

**Version No. 001**  
**Liquor Control Reform Regulations 2009**  
**S.R. No. 134/2009**  
Version as at 1 January 2010

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**PART 1—PRELIMINARY**

**1 Objectives**

The objectives of these Regulations are—

- (a) to prescribe substances for the purpose of the definition of *liquor* in section 3 of the Act; and
- (b) to prescribe—
  - (i) the particulars that are to be included in an application for the grant, variation, relocation or transfer of a licence or BYO permit;
  - (ii) the information that is to accompany an application for the grant, variation, relocation or transfer of a licence or BYO permit;
  - (iii) fees payable under the Act;
  - (iv) variations of licences and BYO permits that are not required to comply with the requirements set out in sections 33, 34 and 35 of the Act unless required by the Director; and
- (c) to provide for the conduct of licensing polls; and
- (d) to establish minimum standards for security cameras and matters relating to the testing of security cameras.

## 2 Commencement

- (1) These Regulations (except regulations 27, 29(2)(b), 29(2)(c) and 30(3)) come into operation on 1 January 2010.
- (2) Regulations 27, 29(2)(b), 29(2)(c) and 30(3) come into operation on 1 January 2011.

## 3 Revocation

The Liquor Control Reform Regulations 1999<sup>1</sup> are **revoked**.

## 4 Authorising provisions

These Regulations are made under sections 18B and 180 of, and clause 17 of Schedule 3 to, the **Liquor Control Reform Act 1998**.

## 5 Definitions

In these Regulations—

***alcohol-based food essence*** means a food flavouring preparation in liquid form that is packaged—

- (a) in the case of vanilla essence (whether natural or imitation)—in a container of more than 100 millilitres capacity;
- (b) in any other case—in a container of more than 50 millilitres capacity;

***attendance voting*** means voting carried out by means other than postal voting;

***election manager*** means the election manager for the licensing poll;

***elector*** means an elector within the meaning of clause 17(2)(e)(ii) of Schedule 3 to the Act;

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**identification** means, in relation to an image of a person, an image that is of sufficient clarity to enable the person's identity to be established with a high degree of certainty;

**licensing poll** means a vote of electors taken within a neighbourhood to determine whether or not a licence should be granted in or relocated to the neighbourhood;

**neighbourhood** means the neighbourhood surrounding the proposed site of the premises in respect of which a licence has been applied for or to which a licence is sought to be relocated as delineated by the Director under clause 17(2)(b) of Schedule 3 to the Act;

**open format** means a published specification for storing digital data that is free of legal restrictions on its use and able to be implemented by both proprietary and free or open source software (such as a bitmap, jpg or tiff file);

**proprietary format** means a file format that is covered by a patent or copyright and is able to be implemented only by proprietary software;

**recognition** means, in relation to an image of a person, an image that is of sufficient clarity to enable a viewer to establish, with a high degree of certainty, whether the person is the same as a person that the viewer has seen before;

**stored images** means the electronic files exported from a digital video recorder to a storage device or the images on recorded cassettes from an analogue video cassette recorder;

*the Act* means the **Liquor Control Reform Act 1998**;

*video recorder* means a digital video recorder or video cassette recorder that records video images from a security camera.

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**PART 2—PRESCRIBED SUBSTANCES**

**6 Substances prescribed as liquor**

For the purposes of the definition of liquor in section 3(1) of the Act, the following are prescribed substances—

- (a) an alcohol-based food essence that is supplied by retail;
  - (b) a food preparation that is intended for consumption in a frozen form;
  - (c) vapour that would as a liquid be a beverage with an alcohol content greater than 0.5% by volume at a temperature of 20° Celsius.
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**PART 3—SECURITY CAMERAS**

**7 Standards for minimum frame rate for security cameras and video recorders**

- (1) For the purposes of section 18B of the Act, a security camera on licensed premises must record continuously at a minimum rate of 5 frames per second.
- (2) For the purposes of section 18B of the Act, a video recorder on licensed premises must—
  - (a) if it is a digital video recorder, record at least 5 images per second for each security camera connected to the digital video recorder; or
  - (b) if it is a video cassette recorder, continuously record the images from the security camera.

**8 Standards for quality of stored images**

For the purposes of section 18B of the Act, stored images exported from a video recorder must—

- (a) display the correct time and date stamp of the security camera; and
- (b) identify the security camera number or the location of the camera; and
- (c) in the case of any still image exported from a video recorder situated in an entrance to or exit from the licensed premises, be of adequate quality and detail to enable identification of a person; and
- (d) in the case of any still image exported from a video recorder situated in any area in a licensed premises other than an entrance to or exit from the licensed premises, be of adequate quality and detail to enable recognition of a person; and

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- (e) if it is a digital video recorder, be in an open format whether or not the recorder can produce exported images in a proprietary format.
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**PART 4—PARTICULARS AND INFORMATION FOR APPLICATIONS**

**9 Particulars for application for licence or BYO permit**

- (1) For the purposes of section 28(1)(b) of the Act, the prescribed particulars to be included in an application for a licence or BYO permit are—
- (a) the applicant's name; and
  - (b) the applicant's address for service of documents (including, if applicable, facsimile number and electronic mail address) and a telephone number on which the applicant or their representative can be contacted during business hours; and
  - (c) the address of the premises or proposed premises in respect of which the licence or permit is sought; and
  - (d) the name and address—
    - (i) if the applicant is a body corporate—of each director of the body corporate;
    - (ii) if the applicant is a member of the committee of management of an unincorporated club applying on behalf of the club—of each member of the committee of management of the club;
    - (iii) if the applicant is a member of a partnership applying on behalf of the partnership—of each member of the partnership; and
  - (e) a description of the nature and scope of the business to be conducted under the licence or BYO permit; and
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- (f) any conditions sought in relation to the licence or permit including, if applicable, the times sought outside ordinary trading hours during which the applicant wishes to supply liquor; and
  - (g) in the case of an application for a BYO permit—the hours for which the applicant wishes the permit to apply.
- (2) Subregulation (1)(c) does not apply to an application for a pre-retail licence.

