

# Liquor Control Reform Amendment Act 2007

No. 73 of 2007

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Victoria

# **Liquor Control Reform Amendment Act 2007<sup>†</sup>**

**No. 73 of 2007**

[Assented to 18 December 2007]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purpose**

The purpose of this Act is to amend the **Liquor Control Reform Act 1998** to—

- (a) enable persons to be excluded from certain premises or areas in specified circumstances;
- (b) strengthen liquor licensing penalties and enforcement powers;

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- (c) facilitate and support voluntary liquor accords;
  - (d) ban inappropriate advertising or promotion of liquor sales and licensed premises.

## 2 Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on a day or days to be proclaimed.
- (2) If section 3 or a provision of Part 3 does not come into operation before 1 July 2008, it comes into operation on that day.
- (3) If a provision of this Act (other than section 3 or a provision of Part 3) does not come into operation before 1 July 2009, it comes into operation on that day.

## 3 Principal Act

In this Act, the **Liquor Control Reform Act 1998** is called the Principal Act.

See:  
Act No.  
94/1998.  
Reprint No. 3  
as at  
5 April 2006  
and  
amending  
Act Nos  
97/2005,  
8/2006,  
24/2006,  
32/2006 and  
80/2006.  
LawToday:  
www.  
legislation.  
vic.gov.au

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**PART 2—BANNING NOTICES AND EXCLUSION ORDERS**

**4 Definitions**

**Insert** the following definitions in section 3(1) of the Principal Act—

**"banning notice** means a notice given under section 148B;

**designated area** means an area declared under section 147 to be a designated area for the purposes of Part 8A;

**exclusion order** means an order made by a court under section 148I;

**homeless person** has the same meaning as in the **Magistrates' Court Act 1989**;

**relevant police member** means—

- (a) an authorised member of the police force; or
- (b) a member of the police force authorised under section 148N(1) to be a relevant police member;

**specified offence**, in relation to a banning notice or an exclusion order, means an offence specified in Schedule 2;".

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**5 New Part 8A inserted**

After Part 8 of the Principal Act **insert**—

**"PART 8A—BANNING NOTICES AND  
EXCLUSION ORDERS**

**Division 1—Designated areas**

**147 Order declaring designated area**

- (1) The Director, by Order published in the Government Gazette, may declare an area to be a designated area for the purposes of this Part if the Director believes that—
  - (a) alcohol-related violence or disorder has occurred in a public place that is in the immediate vicinity of licensed premises within the area; and
  - (b) the exercise of powers under Division 2 or 3 of this Part in relation to the area is reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area.
- (2) Before making an Order, the Director must consult the Chief Commissioner.
- (3) A reference in this section to the immediate vicinity of licensed premises means a place that is within 100 metres of the licensed premises.
- (4) In this section—

***public place*** has the same meaning as in the **Summary Offences Act 1966**.

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**148 Court proceedings regarding Order**

- (1) In any proceeding in which the validity of an Order made under section 147 is called into question, the court hearing the proceeding must not stay the operation of the Order pending the final determination of the proceeding, unless the court considers that there are exceptional circumstances.
- (2) If a court finds that an Order made under section 147 is invalid, that finding does not affect the validity, in relation to any period before that finding, of—
  - (a) any banning notice given or exclusion order made in relation to the designated area that is the subject of the Order; and
  - (b) anything done under this Part in reliance on that banning notice or exclusion order.

**148A Variation and revocation of Order**

- (1) The Director, by Order published in the Government Gazette—
  - (a) may at any time vary or revoke an Order made under section 147; and
  - (b) must revoke an Order made under section 147 if the Director believes that the grounds for making the Order no longer exist.
- (2) This Division applies to the variation or revocation of an Order in the same way as it does to the making of the Order.



