

PARLIAMENT OF VICTORIA

**Liquor Control Reform Further Amendment Bill
2011**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Liquor Control Reform Further Amendment Bill 2011

A Bill for an Act to amend the **Liquor Control Reform Act 1998** to introduce a demerit points system for licensees and permittees involved in non-compliance incidents, to introduce a licence for wine and beer producers, to recognise the importance of live music and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

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

- (a) to provide for a demerit points system for licensees and permittees involved in non-compliance incidents; and
- (b) to provide for a licence for wine and beer producers; and

(c) to provide in the objects of the Act for recognition of the importance of live music; and

(d) to provide for other matters.

5 **2 Commencement**

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

10 (2) If a provision of this Act does not come into operation on 1 July 2012, 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
13/2010,
18/2010,
52/2010,
57/2010,
64/2010,
12/2011,
13/2011,
29/2011 and
43/2011.
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**PART 2—AMENDMENTS TO THE LIQUOR CONTROL
REFORM ACT 1998**

4 Definitions

In section 3(1) of the Principal Act—

(a) **insert** the following definitions—

"authorised notifier means—

- (a) the police force of Victoria; or
- (b) a court, tribunal or other entity involved in the administration of the criminal justice system in Victoria; or
- (c) any other authority or person responsible for the enforcement, investigation or prosecution of offences under this Act; or
- (d) a member, employee or delegate of an entity referred to in paragraph (a), (b) or (c);

infringement notice has the same meaning as in the **Infringements Act 2006**;

infringement penalty has the same meaning as in the **Infringements Act 2006**;

non-compliance incident, in relation to a licence or permit, means—

- (a) the payment of an infringement penalty in an infringement notice served on the licensee or permittee for an offence under section 108(4), 119 or 120; or

(b) the making of an order under section 59 of the **Infringements Act 2006** in respect of an offence under section 108(4), 119 or 120; or

(c) the commencement of a payment plan in respect of an infringement notice served on the licensee or permittee for an offence under section 108(4), 119 or 120; or

(d) the successful prosecution of the licensee or permittee for an offence under section 108(4), 119 or 120;

permit means a BYO permit;

primary premises, in relation to a wine and beer producer's licence under section 13, means premises occupied and used by the licensee—

(a) for the production, storage or distribution of liquor that is the licensee's product; and

(b) for the supply of liquor that is the licensee's product for consumption on or off the premises; and

(c) for the supply of liquor that is not the licensee's product for consumption on the licensed premises; and

(d) for the supply of packaged liquor that is the licensee's product to a person who makes an off-premises request;

promotional event includes but is not limited to a craft market, farmers' market, commercial market, festival, agricultural show, food and wine event, gallery opening, fair or local event but does not include a major event or horse-racing event;

Register means the Demerits Register established under section 86A;

retail premises, in relation to a wine and beer producer's licence under section 13, means premises occupied and used by the licensee for the supply of liquor that is the licensee's product for consumption off the premises;

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

(b) in the definition of *licensed premises*, for "13(1)(b) (vigneron's" **substitute** "13(1)(a) (wine and beer producer's";

(c) in paragraph (d) of the definition of *ordinary trading hours*, for "vigneron's" **substitute** "wine and beer producer's";

(d) in the definition of *venue operator's licence*, for "2003;" **substitute** "2003.";

(e) the definition of *vigneron* is **repealed**.

5 Objects

In section 4(1)(c) of the Principal Act, for "and licensed hospitality" **substitute** ", licensed hospitality and live music".

6 What are the categories of licences and permits that may be issued under this Act?

In section 7(h) of the Principal Act, for "vigneron's" **substitute** "wine and beer producer's".

7 General licence

(1) After section 8(2)(c) of the Principal Act **insert—**

"(ca) the condition that the supply of liquor only for consumption off the licensed premises must not be the whole of the licensee's ordinary business of supplying liquor; and".

(2) After section 8(2) of the Principal Act **insert—**

"(3) For the purposes of subsection (2)(ca), gratuitous supply of liquor under section 20 does not affect whether the supply of liquor only for consumption off the licensed premises is the whole of the licensee's ordinary business of supplying liquor.".

8 Packaged liquor licence

(1) In section 11(1)(c) of the Principal Act, for "licence—" **substitute** "licence; and".

(2) After section 11(1)(c) of the Principal Act **insert—**

"(d) at any time on Christmas Day or on Good Friday determined by the Director and specified in the licence—".

