Liquor Control Reform Amendment Act 2010

No. 57 of 2010

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$\begin{array}{c} \textbf{Liquor Control Reform Amendment} \\ \textbf{Act 2010}^{\dagger} \end{array}$

No. 57 of 2010

[Assented to 14 September 2010]

The Parliament of Victoria enacts:

1 Purpose

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

- (a) in relation to the completion of approved responsible service of alcohol programs; and
- (b) to require licensees to make free drinking water available to patrons on licensed premises when liquor is consumed; and

- (c) to make provision in relation to licensed premises that provide sexually explicit entertainment; and
- (d) to provide for the exemption of certain businesses or classes of businesses from the requirements of that Act.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 September 2011, 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. 5 as at 1 April 2010 and amending Act Nos 9/2008, 88/2009. 13/2010 and 18/2010. LawToday: www. legislation. vic.gov.au

4 Definitions

(1) In section 3(1) of the Principal Act **insert** the following definitions—

"bed and breakfast business means a business that—

 (a) provides temporary accommodation, other than dormitory style accommodation, for persons in the course of that business; and

- (b) is operated by the permanent residents of the accommodation premises;
- butcher business means a business whose primary function is to sell raw meat or fish on a retail basis for human consumption, but does not include a business where meat is sold to be consumed on the premises;
- florist or giftmaker business means a business whose primary function is to sell flowers, food or other products that are packaged as, or intended to be, gifts;
- hairdresser business means a business whose primary function is to provide hairdressing or barber services;".
- (2) In section 3(1) of the Principal Act **insert** the following definitions—
 - "approved responsible service of alcohol program means—
 - (a) an initial training program approved by the Director under section 26C; or
 - (b) in relation to a person who has previously completed an initial training program referred to in paragraph (a), a refresher training program approved by the Director under section 26C;
 - approved responsible service of alcohol program register means a register kept by a licensee in accordance with section 108AD;".
- (3) In section 3(1) of the Principal Act—
 - (a) the definition of *authorised member of the police force* is **repealed**.

- (b) the definition of *relevant police member* is **repealed**.
- (4) In section 3(1) of the Principal Act **insert** the following definition—

"sexually explicit entertainment means live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature, but does not include the provision of sexual services within the meaning of section 3(1) of the **Prostitution Control Act 1994**;".

5 Objects

- (1) In section 4(1)(c) of the Principal Act, for "industries." **substitute** "industries; and".
- (2) After section 4(1)(c) of the Principal Act insert—
 - "(d) to regulate licensed premises that provide sexually explicit entertainment.".

6 New sections 6A to 6D inserted

After section 6 of the Principal Act **insert**—

"6A Exemption from Act—bed and breakfast businesses

- (1) A person who carries on a bed and breakfast business is exempt from any requirement of this Act to hold a licence in relation to the supply of liquor to a person staying at the bed and breakfast business if the following conditions are complied with—
 - (a) the business does not provide accommodation for more than 8 adults at any one time; and
 - (b) the liquor is not supplied to a minor; and

- (c) the proprietor of the business or the business purchased the liquor on a retail basis; and
- (d) each proprietor of the business has completed an approved responsible service of alcohol program in the 3 years prior to the date on which the business notifies the Director that it claims an exemption under subsection (2).
- (2) An exemption under subsection (1) does not take effect unless—
 - (a) the proprietor of the business first notifies the Director in the form and manner approved by the Director that—
 - (i) the business claims an exemption under this section; and
 - (ii) the business will comply with the conditions set out in subsection (1); and
 - (b) the Director acknowledges receipt of that notification by notice in writing.
- (3) The Director must acknowledge receipt within 14 days of receiving a notification under subsection (2).

- 1 It is an offence under section 107 for a person who is not a licensee to sell or offer liquor for sale.
- 2 It is an offence under section 118 to make a statement that is false or misleading in relation to a notice under this Act.