**Division 2—Banning notices**

**148B Issue of banning notice**

- (1) A relevant police member who suspects on reasonable grounds that a person is committing or has committed a specified offence wholly or partly in a designated area may give the person a notice banning the person, for the period specified in the notice, from—
    - (a) the designated area; or
    - (b) all licensed premises in the designated area.
  - (2) The period specified in the banning notice must not exceed 24 hours starting from the time the notice is given to the person to whom it applies.
  - (3) A relevant police member cannot give a banning notice to a person unless the member—
    - (a) believes on reasonable grounds that the giving of the notice may be effective in preventing the person from—
      - (i) continuing to commit the specified offence; or
      - (ii) committing a further specified offence; and
    - (b) considers that the continuation of the commission of the specified offence or the commission of a further specified offence may involve or give rise to a risk of alcohol-related violence or disorder in the designated area.
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- (4) In determining whether there are reasonable grounds for his or her belief under subsection (3)(a), the relevant police member must consider—
- (a) the apparent state of health of the person to whom the notice is to apply; and
  - (b) whether the person is likely to—
    - (i) continue to commit the specified offence; or
    - (ii) commit a further specified offence; and
  - (c) whether the person should be arrested or held in custody pending the hearing of any charges against the person in respect of the specified offence; and
  - (d) whether that person is capable of comprehending the nature and effect of the notice; and
  - (e) any other matters the member considers relevant.
- (5) A relevant police member must produce proof of his or her identity and official status before giving a banning notice to a person, unless the member is in uniform.
- (6) A relevant police member cannot give a banning notice referred to in subsection (1)(a) to a person if the member believes or has reasonable grounds for believing that the person lives or works in the designated area.
- (7) If a person to whom a banning notice applies lives or works in licensed premises in the designated area, the banning notice does not prevent him or her from entering those
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licensed premises during the period for which the notice applies.

- (8) No more than one banning notice may be given to a person for a designated area, or licensed premises in the area, in respect of the same specified offence, but a banning notice may be given to a person who is already subject to a banning notice for the designated area, or licensed premises in the area, if the subsequent notice is given in respect of a separate specified offence.

**148C Content of banning notice**

A banning notice must state—

- (a) the name of the person to whom the notice applies; and
- (b) the specified offence that the relevant police member giving the notice suspects that person has committed and the grounds for the suspicion; and
- (c) the name, rank and place of duty of the relevant police member giving the notice; and
- (d) the designated area in which the notice applies; and
- (e) the specified period for which the notice applies; and
- (f) whether the notice bans the person from the designated area or from all licensed premises in the designated area; and
- (g) if the notice bans the person from the designated area—
  - (i) that the person must not enter or re-enter the designated area during the specified period; and

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- (ii) that, if the person is in the designated area, the person must leave the designated area in accordance with a direction of a member of the police force to do so; and
  - (iii) that it is an offence not to comply with the notice or with a direction given by a member of the police force to leave the designated area; and
  - (iv) the maximum penalties for those offences; and
- (h) if the notice bans the person from licensed premises in the designated area—
- (i) that the person must not enter or re-enter any licensed premises in the designated area during the specified period; and
  - (ii) that, if the person is in any licensed premises in the designated area, the person must leave the licensed premises in accordance with a direction of a member of the police force to do so; and
  - (iii) that it is an offence not to comply with the notice or with a direction given by a member of the police force to leave the licensed premises; and
  - (iv) the maximum penalties for those offences; and
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- (i) that a copy of the notice and, if available, a photograph of the person to whom the notice applies may be provided to licensees or permittees of licensed premises in the designated area and persons employed in those premises for the purpose of enforcement of the notice; and
- (j) that the notice may be varied or revoked under section 148E.

**148D Requirement to give name and address**

- (1) A relevant police member who intends to give a banning notice to a person may request the person to state the person's name and address.
- (2) A relevant police member who makes a request under subsection (1) must inform the person of the member's intention to give the person a banning order.
- (3) A person must not, in response to a request made by a relevant police member in accordance with this section—
  - (a) refuse or fail to comply with the request without a reasonable excuse for not doing so; or
  - (b) state a name that is false in a material particular; or
  - (c) state an address other than the full and correct address of his or her ordinary place of residence or business.

Penalty: 5 penalty units.

- (4) A person who is requested to state his or her name and address may request the member who made the request to state, orally or in

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writing, the member's name, rank and place of duty.

- (5) A relevant police member must not, in response to a request under subsection (4)—
- (a) refuse or fail to comply with the request; or
  - (b) state a name or rank that is false in a material particular; or
  - (c) state as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or
  - (d) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

- (6) If a person states a name and address in response to a request made under subsection (1) and the member who made the request suspects on reasonable grounds that the stated name or address may be false, the member may request the person to produce evidence of the correctness of the name and address.
- (7) The person must comply with the request, unless he or she has a reasonable excuse for not doing so.

Penalty: 5 penalty units.

- (8) It is not an offence for a person to fail to comply with a request made under subsection (1) or (6) if the member who made the request did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request.

**148E Variation and revocation of banning notice**

- (1) A relevant police member of or above the rank of sergeant may vary or revoke a banning notice at any time, by notice in writing given to the person to whom the notice applies.
- (2) A banning notice cannot be varied under this section to extend the period for which the notice applies.

