



Victoria Government Gazette

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Liquor Control Reform Act 1998

STATEMENT OF POLICY

I, Marsha Thomson MP, being the Minister for Consumer Affairs and the Minister responsible for administering the **Liquor Control Reform Act 1998** (the Act) publish the following statement representing the policy of the Victorian Government concerning the grant of liquor licences that may allow the sale of packaged liquor. In particular, the policy covers licensed venues in the State of Victoria that operate for periods in excess of ordinary trading hours as defined in Section 3 of the Act, including, but not exclusive to, licensed venues that operate on a 24 hour basis.

In releasing the Statement of Policy the Victorian Government has considered amongst other matters the following:

1. The objects of the Act including section 4(a)(i) and (ii) of the Act:
to contribute to minimising harm arising from the misuse and abuse of alcohol by –
 - (i) providing adequate controls over the supply and consumption of liquor; and
 - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life;
2. That the second reading speech of the Act makes it clear that harm minimisation is the primary aim of the Act.
3. The definition of ordinary trading hours as defined in section 3 of the Act.
4. The decision of the Liquor Control Commission on 7 July 1998 in the matter of Rosstown Hotel which established the basic principles underpinning Victoria's approach to applications for extended hours for the selling of packaged liquor.
5. Community concern and issues noted in the media regarding the potential increase in the hours of operation of licensed businesses that can sell packaged liquor.
6. The establishment of a Liquor Control Advisory Council, which I have requested to review aspects of the regulation of packaged liquor. The policy position taken on this issue should not be changed until the Government has been able to consider the recommendations of the Advisory Council.

Based on the matters raised above amongst other things, the Victorian Government provides the following statement of policy:

1. That the grant of a licence that allows for the provision of packaged liquor from licensed premises on a 24 hour basis is contrary to the aim of minimisation of harm from the misuse and abuse of alcohol and contrary to the aim of ensuring the amenity of community life.
2. That the grant of a licence that allows for the provision of packaged liquor from licensed premises on hours that are greater than ordinary trading hours as defined in section 3 of the Act should only be granted by the Director of Liquor Licensing if exceptional circumstances can be demonstrated by an applicant, and that in all circumstances that the extended hours for a packaged liquor licence should not extend past 12 midnight.
3. That this policy statement does not affect any licence that has been granted and is operational as at the date of this statement.

Dated 25 October 2006

MARSHA THOMSON MP
Minister for Consumer Affairs

SPECIAL

Liquor Control Reform Act 1998

NOTICE UNDER SECTION 11(5)

I, Marsha Thomson, Minister for Consumer Affairs, under section 11(5) of the **Liquor Control Reform Act 1998** determine a code of conduct for licensees of packaged liquor licences as set out in the Schedule.

Dated 7 September 2006

MARSHA THOMSON MP
Minister for Consumer Affairs

SCHEDULE
CODE OF CONDUCT
PACKAGED LIQUOR LICENSEES

This Code of Conduct is determined pursuant to section 11(5) of the **Liquor Control Reform Act 1998**.

1. Purpose

The purpose of the Code of Conduct is to promote the objects of the Act being to contribute to minimising harm arising from the misuse and abuse of alcohol; to facilitate the development of a diversity of licensed facilities reflecting community expectations and to contribute to the responsible development of the liquor and licensed hospitality industries.

2. Aim and scope of the Code

The aim of the Code of Conduct is:

- to establish and require best practice by licensees in meeting the objects of the **Liquor Control Reform Act 1998** (the Act);
- to promote fair and equitable trading practices amongst industry participants, consistent with the **Fair Trading Act 1999** and the **Small Business Commissioner Act 2003**;
- to discourage conduct in breach of the **Fair Trading Act 1999** and the **Trade Practices Act 1974**; and
- to articulate the rights and obligations of all parties.

The conditions in this Code will apply to all packaged liquor licences. The definition of “packaged liquor licence” is provided at attachment 1 to this Code.

