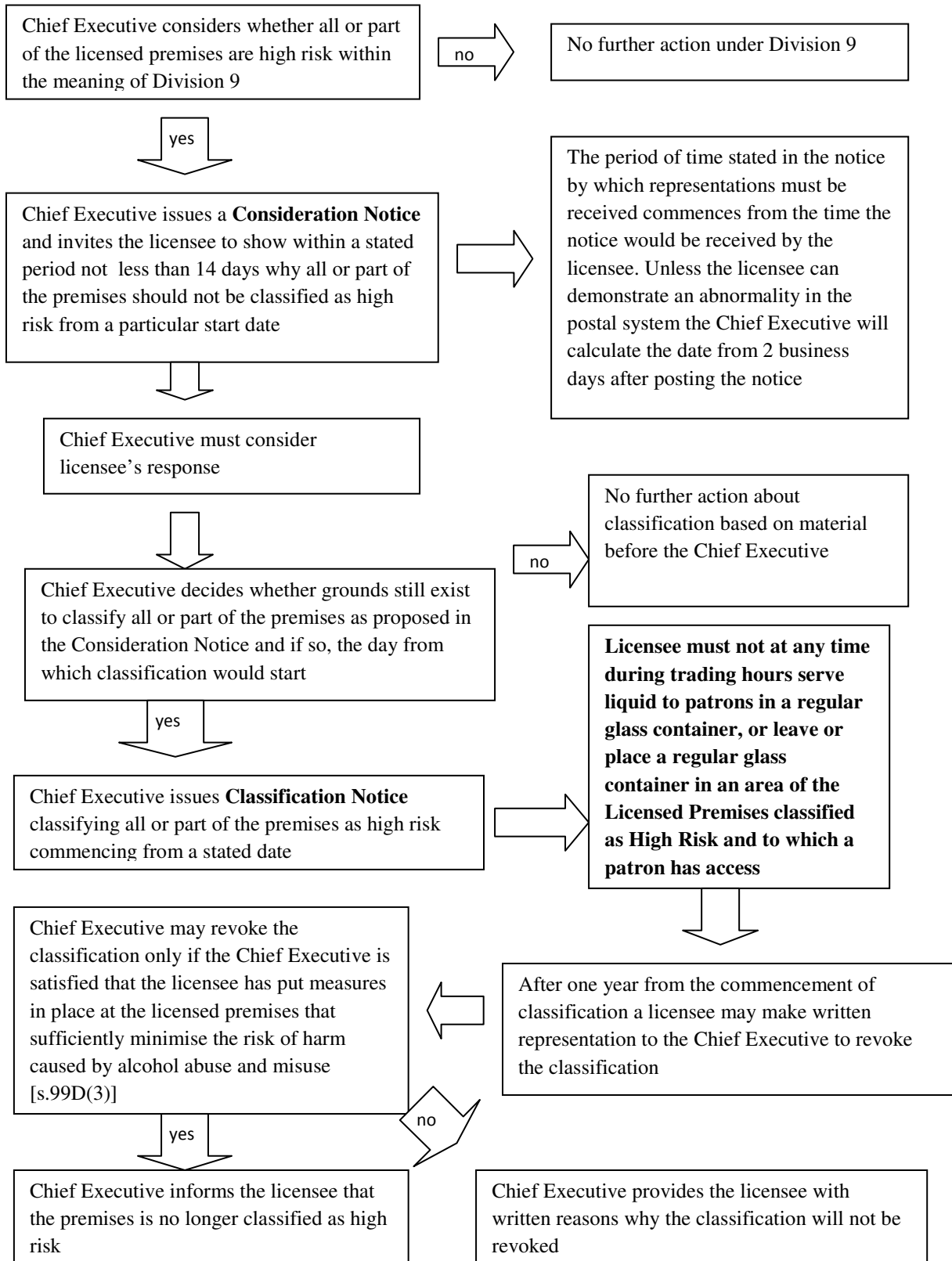
Regular glass means glass other than tempered or toughened glass (see section 96 of the Act).

Regular glass container means a container made entirely or partly of regular glass capable of holding a liquid, for example a drinking glass, bottle or jug (see section 96 of the Act).

Glassing means an act of violence by a person that involves the use of regular glass and causes injury to any person (see section 96 of the Act).

Relevant period for a licensed premises means the period of 1 year before a notice under section 98 is given (see section 96 of the Act).

5. Decision making process under Part 4 Division 9¹



¹ The sections of Division 9 specifying the process in detail and section 3(a) of the Act are appended to this Guideline

6. Consideration Notices

The Chief Executive may consider that all or part of licensed premises is high risk under section 98 of the Act if the Chief Executive is satisfied that:

- (a) one or more glassings have happened at the premises during the relevant period; or
- (b) there has been a level of violence at the premises during the relevant period that is unacceptable having regard to the main purpose of the Act mentioned in section 3(a).

If the Chief Executive considers all or a stated part of the premises to be high risk, he/she will issue the licensee with a Consideration Notice, providing reasons why all or part of the premises are considered high risk and inviting the licensee to show within a stated period not less than fourteen (14) days why all or part of the premises should not be classified as high risk.

This section outlines the material and relevant considerations that are likely to be used by the Chief Executive in making a decision according to the circumstances of each case.