**148F Offence to contravene banning notice or fail to comply with police directions**

- (1) A person to whom a banning notice applies must not enter or re-enter, or attempt to enter or re-enter, the designated area or licensed premises in contravention of the notice.

Penalty: 20 penalty units.

- (2) If the person is in the designated area or licensed premises in contravention of the notice, he or she must comply with any direction given by a member of the police force under section 148G.

Penalty: 20 penalty units.

- (3) It is a defence to a charge of an offence against subsection (1) or (2) for the defendant to prove that—
    - (a) the defendant was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence; or
    - (b) the conduct constituting the offence was caused by circumstances beyond the control of the defendant and the defendant had taken reasonable
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precautions to avoid committing an offence.

- (4) Despite subsection (2), it is not an offence for a person to fail to comply with a direction given by a member of the police force under section 148G if the member of the police force did not comply with section 148G(3).
- (5) Section 130 of the **Magistrates' Court Act 1989** applies in the circumstances referred to in subsection (4).

**148G Direction to leave designated area or licensed premises**

- (1) This section applies if a person to whom a banning notice applies is in the designated area or licensed premises in contravention of the notice.
- (2) Subject to subsection (3), a member of the police force may direct the person to leave the designated area or the licensed premises (as the case requires) in the manner, if any, directed by the member.
- (3) A member of the police force must—
  - (a) produce proof of his or her identity and official status before exercising a power under subsection (2) unless the member is in uniform; and
  - (b) inform the person that—
    - (i) the member of the police force is empowered to direct the person to leave the designated area or licensed premises (as the case requires); and
    - (ii) it is an offence to fail to comply with the direction; and



- (c) make all reasonable attempts to ensure that the person understands the direction.
- (4) A direction under subsection (2)—
  - (a) may be given orally or in writing; and
  - (b) must be reasonable in all the circumstances.

**148H Police may use reasonable force to remove person**

- (1) A member of the police force, using no more force than is reasonably necessary, may—
  - (a) prevent a person from entering or re-entering, or attempting to enter or re-enter, a designated area or licensed premises contrary to section 148F(1);
  - (b) remove a person from a designated area or licensed premises after the person has refused to comply with a direction under section 148G.
- (2) Nothing in this section limits any powers of arrest that a member of the police force has under any other law.
- (3) Any action taken under this section does not prevent the institution of proceedings in respect of an offence.

**Division 3—Exclusion orders**

**148I Exclusion orders**

- (1) A court may make an exclusion order in respect of a person (the *offender*) if the court—
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- (a) finds the offender guilty of a specified offence that was committed wholly or partly in a designated area; and
    - (b) does not sentence the offender to serve a term of imprisonment of 12 months or more, or an indefinite term of imprisonment, in respect of the specified offence; and
    - (c) is satisfied that the order may be an effective and reasonable means of preventing the commission by the offender of further specified offences in the designated area.
  - (2) An *exclusion order* is an order excluding the offender, for the period specified in the order, from—
    - (a) the designated area; or
    - (b) all licensed premises in the designated area; or
    - (c) specified licensed premises, or licensed premises of a specified class, in the designated area.
  - (3) An exclusion order may be made on the application of a member of the police force or the Director of Public Prosecutions, or on the court's own initiative.
  - (4) The period specified in the exclusion order must not exceed 12 months.
  - (5) An exclusion order—
    - (a) may exclude the offender from the designated area or licensed premises (as the case requires) at all times during the period of the order, or at the times specified in the order;
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- (b) may allow the offender to enter the designated area or licensed premises (as the case requires) for specified purposes during the period of the order, subject to any conditions the court thinks fit;
    - (c) may be made subject to any other conditions the court thinks fit.
  - (6) In determining whether it is satisfied under subsection (1)(c), the court must consider—
    - (a) the nature and gravity of the specified offence; and
    - (b) whether the offender has previously been found guilty of a specified offence committed in the designated area (whether or not it was a designated area at the time the offence was committed); and
    - (c) whether the offender is or has been the subject of an exclusion order in relation to another specified offence committed in the designated area, or a specified offence committed in another designated area (whether or not they were designated areas at the time the offence was committed); and
    - (d) the likely impact of the exclusion order on—
      - (i) the offender; and
      - (ii) any victim of the specified offence; and
      - (iii) public safety and public order; and
    - (e) any other matters the court considers relevant.
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**148J Offence to contravene exclusion order or fail to comply with police directions**

- (1) A person to whom an exclusion order applies must not enter or re-enter, or attempt to enter or re-enter, the designated area or licensed premises in contravention of the order.

Penalty: 60 penalty units.

