

**Liquor Control Reform Amendment (Enforcement)
Act 2009
No. 8 of 2009**

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Victoria

Liquor Control Reform Amendment (Enforcement) Act 2009[†]

No. 8 of 2009

[Assented to 18 March 2009]

The Parliament of Victoria enacts:

1 Purpose

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

- (a) to strengthen enforcement powers;
- (b) to clarify the Director's powers to impose conditions in relation to security cameras;
- (c) to require associates of licensees to be declared;
- (d) to make miscellaneous amendments.

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 January 2010, 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. 4
as at
22 May 2008
and
amending
Act Nos
72/2007,
4/2008,
9/2008,
12/2008 and
21/2008.
LawToday:
www.
legislation.
vic.gov.au

4 Definitions

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

"Australian lawyer has the same meaning as in the **Legal Profession Act 2004**;

authorised person, in Division 3 of Part 8, means—

- (a) the Director; or
- (b) a compliance inspector; or
- (c) a member of the police force;

compliance inspector means a person appointed as a compliance inspector under section 172A;

Secretary means Secretary to the Department of Justice;".

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

"*TAFE institute* has the same meaning as in the **Education and Training Reform Act 2006**;

university has the same meaning as in the **Education and Training Reform Act 2006**;".

5 Selling forfeited liquor

In section 6(j) of the Principal Act—

(a) in subparagraph (iv), for "force; or" **substitute** "force;";

(b) after subparagraph (iv) **insert**—

"(v) the Director;

(vi) a compliance inspector; or".

6 Club licence

In section 10(4)(c) of the Principal Act, after "force," **insert** "a compliance inspector,".

7 Licence condition—approval of directors

For section 18(2)(a)(ii) of the Principal Act **substitute**—

"(ii) a university or a TAFE institute; or".

8 New section 18B substituted

For section 18B of the Principal Act **substitute—**

"18B Licence condition—security cameras

- (1) The Director may impose a condition on a licence requiring the licensee to fit security cameras that comply with the prescribed standards (if any) on the licensed premises or any authorised premises, or on any other premises, land, fixtures or objects that are under the control of the licensee and that are in the vicinity of the licensed premises or authorised premises.
- (2) The regulations may prescribe standards relating to the quality and operation of security cameras for the purposes of a licence condition referred to in subsection (1)."

9 Application for licence or BYO permit

- (1) For section 28(1)(aa) of the Principal Act **substitute—**

"(aa) list the names, dates of birth and addresses of the associates—

- (i) of the applicant; and
- (ii) if the applicant is a body corporate, of each director of the applicant; and"

- (2) After section 28(3) of the Principal Act **insert—**

"(4) Subsection (1)(aa)(ii) does not apply to an application by a Council, a university or a TAFE institute."

(3) After section 32(2)(a) of the Principal Act **insert—**

"(ab) list the names, dates of birth and addresses of the associates—

(i) of the proposed transferee; and

(ii) if the proposed transferee is a body corporate, of each director of the proposed transferee; and".

(4) After section 32(3) of the Principal Act **insert—**

"(4) Subsection (2)(ab)(ii) does not apply if the proposed transferee is a Council, a university or a TAFE institute.".

10 Licence or permit lapses if not endorsed

In section 66 of the Principal Act—

(a) in paragraph (d), for "Act—" **substitute** "Act; or";

(b) after paragraph (d) **insert—**

"(e) in the case of a body corporate, is wound up, or is deregistered under the Corporations Act—".

11 Licence suspension by police

Section 96A(1)(b) of the Principal Act is **repealed**.

12 New section 96B inserted

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

"96B Suspension by Director

(1) The Director, by notice in writing to a licensee, may suspend the licensee's licence for a period not exceeding 5 days, if the Director believes on reasonable grounds that—

