

(Reprint No. 5)

SOUTH AUSTRALIA

LIQUOR LICENSING (GENERAL) REGULATIONS 1997

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **11 March 1999**.*

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REGULATIONS UNDER THE LIQUOR LICENSING ACT 1997

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being

No. 210 of 1997: *Gaz.* 25 September 1997, p. 913¹

as varied by

No. 216 of 1997: *Gaz.* 30 October 1997, p. 1141²

No. 28 of 1998: *Gaz.* 16 April 1998, p. 1722³

No. 118 of 1998: *Gaz.* 28 May 1998, p. 2444⁴

No. 217 of 1998: *Gaz.* 17 December 1998, p. 1984⁵

No. 16 of 1999: *Gaz.* 11 March 1999, p. 1396⁶

¹ Came into operation 1 October 1997: reg. 2.

² Came into operation 30 October 1997: reg. 2.

³ Came into operation 16 April 1998: reg. 2.

⁴ Came into operation 1 July 1998: reg. 2.

⁵ Came into operation 17 December 1998: reg. 2.

⁶ **Came into operation 11 March 1999: reg. 2.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the regulations see Appendix.

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Liquor Licensing (General) Regulations 1997*.

Commencement

2. These regulations will come into operation on the day on which the *Liquor Licensing Act 1997* comes into operation.

Regulations under Liquor Licensing Act 1985

3. (1) The *Liquor Licensing Regulations 1985* (see *Gazette* 27 June 1985 p. 2329), as varied, are revoked.

(2) The *Liquor Licensing (New Years Eve Dry Areas) Regulations 1996* (see *Gazette* 19 December 1996 p. 1962) are revoked.

(3) The *Liquor Licensing (Long Term Dry Areas) Regulations 1997* (see *Gazette* 26 June 1997 p. 3102), as varied, were made under section 132 of the repealed *Liquor Licensing Act 1985*. Section 131 of the *Liquor Licensing Act 1997* provides power to make regulations to the same effect. Under section 11 of the *Acts Interpretation Act 1915*, the regulations remain in force as if the *Liquor Licensing Act 1997* had been in force when they were made and they had then been made in pursuance of that Act.

Interpretation

4. In these regulations—

"**Act**" means the *Liquor Licensing Act 1997*;

"**alcohol based food essence**" means a food flavouring preparation—

- (a) that at 20° Celsius contains more than 1.15% alcohol by volume; and
- (b) that is packaged—
 - (i) in the case of vanilla essence—in a container of more than 100 millilitres capacity;
 - (ii) in any other case—in a container of more than 50 millilitres capacity;

"**alcoholic ice confection**" means a preparation—

- (a) that at 20° Celsius is a liquid that contains more than 1.15% alcohol by volume; and
- (b) that is intended for human consumption in a frozen or partially frozen state;

"**duty free shop**" means a shop or store the subject of a warehouse licence issued under the *Customs Act 1901* of the Commonwealth.

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**PART 2
DEFINITIONS**

Definition of entertainment

5. For the purposes of paragraph (b) of the definition of "**entertainment**" in section 4 of the Act, entertainment includes a visual display but not if provided by means of a television screen the dimensions of which do not exceed 2 metres by 2 metres.

Definition of liquor

6. For the purposes of the definition of "**liquor**" in section 4 of the Act, alcohol based food essence and alcoholic ice confection are declared to be liquor for the purposes of the Act.

Definition of low alcohol liquor

7. For the purposes of the definition of "**low alcohol liquor**" in section 4 of the Act, low alcohol liquor means—

- (a) beer that at 20° Celsius contains not more than 3.5% alcohol by volume;
- (b) wine that at 20° Celsius contains not more than 6.5% alcohol by volume.

**PART 3
LICENCES**

Cases where licence is not required

8. (1) For the purposes of section 30(c) of the Act, a course of instruction or training of which the tasting, sampling or use of liquor is an essential part held by any of the following institutions is an approved course for the purposes of section 30:

- (a) Workers Educational Association of S.A. Inc.;
- (b) Australian Hotels' Association (S.A. Branch);
- (c) Licensed Clubs Association Inc.;
- (d) South Australian Restaurant Association Inc.;
- (e) S.A. Tourism and Hospitality Industry Training Council Incorporated;
- (f) South Australian Wine and Brandy Industry Association Inc.;
- (g) Australian Liquor, Hospitality and Miscellaneous Workers Union (S.A. Branch);
- (h) Hotel Motel and Accommodation Association of South Australia Inc.;
- (i) a tertiary educational institution.