- (2) If the person is in the designated area, or licensed premises in contravention of the order, he or she must comply with any direction given by a member of the police force under section 148K.

Penalty: 60 penalty units.

- (3) It is a defence to a charge of an offence against subsection (1) or (2) for the defendant to prove that—

- (a) the defendant was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence; or
- (b) the conduct constituting the offence was caused by circumstances beyond the control of the defendant and the defendant had taken reasonable precautions to avoid committing an offence.
- (4) Despite subsection (2), it is not an offence for a person to fail to comply with a direction given by a member of the police force under section 148K if the member of the police force did not comply with section 148K(3).
- (5) Section 130 of the **Magistrates' Court Act 1989** applies in the circumstances referred to in subsection (4).

- (6) Nothing in this section affects the powers of the court or of the Supreme Court in relation to contempt of court.

**148K Direction to leave designated area or licensed premises**

- (1) This section applies if a person to whom an exclusion order applies is in the designated area or licensed premises in contravention of the order.
- (2) Subject to subsection (3), a member of the police force may direct the person to leave the designated area or the licensed premises (as the case requires) in the manner, if any, directed by the member.
- (3) A member of the police force must—
- (a) produce proof of his or her identity and official status before exercising a power under subsection (2) unless the member is in uniform; and
  - (b) inform the person that—
    - (i) the member of the police force is empowered to direct the person to leave the designated area or licensed premises (as the case requires); and
    - (ii) it is an offence to fail to comply with the direction; and
  - (c) make all reasonable attempts to ensure that the person understands the direction.
- (4) A direction under subsection (2)—
- (a) may be given orally or in writing; and
  - (b) must be reasonable in all the circumstances.
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**148L Police may use reasonable force to remove person**

- (1) A member of the police force, using no more force than is reasonably necessary, may—
  - (a) prevent a person from entering or re-entering, or attempting to enter or re-enter, a designated area or licensed premises contrary to section 148J(1);
  - (b) remove a person from a designated area or licensed premises after the person has refused to comply with a direction under section 148K.
- (2) Nothing in this section limits any powers of arrest that a member of the police force has under any other law.
- (3) Any action taken under this section does not prevent the institution of proceedings in respect of an offence.

**148M Variation of exclusion order**

- (1) Any of the following may apply to the court that made an exclusion order for variation of the order—
  - (a) the person to whom the order applies;
  - (b) the Director of Public Prosecutions;
  - (c) a member of the police force.
- (2) On application under subsection (1), the court may vary the exclusion order in any way the court considers appropriate, if the court is satisfied that facts or circumstances have arisen since the making or last variation of the order that make it appropriate for the order to be varied.

#### **Division 4—General**

##### **148N Relevant police members**

- (1) An authorised member of the police force of or above the rank of sergeant may authorise a member of the police force to be a relevant police member for the purposes of this Part.
- (2) An authorisation under subsection (1) may be given in writing or orally.

##### **Note**

A member of the police force who is authorised by the Chief Commissioner for the purposes of this Act is also a relevant police member for the purposes of this Part—see the definitions of *relevant police member* and *authorised member of the police force* in section 3(1).

##### **148O Licensed premises include authorised premises**

In the case of premises in respect of which an on-premises licence is in force, a reference in this Part to licensed premises includes a reference to authorised premises.

##### **148P Disclosure of information for enforcement purposes**

The Director or a relevant police member may disclose the following information to a licensee or permittee, or an employee or agent of a licensee or permittee—

- (a) the fact that a banning notice or an exclusion order has been given or made that bans or excludes the person to whom it applies from the licensed premises; and
  - (b) the name of the person to whom the notice or order applies and, if available, a photograph of that person; and
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- (c) the period for which the notice or order applies; and
  - (d) a copy of the notice or order and of any variation or revocation of the notice or order; and
  - (e) any other information in relation to the notice or order that the Director or member considers necessary for the purposes of the effective and efficient enforcement of the notice or order.

**148Q Offence to permit contravention of banning notice or exclusion order**

- (1) A licensee or permittee must not knowingly permit a person to whom a banning notice or an exclusion order applies to enter or re-enter the licensed premises in contravention of the notice or order.

Penalty: 60 penalty units.

- (2) An employee or agent of a licensee or permittee must not knowingly permit a person to whom a banning notice or an exclusion order applies to enter or re-enter the licensed premises in contravention of the notice or order.

Penalty: 60 penalty units.