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- (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) 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) The Director cannot suspend a licence under subsection (1) unless the Director—
- (a) has served a notice in writing on the licensee, at least 48 hours before suspending the licence—
 - (i) specifying the conduct which the licensee is believed to have engaged in and the grounds for the Director's belief; and
 - (ii) stating the time period within which the licensee must respond to the notice (being not less than 48 hours after service of the notice); and
 - (iii) stating that the Director intends to suspend the licence, for a specified period, unless the Director is satisfied with the licensee's response; and
 - (b) has considered any response made by the licensee within the time period specified under paragraph (a)(ii).
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- (3) The suspension of a licence under this section—
- (a) takes effect when notice of it is given to the licensee under subsection (1) or at the later time specified in that notice; and
 - (b) ceases to have effect at the time specified in that notice.
- (4) A licence may be suspended under this section whether or not—
- (a) an application has been made to the Tribunal—
 - (i) under section 90 for an inquiry in respect of the alleged conduct; or
 - (ii) under section 94 or 95 for an order cancelling or suspending the licence; or
 - (b) a breach notice has been served on the licensee under section 97A.
- (5) 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."

13 Breach notices

- (1) For section 97A(1) and (2) of the Principal Act **substitute—**

"(1) The Director may serve a breach notice in writing on a licensee if the Director believes on reasonable grounds that the licensee has engaged in conduct that would constitute grounds for an application under section 90 for an inquiry into the licensee.

(2) A breach notice may be served on a licensee whether or not—

(a) an application has been made to the Tribunal—

(i) under section 90 for an inquiry in respect of the alleged conduct; or

(ii) under section 94 or 95 for an order cancelling or suspending the licence; or

(b) the licensee's licence has been suspended under section 96B(1) or a notice has been served on the licensee under section 96B(2)."

(2) For section 97B(4) and (5) of the Principal Act **substitute—**

"(4) The variation of a licence under this section takes effect when notice of it is given to the licensee or at the later time specified in the notice.

(5) The suspension of a licence under this section—

(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."

14 Obligations of owners, mortgagees, licensees and permittees

In sections 100(e) and 101B(2) of the Principal Act, after "force" **insert** "or a compliance inspector".

15 Change of directors and associates

(1) For section 103(3)(a)(ii) of the Principal Act
substitute—

"(ii) a university or a TAFE institute; or".

(2) In section 103A of the Principal Act—

(a) subsection (1) is **repealed**;

(b) in subsection (2), for "The licensee"
substitute "A licensee".

16 Offences in relation to drunken or disorderly patrons

In section 108(5)(a) of the Principal Act, for
"premises; or" **substitute** "premises; and".

17 Further obligations of owners, mortgagees, licensees and permittees

In the Principal Act—

(a) in section 108A(2), after "force" **insert** "or a compliance inspector";

(b) in section 108B(1) and (2), for "within 48 hours after being asked to do so by the member" **substitute** "or a compliance inspector within 48 hours after being asked to do so by the member or inspector";

(c) in section 108B(3), after "member" **insert** "or inspector".

18 Investigatory powers

(1) In section 126(1) of the Principal Act—

(a) in paragraph (a), after "force" **insert** "or a compliance inspector";

(b) after "force" (where secondly occurring)
insert ", inspector".

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- (2) In section 127 of the Principal Act—
- (a) after subsection (1)(a) **insert**—
"(ab) a compliance inspector; or";
 - (b) in subsection (3), after "force" (where first occurring) **insert** "or a compliance inspector";
 - (c) in subsection (4)—
 - (i) after "force" **insert** "or a compliance inspector";
 - (ii) after "or" (where first occurring) **insert** "a member of the police force".
- (3) In section 128(1) of the Principal Act—
- (a) after "force" **insert** "or a compliance inspector";
 - (b) after "member" (where secondly occurring) **insert** "or inspector".

19 New sections 129, 130 and 130A substituted and sections 130B to 130F inserted

For sections 129, 130 and 130A of the Principal Act **substitute**—

"129 Right of entry

- (1) An authorised person may enter and remain on licensed premises for the purposes of exercising his or her functions under this Act.
- (2) The power of entry may be exercised—
 - (a) at any time when the premises are open to the public; or
 - (b) at any time—
 - (i) if the authorised person reasonably suspects that the business of supplying liquor to the

public is being carried on on the premises; or

(ii) with the written consent of the occupier.

