

South Australia

Liquor Licensing (Producers, Responsible Service and Other Matters) Amendment Act 2009

An Act to amend the *Liquor Licensing Act 1997*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Liquor Licensing (Producers, Responsible Service and Other Matters) Amendment Act 2009*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Liquor Licensing Act 1997*

4—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *close associate* insert:

collective outlet—see section 39(1c);

- (2) Section 4—after the definition of *premises* insert:

producer's event endorsement—see section 39(1d);

production outlet—see section 39(1a);

- (3) Section 4—after the definition of *retail licence* insert:

retail outlet—see section 39(1a);

sample—an amount of liquor of a particular kind will not be considered to be a sample if it exceeds the prescribed amount for that kind of liquor;

5—Insertion of section 11A

After section 11 insert:

11A—Commissioner's codes of practice

- (1) For the purposes of this Act, the Commissioner may, by notice in the Gazette, publish a code of practice that has been approved by the Minister.
- (2) A code of practice may include measures designed for any of the following purposes:
 - (a) to minimise the harmful and hazardous use of liquor or promote responsible attitudes in relation to the promotion, sale, supply and consumption of liquor;

Examples—

- Measures requiring staff to undertake specified accredited training.
 - Measures prohibiting advertising of liquor in a manner likely to result in the liquor having a special appeal to minors or being mistaken for confectionery or non-alcoholic beverage.
 - Measures otherwise regulating advertising of liquor or licensed premises or schemes for the promotion of liquor or licensed premises.
 - Measures requiring steps to be taken to prevent liquor from being sold or supplied to intoxicated persons.
- (b) to minimise offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of licensed premises, or to minimise prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of licensed premises, resulting from activities on the licensed premises, or the conduct of people making their way to or from the licensed premises;
 - (c) to prevent offensive behaviour on licensed premises (including offensive behaviour by persons providing or purporting to provide entertainment (whether live or not) on the licensed premises);
 - (d) to protect the safety, health or welfare of customers, staff or both;
 - (e) to protect the safety, health or welfare of minors on licensed premises;
 - (f) to ensure public order and safety at events expected to attract large crowds;

- (g) to otherwise promote compliance with the provisions and objects of this Act.
- (3) A code of practice may be of general or limited application and may vary in operation according to factors stated in the code.
- (4) The Commissioner may, by subsequent notice in the Gazette, vary or revoke a code of practice.
- (5) A notice published in the Gazette under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.
- (6) Sections 10 and 10A of the *Subordinate Legislation Act 1978* apply to a notice published in the Gazette under this section as if it were a regulation within the meaning of that Act.

6—Amendment of section 39—Producer's licence

- (1) Section 39(1)—delete the subsection and substitute:

- (1) A producer's licence authorises the licensee—
 - (a) to sell the licensee's product on the licensed premises at any time for consumption off the licensed premises; and
 - (b) to sell the licensee's product at any time through direct sales transactions; and
 - (c) if the conditions of the licence so provide—to sell or supply by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority—
 - (i) the licensee's product; or
 - (ii) for the purposes of comparison with the licensee's product, other liquor of the same type as the licensee's product; and
 - (d) if the conditions of the licence so provide—to sell liquor at any time for consumption in a designated dining area with or ancillary to a meal; and
 - (e) if the conditions of the licence so provide—to sell the licensee's product at any time for consumption on a part of the licensed premises approved for the purposes by the licensing authority subject to restrictions specified by the licensing authority by condition of licence.
- (1a) The following rules apply for the purposes of subsection (1):
 - (a) if a licensee has production premises—the licensed premises may be comprised of either a production outlet or retail outlet or both a production outlet and retail outlet;
 - (b) if a licensee does not have production premises—the licensed premises may only be comprised of a retail outlet;
 - (c) a production outlet must be comprised of—

- (i) the whole or a part of the licensee's production premises; or
 - (ii) premises that are adjacent to the licensee's production premises and approved by the licensing authority for the purpose;
 - (d) a retail outlet must be comprised of premises approved by the licensing authority for the purpose;
 - (e) if a licensee's production premises are in a particular wine region and are to be used for the production of wine—any retail outlet of the licensee must be in that wine region.
- (1b) The same premises may be shared by 2 or more licensees—
- (a) as a retail outlet for each of the licensees; or
 - (b) as a production outlet for 1 licensee and as a retail outlet for the other licensees,

but the licensing authority must not grant a licence resulting in the same premises being so shared if of the opinion that the trade to be authorised at the premises would, in view of the number of licensees involved or the nature and extent of the trade or for any other reason, be better authorised by a retail liquor merchant's licence or a licence of some other category.