**10 Information to accompany application for licence or BYO permit**

- (1) For the purposes of section 28(1)(c)(i) of the Act, the prescribed information to accompany an application for a licence or BYO permit is—
- (a) an accurate depiction of the premises or proposed premises to which the application relates showing the proposed area of the licensed premises; and
  - (b) any one of—
    - (i) a copy of a permit issued under the **Planning and Environment Act 1987** or, in the case of a vehicle, vessel or aircraft, a permit issued under any relevant planning law permitting the premises to which the application relates to be used as licensed premises in accordance with the authority of the relevant licence or BYO permit; or
    - (ii) other evidence that use of the premises as licensed premises in accordance with the authority of the relevant licence or BYO permit would not contravene the planning scheme that applies under the **Planning and Environment Act 1987**

or, in the case of a vehicle, vessel or aircraft, any relevant planning law; or

(iii) a copy of an application that has been made in accordance with the **Planning and Environment Act 1987** or, in the case of a vehicle, vessel or aircraft, any relevant planning law for a permit, licence or other authority that, if granted, would permit the premises to be used as licensed premises in accordance with the authority of the relevant licence or BYO permit; and

(c) if the applicant is not the owner of the premises to which the application relates—evidence of the applicant's right to occupy the premises.

(2) This regulation does not apply to an application for a limited licence or a pre-retail licence.

#### **11 Particulars for application for variation of licence or BYO permit**

(1) For the purposes of section 29(3)(b) of the Act, the prescribed particulars to be included in an application by a licensee or permittee for a variation of a licence or BYO permit are—

- (a) the applicant's name; and
- (b) the applicant's address for service of documents (including, if applicable, facsimile number and electronic mail address) and a telephone number on which the applicant or their representative can be contacted during business hours; and
- (c) the address of the licensed premises; and

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- (d) the name and address—
- (i) if the applicant is a body corporate— of each director of the body corporate;
  - (ii) if the applicant is a member of the committee of management of an unincorporated club applying on behalf of the club—of each member of the committee of management of the club;
  - (iii) if the applicant is a member of a partnership applying on behalf of the partnership—of each member of the partnership; and
- (e) the details of the variation sought; and
- (f) the licence or permit number.
- (2) For the purposes of section 29(3)(b) of the Act, the prescribed particulars to be included in an application by the Chief Commissioner or a licensing inspector for a variation of a licence or BYO permit are—
- (a) the applicant's name and address; and
  - (b) the name and address of the licensee or permittee; and
  - (c) the address of the licensed premises; and
  - (d) the details of the variation sought; and
  - (e) the licence or permit number.
- (3) For the purposes of section 29(3)(b) of the Act, the prescribed particulars to be included in an application by the persons referred to in section 32(1)(a) or (b) of the Act for a variation of a licence or BYO permit are the particulars referred to in subregulation (1) as if a reference in that subregulation to the applicant were a reference to the transferee of the licence or permit.
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**12 Information to accompany application for variation of licence or BYO permit in respect of the licensed premises**

For the purposes of section 29(3)(c)(i) of the Act, an application for a variation of the size or perimeter of the licensed premises under section 29(2)(b) of the Act must be accompanied by an accurate depiction of the premises or proposed premises to which the application relates showing the proposed size or perimeter of the licensed premises.

**13 Particulars for application for relocation of licence or BYO permit**

For the purposes of section 31(2)(b) of the Act, the prescribed particulars to be included in an application for the relocation of a licence or BYO permit are—

- (a) the applicant's name; and
  - (b) the applicant's address for service of documents (including, if applicable, facsimile number and electronic mail address) and a telephone number on which the applicant or their representative can be contacted during business hours; and
  - (c) the name and address—
    - (i) if the applicant is a body corporate—of each director of the body corporate;
    - (ii) if the applicant is a member of the committee of management of an unincorporated club applying on behalf of the club—of each member of the committee of management of the club;
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- (iii) if the applicant is a member of a partnership applying on behalf of the partnership—of each member of the partnership; and
  - (d) the current address of the licensed premises and the address of the premises to which it is proposed that the licence or BYO permit be relocated; and
  - (e) the licence or permit number.

**14 Information to accompany application for relocation of licence or BYO permit**

- (1) For the purposes of section 31(2)(c)(i) of the Act, the prescribed information to accompany an application for the relocation of a licence or BYO permit is the information referred to in regulation 10(1).
- (2) This regulation does not apply to an application for a limited licence or a pre-retail licence.