- (3) An authorised person who enters premises under this section is not authorised to remain on the premises if, on the request of the occupier of the premises, the authorised person does not show his or her identity card to the occupier.
- (4) Subsection (3) does not apply to an authorised person who is a member of the police force if he or she is in uniform.
- (5) If an occupier consents to the entry of premises under this section, the authorised person must give the occupier a copy of the consent immediately.
- (6) A person may not, under this section, enter a room in licensed premises under a general licence which is occupied by or reserved for the private use of the licensee or permittee unless the person—
- (a) has first given notice of his or her intention to the licensee or permittee or (in the absence of the licensee or permittee) to the person appearing to be in charge of the licensed premises and has given the licensee, permittee or person an opportunity to be present; or
 - (b) has obtained the consent of the licensee, permittee or person to enter the room.
- (7) A person may not, under this section, enter a room in licensed premises under a general licence which is occupied by or set apart for the private use of a resident unless the person
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has obtained the consent of the resident to enter the room.

- (8) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry.

130 Powers of authorised persons

- (1) An authorised person may do any one or more of the following—
- (a) require any person in possession of, or having control of, any document, equipment or other thing relating to an activity regulated by this Act to produce the document, equipment or other thing for inspection and to answer questions or provide information relating to the document, equipment or other thing;
 - (b) inspect any document, equipment or other thing referred to in paragraph (a);
 - (c) take copies of, extracts from, or notes relating to, any document inspected under paragraph (b);
 - (d) if the authorised person considers it necessary to do so for the purpose of obtaining evidence of the commission of an offence, seize any document, equipment or other thing;
 - (e) by written notice require—
 - (i) the holder of a licence or BYO permit or other authorisation under this Act; or
 - (ii) an employee of a person referred to in subparagraph (i); or

(iii) any other person associated with operations or their management in premises the authorised person is authorised to enter—

to attend before the authorised person at a specified time or place and answer questions, or to provide information within a reasonable period specified in the notice, with respect to any activity regulated by this Act;

(f) examine and test any equipment referred to in paragraph (a) and order the person in charge of the equipment to withdraw it from use if it is unsatisfactory for use;

(g) any other thing authorised by this Act to be done by an authorised person.

- (2) If an authorised person seizes any thing under this section, it may be retained by the authorised person until the completion of any proceedings (including proceedings on appeal) in which it may be evidence but only if, in the case of a document, the person from whom the document was seized is provided, within a reasonable time after the seizure, with a copy of the document certified by an authorised person as a true copy.
- (3) Subsection (2) ceases to have effect in relation to things seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are instituted so orders.
- (4) A copy of a document provided under subsection (2) is, as evidence, of equal validity to the document of which it is certified to be a copy.
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130A Power to require names and addresses

- (1) An authorised person who exercises a right of entry to premises under section 129 or under a search warrant may require a person on the premises to state the person's full name and residential address.
- (2) An authorised person is not authorised to require a person to state his or her name or address unless the authorised person—
 - (a) suspects on reasonable grounds that the person has committed an offence; and
 - (b) has informed the person, at the time of stating the requirement, that it is an offence to fail to comply with the requirement.
- (3) A person on being required under subsection (1) to state his or her full name and residential address must not—
 - (a) refuse or fail to give his or her full name and residential address; or
 - (b) give a false name or address.

Penalty: 20 penalty units.

130B Search warrants

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to particular premises if the authorised person suspects on reasonable grounds that—
 - (a) liquor is supplied on the premises by a person—
 - (i) who does not hold a licence authorising the supply; and

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- (ii) who is required under this Act to hold such a licence to supply the liquor; or
 - (b) in the case of premises occupied by a club in respect of which a licence is not in force, liquor is supplied or kept for supply on the premises; or
 - (c) there is on the premises any document, equipment or other thing—
 - (i) in relation to which an offence against this Act or the regulations has been, is being, or is likely to be, committed; or
 - (ii) that may be evidence of the commission of an offence against this Act or the regulations.
- (2) If a magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting any of the matters referred to in subsection (1), the magistrate may issue a search warrant authorising an authorised person named in the warrant and any assistants the authorised person considers necessary—
- (a) to enter the premises, or the part of premises, named or described in the warrant; and
 - (b) to search for and seize any document, equipment or other thing named or described in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected; and
 - (b) the premises to be searched; and
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- (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
 - (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
 - (6) An authorised person who is a compliance inspector may apply for a search warrant under this section only with the prior written consent of the Director.