6B Exemption from Act—florist or giftmaker

- (1) A person who carries on a florist or giftmaker business is exempt from any requirement of this Act to hold a licence in relation to the supply of liquor by that business if the following conditions are met—
 - (a) the business only supplies liquor that is packaged together with flowers, food or other gifts; and
 - (b) the liquor is not supplied to a minor; and
 - (c) the business does not accept orders to supply liquor from a minor; and
 - (d) the proprietor of the business or the business purchased the liquor on a retail basis; and
 - (e) not more than 1.5 litres of liquor is supplied to each recipient in any one day; and
 - (f) the value of the liquor and its container is not more than 50 per cent of the total sale price of the supplied items.
- (2) An exemption under subsection (1) does not take effect unless—
 - (a) the proprietor of the business first notifies the Director in the form and manner approved by the Director that—
 - (i) the business claims an exemption under this section; and
 - (ii) the business will comply with the conditions set out in subsection (1); and

- (b) the Director acknowledges receipt of that notification by notice in writing.
- (3) The Director must acknowledge receipt within 14 days of receiving a notification under subsection (2).

- 1 It is an offence under section 107 for a person who is not a licensee to sell or offer liquor for sale.
- 2 It is an offence under section 118 to make a statement that is false or misleading in relation to a notice under this Act.

6C Exemption from Act—hairdressers

- (1) A person who carries on a hairdresser business is exempt from any requirement of this Act to hold a licence in relation to the supply of liquor to a customer by that business if the following conditions are met—
 - (a) the liquor is not supplied to a minor; and
 - (b) the liquor is consumed on the business premises; and
 - (c) the liquor is supplied without charge and the supply is ancillary to the provision of hairdressing or barber services.
- (2) An exemption under subsection (1) does not take effect unless—
 - (a) the proprietor of the business first notifies the Director in the form and manner approved by the Director that—
 - (i) the business claims an exemption under this section; and

- (ii) the business will comply with the conditions set out in subsection (1); and
- (b) the Director acknowledges receipt of that notification by notice in writing.
- (3) The Director must acknowledge receipt within 14 days of receiving a notification under subsection (2).

- 1 It is an offence under section 107 for a person who is not a licensee to sell or offer liquor for sale.
- 2 It is an offence under section 118 to make a statement that is false or misleading in relation to a notice under this Act.

6D Exemption from Act—butchers

- (1) A person who carries on a butcher business is exempt from any requirement of this Act to hold a licence in relation to the supply of liquor by that business if the following conditions are met—
 - (a) the liquor is not supplied to a minor; and
 - (b) the liquor supplied is in sealed containers, bottles or cans for consumption off the business premises; and
 - (c) the liquor supplied is a type of liquor prescribed by the regulations; and
 - (d) not more than 1.5 litres of liquor is supplied to each recipient in any one day.

- (2) An exemption under subsection (1) does not take effect unless—
 - (a) the proprietor of the business first notifies the Director in the form and manner approved by the Director that—
 - (i) the business claims an exemption under this section; and
 - (ii) the business will comply with the conditions set out in subsection(1); and
 - (b) the Director acknowledges receipt of that notification by notice in writing.
- (3) The Director must acknowledge receipt within 14 days of receiving a notification under subsection (2).

- 1 It is an offence under section 107 for a person who is not a licensee to sell or offer liquor for sale.
- 2 It is an offence under section 118 to make a statement that is false or misleading in relation to a notice under this Act.".

7 On-premises licence

In section 9(1)(b) of the Principal Act, for "or" (wherever occurring) **substitute** "and".

8 Club licence

In section 10(4)(c) of the Principal Act for "an authorised member" **substitute** "a member".

9 Packaged liquor licence

- (1) Section 11(3)(aab) and (aac) of the Principal Act are **repealed**.
- (2) Section 11(4) of the Principal Act is **repealed**.