**148R Annual report by Chief Commissioner**

- (1) The Chief Commissioner must submit a report to the Minister in respect of each financial year that includes the following information—
  - (a) in relation to banning notices—
    - (i) the number of banning notices given during that year;



- (ii) the number of persons to whom banning notices were given during that year;
  - (iii) the number of banning notices given during that year to each person who was given more than one banning notice during that year;
  - (iv) the suspected specified offences in respect of which banning notices were given during that year;
  - (v) the designated areas in which those offences were suspected of being committed;
  - (vi) the ages of the persons to whom banning notices were given during that year;
  - (vii) whether any of the persons to whom banning notices were given during that year were of Koori origin;
  - (viii) the number of banning notices given during that year in relation to each designated area;
  - (ix) the number of persons charged with an offence against section 148F(1) or (2) during that year;
  - (x) the results of those charges;
  - (xi) the number of contraventions of section 148F(1) or (2) that were recorded by members of the police force during that year in respect of which no charges were laid;
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- (b) in relation to exclusion orders—
- (i) the number of applications made by members of the police force for exclusion orders during that year;
  - (ii) the number of exclusion orders made during that year;
  - (iii) the number of persons in respect of whom exclusion orders were made during that year;
  - (iv) the number of exclusion orders made during that year in respect of each person in respect of whom more than one exclusion order was made during that year;
  - (v) the specified offences in respect of which exclusion orders were made during that year;
  - (vi) the designated areas in which those offences were committed;
  - (vii) the ages of the persons in respect of whom exclusion orders were made during that year;
  - (viii) whether any of the persons in respect of whom exclusion orders were made during that year were of Koori origin or were homeless persons;
  - (ix) the number of exclusion orders that were made during that year in relation to each designated area;
  - (x) the number of persons charged with an offence against section 148J(1) or (2) during that year;
  - (xi) the results of those charges;
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- (xii) the number of contraventions of section 148J(1) or (2) that were recorded by members of the police force during that year in respect of which no charges were laid.
- (2) The Chief Commissioner must cause the information to be collected that is necessary to enable reports to be prepared under this section.
- (3) The Chief Commissioner must submit a report under this section to the Minister within 2 months after the end of the financial year to which the report relates.
- (4) The Minister must cause a report under this section to be presented to each House of Parliament within 7 sitting days of that House after the report is received by the Minister.
- (5) In this section—

***Minister*** means the Minister administering the **Police Regulation Act 1958**.

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## 6 Infringement offences

In section 141(2) of the Principal Act—

- (a) in paragraph (1), for "warrant)." **substitute** "warrant);";
- (b) after paragraph (1) **insert**—
- "(m) section 148F(1) or (2) (contravening banning notice or failing to comply with police directions);
- (n) section 148J(1) or (2) (contravening exclusion order or failing to comply with police directions).".

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**7 New Schedule 2 inserted**

After Schedule 1 to the Principal Act insert—

**"SCHEDULE 2**

**SPECIFIED OFFENCES FOR THE PURPOSES  
OF BANNING NOTICES AND EXCLUSION  
ORDERS**

The following offences are specified  
offences for the purposes of Part 8A—

1 Offences against the person

An offence against section 16, 17, 18,  
19, 20, 21, 22, 23, 24, 30, 31 or 31B of  
the **Crimes Act 1958**.

2 Sexual offences

An offence against section 38, 38A, 39  
or 40 of the **Crimes Act 1958**.

3 Destroying or damaging property and  
trespass

An offence against section 197 or 206  
of the **Crimes Act 1958** or section 9 of  
the **Summary Offences Act 1966**.

4 Offences relating to drunkenness

An offence against section 14 or 16 of  
the **Summary Offences Act 1966**.

5 Offensive and obscene behaviour

An offence against section 17 or 19 of  
the **Summary Offences Act 1966**.

6 Assaults—summary offences

An offence against section 23 or 24 of  
the **Summary Offences Act 1966**.

7 Prohibited weapons offences

An offence against section 5(1A) of the  
**Control of Weapons Act 1990.**

8 Failure to leave licensed premises

An offence against section 114(d) of  
this Act.