130C Announcement before entry

- (1) Before executing a search warrant, the person named in the warrant or a person assisting him or her must—
 - (a) announce that he or she is authorised by the warrant to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
 - (2) The person named in the warrant or a person assisting him or her need not comply with subsection (1) if he or she believes on
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reasonable grounds that immediate entry to the premises is required to ensure—

- (a) the safety of any person; or
- (b) that the effective execution of the search warrant is not frustrated.

130D Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at the premises when a search warrant is being executed, the authorised person must—

- (a) identify himself or herself to that occupier or other person by producing his or her identity card for inspection by that occupier or other person, unless the authorised person is a member of the police force who is in uniform; and
- (b) give to that occupier or other person a copy of the execution copy of the warrant.

130E Offences relating to obstruction of authorised persons

A person must not—

- (a) obstruct, hinder, threaten, abuse or intimidate an authorised person when the authorised person is performing or attempting to perform functions under this Act or the regulations; or
- (b) fail, without reasonable excuse, to produce for inspection any document, equipment or other thing in the possession or under the control of the person when required to do so by an authorised person in the performance of

his or her functions under this Act or the regulations; or

- (c) fail, without reasonable excuse, to attend before an authorised person and answer questions or supply information when required to do so by the authorised person in the performance of his or her functions under this Act or the regulations; or
- (d) except with the permission of an authorised person, take any document, equipment or other thing seized, impounded or retained under the authority of this Act; or
- (e) fail to comply with a direction of an authorised person to cease to have available for use any equipment considered by the authorised person to be unsatisfactory for use; or
- (f) prevent, directly or indirectly, a person from attending before an authorised person, producing to an authorised person any document, equipment or other thing or answering any question of, or supplying any information to, an authorised person when that person is required to do so under this Act.

Penalty: 60 penalty units.

130F Protection against self-incrimination

- (1) It is a reasonable excuse for a person to refuse or fail to answer questions or provide information that the person is required to answer or provide by or under this Act if the answering of the question or provision of the information would tend to incriminate the person.

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- (2) It is not a reasonable excuse for a person to refuse or fail to produce any document, equipment or other thing that a person is required to produce by or under this Act on the ground that the production of the document, equipment or other thing would tend to incriminate the person.
 - (3) If the person claims, before producing the document, equipment or other thing, that production of the document, equipment or other thing would tend to incriminate them, the document, equipment or other thing is not admissible in evidence against the person in criminal proceedings."

20 Further search and seizure provisions

- (1) In section 131 of the Principal Act—
 - (a) in subsection (1), after "force" **insert** "or a compliance inspector";
 - (b) in subsection (2)—
 - (i) after "force" **insert** "or a compliance inspector";
 - (ii) after "member" (where secondly occurring) **insert** "or inspector".
 - (2) Sections 133, 133A and 133B of the Principal Act are **repealed**.
 - (3) For section 133C(2) of the Principal Act **substitute**—
 - "(2) This section does not apply if the person has been given a copy of the document certified by an authorised person as a true copy of the document."
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21 Infringement notices

- (1) After section 141(1) of the Principal Act **insert**—
- "(1AA) If a compliance inspector has reason to believe that a person has committed an offence referred to in subsection (2) (other than subsection (2)(m) or (n)), he or she may serve an infringement notice on that person."
- (2) In section 141 of the Principal Act—
- (a) in subsection (1A), after "subsection (1)" **insert** "or (1AA)";
- (b) in subsection (2)(ba) **omit** "to police";
- (c) for subsection (2)(l) **substitute**—
- "(l) section 130A(3) (refuse or fail to give name and residential address);".

22 New section 154 substituted

For section 154 of the Principal Act **substitute**—

"154 Investigations and inquiries by the Director

- (1) The Director may investigate any matter relevant to the operation of this Act, including the conduct and practices of any licensee or permittee.
- (2) In addition to the Director's powers under subsection (1), the Director may conduct an inquiry into any matter relevant to the operation of this Act including an inquiry into activities regulated by this Act in any area or locality in the State.
- (3) For the purpose of an inquiry under subsection (2), the Director may determine an area or locality in any manner he or she thinks fit.