**15 Particulars for application for transfer of licence or BYO permit**

For the purposes of section 32(2)(b) of the Act, the prescribed particulars for an application for the transfer of a licence or BYO permit are—

- (a) the transferee's name; and
- (b) the transferee's address for service of documents (including, if applicable, facsimile number and electronic mail address) and a telephone number on which the transferee or their representative can be contacted during business hours; and

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- (c) the name and address—
    - (i) if the transferee is a body corporate—of each director of the body corporate;
    - (ii) if the transferee is an unincorporated club—of each member of the committee of management of the club;
    - (iii) if the transferee is a partnership—of each member of the partnership; and
  - (d) the names and addresses of the transferee's associates; and
  - (e) the address of the licensed premises; and
  - (f) the licence or permit number.

**16 Information to accompany application for transfer of licence or BYO permit**

For the purposes of section 32(2)(c)(i) of the Act, an application for the transfer of a licence or BYO permit to a transferee who is not the owner of the licensed premises must be accompanied by evidence of the transferee's right to occupy the premises.

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**PART 5—FEES**

**17 Definitions**

For the purpose of this Part—

***function room*** means an area of a licensed premises specified on a licence to be a function room set aside at all times for the exclusive use of persons who have booked a function to be held in that area and which is attended only by those persons or their guests;

***non-compliance incident*** means a relevant infringement notice or a successful prosecution;

***relevant infringement notice*** means an infringement notice within the meaning of the **Infringements Act 2006** served on a licensee or permittee of the licensed premises for an offence under section 108(4), 119 or 120 of the Act in respect of which the penalty for the offence has been paid;

***relevant period*** means—

- (a) for renewal fees payable for 2011,  
1 January 2010 to 30 September 2010;  
or
- (b) for renewal fees payable for 2012,  
1 October 2010 to 30 September 2011;  
or

- (c) for renewal fees payable for 2013 and subsequent years, 1 October in the year two years preceding the year in respect of which the renewal fee is payable to 30 September in the year preceding the year in respect of which the renewal fee is payable;

**risk criteria** means the factors taken into account when calculating a risk fee in accordance with regulation 25, 26 or 27 (as the case requires);

**successful prosecution** means a prosecution which results in a licensee or permittee being convicted or found guilty of an offence under section 108(4), 119 or 120 of the Act;

**venue capacity**, in relation to licensed premises, means the venue capacity of the licensed premises as calculated in accordance with regulation 18 or 19.

## 18 Venue capacity

- (1) This regulation applies subject to regulation 19.
- (2) If a maximum capacity is specified on a licence, the venue capacity of the licensed premises is—
  - (a) if a maximum capacity is specified in respect of the total area of the licensed premises, that maximum capacity;
  - (b) if a maximum capacity is specified in respect of more than one area of the licensed premises but no total maximum capacity for the licensed premises is specified, the sum of those maximum capacities;
  - (c) if a different total maximum capacity (as calculated under paragraph (a) or (b) (as the case requires)) may apply depending on the time of day, the greatest total

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maximum capacity as calculated under paragraph (a) or (b) (as the case requires) at any time after 11 p.m. on any particular day and before the commencement of ordinary trading hours on the following day—

minus the maximum capacity for any area of the licensed premises used to provide accommodation as specified on the licence (if applicable).

- (3) If no maximum capacity is specified on a licence, the venue capacity of the licensed premises is the lesser of—
- (a) the maximum number of patrons specified for the licensed premises in any permit granted in accordance with the **Planning and Environment Act 1987** which has been given to the Director; and
  - (b) the maximum number of people to be accommodated within the licensed premises specified in any occupancy permit issued in accordance with the **Building Act 1993** which has been given to the Director.
- (4) If neither subregulation (2) nor (3) applies, the venue capacity of the licensed premises is the maximum capacity as determined by the Director by calculating the number of people that may be accommodated on the licensed premises and (if relevant) the authorised premises based on a ratio of one patron per 0.75 square metres for the area available to, as the case requires—
- (a) members of the public; or
  - (b) in relation to a club licence, members of a club and guests of members of a club and authorised gaming visitors—

for on-premises consumption.

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**19 Venue capacity where function room exists**

- (1) This regulation applies if—
- (a) a function room exists within the licensed premises; and
  - (b) the licence does not authorise the supply of liquor in the function room between 1.00 a.m. on any particular day and the commencement of ordinary trading hours on that day; and
  - (c) no non-compliance incidents relate to the licence in the relevant period.
- (2) If a maximum capacity for the function room is specified on a licence, the venue capacity of the licensed premises is the venue capacity of the licensed premises calculated in accordance with regulation 18(2), (3) or (4) (as the case requires) minus the maximum capacity for the function room specified on the licence.

**20 Fee for licence and BYO—general**

The prescribed fees (other than renewal fees) for the purposes of the Act are the fees set out in Schedule 1.

**21 Renewal fees—general**

For the purposes of sections 59, 60(2)(c) and 62(2)(c) of the Act, the renewal fee for a licence or BYO permit is the amount calculated in accordance with regulation 22, 23 or 29.

**22 Renewal fees—licences and permits to which venue capacity multiplier does not apply**

- (1) Subject to subregulation (2), this regulation applies to the following licences—
- (a) late night (packaged liquor) licence;
  - (b) packaged liquor licence;

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- (c) pre-retail licence;
  - (d) vigneron's licence;
  - (e) renewable limited licence;
  - (f) BYO permit; and
  - (g) any other licence for a licensed premises that has a venue capacity of 200 patrons or less or to which regulation 28 does not apply.
- (2) This regulation does not apply to a licence on which a condition is specified in relation to the provision of sexually explicit entertainment.
- (3) The renewal fee for a licence to which this regulation applies is calculated in accordance with the following formula—

renewal fee = base fee + risk fee (if any)—

where—

base fee = base fee that applies to the licence under regulation 24;

risk fee = the total risk fee, calculated under regulations 25, 26 and 27 for each risk criteria that applies to the licence.