10 New section 15E inserted

After section 15D of the Principal Act insert—

"15E Sexually explicit entertainment licence condition—fees

- (1) This section applies to a licence that is subject to a condition relating to the provision of sexually explicit entertainment.
- (2) The renewal fee for a licence to which this section 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 2 non-compliance incidents that relate to the licence in the relevant period, 3849.44 fee units; or
 - (c) if there are 3 or more non-compliance incidents that relate to the licence in the relevant period, 5132·59 fee units.
- (3) In this section—

non-compliance incident means—

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

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;

successful prosecution means a prosecution which results in a licensee or permittee being convicted or found guilty of an offence under sections 108(4), 119 or 120."

11 New sections 26B and 26C inserted

After section 26A of the Principal Act insert—

"26B Restriction on the grant of certain licences—approved responsible service of alcohol programs

- (1) This section applies to an application for a general licence, on-premises licence, packaged liquor licence or late night licence.
- (2) The Director must not grant the licence unless satisfied that the applicant, or if the applicant is a body corporate, the person who will be responsible for the management or control of the licensed premises, has completed an approved responsible service

- of alcohol program in the 3 years prior to the date on which the application was made.
- (3) The Director may exempt an applicant, or if the applicant is a body corporate, the person who will be responsible for the management or control of the licensed premises, from the requirement under subsection (2), if the Director thinks it is appropriate to do so.
- (4) In making a decision under subsection (3), the Director must consider—
 - (a) the risk of harm arising from the misuse and abuse of liquor supplied under the licence; and
 - (b) the extent of the burden imposed on the licensee by the requirement under subsection (2).
- (5) The Director may grant an exemption under subsection (3) for the period and on any conditions the Director determines.
- (6) The Director may revoke an exemption granted under subsection (3) by notice in writing.

26C Approval of responsible service of alcohol programs

The Director may, from time to time, approve initial training programs and refresher training programs to be approved responsible service of alcohol programs for the purposes this Act.".

12 Public display of licence application

For section 34(1) of the Principal Act **substitute**—

- "(1) An applicant for the grant, variation or relocation of a licence (other than a limited licence, a major event licence or a prescribed variation of a licence) must ensure that a notice of the application is displayed on the premises or site to which the application relates or the premises to which the licence is sought to be relocated for the period determined under section (1A).
- (1A) The notice must be continuously displayed for a period of 28 days (or a shorter period determined by the Director) from the date determined by the Director.".

13 Licence to be renewed within 3 months

(1) **Insert** the following heading to section 59 of the Principal Act—

"Licence to be renewed within 3 months".

- (2) In section 59(1) of the Principal Act, for "21 days" substitute "3 months".
- (3) **Insert** the following heading to section 60 of the Principal Act—

"Licence renewal after 3 months".

14 Application for review of other decisions

In section 88(1) of the Principal Act, for "or 104" **substitute** ", 99C, 104 or 108AG".

15 New sections 99A to 99D inserted

After section 99 of the Principal Act insert—

"99A Free drinking water to be provided at licensed premises

(1) The licensee under a licence that authorises the licensee to supply liquor for consumption on the licensed premises or authorised premises (if any) must have available for patrons on the licensed premises or authorised premises, or must provide on the request of a patron, free drinking water at any time at which liquor is available for supply.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply to a licensee, a class of licensees or a class of activities that the Director has exempted under section 99B or 99C.
- (3) In this section—

drinking water means water that is intended for human consumption.

99B Exemption from requirement to provide free drinking water—without application

- (1) The Director may, by notice in writing, exempt a licensee or a class of licensees or class of activities from the requirement to provide free drinking water to patrons under section 99A, if the Director thinks it is appropriate to do so.
- (2) The Director may grant an exemption under subsection (1) for the period and on any conditions the Director determines.

(3) The Director may revoke an exemption granted under subsection (1) by notice in writing.