(2) For the purposes of section 30(h) of the Act, the sale of liquor is exempted from the application of the Act in each of the following cases:

- (a) the sale of liquor to a person—
 - (i) who proposes to travel outside Australia and to take the liquor with him or her when he or she does so; and
 - (ii) who purchases the liquor in a duty free shop;
- (b) the sale of liquor to the operator of a duty free shop for the purposes of resale in that shop;
- (c) the sale of liquor at cottage or bed-and breakfast style accommodation at premises with accommodation for a maximum of 8 persons if—
 - (i) the supply of liquor is complimentary; and
 - (ii) the liquor is supplied to a person of or above the age of 18 years accommodated at the premises; and
 - (iii) the liquor has been purchased from the holder of a producer's licence at the producer's premises in the vicinity of the premises; and
 - (iv) —
 - (A) the supply of liquor is ancillary to the provision of the accommodation, the liquor is delivered to the person at that part of the premises where the person is accommodated and the volume of liquor supplied does not exceed 2 litres per accommodation booking; or

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- (B) the supply of liquor is ancillary to a meal hosted by the operator of the premises and the volume of liquor supplied does not exceed 1 litre per person; or
 - (C) the supply of liquor is ancillary to the supply of a picnic basket and the volume of liquor supplied does not exceed 1 litre per person who may reasonably be expected to consume the contents of the picnic basket;
- (d) the sale of liquor in the course of the business of selling flowers or confectionery or other food to be delivered as a gift to a person other than the purchaser if—
- (i) the liquor is delivered by the vendor, together with the flowers or confectionery or other food to the donee of the gift at a place other than the premises at which the business is conducted; and
 - (ii) the liquor has been purchased by the person conducting the business from the holder of a hotel licence, retail liquor merchant's licence, producer's licence or special circumstances licence; and
 - (iii) the volume of liquor supplied in respect of each sale does not exceed 2 litres;
- (e) the sale of an alcohol based food essence if—
- (i) the sale is by wholesale; or
 - (ii) the sale is made door-to-door to a person of or above the age of 18 years;
- (f) the sale of liquor comprised of goods listed or registered in the Australian Register of Therapeutic Goods under the *Therapeutic Goods Act 1989* of the Commonwealth;
- (g) the sale of liquor at a hospital, nursing home or other institution the purpose of which is to care for sick or elderly patients for consumption at the hospital, nursing home or other institution by patients of the hospital, nursing home or other institution;
- (h) the sale of liquor by a ship's providore to the master of the ship for supply as an allowance to a member of the ship's crew;
- (i) the sale of liquor within South Australia by the operator of an aircraft to a passenger on the aircraft in the course of a flight (other than a flight that both begins and ends in South Australia) for consumption during that flight;
- (j) the sale of wine by or on behalf of Willunga High School or Nuriootpa High School if—
- (i) the wine is produced and sold as part of a course in viticulture offered by the school; and
 - (ii) the sale is made by and to a person of or above the age of 18 years.

Mandatory conditions—code of practice

9. (1) For the purposes of section 42 of the Act, the code of practice entitled *Code of Practice under section 42 Liquor Licensing Act 1997* (September 1997) published by the Commissioner with the approval of the Minister is approved.

- (2) The Commissioner must ensure that—
- (a) a copy of the code of practice is available free of charge to each licensee; and
 - (b) a copy of the code of practice is available for inspection by members of the public free of charge during normal business hours at the office of the Commissioner; and
 - (c) copies of the code of practice are made available for purchase or by other means.

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**PART 4
APPLICATIONS AND OBJECTIONS**

Plans to accompany applications

10. (1) For the purposes of section 51(1)(b) of the Act—

- (a) an application to a licensing authority for a licence (not being a limited licence) or for removal of such a licence must be accompanied by plans of the premises in respect of which the licence is sought;
- (b) an application to a licensing authority for approval of an alteration or proposed alteration to the licensed premises must be accompanied by plans of the alterations;
- (c) an application to a licensing authority for redefinition of licensed premises must be accompanied by plans of the redefinition;
- (d) an application to a licensing authority for designation of a part of licensed premises as a dining area or a reception area must be accompanied by plans of the areas;
- (e) an application to a licensing authority for an authorisation to sell liquor in an area adjacent to the licensed premises must be accompanied by plans of the adjacent area.