9 Late night licence

(1) In section 11A(4)(b) of the Principal Act, for "licence—" **substitute** "licence; and".

(2) After section 11A(4)(b) of the Principal Act **insert—**

"(c) at any time on Christmas Day or on Good Friday determined by the Director and specified in the licence—".

(3) In section 11A(5) of the Principal Act, after paragraph (d) **insert—**

"(da) in the case of a late night (general) licence, the condition that the supply of liquor only for consumption off the licensed premises must not be the whole of the licensee's ordinary business of supplying liquor; and".

(4) After section 11A(5) of the Principal Act **insert—**

"(5A) For the purposes of subsection (5)(da), gratuitous supply of liquor under section 20 does not affect whether the supply of liquor only for consumption off the licensed premises is the whole of the licensee's ordinary business of supplying liquor."

(5) In section 11A(6) of the Principal Act, for "11(4)" **substitute** "11(5)".

10 New section 13 substituted

For section 13 of the Principal Act **substitute—**

"13 Wine and beer producer's licence

(1) A wine and beer producer's licence authorises the licensee—

(a) to supply liquor that is the licensee's product at any time and on any premises to another licensee; and

(b) to supply during ordinary trading hours and at any other time determined by the Commission and specified in the licence—

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- (i) liquor that is the licensee's product for consumption on or off the licensed premises; and
 - (ii) liquor that is not the licensee's product for consumption on the licensed premises; and
 - (c) to supply packaged liquor that is the licensee's product during ordinary trading hours and at any other time determined by the Commission and specified in the licence to a person who makes an off-premises request.
- (2) A wine and beer producer's licence is subject to—
- (a) the conditions set out in section 16 (compliance with planning scheme); and
 - (b) if the licence authorises the licensee to supply liquor outside ordinary trading hours, the condition set out in section 17(1) (extended hours); and
 - (c) if the licensee is a body corporate, the condition set out in section 18 (approval of directors); and
 - (d) any other conditions determined by the Commission and specified in the licence.
- (3) In this Act, a reference to ***liquor that is the licensee's product*** is a reference to wine, cider, brandy, perry or beer that—
- (a) in the case of beer—has been brewed by or at the direction of the licensee and the licensee has assumed the financial risk of the production;

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- (b) in the case of wine, cider, brandy or perry—
 - (i) has been made from fruit grown by the licensee and the licensee has assumed the financial risk of the production; or
 - (ii) has been made under the direction of the licensee from fruit grown in Australia that was not grown by the licensee and the licensee has assumed the financial risk of the production.
 - (4) For the purposes of this section—
 - (a) licensed premises may consist of a primary premises, or both a primary premises and a retail premises;
 - (b) in the case of licensed premises that consist of both a primary premises and a retail premises, both premises must be located in the same region specified in the Register of Protected Geographical Indications and Other Terms kept by the Registrar under the Australian Wine and Brandy Corporation Act 1980 of the Commonwealth.
 - (5) A licensee under this section may apply under section 29 for a condition that authorises the supply of liquor that is the licensee's product at promotional events that are conducted off the licensed premises.
 - (6) An application under subsection (5)—
 - (a) must be accompanied by the prescribed fee; and

(b) is subject to any further condition determined by the Commission and specified on the licence.

(7) Section 29(3)(c)(ia) does not apply to an application under subsection (5).

(8) A licensee of a licence that has a condition of the type referred to in subsection (5) must keep a record of the name, date and location of all promotional events at which it has supplied liquor that is the licensee's product, including records of the times at which the licensee was supplying the product at the event, and produce the records for inspection upon request by an authorised person."

11 ANZAC Day restrictions

In section 15A(2) of the Principal Act, for "the supply of liquor" **substitute** "liquor to be consumed, possessed or controlled on the premises in respect of which the permit is granted".

12 Sexually explicit entertainment licence condition—fees

In section 15E(3) of the Principal Act—

(a) for "section—" **substitute** "section,";

(b) the definition of *non-compliance incident* is **repealed**;

(c) in paragraph (c) of the definition of *relevant period*, for "is payable;" **substitute** "is payable.";

(d) the definition of *successful prosecution* is **repealed**.

13 Licence condition—extended hours

In section 17(2)(c) of the Principal Act, for "vigneron's" **substitute** "wine and beer producer's".