99C Exemption from requirement to provide free drinking water—on application

- (1) A licensee may apply to the Director to be exempted from the requirement to provide free drinking water to patrons under section 99A.
- (2) The Director may approve an application if the Director thinks it is appropriate to do so.
- (3) The Director must give the licensee notice in writing of the approval or refusal of an application.
- (4) The Director may grant an exemption under subsection (2) for the period and on any conditions the Director determines.
- (5) The Director may revoke an exemption granted under subsection (2) by notice in writing.

99D Matters Director must consider when exempting licensees from free drinking water requirements

In making a decision under section 99B or 99C to exempt a licensee, class of licensees or class of activities from the requirement to provide free drinking water to patrons under section 99A, the Director must consider—

- (a) the risk of harm arising from the misuse and abuse of liquor supplied under the licence; and
- (b) the extent of the burden imposed on the licensee by the requirement under section 99A.".

16 Copy of licence or permit to be displayed on premises

In section 101 of the Principal Act, after "BYO permit" **insert** "most recently issued to and received by the licensee or permittee".

17 New section 106B inserted

After section 106A of the Principal Act insert—

"106B Requirement to notify Director that sexually explicit entertainment provided on licensed premises

A licensee must notify the Director in writing within 21 days after commencing to provide sexually explicit entertainment on the licensed premises.

Penalty: 10 penalty units.".

18 Section 108A repealed

Section 108A of the Principal Act is **repealed**.

19 Sections 108AA to 108AH inserted

Before section 108B of the Principal Act insert—

"108AA Licensee must complete refresher approved responsible service of alcohol programs

- (1) This section applies to a general licence, on-premises licence, packaged liquor licence or late night licence.
- (2) The licensee (except in the case of a body corporate) must complete an approved responsible service of alcohol program within 3 years from the date on which the licensee last completed an approved responsible service of alcohol program.

Penalty: 60 penalty units.

(3) If the licensee is a body corporate, the licensee must ensure that the person responsible for the management or control of the licensed premises completes an approved responsible service of alcohol program within 3 years from the date on which the person last completed an approved responsible service of alcohol program.

Penalty: 60 penalty units.

108AB Licensee must ensure staff complete approved responsible service of alcohol programs

- (1) This section applies to a general licence, on-premises licence, packaged liquor licence or late night licence.
- (2) The licensee must ensure that any person who sells, offers for sale or serves liquor on the licensed premises of the licensee—
 - (a) has completed an approved responsible service of alcohol program within the period of 3 years prior to the date on which that person first sells, offers for sale or serves liquor on the licensed premises; or
 - (b) completes an approved responsible service of alcohol program within one month after the date on which that person first sells, offers for sale or serves liquor on the licensed premises.

Penalty: 60 penalty units.

108AC Licensee must ensure staff complete refresher approved responsible service of alcohol programs

- (1) This section applies to a general licence, on-premises licence, packaged liquor licence or late night licence.
- (2) The licensee must ensure that any person who sells, offers for sale or serves liquor on the licensed premises of the licensee completes an approved responsible service of alcohol program within 3 years from the date on which that person last completed an approved responsible service of alcohol program.

Penalty: 60 penalty units.

108AD Licensee must keep approved responsible service of alcohol register

- (1) This section applies to a general licence, on-premises licence, packaged liquor licence, late night licence or any other licence which is subject to a condition in relation to responsible service of alcohol.
- (2) The licensee must establish and maintain an approved responsible service of alcohol program register in accordance with subsection (3).

Penalty: 5 penalty units.

- (3) An approved responsible service of alcohol program register must—
 - (a) record the name of the licensee, and if the licensee is a body corporate, the name of the person responsible for the management or control of the licensed premises; and

- (b) include a copy of the most recent certificate or report evidencing completion of an approved responsible service of alcohol program issued to the licensee or person responsible for the management or control of the licensed premises; and
- (c) record the name of each person who sells, offers for sale or serves liquor on the licensed premises and the date on which each person first sold, offered for sale or served liquor on the licensed premises; and
- (d) include a copy of the most recent certificate or report evidencing completion of an approved responsible service of alcohol program issued to each person who sells, offers for sale or serves liquor on the licensed premises.