3. Code Committee

3.1 In order to give effect to the Aim of the Code, there shall exist a Packaged Liquor Code Committee (Code Committee). The Code Committee shall be comprised of a Chair, the Director of Liquor Licensing and members from the following organisations:

- the Liquor Stores Association of Victoria;
- the Master Grocers Association of Victoria;
- Coles Myer Ltd;
- Woolworths Ltd; and
- the Office of the Small Business Commissioner.

3.2 The Code Committee shall convene on a regular basis, at the request of the Director of Liquor Licensing.

4. Activity in Licensed Premises

Licensees must observe existing requirements of the **Liquor Control Reform Act 1998** in relation to ascertaining the proof of age of patrons and refusal to supply alcohol to intoxicated persons. To support these requirements the following actions are required.

Signage

4.1 The following signs, approved by the Director of Liquor Licensing pursuant to section 102 of the Act, are required to be displayed in a manner that invites customers’ attention:

- “no proof no purchase”
- “intoxication” and
- “please do not attempt to buy liquor for a minor”.

- 4.2 The following information is to be displayed prominently in the licensed area:
- The free call number for Directline the Victorian Government's 24 hour, 7 day counselling, information and referral line for people with alcohol and drug problems – 1800 888 236 and;
 - where appropriate, information on any municipal local law which prohibits the consumption of alcohol in a public place.

Marketing and Promotion

- 4.3 The licensee must not engage directly or indirectly in the following practices:
- promotions that may encourage patrons to consume liquor irresponsibly and excessively;
 - promotion of liquor that includes incentives which encourage consumers to consume the product in a risky or rapid manner; and
 - the advertising or marketing of alcohol products which is directed to or is primarily appealing to minors or others in high risk categories.
- 4.4 Alcohol advertising by a licensee, except on licensed premises, should be discouraged from being close to a primary or secondary school.

5. Minors on Premises

- 5.1 No minors are to be permitted on the licensed premises unless they are accompanied by a parent, spouse or guardian or a responsible adult.
- 5.2 The licensee shall ensure that any minor employed to work on licensed premises is not involved in the supply of liquor other than in an approved training program.
- 5.3 The licensee must maintain a list/register of minors employed on the premises (which may be the business time and wages record book) and which is available upon request for viewing by an authorised officer of the Victoria Police.
- 5.4 The licensee must, where there are reasonable grounds for considering that an adult is purchasing alcohol for a minor, decline the purchase of the alcohol.

6. Responsibilities of Licensees

- 6.1 The licensee must develop, within 3 months of the publishing of the Code of Conduct in the Government Gazette, a set of "House Rules" for the licensed premises which will set out the responsibilities and obligations of staff in the sale and supply of alcohol in accordance with established responsible serving of alcohol principles.
- 6.2 The "House Rules" must be retained on the premises in the possession of the licensee, manager or other person in charge and be made available to an authorised member of the Victoria Police if requested.
- 6.3 Where the licensee has installed and maintains a surveillance recording system able to clearly identify individuals and which shows time and date and provides continuous images of all relevant entrances and exits, a copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Director of Liquor Licensing, or otherwise retained for at least 2 weeks where technology exists.
- 6.4 The licensee must take all reasonable steps to manage and supervise all aspects of the business in accordance with the **Occupational Health and Safety Act 2004**.

7. Responsible Service of Alcohol

- 7.1 The licensee and any other person who has the management or control of licensed premises must complete within three months of being granted a licence or the grant of a transfer of a licence a "Responsible Serving of Alcohol" training course approved by the Director of Liquor Licensing.