**23 Renewal fees—licences to which the venue capacity multiplier applies**

- (1) Subject to subregulation (2), this regulation applies to the following licences if regulation 28 applies to the licence and the licensed premises has a venue capacity of more than 200 patrons—
- (a) late night (general) licence;
  - (b) late night (on-premises) licence;
  - (c) general licence;
  - (d) on-premises licence;
  - (e) restaurant and café licence;

- (f) full club licence; and
  - (g) restricted club licence.
- (2) This regulation does not apply to a licence on which a condition is specified in relation to the provision of sexually explicit entertainment.
- (3) The renewal fee for a licence to which this regulation applies is calculated in accordance with the following formula—

renewal fee = (base fee + risk fee) × venue capacity multiplier—

where—

base fee = base fee that applies to the licence under regulation 24;

risk fee = the total risk fee, calculated under regulations 25 and 27 for each risk criteria that applies to the licence;

venue capacity multiplier = the multiplier that applies to the licence under regulation 28.

#### **24 Base fees**

- (1) The base fee for the following licences and BYO permits is 33·96 fee units—
- (a) restaurant and cafe licence;
  - (b) vigneron's licence;
  - (c) restricted club licence;
  - (d) renewable limited licence; and
  - (e) BYO permit.
- (2) Subject to subregulation (3), the base fee for the following licences is 68·01 fee units—
- (a) late night (general) licence;
  - (b) late night (on-premises) licence;
  - (c) general licence;

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- (d) on-premises licence;
  - (e) full club licence; and
  - (f) pre-retail licence.
- (3) This regulation does not apply to a licence on which a condition is specified in relation to the provision of sexually explicit entertainment.
- (4) The base fee for the following licences is 136·01 fee units—
- (a) late night (packaged liquor) licence; and
  - (b) packaged liquor licence.

**25 Risk fee—late night trading**

- (1) Subject to subregulation (4), this regulation applies to any of the following licences—
- (a) late night (general) licence;
  - (b) late night (on-premises) licence;
  - (c) general licence; and
  - (d) on-premises licence—
- that authorises the supply of liquor any time after 11.00 p.m. on any particular day and before the commencement of ordinary trading hours on the following day.
- (2) The risk fee for late night trading hours is—
- (a) if the licence authorises the licensee to supply liquor after 11.00 p.m. on any particular day but not after 1.00 a.m. on the following day, 136·01 fee units; or
  - (b) if the licence authorises the licensee to supply liquor after 11.00 p.m. on any particular day but not after 3.00 a.m. on the following day, 272·03 fee units; or

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- (c) subject to subregulation (3), if the licence authorises the licensee to supply liquor after 11.00 p.m. on any particular day and before the commencement of ordinary trading hours on the following day, 544·05 fee units.
- (3) Subregulation (2)(c) does not apply to a licence that—
- (a) authorises the licensee to commence the supply of liquor before the commencement of ordinary trading hours from a time not being earlier than 7.00 a.m. on a particular day; and
- (b) does not also authorise the supply of liquor at any time after 3.00 a.m. on that day and before 7.00 a.m on that day.
- (4) This regulation does not apply to—
- (a) a general licence or a late night (general) licence that authorises the supply of liquor outside ordinary trading hours only as provided in section 8(1)(b) or (c) or section 11A(2)(b) or (c) of the Act; or
- (b) any licence on which a condition is specified in relation to the provision of sexually explicit entertainment.

**26 Risk fee—non-standard trading hours for packaged liquor licences and late night (packaged liquor) licences**

- (1) This regulation applies to packaged liquor licences and late night (packaged liquor) licences that authorise the licensee to supply liquor outside ordinary trading hours.
- (2) The risk fee for trading outside ordinary trading hours is 408·04 fee units.

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**27 Risk fee—compliance history**

- (1) Subject to subregulation (2), this regulation applies to a licence or BYO permit if one or more non-compliance incidents relate to the licence or permit in the relevant period.
- (2) This regulation does not apply to a licence on which a condition is specified in relation to the provision of sexually explicit entertainment.
- (3) The risk fee for non-compliance incidents is—
  - (a) if there are one or two non-compliance incidents that relate to the licence or permit in the relevant period, 272·03 fee units; or
  - (b) if there are three or more non-compliance incidents that relate to the licence or permit in the relevant period, 544·05 fee units.