- (1c) To the extent that licensees share the same premises as referred to in subsection (1b)—
- (a) the part of the premises that is shared is referred to as a ***collective outlet***; and
 - (b) for the purposes of the application of this Act to the part of the premises that is shared, a single producer's licence will be taken to be held for that part of the premises jointly by the licensees.
- (1d) The licensing authority may endorse a producer's licence with an authorisation to sell or supply the licensee's product on a site specified in the endorsement during an event specified in the endorsement for consumption on or off the site as specified in the endorsement (a ***producer's event endorsement***) except if—
- (a) the licensee does not have production premises; or
 - (b) the licensing authority is of the opinion that the trade to be authorised by the endorsement would, in view of the likely scale or nature of the event or for any other reason, be better authorised by a limited licence or a licence of some other category.

Note—

Licensees cannot share the same site specified in an endorsement—see section 48(3).

- (1e) If a licensee's production premises are in a particular wine region and are to be used for the production of wine, any site specified in a producer's event endorsement must be in that wine region.
- (1f) A producer's licence with a producer's event endorsement authorises the licensee to sell or supply the licensee's product in accordance with the endorsement and the licensed premises are, for the period for which the licensee is so authorised to sell or supply the product, to be regarded as including any site specified in the endorsement.
- (2) Section 39(2)(c)—after subparagraph (ii) insert:
- or
- (iii) the wine was produced by blending wine produced from Australian primary produce by or at the direction of the licensee (or a related body corporate) in accordance with, and during a period specified in, an approval granted by the licensing authority under subsection (3) and is uniquely the licensee's (or the related body corporate's) own product,
- (3) Section 39(3)—delete subsection (3) and substitute:
- (3) The licensing authority may, on application by a licensee, grant an approval for the purposes of section 39(2)(c)(iii) if satisfied that circumstances beyond the control of the licensee warrant the licensee being authorised to produce wine during the period to be specified in the approval other than wine comprised of, or including a substantial proportion of, wine fermented by or under the direction of the licensee (or a related body corporate).
- (4) For the purposes of this section—
- licensee* means the holder of a producer's licence;
- production premises* of a licensee means premises to be occupied and used by the licensee for the production of liquor;
- wine region* means a geographical area in relation to which a geographical indication is in force under the *Australian Wine and Brandy Corporation Act 1980* of the Commonwealth.

7—Amendment of section 42—Mandatory conditions

Section 42(1)—delete subsection (1) and substitute:

- (1) It is a condition of every licence that the licensee must comply with the Commissioner's codes of practice (see section 11A).

8—Amendment of section 45—Compliance with licence conditions

Section 45—at the foot of the section insert:

Maximum penalty:

- (a) in the case of the licensee—\$10 000;
- (b) in any other case—\$2 500.

Expiation fee: for an offence of a kind prescribed by the regulations—

- (a) in the case of the licensee—\$1 200;
- (b) in any other case—\$210.

9—Amendment of section 48—Plurality of licences

Section 48(3)—after paragraph (c) insert:

and

- (d) 2 or more producer's licences may be granted for the same premises constituting a collective outlet.

10—Amendment of section 51—Form of application

Section 51(1)(b)—after "regulations" insert:

and any documents or material required by the Commissioner

11—Amendment of section 52—Certain applications to be advertised

Section 52—after subsection (2) insert:

- (2a) A notice under subsection (2) must specify that the application and certain documents and material relevant to the application may be inspected at a place and during a period specified by the Commissioner.

12—Insertion of section 52A

After section 52 insert:

52A—Confidentiality of certain documents and material relevant to application

- (1) Subject to this section, the Commissioner must make available for inspection by any person with a genuine interest an application required to be advertised under this Act and any documents and material produced to the licensing authority under this Act relevant to the application.
- (2) The Commissioner may, in his or her absolute discretion, exclude from inspection information that the Commissioner considers to be—
 - (a) personal information of a confidential nature; or
 - (b) information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
 - (c) information the disclosure of which would, or could reasonably be expected to, prejudice the commercial position of a person or confer a commercial advantage on a person; or
 - (d) information the disclosure of which would be contrary to the public interest for any other reason.

