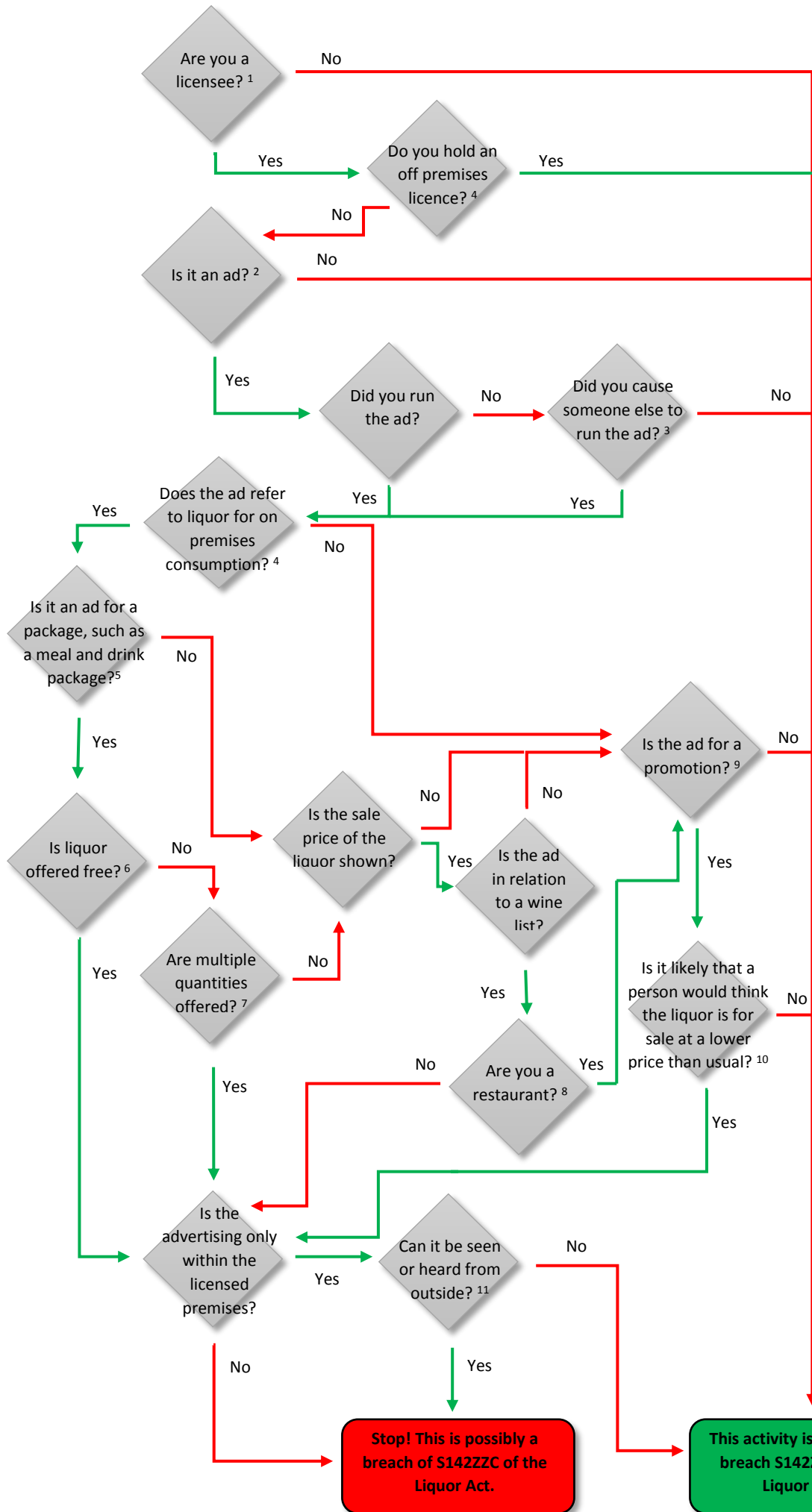


# Liquor Act 1992 - Section 142ZZC - Control of certain advertising by licensees Decision Making Tool



This flowchart and the attached notes have been designed to assist licensees in navigating the ponderous Section 142ZZC controls on certain liquor advertising.

Some aspects of these rules are open to interpretation and as such this document must be used as a guide only. It is not intended to replace proper professional advice in appropriate circumstances. If you reach the end of the chart and you remain unsure of your position, call us on 07 3252 4066.

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### **1: Are you a licensee?**

The restrictions only apply to a licensee (or a permittee).