**28 Venue capacity multiplier**

- (1) Subject to subregulation (2), this regulation applies to the following licences in respect of which one or more of the risk criteria in regulation 25 or 27 apply—
    - (a) late night (general) licence;
    - (b) late night (on-premises) licence;
    - (c) general licence;
    - (d) on-premises licence;
    - (e) restaurant and cafe licence;
    - (f) full club licence; and
    - (g) restricted club licence.
  - (2) This regulation does not apply to—
    - (a) any late night (general) licence, late night (on-premises) licence, general licence or on-premises licence to which only the risk criteria in regulation 25(2)(a) applies; or
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- (b) any licence on which a condition is specified in relation to the provision of sexually explicit entertainment.
- (3) The venue capacity multiplier for a licensed premises with a venue capacity of—
- (a) more than 200 and not more than 300 patrons, is 1.25; or
  - (b) more than 300 and not more than 400 patrons, is 1.5; or
  - (c) more than 400 and not more than 500 patrons, is 1.75; or
  - (d) more than 500 and not more than 600 patrons, is 2.0; or
  - (e) more than 600 and not more than 700 patrons, is 2.25; or
  - (f) more than 700 and not more than 800 patrons, is 2.5; or
  - (g) more than 800 and not more than 900 patrons, is 2.75; or
  - (h) more than 900 and not more than 1000 patrons, is 3.0; or
  - (i) more than 1000 and not more than 1100 patrons, is 3.25; or
  - (j) more than 1100 and not more than 1200 patrons, is 3.5; or
  - (k) more than 1200 and not more than 1300 patrons, is 3.75; or
  - (l) more than 1300 patrons, is 4.

**29 Sexually explicit entertainment venues**

- (1) This regulation applies to a licence on which a condition is specified in relation to the provision of sexually explicit entertainment.

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- (2) The renewal fee for a licence to which this regulation applies is—
- (a) if no non-compliance incidents relate to the licence in the relevant period, 2566·30 fee units; or
  - (b) if there are one or two non-compliance incidents that relate to the licence in the relevant period, 3849·44 fee units; or
  - (c) if there are three or more non-compliance incidents that relate to the licence in the relevant period, 5132·59 fee units.

**30 Waiver or reduction of prescribed renewal fees**

- (1) This regulation applies to prescribed renewal fees payable by small business and non-profit organisations.
- (2) Subject to subregulation (3), the Director may, in writing, waive or reduce the prescribed renewal fee payable by a licensee or permittee if he or she is satisfied that payment of the full amount of the renewal fee would cause serious financial hardship.
- (3) The Director cannot waive or reduce the prescribed renewal fee payable by a licensee or permittee if one or more non-compliance incidents relate to the licence in the relevant period.
- (4) In this regulation—

*non-profit organisation* means an organisation that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the organisation's constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members;

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*small business* means a business employing the equivalent of five or less full-time employees.

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**PART 6—PRESCRIBED VARIATIONS**

**31 Prescribed variations**

For the purposes of sections 33, 34 and 35 of the Act, the following variations are prescribed variations—

- (a) a variation to reduce authorised trading hours;
  - (b) a variation to reduce the maximum capacity of a licensed premises.
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## **PART 7—LICENSING POLLS**

### **Division 1—Advertising the poll**

#### **32 Advertising the poll**

- (1) At least 28 days before the polling day for a licensing poll, the election manager must publish a notice of the licensing poll in the Government Gazette and by advertisement in a daily newspaper circulating in the neighbourhood.
- (2) The notice must contain—
  - (a) a description of the neighbourhood; and
  - (b) the resolution to be submitted to the electors; and
  - (c) a statement that voting is compulsory.

### **Division 2—Ballot papers**

#### **33 Ballot paper**

The ballot paper to be used for the purposes of conducting a licensing poll must be in the form set out in Schedule 2.

#### **34 Formality of vote**

A ballot paper used at a licensing poll must be rejected as informal if—

- (a) it has no vote marked on it; or
- (b) the elector's vote is not clear; or
- (c) it has more than one vote marked on it.

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**Division 3—Polls by attendance voting**

**35 Application of Division**

This Division applies where the Victorian Electoral Commission decides that the voting at a licensing poll is to be by means of attendance voting.

**36 Notice of poll**

In addition to the requirements specified in regulation 32, public notice of the licensing poll must contain—

- (a) information concerning postal voting procedures; and
- (b) the names and locations of voting centres; and
- (c) the day and hours of voting.

**37 Appointment of scrutineers**

The election manager may approve prior to polling day the appointment of one scrutineer at each voting centre on behalf of—

- (a) the applicant for the granting or relocation of the licence; and
- (b) any group of at least five people entitled to vote at the poll who are opposed to the granting or relocation of the licence.

**Division 4—Polls by postal voting**

**38 Application of Division**

This Division applies where the Victorian Electoral Commission decides that the voting at a licensing poll is to be by means of postal voting.

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### **39 Notice of poll**

- (1) In addition to the requirements specified in regulation 32, public notice of the licensing poll must—
  - (a) indicate the week in which postal ballot envelopes are likely to be posted or delivered to electors; and
  - (b) specify the last day of voting and the time that voting closes fixed in accordance with subregulation (2); and
  - (c) describe how a voter may request an early postal vote.
- (2) Subject to regulation 40, the election manager must specify—
  - (a) a day not later than the date of the poll, not being a Saturday, Sunday or public holiday, as the last day on which postal ballots must be received by him or her; and
  - (b) 5.00 p.m. as the time that voting closes on that day.

### **40 Change to last day of voting**

- (1) If the election manager is satisfied that—
  - (a) there is an unforeseen delay in the printing of poll materials; or
  - (b) there is a postal strike or any other disruption to the postal service; or
  - (c) other special circumstances exist that justify postponing the last day of voting—he or she may fix a later day as the last day of voting.

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- (2) If the election manager fixes a later day as the last day of voting, he or she must—
- (a) immediately give public notice of the new last day of voting; and
  - (b) if postal ballot envelopes have not yet been issued, indicate in the notice the week in which they are likely to be issued.