108AE Licensee must produce approved responsible service of alcohol program register for inspection

- (1) This section applies to a general licence, on-premises licence, packaged liquor licence, late night licence or any other licence which is subject to a condition in relation to responsible service of alcohol.
- (2) The licensee must produce the approved responsible service of alcohol program register kept by the licensee for inspection on being asked to do so by a member of the police force or a compliance inspector.

Penalty: 5 penalty units.

108AF Exemption from approved responsible service of alcohol program requirements—without application

- (1) The Director may, by notice in writing, exempt a licensee or a class of licensees from any of the requirements of sections 108AA to 108AE, if the Director thinks it is appropriate to do so.
- (2) The Director may grant an exemption under subsection (1) for the period and on any conditions the Director determines.
- (3) The Director may revoke an exemption granted under subsection (1) by notice in writing.

108AG Exemption from approved responsible service of alcohol program requirements—on application

- (1) A licensee may apply to the Director to be exempted from any of the requirements of sections 108AA to 108AE.
- (2) The Director may approve an application if the Director thinks it is appropriate to do so.
- (3) The Director must give the licensee notice in writing of the approval or refusal of an application.
- (4) The Director may grant an exemption under subsection (2) for the period and on any conditions the Director determines.
- (5) The Director may revoke an exemption granted under subsection (2) by notice in writing.

108AH Matters Director must consider when exempting licensees from responsible service of alcohol program requirements

In making a decision under section 108AF or 108AG to exempt a licensee or class of licensees from any of the requirements of sections 108AA to 108AE, the Director must consider—

- (a) the risk of harm arising from the misuse and abuse of liquor supplied under the licence; and
- (b) the extent of the burden imposed on the licensee by the requirement under sections 108AA to 108AE.".

20 Sufficient evidence of certain matters

In section 136(2)(e) of the Principal Act, for ", a licensing inspector or an authorised member of the police force" **substitute** "or a licensing inspector".

21 Power to serve an infringement notice

- (1) After section 141(2)(aa) of the Principal Act insert—
 - "(aab) section 99A (free drinking water to be provided);".
- (2) After section 141(2)(db) of the Principal Act insert—
 - "(dc) section 106B (failure to notify Director that sexually explicit entertainment provided on licensed premises);".
- (3) After section 141(2)(ea) of the Principal Act insert—
 - "(eab) section 108AA (licensee, or the person responsible for the management or control of the licensed premises, must complete

- refresher approved responsible service of alcohol programs);
- (eac) section 108AB (licensee must ensure staff complete approved responsible service of alcohol programs);
- (ead) section 108AC (licensee must ensure staff complete refresher approved responsible service of alcohol programs);
- (eae) section 108AD (licensee must keep approved responsible service of alcohol register);
- (eaf) section 108AE (licensee must produce approved responsible service of alcohol program register for inspection);".

22 Issue of banning notice

In section 148B of the Principal Act, for "relevant police member" (wherever occurring) **substitute** "member of the police force".

23 Content of banning notice

In section 148C of the Principal Act, for "relevant police member" (wherever occurring) **substitute** "member of the police force".

24 Requirement to give name and address

In section 148D of the Principal Act, for "relevant police member" (wherever occurring) **substitute** "member of the police force".

25 Variation and revocation of banning notice

In section 148E(1) of the Principal Act, for "relevant police member" **substitute** "member of the police force".

26 Section 148N repealed

Section 148N of the Principal Act is **repealed**.

27 Disclosure of information for enforcement purposes

In section 148P of the Principal Act, for "relevant police member" **substitute** "member of the police force".

28 Regulations

After section 180(3)(ca) of the Principal Act insert—

- "(cb) may exempt a business or a class or classes of business from the requirement to hold a licence subject to specified conditions;
- (cc) may prescribe a type or types of liquor for the purposes of section 6D;".