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**PART 3—OTHER AMENDMENTS TO PRINCIPAL ACT**

**8 Definition of *associate***

In section 3(1) of the Principal Act, for the definition of *associate substitute*—

"*associate* has the meaning given in section 3AC;"

**9 Definition of *contested application***

In section 3(1) of the Principal Act, for the definition of *contested application substitute*—

"*contested application* means—

- (a) an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the period set out in that Division for those objections (or that period as extended under section 174); or
- (b) an application under section 30 for the variation of a licence or BYO permit in respect of which an objection is received under section 30(b) within the period set out in that section for that objection (or that period as extended under section 174);"

**10 New definition—*alcohol-related violence or disorder***

**Insert** the following definition in section 3(1) of the Principal Act—

"*alcohol-related violence or disorder* means violence or disorder resulting from or related to the consumption of alcohol (whether or not the alcohol is consumed in the place where the violence or disorder occurs);"

**11 New definition—*breach notice***

**Insert** the following definition in section 3(1) of the Principal Act—

**"breach notice** means a notice served by the Director under section 97A;"

**12 New section 3AC inserted**

After section 3AB of the Principal Act **insert**—

**"3AC Who is an associate?**

- (1) For the purposes of this Act, an **associate** of a person (the **first person**) is—
  - (a) a person who—
    - (i) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and
    - (ii) by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or
  - (b) a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or
  - (c) if the first person is a natural person, a person who is a relative of the first person, other than a relative—

- (i) who is not, and has never been, involved in any business of the first person involving the sale of liquor; or
- (ii) who will not be involved in the business the first person proposes to conduct as a licensee or permittee.

(2) In this section—

**relative**, in relation to a person, means—

- (a) the spouse or domestic partner of the person; or
- (b) a parent, son, daughter, brother or sister of the person; or
- (c) a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;

**relevant financial interest**, in relation to a business involving the sale of liquor, means—

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business; or
- (c) any entitlement to receive any payment as a result of money advanced;

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—



- (a) to participate in any directorial, managerial, or executive decision; or
- (b) to elect or appoint any person as a director."

### 13 On-premises licence conditions

(1) In section 9(3) of the Principal Act—

(a) in paragraph (b), for "time." **substitute** "time; and";

(b) after paragraph (b) **insert**—

"(c) the licensee must not permit—

(i) the live performance of any musical works; or

(ii) the playing of any recorded musical works—

on the premises at higher than background music level at any time outside ordinary trading hours."

(2) After section 9(3) of the Principal Act **insert**—

"(4) The condition in subsection (3)(c) does not apply to music performed or played on licensed premises outside ordinary trading hours as part of a function that is—

(a) held in an area of those premises that is set aside for the exclusive use of persons who have booked a table in that area and their guests; and

(b) attended only by those persons and guests.

(5) In this section—

*background music level*, in relation to premises, means a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial degree."

**14 Associates' dates of birth**

In section 28(1)(aa) of the Principal Act, after "names" **insert** ", dates of birth".

**15 New section 58CA inserted**

After section 58C of the Principal Act **insert**—

**"58CA Temporary late hour entry declaration**

- (1) Despite anything to the contrary in section 58C, the Director may make a late hour entry declaration under section 58B without giving written notice under section 58C if the Director believes on reasonable grounds that—
  - (a) alcohol-related violence or disorder has occurred in the area or locality to which the order is to apply; and
  - (b) a late hour entry declaration in relation to the area or locality is reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area or locality.
- (2) Before making a late hour entry declaration referred to in subsection (1), the Director must consult the Chief Commissioner.

- (3) The Director must give written notice of a late night entry declaration referred to in subsection (1) to each licensee of licensed premises in the area or locality to which the declaration applies.
- (4) A late hour entry declaration referred to in subsection (1) takes effect on the day specified in the notice and expires when the earliest of the following occurs—
  - (a) the declaration is revoked under section 58D;
  - (b) a late night entry declaration is made in accordance with section 58C in relation to the area or locality;
  - (c) a period of 3 months elapses after the day on which the declaration takes effect.
- (5) Nothing in this section prevents the Director from making a late hour entry declaration in accordance with section 58C in relation to the area or locality to which a late night entry declaration referred to in subsection (1) applies while the declaration referred to in subsection (1) is in force."

#### **16 Application for VCAT review**

- (1) After section 87(2) of the Principal Act **insert**—
    - "(3) A licensee may apply to the Tribunal for review of a decision of the Director to vary or suspend a licence under section 97B."
  - (2) After section 88(5) of the Principal Act **insert**—
    - "(6) A licensee whose interests are affected by a ban under section 115A may apply to the Tribunal for review of the Director's decision to make the ban."
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## 17 Grounds for inquiry

(1) After section 90(1)(ba) of the Principal Act **insert—**

"(bb) has contravened an undertaking given under section 133F; or".

(2) In section 90 of the Principal Act—

(a) after subsection (1)(f) **insert—**

"(fa) is a body corporate a director of which has been convicted, whether in Victoria or elsewhere, of an offence punishable by a maximum term of imprisonment of 3 years or more; or

(fb) is a club that is not a body corporate, a member of the committee of management of which has been convicted, whether in Victoria or elsewhere, of an offence punishable by a maximum term of imprisonment of 3 years or more; or";

(b) in subsection (3), after "(1)(f)" **insert** ", (fa) or (fb)".