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- (4) In an inquiry under subsection (2), the Director may—
 - (a) call for submissions from interested organisations and members of the public;
 - (b) consult with any other persons or bodies the Director considers appropriate and seek submissions from those persons or bodies.
 - (5) The Director must publish notice of an inquiry in—
 - (a) the Government Gazette; and
 - (b) in a newspaper generally circulating in the area or locality to which the inquiry relates (if applicable).
 - (6) A notice under subsection (5) must invite the public to make submissions to the Director in relation to the inquiry within the time specified in the notice.
 - (7) The Director must consider submissions made within the specified time on an inquiry before concluding the inquiry.
 - (8) Subject to this section, the Director may conduct an inquiry in any manner he or she considers appropriate."

23 New section 155 substituted

For section 155 of the Principal Act **substitute—**

"155 Delegation

The Director, by instrument, may delegate to a person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act any power of the Director under this Act other than—

- (a) a power under Division 7A of Part 2 (late hour entry declarations); or
- (b) a power under Division 1 of Part 8A (declaration of designated areas); or
- (c) the power to conduct an inquiry under section 154(2); or
- (d) this power of delegation."

24 New section 156A inserted

After section 156 of the Principal Act **insert—**

"156A Assistance to be provided

The Secretary must ensure that the Director is provided with any assistance in connection with the performance of the Director's functions that the Director reasonably requires."

25 Licensing inspectors

In section 172(3)(b) of the Principal Act **omit** "(within the meaning of the **Legal Profession Act 2004**)".

26 New Division 5 inserted in Part 9

After Division 4 of Part 9 of the Principal Act **insert—**

"Division 5—Compliance inspectors

172A Compliance inspectors

The Secretary, by instrument, may appoint as a compliance inspector for the purposes of this Act a person employed under Part 3 of the **Public Administration Act 2004** who, in the Secretary's opinion—

- (a) is competent to perform the functions of a compliance inspector; and

(b) is of good repute, having regard to character, honesty and integrity.

172B Criminal record checks

- (1) The Secretary may require a person under consideration for appointment as a compliance inspector to consent to having his or her photograph and fingerprints taken.
- (2) The Secretary must refer a copy of any photograph and fingerprints and any supporting documentation to the Chief Commissioner.
- (3) The Chief Commissioner must inquire into and report to the Secretary on matters relating to whether the person under consideration is of good repute, having regard to character, honesty and integrity.
- (4) The Chief Commissioner must ensure that—
 - (a) any copies of photographs and fingerprints and any supporting documentation received under subsection (2) are destroyed—
 - (i) within 28 days after they are no longer required in connection with the Chief Commissioner's inquiry and report under subsection (3); or
 - (ii) no later than 6 months from the date they were received—whichever is the earlier; and
 - (b) the person to whom they relate is notified of the destruction as soon as practicable.

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- (5) The Secretary must ensure that—
- (a) any photographs or fingerprints taken under subsection (1) are destroyed—
 - (i) within 28 days after they are no longer required in connection with the consideration of the person's appointment as a compliance inspector; or
 - (ii) no later than 6 months from the date they were taken—whichever is the earlier; and
 - (b) the person to whom they relate is notified of the destruction as soon as practicable.

172C Identity cards

- (1) A compliance inspector is not authorised to perform the functions of a compliance inspector unless he or she is in possession of an identity card in the form approved by the Secretary.
- (2) The identity card must bear a photograph and the signature of the compliance inspector.
- (3) Subject to this Act, in the course of performing a function as a compliance inspector, a compliance inspector must, if requested to do so by a person affected by the performance of that function, produce the inspector's identity card for inspection by the person unless to do so would defeat the purpose for which the functions are to be exercised.

172D General functions of compliance inspectors

- (1) A compliance inspector has the functions and powers conferred on him or her by this Act.
- (2) In addition to his or her other functions and powers, a compliance inspector—
 - (a) may bring proceedings for offences against this Act or the regulations with the prior approval of the Director; and
 - (b) may appear personally or by an Australian lawyer in any proceedings under this Act or the regulations."

27 Repeal of Act

This Act is **repealed** on 1 January 2011.

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**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 4 December 2008

Legislative Council: 26 February 2009

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