14 Certain premises not to be licensed

(1) In section 22(ca) of the Principal Act, for "18 years; or" **substitute** "18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years; or".

(2) After section 22(3) of the Principal Act **insert**—

"(3A) For the purposes of section 22(1)(ca), factors that the Commission may consider include but are not limited to—

(a) whether the proposed licence or permit authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and

(b) whether the proposed licence or permit provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur."

15 Form of application

After section 28(1)(aa) of the Principal Act **insert**—

"(ab) disclose any demerit points that have accrued within the previous 3 years on a licence or permit that the applicant or a nominee of the applicant has held or holds at the time of the application; and".

16 Application for transfer of licence or BYO permit

After section 32(2)(ab) of the Principal Act
insert—

"(ac) disclose any demerit points that have accrued within the previous 3 years on a licence or permit that the proposed transferee or a nominee of the proposed transferee has held or holds at the time of the application; and".

17 Liability of joint and incorporated licensees or permittees and unincorporated clubs

- (1) In section 53(2) of the Principal Act, after "liable as" **insert** "if they were the".
- (2) In section 53(3) of the Principal Act, after "liable as" **insert** "if they were the".

18 New Part 4A inserted

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

"PART 4A—DEMERITS REGISTER

86A Demerits Register

The Commission must keep a Demerits Register and must record against a licence or permit any demerit points that are incurred in relation to that licence or permit.

86B Commission to record demerit points

- (1) The Commission must record in the Register a demerit point against a licence or permit if the Commission is notified by an authorised notifier that a non-compliance incident has occurred in respect of the licensed premises.
- (2) Despite anything to the contrary in this Part, the Commission must not record demerit points against a licence or permit in the Register if more than 12 months have elapsed since the Commission was notified

by an authorised notifier of the non-compliance incident.

- (3) In this Part, a reference to a licence or permit does not include a licence granted under section 14(1A) or 14A.

86C Record of day on which offence was committed

The Commission must record demerit points in the Register in relation to the day the offence that is the basis of the non-compliance incident to which the demerit point relates is alleged to have been committed.

86D Commission must notify licensee or permittee when demerit point is incurred

- (1) If a demerit point has been incurred in respect of a licence or permit, the Commission must give the licensee or permittee a notice advising that the demerit point has been incurred.
- (2) A notice under subsection (1) must contain the following details—
- (a) details of the licence or permit;
 - (b) details of the offence that is alleged to have been committed which is the basis of the non-compliance incident to which the demerit point relates;
 - (c) the date on which the demerit point was recorded in the Register;
 - (d) the total number of demerit points recorded against the licence or permit in the previous 3 years.

86E Automatic suspension of licence or permit if certain number of demerit points incurred

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(1) The Commission must suspend a licence or permit—

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(a) in the case of a licence or permit that has accrued 5 demerit points in a 3 year period, for 24 hours, commencing during ordinary trading hours;

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(b) in the case of a licence or permit that has accrued 10 demerit points in a 3 year period, for 7 days, commencing during ordinary trading hours;

(c) in the case of a licence or permit that has accrued 15 demerit points in a 3 year period, for 28 days, commencing during ordinary trading hours.

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(2) For the purposes of subsection (1), the 3 year period commences on the date that the first demerit point is recorded on the Register.

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(3) For the purposes of subsection (1), a suspension must not commence on a day which is not during the authorised trading hours of the licence.

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(4) If the Commission suspends a licence or permit under subsection (1)(c), the Commission must, when calculating demerit points recorded against the licence or permit at any time after the period of suspension, disregard all demerit points recorded against the licence or permit as at the date of suspension.

(5) A suspension under this section must commence—

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- (a) on the same day of the week as the day that the alleged offence that is the basis of the non-compliance incident occurred that resulted in the latest demerit point being recorded; or

Example

10 If an offence that results in a licence's 5th demerit point being recorded occurs on a Friday, the 24 hour suspension must commence on a subsequent Friday.

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- (b) if the alleged offence that is the basis of the non-compliance incident that resulted in the latest demerit point being recorded occurred between 12.01am and 7.00am, on the same day of the week as the previous day of the week that the incident occurred; or

20 **Example**

If an offence that results in a licence's 5th demerit point being recorded occurs at 12.01am on a Sunday, the 24 hour suspension must commence on a subsequent Saturday.