(2) In each case, the plans must, subject to subregulation (3), comply with the following requirements:

- (a) the plans must be on paper of dimensions not larger than international size A1 paper and not smaller than international size A3 paper;
- (b) the plans must indicate the scale to which they are drawn;
- (c) the plans must include floor plans and site plans reasonably required for proper consideration of the application;
- (d) the plans must be signed by the applicant;
- (e) the plans must, if the licensing authority so requires, be certified by a registered architect or a registered surveyor.

(3) The Commissioner may authorise plans to be submitted by electronic means and to be endorsed by the applicant by some means other than signature.

(4) For the purposes of section 51(1)(b) of the Act, an application to a licensing authority for a limited licence must, if the licensing authority so requires, be accompanied by plans (complying with the requirements of the licensing authority) of the premises in which the sale or consumption of liquor is to be authorised by the licence.

Time limitation for application for limited licence

11. For the purposes of section 51(1)(c) of the Act, an application for a limited licence must be made—

- (a) if the special occasion or series of special occasions in respect of which the licence is sought will extend over more than 3 days—at least 60 days before the commencement of the occasion or the first occasion in the series;

- (b) in any other case—at least 14 days before the commencement of the special occasion or the first special occasion in the series of special occasions in respect of which the licence is sought.

Fees to accompany applications

12. For the purposes of section 51(1)(d) of the Act, Schedule 1 fixes the fees to accompany applications to a licensing authority.

Requirements relating to advertising of applications

13. (1) For the purposes of section 52(2)(b) of the Act, the required advertisement must be in the appropriate form set out in Schedule 2.

(2) For the purposes of section 52(2)(c) of the Act, the required notice—

(a) must be in the appropriate form set out in Schedule 2; and

(b) must be on paper of dimensions not smaller than international size A2 paper.

Order for determining applications

14. (1) For the purposes of section 54 of the Act, applications for new licences must, subject to subregulation (2), be determined in the order in which they are received by the licensing authority.

(2) A licensing authority may, if satisfied that special circumstances justify it doing so, hear and determine particular applications together regardless of the order in which they were received.

Form of notice of objection

15. For the purposes of section 77(1) of the Act, a notice of objection to an application must be in the appropriate form set out in Schedule 2.

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**PART 5
RETURNS**

Interpretation of Part 5

16. In this Part—

"**corresponding licence**" under the repealed Act means—

- (a) in relation to a special circumstances licence in force under the Act—a general facility licence;
- (b) in any other case—a licence of the same name as that in force under the Act;

"**repealed Act**" means the *Liquor Licensing Act 1985* repealed by the Act;

"**wholesale licence**" means—

- (a) a wholesale liquor merchant's licence;
- (b) a producer's licence;
- (c) a special circumstances licence under which the licensee sells liquor wholly or predominantly to liquor merchants.

Returns

17. (1) For the purposes of section 95(1) of the Act, the following information must be included in a return lodged by a licensee who holds a wholesale licence within 2 months after the end of an assessment period:

- (a) the name and address of each supplier from whom the licensee purchased liquor during the assessment period and, if the supplier is a liquor merchant, the category and number of licence or other authorisation held by the supplier; and
- (b) the name and address of each liquor merchant to whom liquor was sold during the assessment period and the category and number of licence or other authorisation held by the liquor merchant; and
- (c) the gross amount paid or payable to the licensee for low alcohol liquor sold during the assessment period and the gross amount paid or payable to the licensee for liquor other than low alcohol liquor sold during the assessment period; and
- (d) the total volume (in litres) of low alcohol liquor sold by the licensee during the assessment period and the total volume (in litres) of liquor other than low alcohol liquor sold by the licensee during the assessment period; and
- (e) what proportion of each of those gross amounts was paid or payable to the licensee during the assessment period, and what proportion of each of those total volumes was sold by the licensee during the assessment period, in respect of each of the following categories of sales:
 - (i) sales to liquor merchants holding a licence under the Act;
 - (ii) sales to liquor merchants not holding a licence under the Act;