- (3) A person who inspects an application, a document or material under this section must not use information contained in the application, document or material for a purpose other than objecting to the application, or intervening in proceedings, under this Act and must not disclose that information to another person except for that purpose.

Maximum penalty: \$10 000.

- (4) A person who gains access to information (whether properly or improperly and whether directly or indirectly) as a result of the inspection of an application, a document or material under this section by another person must not use the information for a purpose other than that for which the person inspecting the application, document or material may lawfully use it.

Maximum penalty: \$10 000.

13—Insertion of section 62A

After section 62 insert:

62A—Removal of producer's licence in respect of outlet

An application for removal of a producer's licence in respect of a production outlet to a different production outlet or in respect of a retail outlet to a different retail outlet is to be dealt with as an application for the removal of the licence to premises or proposed premises under this Division (even if the licence is not removed in respect of some other outlet).

14—Insertion of Part 4 Division 4A

After Part 4 Division 4 insert:

Division 4A—Addition of outlets to producer's licence

62B—Addition of outlets to producer's licence

- (1) An applicant for the addition to a producer's licence of premises or proposed premises as a production outlet or retail outlet must satisfy the licensing authority—
- (a) that the premises sought to be added are, or, in the case of premises not yet constructed, will be, of an appropriate standard for carrying on business under the licence; and
 - (b) that the addition of the premises to the licence would be unlikely—
 - (i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or
 - (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.

- (2) An application for the addition to a producer's licence of premises or proposed premises as a production outlet or retail outlet cannot be granted unless the licensing authority is satisfied—
 - (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
 - (b) that any approvals, consents or exemptions that are required by law for carrying out of building work before the removal of the licence takes effect have been obtained; and
 - (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.
- (3) If adding a production outlet or retail outlet to a producer's licence would result in the establishment of a collective outlet or an increase in the number of licensees for whom the outlet constitutes a collective outlet, the licensing authority must not grant the application for the addition if of the opinion that the trade to be authorised at the outlet would, in view of the number of licensees involved or the nature and extent of the trade or for any other reason, be better authorised by a retail liquor merchant's licence or a licence of some other category.

62C—Certificate of approval for addition to producer's licence of proposed premises as outlet

- (1) The licensing authority may refuse an application for the addition to a producer's licence of proposed premises as a production outlet or retail outlet having regard to the extent to which the proposed premises are uncompleted but may, instead, grant a certificate (a *certificate of approval*) approving the plans submitted by the applicant in respect of the proposed premises if satisfied that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the sale of liquor have been obtained.
- (2) A certificate of approval—
 - (a) may be granted on conditions the licensing authority thinks fit; and
 - (b) may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject on the addition of the premises (either in addition to, or in substitution for, existing conditions of the licence).
- (3) If—
 - (a) a certificate has been granted under subsection (1); and
 - (b) the holder of the certificate satisfies the licensing authority—

- (i) that the conditions (if any) on which the certificate was granted have been complied with; and
- (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,

the new premises must be added to the licence and, if the certificate of approval provides for the addition or substitution of conditions, the licence then becomes subject to the new conditions in accordance with the terms of the certificate.

- (4) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

15—Amendment of section 68—Alteration and redefinition of licensed premises

Section 68(1)—after paragraph (c) insert:

- (d) in the case of a producer's licence—remove a production outlet or retail outlet from the licensed premises.

16—Insertion of Part 4 Division 8A

After Part 4 Division 8 insert:

Division 8A—Alteration of producer's event endorsement

69A—Alteration of producer's event endorsement

The licensing authority may, on the application of the holder of a producer's licence with a producer's event endorsement, alter the terms of the endorsement.

17—Amendment of section 97—Supervision and management of licensee's business

Section 97(5)—after the penalty provision insert:

Expiation fee: \$160.

18—Amendment of section 100—Supply of liquor to lodgers

Section 100(2)—at the foot of subsection (2) insert:

Maximum penalty:

- (a) in the case of the licensee—\$10 000;
- (b) in the case of a lodger—\$2 500.