**41 Ballot papers and declaration envelopes**

The election manager must ensure that—

- (a) the ballot papers for the poll are made of marked security paper; and
- (b) the declaration envelopes for the poll are opaque; and
- (c) all replacement declaration envelopes issued under regulation 45(1) are identified as replacement declaration envelopes.

**42 Issue of postal ballot envelope**

At least 15 days before the last day of voting the election manager must post or deliver to each elector a postal ballot envelope that contains the following—

- (a) a ballot paper;
- (b) a sealable declaration envelope that has a declaration flap which is capable of being removed by the election manager without opening the declaration envelope and which includes—
  - (i) the name of the licensing poll; and
  - (ii) the name and address of the elector as they appear on the roll of electors for the poll; and

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- (iii) the declaration to be signed by the elector, which must be in the following form or to the following effect: "I am the elector named on this envelope. I have enclosed my completed ballot paper in this envelope. I have not already voted in this licensing poll."; and
  - (iv) a place for the elector to sign and date the declaration;
  - (c) a prepaid return envelope addressed to the election manager;
  - (d) instructions to the elector on how to complete and return the ballot paper and related material;
  - (e) any other material that the election manager considers appropriate.

#### **43 Early postal vote**

- (1) An elector may request an early postal ballot paper from the election manager.
- (2) An elector making a request under subregulation (1) must give reasons for the request.
- (3) If the election manager considers that the request is reasonable, he or she must comply with the request.
- (4) The election manager may issue a ballot paper under this regulation that is not made of marked security paper if he or she initials the ballot paper.

#### **44 Record of issue of postal ballot envelopes**

The election manager must keep a record of all persons who have been issued with a postal ballot envelope for the poll.

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**45 Issue of replacement voting materials**

- (1) If, on or before the last day of voting, an elector—
  - (a) claims that he or she has lost or destroyed the declaration envelope or ballot paper or both;  
or
  - (b) claims that he or she has not received a postal ballot envelope; or
  - (c) satisfies the election manager that he or she has spoiled the declaration envelope or ballot paper or both and returns the spoiled declaration envelope or the spoiled ballot paper or both—

the election manager must issue the elector with a declaration envelope or ballot paper or postal ballot envelope, as the case requires.

- (2) If a spoiled declaration envelope or spoiled ballot paper has been returned under subregulation (1)(c), the election manager must cancel the spoiled declaration envelope or spoiled ballot paper by marking it with the words "spoiled by voter", initial the spoiled ballot paper and retain the spoiled declaration envelope or ballot paper until the close of voting.
- (3) The election manager may use any means of identifying declaration envelopes, ballot papers and postal ballot envelopes issued under this regulation which he or she considers appropriate in order to comply with regulation 48(2)(b).
- (4) The election manager must keep a record of all declaration envelopes, ballot papers and postal ballot envelopes issued under subregulation (1).

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**46 Request by an unenrolled voter**

- (1) If a person claims to be entitled to vote but is not enrolled on the roll of electors for the poll he or she may apply to the election manager for a postal ballot envelope as an unenrolled voter.
- (2) Despite regulation 42, the election manager must issue a postal ballot envelope to any person who applies to vote under subregulation (1).
- (3) The declaration envelope issued to an unenrolled voter under this regulation must be identified as a declaration envelope for an unenrolled voter.
- (4) The declaration envelope issued to a person under this regulation must require the person to—
  - (a) specify the address for which they claim to be entitled to be enrolled; and
  - (b) describe the basis of their claim to entitlement; and
  - (c) specify their date of birth; and
  - (d) declare that the details provided on the declaration envelope are true and correct.
- (5) The election manager must ensure that a record is kept of all declaration envelopes, ballot papers and postal ballot envelopes issued under this regulation.

**47 Return of declaration envelopes and ballot papers**

- (1) An elector or, if the elector requires assistance, a person appointed by the elector must—
  - (a) mark the ballot paper in accordance with the instructions; and
  - (b) insert his or her completed ballot paper in the declaration envelope provided and seal the envelope; and

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- (c) sign and date the declaration envelope; and
  - (d) place the declaration envelope in the prepaid return envelope.
- (2) The elector or, if the elector requires assistance, a person appointed by the elector must post or deliver the declaration envelope and ballot paper to the election manager to reach the election manager not later than 5.00 p.m. on the last day of voting or deliver it to a place designated by the election manager for that purpose no later than 5.00 p.m. on the last day of voting.
  - (3) Except as provided in subregulation (2), the election manager may specify the times when declaration envelopes may be returned.
  - (4) The election manager must not reject a declaration envelope only because it is not posted or delivered in the prepaid return envelope.

**48 Election manager to deal with declaration envelopes on receipt**

- (1) Before the close of voting, the election manager may—
  - (a) remove the declaration envelopes from the prepaid envelopes; and
  - (b) separate the signed declaration envelopes from the unsigned declaration envelopes; and
  - (c) put aside declaration envelopes returned without declaration flaps and disallow those envelopes; and
  - (d) disallow the unsigned declaration envelopes.
- (2) The election manager must—
  - (a) identify the declaration envelopes issued under regulation 45; and

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- (b) satisfy himself or herself, in relation to each elector issued with a declaration envelope under regulation 45, that the elector has not voted or attempted to vote more than once in the poll.
  - (3) If it appears to the election manager that a person has signed and returned more than one declaration envelope, the election manager must—
    - (a) accept the ballot paper within the declaration envelope that appears to have been signed first by the elector; and
    - (b) disallow ballot papers in other declaration envelopes that appear to have been returned by the elector.
  - (4) If it appears to the election manager that two or more declaration envelopes bearing the name of the same voter have been signed and returned by different people, the election manager must disallow the ballot papers contained in the declaration envelopes without removing the declaration flaps or opening the declaration envelopes.
  - (5) The election manager must keep a record of the number of persons whose declaration envelopes have been disallowed under subregulation (4) and the action taken in each case.