- 7.2 All staff who are employed to serve alcohol must undertake a “Responsible Serving of Alcohol” training course approved by the Director of Liquor Licensing within 3 months of their commencement in employment at the licensed premises.
- 7.3 All staff employed prior to the gazettal of the Code of Conduct must undertake a “RSA” training course approved by the Director of Liquor Licensing within 12 months.
- 7.4 The licensee must maintain a register of Certificates of completion of the “Responsible Serving of Alcohol” training course approved by the Director of Liquor Licensing by licensees and employees which is available upon request for viewing by an authorised officer of the Victoria Police.
- 7.5 The licensee must ensure that the licensee and manager complete the Responsible Serving of Alcohol refresher course each financial year.
- 7.6 The licensee must ensure that each employee completes the Responsible Serving of Alcohol refresher course every two years.

8. Sale by means of mail, facsimile, telephone or the internet

- 8.1 A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must display their liquor licence number in any advertisement or information published in writing or electronically in connection with such sales.
- 8.2 A licensee who advertises on or supplies liquor by means of the internet must display the following notice prominently on the site at all times so that customers will notice its contents.

“WARNING

Under the **Liquor Control Reform Act 1998** it is an offence

- To supply alcohol to a person under the age of 18 years [Penalty exceeds \$6,000]
- For a person under the age of 18 years to purchase or receive liquor [Penalty exceeds \$500]”

- 8.3 A licensee must ensure that liquor is purchased by a person aged 18 or over. The licensee must ensure that delivery arrangements include requiring proof of age to be sighted where appropriate.

9. Unfair Market Practices

- 9.1 The purpose of the **Small Business Commissioner Act 2003** is to establish the Office of the Small Business Commissioner (OSBC) to enhance a competitive and fair operating environment for small business in Victoria.
- 9.2 Under the **Small Business Commissioner Act 2003**, the Small Business Commissioner may receive ‘unfair market practice’ complaints from small businesses. This includes small, independent, liquor stores (and their relevant industry association) complaining about the use of market power in an anti-competitive manner by large market players.

If a packaged liquor licensee considers that its small business is the subject of an unfair market practice, it may contact the OSBC. The OSBC may investigate the complaint, or it may seek to mediate the complaint between the small business and the respondent in order to seek to resolve the complaint. Alternatively, the OSBC may make representations about the complaint to an appropriate person or body (eg. the Director of Liquor Licensing, or another body, such as the Australian Competition and Consumer Commission).

In order to investigate unfair market practice complaints, licensees of packaged liquor licences may contact the OSBC or the Australian Competition and Consumer Commission (ACCC).

The contact details for the OSBC are:

Office of the Small Business Commissioner

GPO Box 4509RR

MELBOURNE VIC 3001

Telephone: 13 22 15; toll free: 1800 136 034

Website: www.sbc.vic.gov.au

The contact details for the Australian Competition and Consumer Commission are:

Level 35, The Tower

Melbourne Central

360 Elizabeth Street

Melbourne Vic. 3000

10. **Misleading and deceptive and unconscionable conduct**

10.1 All licensees shall comply with the requirements of the Victorian **Fair Trading Act 1999** and the **Commonwealth Trades Practices Act 1974** to ensure that misleading, deceptive and 'unconscionable conduct' does not occur in business trading.

10.2 In considering whether conduct is unconscionable, a court or tribunal will have regard to the relative bargaining strength of the parties; whether conditions imposed were reasonably necessary to protect the supplier's legitimate interests; the ability to understand documentation; the need for no undue influence or use of pressure tactics in the transaction; the amount goods or services can be acquired for in similar transactions; the requirements of industry codes; any failure to disclose intended conduct or risks; the extent of willingness to negotiate terms and conditions of any contract and the extent to which the supplier acted in good faith.

10.3 The **Fair Trading Act 1999** is administered by Consumer Affairs Victoria (CAV). The CAV Telephone Helpline is -1300 55 81 81.

[Parties to this Code should note that, under the **Victorian Civil and Administrative Tribunal Act 1998**, the Small Business Commissioner may intervene at any stage in unconscionable conduct proceedings brought before the Victorian Civil and Administrative Tribunal under section 8A of the **Fair Trading Act 1999**].