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- (c) if the alleged offence that is the basis of the non-compliance incident that resulted in the latest demerit point being recorded occurred on a day that was not ordinarily part of the licensee's authorised trading hours, on the next day that falls within the licensee's authorised trading hours.
- 30

86F Date of commencement of suspension

35 The date of commencement of a suspension under section 86E must be a day no less than 14 days after the date of a notice under section 86G and no more than 60 days after

the date that the latest demerit point was recorded on the Register.

86G Notice of suspension

If a licence or permit is to be suspended under section 86E, the Commission must give a notice to the licensee or permittee containing the following details—

- (a) details of the licence or permit to which the suspension relates;
- (b) the period of the suspension;
- (c) the date the suspension commences;
- (d) the date the suspension ends;
- (e) any other prescribed details.

86H Minister may suspend, cancel or delay a suspension

- (1) The Minister may suspend, cancel or delay the suspension of a licence or permit under section 86E if the Minister is satisfied that the cost to the community of the suspension outweighs the benefit of the suspension.
- (2) If a licensee or permittee makes an application under this section, the suspension of the licence or permit under section 86F does not take effect until the Minister determines the application.

86I Commission may deduct demerit points

- (1) If a licence or permit that has accrued demerit points has been transferred under section 32, the new licensee or permittee may apply to the Commission to remove any demerit points from the Register accrued in respect of the licence or permit before the transfer.

(2) An application under subsection (1) must be accompanied by the prescribed fee.

(3) The Commission must not remove any demerit points under subsection (1) unless the Commission is satisfied that the new licensee or permittee has taken sufficient measures in respect of the licence or permit to improve compliance with this Act.

(4) For the purposes of subsection (3), factors that the Commission may consider include but are not limited to—

(a) written evidence that the new licensee or permittee has no business or family association with the previous licensee, permittee or the nominee of the licensee or permittee or any associates of the licensee or permittee;

(b) evidence of a change of management practices or staff training.

86J Demerit point automatically deducted after 3 years

The Commission must remove a demerit point from the Register on the day immediately after 3 years have expired since the date the demerit point was incurred.

86K Commission may publish details of licences and permits

(1) The Commission may publish the following details on its website—

(a) details of any licence or permit that appear on the licence or permit;

(b) details of a licence or permit that has accrued demerit points, including details of the licensee or permittee or nominee of the licensee or permittee;

- (c) a copy of any licence or permit;
 - (d) the total accumulated demerit points relating to a licence or permit;
 - (e) any other prescribed information.
- 5 (2) To the extent necessary to give effect to subsection (1), sections 32 and 33 of the **Infringements Act 2006** do not apply.

_____".

19 Offences by licensee and permittee

10 In section 108(2)(b) of the Principal Act, for "vigneron's" **substitute** "wine and beer producer's".

20 Taking orders for liquor at unlicensed premises

15 In section 109(2)(b) of the Principal Act, for "vigneron's" **substitute** "wine and beer producer's".

21 Power to serve an infringement notice

In section 141(2) of the Principal Act—

(a) before paragraph (a) **insert**—

20 "(aaa) section 54(11) (failure to notify Commission of person ceasing to be nominee);";

(b) in paragraph (n), for "directions)." **substitute** "directions);";

25 (c) after paragraph (n) **insert**—

"(o) clause 25(2), (3), (4), (5), (6), (7) or (9) of Schedule 3 (transitional provisions— **Liquor Control Reform Amendment Act 2010**);

30 (p) clause 26 (transitional provision— **Liquor Control Reform Further Amendment Act 2011**).".

22 Infringement penalties

Section 144(5) of the Principal Act is **repealed**.

23 Search of premises after entry authorised by any other Act

5 In section 148X(2) of the Principal Act, for "have management or control of the licensed premises" **substitute** "be a responsible person".

24 Requirement to assist the fire safety inspector during search of certain premises

10 In section 148Y of the Principal Act, for "have management or control of the licensed premises" **substitute** "be a responsible person".

25 Offence to refuse entry to a fire safety inspector

15 In section 148ZA of the Principal Act, for "have management or control of a licensed premises" **substitute** "be a responsible person".

26 Service of closure and evacuation notice

20 In section 148ZE(1) of the Principal Act, for "have management or control of the licensed premises" **substitute** "be a responsible person".

27 Issue and service of subsequent notice

In section 148ZF(3) of the Principal Act, for "have management or control of the licensed premises" **substitute** "be a responsible person".