Note: this will automatically include staff and management of the licensee acting on instructions from the licensee or acting within the ordinary scope of their authority as an employee.

### **2: Is it an ad?**

If something is being published (including through electronic media such as a website, Instagram, Facebook etc) in a way which is intended to promote your business, then it is regarded as an advertisement.

However, things like editorial material, such as an article which someone has produced about your business, would not usually be regarded as an advertisement.

If someone solicits information from you, what you provide to them in response would not normally be an advertisement.

For example: if someone emails or telephones you and asks for information about any special deals you have on, and you reply with that information, then this is not an advertisement.

### **3: Did you cause someone else to run the ad?**

A licensee does not avoid liability under the Section by having the advertising undertaken by a third party such as an agency or consultancy firm.

However, if a third party voluntarily advertises your business, the third party is not covered by the restriction.

An example of this would be a blog or review site, such as eatability.com.au or urbanspoon.com, or a newspaper article, where someone fully independent of you posted information about your drink prices or deals.

### **4: Does the ad refer to liquor for on premises consumption?**

At this stage the restrictions do not apply to advertising of liquor sold for consumption off premises (ie. Takeaway liquor).

### **5: Is it an ad for a package, such as a meal and drink package?**

A guideline published by OLGR (Guideline 12) permits the advertising of certain meal and drink packages. If the package is for one person and includes not more than 1.5 standard drinks with a substantial meal OR if the package is for two people and includes up to a 750mL bottle of wine or bubbles with two substantial meals, then the ad is ok.

### **6: Is liquor offered free?**

This is an important element. In the past, an ad for a meal deal which, for example, "includes" a glass of wine has not been thought to infringe the Section. However, if the very same deal was expressed as including a "free" or "complimentary" glass of wine, then this WOULD be considered an infringement.

### **7: Are multiple quantities offered?**

The example in the Liquor Act is "2 drinks for the price of 1", so it's a safe bet that this type of advertisement would infringe the Section. Beyond this it becomes far less clear.

Consider that an advertisement for "*Brisbane's best range of beers on tap*" might be regarded as an ad for multiple quantities of liquor. Similarly, an ad for an "*extensive wine list*" might also be struck down. However, up to this point the Section has not been thought to apply to these types of ads.

Critically, there has been much discussion about advertising deals such as a steak and four Coronas for a particular price. It may be that mentioning the number of drinks included in the deal will be taken as making it an ad for multiple quantities of liquor.

Similarly, licensees have been warned about the use of phrases like "a bucket of Corona" as it has allegedly become well-known that this refers to four or six Corona bottles in an ice bucket.

### ***8: Are you a restaurant?***

Restaurants, namely the holders of Commercial Other Subsidiary On Premises licences with a principal activity of the preparation and service of meals on the premises for consumption on the premises, are allowed to advertise the regular sale price of liquor, whereas other licensees cannot.

The exemption DOES NOT apply to a restaurant/dining area within:

- A hotel premises – Commercial Hotel Licence, or
- A small bar – Bar licence, or
- An accommodation business – Commercial Subsidiary On Premises licence with the principle activity being the provision of accommodation.

### ***9: Is the ad for a promotion?***

Again it's unclear exactly what a "*promotion*" is, and what the extent or limitations might be, but commonsense would suggest that the term includes anything which would in ordinary parlance be regarded as a promotion.

In the Liquor Act the examples are "*happy hours*", "*all you can drink*", and "*toss the boss*". Other obvious examples would be a coupon deal, a poster campaign, a special guest appearance and so on.

Dictionary.com defines the word as "*something devised to publicise or advertise a product*".

### ***10: Is it likely that a person would think the liquor is for sale at a price lower than usual?***

If the ad is for a promotion, then it will infringe the Section if it is objectively likely to indicate to a person that liquor will be available for less than would ordinarily be charged. If the promotion is for a food and beverage deal, then it becomes a matter of interpretation whether the price offered represents a discount on food or liquor or both.

Although Guideline 12 covers some food and beverage options, others may be perceived by the market as including both discounted food and liquor.

### ***11: Can it be seen or heard from outside?***

Regardless of whether advertising would infringe any or all elements of Section 142ZZC, if it only occurs within the advertised premises and cannot be seen or heard from outside, then it is not affected by the Section.

Note: licensees have received infringement notices in the past because a compliance officer can stand against a window and make out a slide show on a screen within the venue, so this element is often strictly enforced.

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