10.4 The Trade Practices Act 1974 is administered by the Australian Competition and Consumer Commissioner (ACCC). The ACCC Infocentre Telephone is -
1300 302 502.

11. **Compliance with the Code**

11.1 Under section 11(8) of the **Liquor Control Reform Act 1998**, the Small Business Commissioner appointed under the **Small Business Commissioner Act 2003** may investigate the compliance by licensees of packaged liquor licences with this Code of Conduct.

11.2 The Director of Liquor Licensing may investigate complaints made by licensees under the Code of Conduct.

12. Code Review

- 12.1 Two years after the commencement of the Code and thereafter on a biennial basis, an evaluation shall be conducted on the performance and effectiveness of the Code in relation to:
- benefits;
 - cost of administration;
 - visibility to the public;
 - market practices; and
 - industry awareness.
- 12.2 The Code Review will be conducted by the Minister for Consumer Affairs, in consultation with the Code Committee and other relevant parties, including packaged liquor licensees.

Attachment 1

CODE OF CONDUCT
PACKAGED LIQUOR LICENSEES

Extracts from the **Liquor Control Reform Act 1998**

4. Objects

The objects of this Act are –

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol by –
 - (i) providing adequate controls over the supply and consumption of liquor; and
 - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
 - (iii) restricting the supply of certain other alcoholic products; and
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- (c) to contribute to the responsible development of the liquor and licensed hospitality industries.

11. Packaged liquor licence

- (1) A packaged liquor licence authorises the licensee to supply liquor on the licensed premises in sealed containers, bottles or cans –
 - (a) during ordinary trading hours; and
 - (b) at any other times determined by the Director and specified in the licence – for consumption off the licensed premises.
- (2) If –
 - (a) the licensed premises under a packaged liquor licence is located within premises used primarily as a supermarket; and
 - (b) the licensee is the owner of the supermarket business; and
 - (c) the Director so determines and specifies in the licence –
the packaged liquor licence also authorises the licensee to receive payment for liquor supplied on the licensed premises at any checkout located in the supermarket if the person receiving the payment is of or over the age of 18 years.
- (3) A packaged liquor licence is subject to –
 - (aa) a condition that the predominant activity carried on in the area set aside as the licensed premises is the sale by retail of liquor for consumption off the licensed premises; and
 - (aab) a condition that, following the period of 3 months after the grant or transfer of the licence to the licensee, the area set aside as the licensed premises is, at any time when it is open for business, under the management or control of a person who has completed a responsible service of alcohol program approved by the Director under sub-section (4); and
 - (aac) a condition that every person who has the management or control of the area set aside as the licensed premises when it is open for business must have completed a responsible service of alcohol program approved by the Director under sub-section (4) in the previous financial year; and

- (aad) a condition that the licensee comply with the code of conduct (if any) determined by the Minister under sub-section (5) as in force from time to time; and
 - (a) the condition 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); 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 Director and specified in the licence.
- (4) The Director may, from time to time, approve programs to be responsible service of alcohol programs for the purposes of the licence condition referred to in sub-section (3)(aab) and the licence condition referred to in sub-section (3)(aac).
- (5) The Minister, by notice published in the Government Gazette, may determine a code of conduct, consistent with the objects of this Act, for licensees of packaged liquor licences.
- (6) The Minister may, at any time by notice published in the Government Gazette, vary or revoke the code of conduct under sub-section (5).
- (7) The Minister must not determine a code of conduct, or vary or revoke it, until the Minister has consulted packaged liquor licensees.
- (8) The Small Business Commissioner appointed under the **Small Business Commissioner Act 2003** may investigate the compliance by licensees of packaged liquor licences with a code of conduct under sub-section (5).

3 Definitions

“ordinary trading hours” means –

- (c) in relation to a packaged liquor licence –
 - (i) the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and
 - (ii) the hours between 10 a.m. and 11 p.m. on Sunday; and
 - (iii) the hours between 12 noon and 11 p.m. on ANZAC Day
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