28 Revocation of closure and evacuation notice and subsequent notice

25 In section 148ZP(2) of the Principal Act, for "have management or control of the licensed premises" **substitute** "be a responsible person".

29 Regulations

After section 180(4)(a) of the Principal Act
insert—

5 "(ab) may provide for different fees or discounts
 on fees depending on whether the licence or
 permit has incurred demerit points under
 Part 4A or is the subject of non-compliance
 incidents;

10 (ac) may provide for different fees for licences
 that have different conditions;"

30 Schedule 2 amended

In item 8 of Schedule 2 to the Principal Act, for
"114(d)" **substitute** "114(2)".

31 Amendment of Schedule 3—Savings and Transitional Provisions

15 (1) In Schedule 3 to the Principal Act, before clause 1
 insert the following heading—

"PART 1—GENERAL PROVISIONS".

20 (2) After clause 25 of Schedule 3 to the Principal Act,
 insert—

**"PART 2—LIQUOR CONTROL REFORM
FURTHER AMENDMENT ACT 2011**

26 Transitional provision—general licence

25 (1) In this section a *pre-2011 general licence*
 means a general licence as in force before
 the commencement of section 7 of the
 **Liquor Control Reform Further
 Amendment Act 2011** under which a
30 licensee supplies packaged liquor only for
 consumption off the licensed premises as the
 whole of the licensee's ordinary business of
 supplying liquor.

(2) The Commission may—

- (a) impose a condition that the licensee of a pre-2011 general licence comply with the code of conduct (if any) determined by the Minister under section 11(5) as in force from time to time; and
- (b) charge the prescribed renewal fee for a licence that is subject to the condition set out in paragraph (a).

(3) On and from the commencement of section 7 of the **Liquor Control Reform Further Amendment Act 2011**, a licensee of a pre-2011 general licence must notify the Commission in writing within 3 months after commencing supply of packaged liquor only for consumption off the licensed premises as the whole of the licensee's ordinary business supplying liquor.

Penalty: 10 penalty units.

27 Savings provision—packaged liquor licences

Section 11(1) as amended by the **Liquor Control Reform Further Amendment Act 2011** is taken to have applied in respect of any packaged liquor licence in force on or after 1 January 2010.

28 Savings provision—late night (packaged liquor) licences

Section 11A(4) as amended by the **Liquor Control Reform Further Amendment Act 2011** is taken to have applied in respect of any late night (packaged liquor) licence granted on or after 1 January 2010.

29 Transitional provision—vigneron's licences

On and from the commencement of section 10 of the **Liquor Control Reform Further Amendment Act 2011**, any vigneron's licence that was in force immediately before that commencement is taken to continue in force (subject to any conditions on which it was granted) as if it were a wine and beer producer's licence.

30 Transitional provision—other licences

- (1) A licensee of a licence that is not a late night licence that was in force immediately before the commencement of section 10 of the **Liquor Control Reform Further Amendment Act 2011** may, within 1 year of that commencement, apply to the Commission for a variation of the licence to a wine and beer producer's licence.
- (2) If the Commission is satisfied that the conditions for a wine and beer producer's licence have been met, the Commission may authorise the variation.
- (3) Section 29 does not apply to an application under this section.
- (4) An application under this section is not subject to any fee."

**PART 3—AMENDMENTS TO THE INFRINGEMENTS
ACT 2006**

32 Demerit point schemes

In section 34 of the **Infringements Act 2006**—

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

(b) after paragraph (b) **insert**—

"(c) an offence under section 108(4), 119
or 120 of the **Liquor Control Reform
Act 1998** does not prevent the incurring
of demerit points under that Act in
relation to that offence."

See:
Act No.
12/2006.
Reprint No. 3
as at
22 June 2011.
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vic.gov.au

**PART 4—FURTHER AMENDMENTS TO LIQUOR CONTROL
REFORM ACT 1998**

33 Packaged liquor licence

In section 11(1)(d) of the Principal Act, for
"Director" **substitute** "Commission".

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34 Late night licence

In section 11A(4)(c) of the Principal Act, for
"Director" **substitute** "Commission".

PART 5—REPEAL OF AMENDING ACT

35 Repeal of amending Act

This Act is **repealed** on 1 July 2013.

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**).

5

ENDNOTES

By Authority. Government Printer for the State of Victoria.