Expiation fee: for an offence of contravening conditions prescribed by subsection (1)(a)—

- (a) in the case of the licensee—\$1 200;

- (b) in the case of a lodger—\$210.

19—Amendment of section 101—Record of lodgers

Section 101(3)—at the foot of subsection (3) insert:

Maximum penalty: \$10 000.

Expiation fee: \$1 200.

20—Amendment of section 102—Restriction on taking liquor from licensed premises

Section 102(1)—at the foot of subsection (1) insert:

Maximum penalty: \$2 500.

Expiation fee: \$210.

21—Amendment of section 103—Restriction on consumption of liquor in, and taking liquor from, licensed premises

Section 103(1)—at the foot of subsection (1) insert:

Maximum penalty: \$2 500.

Expiation fee: \$210.

22—Amendment of section 104—Liquor may be brought onto, and removed from, licensed premises in certain cases

Section 104(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) to bring liquor onto the licensed premises, with the consent of the licensee, intending that it be consumed with or ancillary to a meal provided by the licensee on the licensed premises and later to take from the licensed premises the unconsumed portion of liquor so brought onto the licensed premises in the container in which it was brought onto the licensed premises; or
- (b) if a bottle of wine has been purchased on the licensed premises by the person intending that the wine be consumed with or ancillary to a meal provided by the licensee on the licensed premises, to take from the licensed premises the unconsumed portion of wine so purchased in the bottle in which it was purchased.

23—Amendment of section 105—Entertainment on licensed premises

(1) Section 105(1)—delete subsection (1) and substitute:

- (1) A licensee must not use any part of the licensed premises, or any area adjacent to the licensed premises, for the purpose of providing entertainment unless—
 - (a) the consent of the licensing authority has been obtained; and
 - (b) in the case of a licence that authorises the sale or supply of liquor for consumption on the licensed premises—

- (i) the licensed premises are, at all times while the entertainment is being provided, open for the sale or supply of liquor for consumption on the licensed premises under the licence; or
 - (ii) the terms of the consent of the licensing authority expressly allow the provision of entertainment in circumstances in which the licensed premises are not open for the sale or supply of liquor for consumption on the licensed premises under the licence.
- (2) Section 105(5)—at the foot of subsection (5) insert:
- Maximum penalty: \$10 000.
Expiation fee: \$1 200.

24—Amendment of section 108—Liquor not to be sold or supplied to intoxicated persons

- (1) Section 108(1)—delete subsection (1) and substitute:
- (1) If—
 - (a) liquor is sold or supplied on licensed premises to an intoxicated person; or
 - (b) liquor is sold or supplied on licensed premises to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor,
- the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.
- Maximum penalty: \$20 000.
- (2) Section 108(2)(a)—delete paragraph (a) and substitute:
- (a) if the defendant is the person by whom the liquor was sold or supplied—
 - (i) in the case of contravention of subsection (1)(a)—that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or
 - (ii) in the case of contravention of subsection (1)(b)—that the defendant believed on reasonable grounds that the impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor; or

25—Amendment of section 109—Copy of licence to be kept on licensed premises

Section 109(2)—at the foot of subsection (2) insert:

Maximum penalty: \$10 000.

Expiation fee: \$1 200.

26—Amendment of section 109B—Returns

Section 109B(3)—delete the expiation fee provision at the foot of subsection (3) and substitute:

Expiation fee: for an offence against paragraph (a)—\$315.

27—Amendment of section 110—Sale of liquor to minors

(1) Section 110(3)(a)—after "age" insert:

that complies with the requirements of the regulations

(2) Section 110(5)(a)(ii)(C)—delete "licensed premises" and substitute:

licensee

28—Amendment of section 113—Notice to be erected

Section 113(2)—at the foot of subsection (2) insert:

Maximum penalty: \$10 000.

Expiation fee: \$1 200.

29—Amendment of section 124—Power to refuse entry or remove intoxicated persons or persons guilty of offensive behaviour

(1) Section 124(1) and (2)—delete subsections (1) and (2) and substitute:

(1) An authorised person may, if necessary, use reasonable force to remove a person from, or prevent the entry of a person onto, licensed premises if—

(a) the person is intoxicated; or

(b) the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or

(c) the person is behaving in an offensive or disorderly manner.