29 Transitional provisions

After clause 24 of Schedule 3 to the Principal Act insert—

"25 Transitional provisions—Liquor Control Reform Amendment Act 2010

- (1) A condition in relation to responsible service of alcohol programs that was imposed on a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of the section 19 of the Liquor Control Reform Amendment Act 2010 ceases to have effect on that commencement.
- (2) A licensee (except a body corporate) of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the Liquor Control Reform Amendment Act 2010 who has not completed a responsible service of alcohol program in the 3 years before that commencement, must complete an approved

responsible service of alcohol program within 12 months of that commencement.

Penalty: 60 penalty units.

(3) If a licensee of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the **Liquor Control Reform**Amendment Act 2010 is a body corporate and the person responsible for the management or control of the licensed premises has not completed a responsible service of alcohol program in the 3 years before that commencement, the licensee must ensure the person completes an approved responsible service of alcohol program within 12 months of that commencement.

Penalty: 60 penalty units.

- (4) A licensee (except a body corporate) of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the Liquor Control Reform Amendment Act 2010 who has completed a responsible service of alcohol program in the 3 years before that commencement, must complete an approved responsible service of alcohol program within the later of the following periods—
 - (a) the period commencing on that commencement and the period ending 3 years from the date on which the licensee completed the responsible service of alcohol program;

(b) the period ending 12 months from that commencement.

Penalty: 60 penalty units.

- (5) If a licensee of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the Liquor Control Reform Amendment Act 2010 is a body corporate and the person responsible for the management or control of the licensed premises has completed a responsible service of alcohol program in the 3 years before that commencement, the licensee must ensure the person completes an approved responsible service of alcohol program within the later of the following periods—
 - (a) the period commencing on that commencement and ending 3 years from the date on which the person completed the responsible service of alcohol program;
 - (b) the period ending 12 months from that commencement.

Penalty: 60 penalty units.

(6) A licensee of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the Liquor Control Reform Amendment Act 2010 must ensure that any person who on that commencement is engaged or employed by the licensee to sell, offer for sale or serve liquor on the licensed premises and has not completed a responsible service of alcohol program in the 3 years before that

commencement completes an approved responsible service of alcohol program within 12 months of that commencement.

Penalty: 60 penalty units.

- (7) A licensee of a general licence, on-premises licence, packaged liquor licence or late night licence that was existing immediately before the commencement of section 19 of the Liquor Control Reform Amendment Act 2010 must ensure that any person who on that commencement is engaged or employed by the licensee to sell, offer for sale or serve liquor on the licensed premises and has completed a responsible service of alcohol program in the 3 years before that commencement completes an approved responsible service of alcohol program within the later of the following periods—
 - (a) the period commencing on that commencement and ending 3 years from the date on which the person completed the responsible service of alcohol program;
 - (b) the period ending 12 months from that commencement.

Penalty: 60 penalty units.

- (8) Section 99A does not apply to a licensee in respect of a licence that was existing immediately before the commencement of section 15 of the Liquor Control Reform Amendment Act 2010 until one month after that commencement.
- (9) A licensee who provides sexually explicit entertainment on licensed premises at the commencement of section 17 of the Liquor Control Reform Amendment Act 2010

must notify the Director in writing of this within 3 months after that commencement.

Penalty: 10 penalty units.".

30 Change of name of the Prostitution Control Act 1994

In section 3(1) of the Principal Act, in the definition of *sexually explicit entertainment*, for "Prostitution Control Act 1994" substitute "Sex Work Act 1994".

31 Repeal of Act

This Act is **repealed** on 1 September 2012.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Liquor Control Reform Amendment Act 2010 No. 57 of 2010

Endnotes

ENDNOTES

Minister's second reading speech—

Legislative Assembly: 28 July 2010

Legislative Council: 12 August 2010

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."