**49 Postal ballot papers issued to unenrolled voters**

- (1) The election manager must—
  - (a) identify the declaration envelopes issued to unenrolled voters under regulation 46; and
  - (b) satisfy himself or herself that the person was entitled to be enrolled.

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- (2) If satisfied of the matter referred to in subregulation (1)(b), the election manager must accept the ballot paper without opening the declaration envelope in which it is contained.
  - (3) If not satisfied of the matter referred to in subregulation (1)(b), the election manager must disallow the ballot paper within the declaration envelope without removing the declaration flap or opening the declaration envelope.

#### **50 Security of declaration envelopes**

The election manager must ensure that all declaration envelopes received for a licensing poll—

- (a) are placed in a properly secured postal ballot receptacle; and
- (b) remain unopened and without their declaration flaps being removed—

until after the close of voting.

#### **51 Record of return of declaration envelopes**

The election manager must keep a record of all electors who return a declaration envelope during a licensing poll.

#### **52 Scrutineers**

- (1) Subject to this regulation, the election manager may approve the appointment of scrutineers to scrutinise the following electoral activities only—
  - (a) the posting of postal ballot envelopes;
  - (b) the opening and emptying of a Post Office Box;
  - (c) the opening and emptying of a postal ballot receptacle;

- (d) the receipt and processing of declaration envelopes;
  - (e) the counting and recounting of ballot papers.
- (2) For each election official engaged in an electoral activity mentioned in subregulations (1)(a) to (e), the following number of scrutineers may be appointed—
- (a) one scrutineer for the person who is the applicant for the granting or relocation of the licence; and
  - (b) one scrutineer for any group of at least five people entitled to vote at the poll who are opposed to the granting or relocation of the licence.
- (3) The election manager may have a scrutineer removed if—
- (a) more scrutineers are present than are permitted under subregulation (2); or
  - (b) the scrutineer commits any breach of clause 17 of Schedule 3 to the Act or these Regulations; or
  - (c) the scrutineer obstructs or hinders an election official who is performing any of the electoral activities mentioned in subregulation (1); or
  - (d) the scrutineer fails to obey a lawful direction from an election official.

### **53 Place where votes to be counted**

The election manager must designate the place or places at which ballot papers are to be counted and must advise scrutineers where the count is to be made.

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**54 Handling of poll materials**

- (1) As soon as practicable after the close of voting, the election manager must carry out the following activities before any scrutineers who may be present and any election officials and no other person—
  - (a) open the postal ballot receptacle and remove its contents;
  - (b) make up into separate parcels—
    - (i) the record or records kept of persons who have returned a declaration envelope;
    - (ii) the spoilt ballot papers and declaration envelopes;
    - (iii) the unsigned declaration envelopes;
    - (iv) the declaration envelopes disallowed under regulation 48;
    - (v) the unused declaration envelopes;
    - (vi) the unused ballot papers;
  - (c) remove the declaration flaps from the declaration envelopes that have not been disallowed;
  - (d) place the removed declaration flaps in a secure receptacle or location;
  - (e) after the declaration flaps have been removed and placed in a secure receptacle or location, open the signed declaration envelopes and take out the ballot papers;
  - (f) make up the signed declaration envelopes into a separate parcel;
  - (g) ascertain the number of votes in favour of the proposal, the number of votes against the proposal and the number of informal votes;

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- (h) put the formal and informal ballot papers into separate parcels;
  - (i) prepare and sign a certificate which may be signed by any of the scrutineers specifying the number of—
    - (i) votes received in favour of the proposal and votes against the proposal;
    - (ii) ballot papers set aside as informal;
  - (j) make a statement on the outside of each parcel containing—
    - (i) a description of its contents;
    - (ii) the name of the licensing poll;
    - (iii) the name of the counting place;
    - (iv) the date of the count;
  - (k) enclose and properly fasten each parcel and sign the statement made under paragraph (j) and permit any scrutineer present to sign the statement.
- (2) As far as is practicable, the election manager must ensure that a ballot paper is removed from a signed declaration envelope in a way that prevents any person from seeing how an elector voted.
- (3) If a declaration envelope contains—
- (a) more than one ballot paper for the same licensing poll; or
  - (b) ballot papers for more than one licensing poll—
- the election manager must disallow all the ballot papers from that declaration envelope and mark them in a manner that indicates why they have been disallowed.
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**55 Adjournment of count**

- (1) The election manager may from time to time adjourn the counting of votes.
- (2) If the counting of votes is adjourned the election manager must advise the scrutineers of the adjournment.
- (3) The election manager must ensure that the ballot papers and documents relating to the poll are kept secure during an adjournment of the count.