## 18 New section 96A inserted

After section 96 of the Principal Act **insert—**

### "96A Suspension by police

(1) A senior police member, by notice in writing to a licensee, may suspend the licensee's licence for a period not exceeding 24 hours, if the member believes on reasonable grounds that—

(a) the licensee has engaged in conduct that would constitute grounds for an application under section 90 for an inquiry into the licensee; and

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- (b) it is likely that the licensee will continue to engage in that conduct; and
  - (c) there is a danger that a person may suffer substantial harm, loss or damage as a result of the licensee's conduct unless the licence is suspended.
- (2) A notice of suspension under this section must specify the conduct which the licensee is believed to have engaged in and the grounds for the senior police member's belief.
- (3) In this section—
- senior police member* means the Chief Commissioner, a Deputy Commissioner of Police or an Assistant Commissioner of Police."

**19 New Division 4 inserted in Part 6**

After Division 3 of Part 6 of the Principal Act  
**insert—**

**"Division 4—Breach notices**

**97A Service of breach notice**

- (1) The Director may serve a breach notice in writing on a licensee if the Director believes on reasonable grounds that—
- (a) the licensee has engaged in conduct that would constitute grounds for an application under section 90 for an inquiry into the licensee; and
  - (b) it is likely that the licensee will continue to engage in that conduct.
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- (2) A breach notice may be served on a licensee whether or not an application has been made to the Tribunal—
- (a) under section 90 for an inquiry in respect of the alleged conduct; or
  - (b) under section 94 or 95 for an order cancelling or suspending the licence.
- (3) A breach notice must—
- (a) specify the conduct which the licensee is believed to have engaged in and the grounds for the Director's belief;
  - (b) state the time period within which the licensee must respond to the notice, that time period being not less than 14 days from the date of service of the notice;
  - (c) state what steps need to be taken by the licensee to respond to the notice;
  - (d) state the consequences for the licensee of not responding to the notice.

**97B Variation or suspension of licence**

- (1) If a licensee does not respond to a breach notice within the period stated in the notice, or if the Director is not satisfied with the licensee's response, the Director may, by notice in writing to the licensee—
- (a) vary the licence; or
  - (b) suspend the licence.
- (2) The Director may suspend a licence under this section only if the Director believes on reasonable grounds that there is a danger that a person may suffer substantial harm, loss or damage as a result of the licensee's conduct unless the licence is suspended.

- (3) The variation of a licence under this section may include—
    - (a) a variation of the times at which the licence authorises the supply of liquor (including a variation reducing the times to less than ordinary trading hours);
    - (b) a variation of a condition of the licence (other than a condition imposed by this Act);
    - (c) the imposition of a new condition on the licence.
  - (4) The variation or suspension of a licence—
    - (a) takes effect when notice of it is given to the licensee or at the later time specified in the notice; and
    - (b) ceases to have effect 7 days after the day on which it takes effect.
  - (5) If a licence is varied under this section, the licence has effect after the variation ceases to have effect as if the variation had never been made.
  - (6) No compensation is payable in respect of any loss or damage resulting from or arising out of the suspension of a licence in accordance with this section.
  - (7) Nothing in this Division affects the power of the Director to vary a licence under section 58."
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## 20 Unlicensed selling of liquor

- (1) For section 107(1) of the Principal Act **substitute**—

"(1) A person who is not a licensee must not sell liquor or offer liquor for sale.

Penalty: 240 penalty units or imprisonment for 2 years."

- (2) In section 107(2) of the Principal Act—

(a) after "liquor" **insert** ", or the offer of liquor for sale,";

(b) for "sale is" **substitute** "sale or offer is".

## 21 Increased penalties for certain offences

- (1) In section 108(1) of the Principal Act—

(a) paragraph (c) is **repealed**;

(b) in paragraph (d), for "authorised premises;" **substitute** "authorised premises.";

(c) paragraph (e) is **repealed**.

- (2) After section 108(3) of the Principal Act **insert**—

"(4) A licensee or permittee—

(a) must not supply liquor to a person who is in a state of intoxication;

(b) must not permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

Penalty: 120 penalty units.

- (5) It is a defence to a prosecution for an offence under subsection (4)(b) for the defendant to prove that—

(a) the defendant did not know that drunken or disorderly persons were on the premises; or



- (b) the defendant had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises."