6.1. Material relied upon

In considering whether all or part of a premises is 'high risk':

- the Chief Executive **may** have regard to all or some of the following:
 - data provided by the Queensland Police Service;
 - internal compliance records held by the Office of Liquor and Gaming Regulation (OLGR), including, where relevant, records of previous disciplinary action and reminders of the licensee's obligations under the provisions of the Act within the relevant period;
 - any other relevant information.

6.2 Considerations

In considering whether part or all of a licensed premises is 'high risk', the Chief Executive may take into account all or some of the following considerations depending on the material he/she has before him/her.

1. Consideration for Glassing incidents

Whether one or more Glassings occurred at the relevant licensed premises.

2. Considerations for an 'unacceptable level of violence'

- Whether, in taking account of the purpose of the Act in section 3(a), the incidents taken individually or as a whole have caused:
 - harm or the potential for harm from alcohol abuse and misuse and associated violence; or
 - adverse effects on the health or safety of members of the public; or
 - adverse effect on the amenity of the community.

7. Classification Notices

The Chief Executive may classify all or part of licensed premises as high risk if the Chief Executive is satisfied that:

- (a) one or more glassings have happened at the premises during the relevant period; or
- (b) there has been a level of violence at the premises during the relevant period that is unacceptable having regard to the main purpose of the Act mentioned in section 3(a).

If after considering representations by the licensee the Chief Executive no longer considers that grounds exist to classify part or all of the premises as high risk, the Chief Executive must give notice to the licensee that no further action will be taken about the classification of the premises.

If after considering representations by the licensee the Chief Executive considers that grounds still exist, then the Chief Executive must give the licensee a notice under section 99B of the Act (a Classification Notice).

This section outlines the material and relevant considerations that are likely to be used by the Chief Executive in making a decision according to the circumstances of each case.

7.1 Material relied upon

In considering whether to classify all or part of a premises as 'high risk':

- the Chief Executive **may** have regard to all or some of the following:
 - data provided by the Queensland Police Service;
 - internal compliance records held by OLGR, including, where relevant, records of previous disciplinary action and reminders of the licensee's obligations under the provisions of the Act within the relevant period;
 - the relevant premises' management practices;
 - other operational considerations;
 - any other relevant information.
- the Chief Executive **must** have regard to:
 - the licensee's response, if any, to the Consideration Notice before then deciding whether or not to classify a premises as high risk.

7.2 Considerations

In deciding whether to classify part or all of a licensed premises as 'high risk' the Chief Executive may take into account all or some of the following considerations depending on the material he/she has before him/her.

1. Considerations for Glassing incidents

- Whether the Glassing was an isolated incident or part of a pattern;
- In what part of the premises the incident occurred (eg was it caused by someone walking past the premises or by a patron from the premises?);
- Whether the glass came from the premises in question;
- What had been done to prevent it (eg what were the management practices in place at the time of the incident, including the level of supervision?);
- What has been done since to prevent its repetition;
- Whether there is an unacceptable risk that a Glassing will occur at the premises in the future.

2. Considerations for an 'unacceptable level of violence'

- Whether the incidents taken individually or as a whole are unacceptable having regard to:
 - harm or the potential for harm from alcohol abuse and misuse and associated violence; or
 - adverse effects on the health or safety of members of the public; or
 - adverse effect on the amenity of the community.
- The frequency of violent incidents within the relevant period in or around the premises;
- The seriousness of the violent incident/s including:
 - the nature and extent of any injuries or damage arising from the incident/s;
 - the number of persons involved (noting that depending on the circumstances it may be considered high risk if one person was injured but sustained serious injuries)
- The steps that had been taken to prevent each incident (the management practices in place at the time of any incident, including the level of supervision);
- The measures taken since the incident to prevent the incident's repetition.

3. Considerations for deciding whether to classify all or a stated part of the premises as 'high risk'

- Those matters set out above at 7.2 for deciding under section 97 whether part or all of the licensed premises should be classified as high risk;
- The nature and location of public areas which comprise the premises and the functional use, access and movement across and between these areas by patrons and staff;
- The part of the premises at which any incident occurred;
- Whether parts of the premises can be effectively isolated from other parts of the premises;
- Whether the premises includes accommodation or other areas which can be reasonably excised from the high risk part of the premises.

8. Commencement date for classification

In determining the commencement date for classification, the Chief Executive may take into account all or some of the following considerations:

- availability of the supply of containers which are an alternative to regular glass;
- the capacity of the particular premises to change from regular glass to alternatives;
- whether the classification applies to all or part of the premises.

9. Revocation of a Classification Notice

After one year from the day a classification commences, a licensee may make written representation to the Chief Executive to revoke the classification.

9.1 Material relied upon

In making a decision about whether to revoke the classification, the Chief Executive **may** have regard to all or some of the following:

- the material relied upon in the Classification Notice;
- all of the licensee's representations to date; and
- any other relevant material.

9.2 Considerations

Under section 99D(3) of the Act, the Chief Executive may revoke the classification only if the Chief Executive is satisfied that the licensee has put measures in place at the licensed premises that sufficiently minimise the risk of harm caused by alcohol abuse and misuse.

10. Appeal Rights

A Chief Executive's decision under Part 4 Division 9 is final and conclusive (section 99E of the Act). The *Judicial Review Act 1991* applies to decisions under this Division.