**56 Safe custody of postal ballot materials**

- (1) The election manager is responsible for the safe custody of postal ballot envelopes and all documents and materials contained in the postal ballot envelopes until they are issued under regulation 42.
- (2) The election manager must keep a record of—
  - (a) the number of ballot papers printed, issued and received; and
  - (b) the number of declaration envelopes issued and received.
- (3) The election manager must reconcile the number of ballot papers printed with the number of ballot papers issued, spoilt, left unused or not returned by voters.
- (4) The election manager must certify the record kept under subregulations (2) and (3) as being true and correct.

**57 Disposal of ballot-papers**

- (1) The election manager must enclose in one or more separate packets the parcels of postal ballot materials made up under regulation 54.

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- (2) The election manager must deliver the parcels to the Victorian Electoral Commission which must keep the parcels safely and secretly for 12 months.
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**PART 8—MISCELLANEOUS**

**58 Adoption of provisions of the Electoral Act 2002**

Subject to clause 17 of Schedule 3 to the Act, a licensing poll must be conducted (with any adaptations as are necessary) in accordance with the following provisions of the **Electoral Act 2002**—

- (a) sections 3 and 4 of Part 1;
- (b) Part 2;
- (c) Part 3;
- (d) Divisions 2, 4 (except sections 73, 73A and 75) and 6 of Part 5;
- (e) the following provisions of Part 6—
  - (i) sections 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 97A, 98, 99, 102, 103, 107, 108 and 110;
  - (ii) to the extent that they are relevant to attendance voting under these Regulations, sections 101, 104, 105 and 106;
- (f) the following provisions of Part 7—
  - (i) sections 111, 113, 115, 118 and 120;
  - (ii) to the extent that they are relevant to attendance voting under these Regulations, sections 112 and 122;
- (g) Divisions 1 and 2 of Part 8;
- (h) Part 9 (except sections 156 and 157);
- (i) Part 10 (except section 180).

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**59 Adoption of provisions of the Electoral Regulations 2002**

Subject to clause 17 of Schedule 3 to the Act, a licensing poll must be conducted (with any adaptations as are necessary) in accordance with the following provisions of the Electoral Regulations 2002—

- (a) Part 4 (except regulations 28 and 29);
  - (b) Part 5 (except regulation 34);
  - (c) Part 6;
  - (d) Forms J, K, L, M, N, O and P in the Schedule to the Regulations.
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## SCHEDULES

### SCHEDULE 1

Regulation 20

#### FEES

##### Fees for licence and BYO permit related applications

The prescribed fee referred to in the provision set out in column 1 of Table A and described in column 2 of that Table is the amount set out in column 3 opposite that description.

**Table A**

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Description of fee</i>	<i>Column 3</i> <i>Fee</i>
28(1)(c)(ii)	Fee for licence (other than a temporary limited licence or a major event licence)	32.44 fee units
28(1)(c)(ii)	Fee for BYO permit	17.43 fee units
28(1)(c)(ii)	Fee for temporary limited licence	7.74 fee units
28(1)(c)(ii)	Fee for major event licence where a single applicant makes one or more licence applications in relation to the event	66.60 fee units
28(1)(c)(ii)	Fee for major event licence where multiple applicants make licence applications in relation to the event	9.99 fee units
29(3)(c)(ii)	Fee for variation of licence or BYO permit	14.62 fee units
31(2)(c)(ii)	Fee for relocation of licence or BYO permit	14.62 fee units
32(2)(c)(ii)	Fee for transfer of licence or BYO permit	14.62 fee units
54(2A)	Fee for approval of nominee	14.62 fee units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Act</i>	<i>Description of fee</i>	<i>Fee</i>
67(2)(c)(iii)	Fee for club licence on application by amalgamated club	14.62 fee units
104(1A)	Fee for approval of director	14.62 fee units
120(2A)	Fee for temporary approval to allow minors on licensed premises while entertainment for minors is provided	14.62 fee units

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**SCHEDULE 2**

Regulation 33

**BALLOT PAPER**

Resolution that a <sup>1</sup> be granted in (or relocated to)  
the neighbourhood of <sup>2</sup> .

Do you approve the resolution?

*Directions to the Voter*

If you desire to vote for the resolution write the word "YES" in  
the square provided opposite the question.

If you desire to vote against the resolution write the word "NO"  
in the square provided opposite the question.

<sup>1</sup> Insert the type of licence.

<sup>2</sup> Insert the neighbourhood in which the grant or relocation of  
the licence is to be considered.

## ENDNOTES

### 1. General Information

The Liquor Control Reform Regulations 2009, S.R. No. 134/2009 were made on 4 November 2009 by the Governor in Council under sections 18B and 180 of, and clause 17 of Schedule 3 to, the **Liquor Control Reform Act 1998**, No. 94/1998 and came into operation as follows:

Regulations 1–26, 28, 29(1)(2)(a), 30(1)(2)(4), 31–59 on 1 January 2010:  
regulation 2(1); regulations 27, 29(2)(b)(c) and 30(3) on 1 January 2011:  
regulation 2(2).

The Liquor Control Reform Regulations 2009 will sunset 10 years after the day of making on 4 November 2019 (see section 5 of the **Subordinate Legislation Act 1994**).

**2. Table of Amendments**

There are no amendments made to the Liquor Control Reform Regulations 2009 by statutory rules, subordinate instruments and Acts.

### 3. Explanatory Details

<sup>1</sup> Reg. 3: S.R. No. 13/1999. Reprint No. 2 as at 1 March 2006. Reprinted to S.R. No. 13/2006 and subsequently amended by S.R. Nos 102/2008 and 143/2008.

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#### Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2009 is \$11.69. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.