(2) An authorised person may, if necessary, use reasonable force to remove a person from licensed premises if the authorised person reasonably suspects that the person has supplied, or is about to supply, liquor to another person on the licensed premises in circumstances in which—

(a) that other person is intoxicated; or

(b) that other person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.

- (2a) If a licensee or a responsible person for licensed premises requests a police officer to exercise a power conferred by this section in relation to a person, the police officer must do so if satisfied that the power may be exercised in relation to the person under this section.

- (2) Section 124(3)—delete "subsection (1)" and substitute:

this section

30—Amendment of section 131—Control of consumption etc of liquor in public places

Section 131—after subsection (2) insert:

- (3) If, in proceedings for an offence against subsection (1) constituted of the possession of liquor, the question arises as to whether the possession was lawful under section 104, the onus of proving that the possession was lawful lies on the defendant.

31—Insertion of Part 10A

After Part 10 insert:

Part 10A—Prohibition of manufacture, sale or supply of certain liquor

131AA—Prohibition of manufacture, sale or supply of certain liquor

- (1) A person must not, in the course of a trade or business, manufacture, sell or supply liquor to which this section applies.
Maximum penalty: \$10 000.
- (2) This section applies to such liquor as may be declared—
- (a) by the Minister by notice in the Gazette; or
 - (b) by the regulations.
- (3) A declaration may only be made under this section if the Minister is satisfied that, because of its name, design or packaging or for any other reason, the liquor is likely to have a special appeal to minors or be confused with confectionery or non-alcoholic beverage.
- (4) A notice under subsection (2)(a) expires 42 days after it comes into operation or on such earlier day as is specified by the Minister in the notice or by subsequent notice in the Gazette.
- (5) Before a regulation is made under subsection (2)(b) in relation to liquor, the Minister must give manufacturers, importers and distributors of the liquor known to the Minister at least 7 days within which to comment on the proposed regulation (but failure to do so does not affect the validity of the regulation).

32—Substitution of section 131A

Section 131A—delete the section and substitute:

131A—Failing to leave licensed premises on request

- (1) If a person to whom this section applies fails, without reasonable excuse, to leave licensed premises immediately on being requested to do so by an authorised person, the person is guilty of an offence.

Maximum penalty: \$1 250.

- (2) This section applies to a person who is on licensed premises if—
- (a) the person is under the age of 18 years and is on the licensed premises for the purpose of consuming liquor in contravention of this Act; or
 - (b) the person is intoxicated; or
 - (c) the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or
 - (d) it is reasonable to suspect that the person has supplied, or is about to supply, liquor to another person on the licensed premises in circumstances in which—
 - (i) that other person is intoxicated; or
 - (ii) that other person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or
 - (e) the person is behaving in an offensive or disorderly manner; or
 - (f) the person is barred from the licensed premises under Part 9 Division 3; or
 - (g) the person's presence on the licensed premises is otherwise in contravention of this Act.

33—Amendment of section 138—Regulations

Section 138—after subsection (3) insert:

- (4) A regulation may prescribe an expiation fee for an alleged offence against the regulations not exceeding—
- (a) if the alleged offender is, or was at the time of the offence, a licensee, a responsible person for licensed premises or an officer of a trust or corporate entity that holds a licence—\$1 200; or
 - (b) in any other case—\$160.

Schedule 1—Transitional provisions

1—Certain existing special circumstances licences

- (1) If a special circumstances licence in force under the *Liquor Licensing Act 1997* immediately before the commencement of section 6 of this Act authorises the licensee to sell the licensee's product (within the meaning of section 39 of the *Liquor Licensing Act 1997*) on the licensed premises at any time for consumption off the licensed premises, the licence will lapse 2 years after that commencement unless within that period the licensing authority, on application by the licensee—
 - (a) converts the licence into a producer's licence; or
 - (b) confirms that the licence may continue in force as a special circumstances licence.
- (2) The licensing authority may not confirm that a licence may continue in force as a special circumstances licence unless satisfied by the licensee that—
 - (a) a producer's licence (either with or without an extended trading authorisation) could not adequately cover the kind of business authorised by the licensee's special circumstances licence; and
 - (b) the licensee's business would be substantially prejudiced if the licensee's trading rights were limited to those possible under a producer's licence.