**22 New section 115A inserted**

After section 115 of the Principal Act **insert—**

**"115A Prohibited advertising or promotion**

- (1) The Director may give a notice to a licensee banning the licensee from advertising or promoting—
- (a) the supply of liquor by the licensee; or
  - (b) the conduct of licensed premises by the licensee—

if, in the opinion of the Director, the advertising or promotion, or the proposed advertising or promotion, is likely to encourage irresponsible consumption of alcohol or is otherwise not in the public interest.

- (2) A licensee to whom a notice applies must comply with the notice.

Penalty: 120 penalty units."

**23 New Division 3A inserted in Part 8**

After Division 3 of Part 8 of the Principal Act **insert—**

**"Division 3A—Undertakings by licensees**

**133F Undertakings**

- (1) The Director may accept a written undertaking given by a licensee in connection with—
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- (a) a matter in relation to which the Director has a power or function under this Act; or
  - (b) a matter relating to a contravention of this Act.
- (2) The Director must give a copy of the undertaking to the licensee.
  - (3) A licensee may withdraw or vary an undertaking at any time, if the licensee has first obtained the consent of the Director.

**133G Register of undertakings**

- (1) The Director must—
  - (a) maintain a register of undertakings; and
  - (b) register each undertaking in the register of undertakings.
- (2) The register of undertakings must include the following—
  - (a) the name and address of the licensee who gave the undertaking;
  - (b) the date of the undertaking;
  - (c) a copy of the undertaking.
- (3) The register of undertakings may be inspected by any person at any reasonable time, without charge."

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**24 New Division 6 inserted in Part 8**

After Division 5 of Part 8 of the Principal Act  
**insert—**

**"Division 6—Liquor accords**

**146A Definitions**

In this Division—

*agreement* includes a contract, arrangement  
or understanding;

*liquor accord* means a code of practice or an  
agreement—

- (a) that affects the supply of liquor,  
the opening and closing of  
licensed premises or other aspects  
of the management of or conduct  
of business on licensed premises;  
and
- (b) that is entered into in writing  
between 2 or more licensees or  
permittees (or both), with the  
approval of the Chief  
Commissioner and the Director,  
for the purpose of minimising  
harm arising from the misuse and  
abuse of alcohol;

*liquor accord ban* means a provision of a  
liquor accord referred to in  
section 146B(b).

**146B Liquor accord terms**

Without limiting the terms that may be  
included in a liquor accord, a liquor accord  
may make provision for or with respect to  
authorising or requiring any licensees or

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permittees who are parties to it to do either or both of the following—

- (a) to cease to supply liquor or to allow the consumption of liquor at their licensed premises;
- (b) to ban access by the public, or individual members of the public, to their licensed premises in a manner and to the extent provided by the accord.

**146C Trade Practices Act and Competition Code**

For the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, the following conduct is authorised by this Act—

- (a) the entry by any person into a liquor accord;
- (b) any conduct by any person engaged in for the purpose of promoting, performing, giving effect to or otherwise done in connection with the terms of a liquor accord.

**146D Information disclosure in relation to liquor accord bans**

The Director or a member of the police force may disclose to a licensee or permittee who is a party to a liquor accord that contains a liquor accord ban, or to an employee or agent of such a licensee or permittee, any of the following information in respect of a person who is subject to the ban—

- (a) the person's name;
- (b) a photograph of the person;

- (c) the period for which the person is subject to the ban;
- (d) any other information that the Director or member considers necessary for the purposes of the effective and efficient enforcement of the ban."

**25 New clause 21 inserted in Schedule 3**

After clause 20 in Schedule 3 to the Principal Act  
**insert—**

**"21 Transitional provisions—Liquor Control Reform Amendment Act 2007**

- (1) The condition referred to in section 9(3)(c), as inserted by section 13(1)(b) of the Amending Act, applies on and after the commencement of that section 13(1)(b) to an on-premises licence whether the licence was granted before, on or after that commencement.
- (2) Section 90(1)(fa) and (fb), as inserted by section 17(2)(a) of the Amending Act, apply only in the case of a director or member of a committee of management who is convicted of an offence on or after the commencement of that section 17(2)(a).
- (3) In this clause—

*Amending Act* means the **Liquor Control Reform Amendment Act 2007**."

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**PART 4—GENERAL**

**26 Statute law revision**

In section 90(1)(h) of the Principal Act, after  
"served;" **insert** "or".

**27 Repeal of amending Act**

This Act is **repealed** on 1 July 2010.

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## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 1 November 2007*

*Legislative Council: 22 November 2007*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Liquor Control Reform Act 1998** and for other purposes."