- (iii) in the case of a licensee who holds a wholesale liquor merchant's licence or a special circumstances licence—
 - (A) sales to employees of the licensee;
 - (B) sales to persons, sales of liquor by whom are not subject to the Act, or who are otherwise exempt from the application of the Act;
 - (C) sales by auction;
 - (D) sales under a limited licence held by the licensee under the Act; and
- (f) in the case of a licensee who holds a producer's licence—
 - (i) the wholesale value, and the total volume (in litres), of low alcohol liquor supplied by way of sample for consumption on the licensed premises during the relevant assessment period; and
 - (ii) the wholesale value, and the total volume (in litres), of liquor other than low alcohol liquor supplied by way of sample for consumption on the licensed premises during the relevant assessment period.
- (2) In the case of the first return lodged after the commencement of the Act—
 - (a) a reference in this regulation to a licence will be taken to include a reference to a corresponding licence under the repealed Act and a reference to the Act will be taken to include a reference to the repealed Act; and
 - (b) the information required to be included in the return extends to information relating to transactions that took place under a corresponding licence (if any) held by the licensee under the repealed Act as if the Act had been in force and the corresponding licence issued under the Act.

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**PART 6
CONDUCT OF LICENSED BUSINESS**

Record of lodgers

18. For the purposes of section 101(2)(c) of the Act, the record kept under that section must include the following information in respect of each lodger:

- (a) the date on which the lodger took up lodgings; and
- (b) by means of a number or other unambiguous description, the room assigned to the lodger.

**PART 7
MINORS**

Notices relating to minors

19. For the purposes of sections 111(2), 112(5) and 113(1) of the Act, each of the notices required by those sections—

- (a) must be in the appropriate form set out in Schedule 2; and
- (b) must be printed—
 - (i) in bold faced letters of a height of at least 10 millimetres; and
 - (ii) in a colour or colours contrasting with the background; and
 - (iii) on paper of dimensions not smaller than international size A3 paper.

Classes of minors allowed in certain licensed premises

20. For the purposes of section 112(6) of the Act, the following classes of minors are exempt from the ambit of section 112:

- (a) minors who—
 - (i) are at least 16 years of age; and
 - (ii) are engaged in providing entertainment of a kind that does not involve any person being nude, partially nude or in transparent clothing;
- (b) minors who—
 - (i) are at least 16 years of age; and
 - (ii) are engaged in performing duties as employees of the licensee.

Evidence of age

21. For the purposes of section 115(1) of the Act, an authorised person may require a suspected minor to produce evidence as follows:

- (a) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory; or
- (b) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory; or
- (c) a current passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person and enabling the age of the person to be determined.

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**PART 8
ENFORCEMENT**

Orders

22. For the purposes of section 126 of the Act, an order under Part 9 Division 3 of the Act must be in the appropriate form set out in Schedule 2.

SCHEDULE 1

Fees

1. Application for grant of licence other than limited licence \$300
2. Application for grant of limited licence—
 - (a) if the licence is sought for one function lasting 1 day or less \$25
 - (b) if the licence is sought for one function lasting more than 1 day \$25 for each day or part of a day up to a maximum of \$500
 - (c) if the licence is sought for more than one function, whether or not the functions are held on the same day \$25 for each function up to a maximum of \$500

However, no fee is payable for an application for a limited licence if the licence is granted for a function or functions that, in the opinion of the licensing authority, are to be held for charitable or other community purposes.

3. Application for extended trading authorisation \$300
4. Application for removal of licence \$300
5. Application for transfer of licence \$300
6. Application for—
 - approval of alteration or proposed alteration to licensed premises; or
 - redefinition of licensed premises as defined in licence; or
 - designation of part of licensed premises as dining area or reception area \$65
7. Application for authorisation to sell liquor in area adjacent to licensed premises \$65
8. Application for variation of trading hours or for imposition, variation or revocation of condition of licence \$300
9. Application for approval of—
 - natural person or persons as manager or managers of business conducted under licence; or
 - approval of assumption by person of position of authority in trust or corporate entity that holds licence,per person in respect of whom Commissioner of Police investigates and reports \$65
10. Application for conversion of temporary licence into ordinary licence \$300
11. Application for consent of licensing authority to use part of licensed premises or area adjacent to licensed premises for the purpose of providing entertainment \$300

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SCHEDULE 2

Forms

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Liquor Licensing (General) Regulations 1997

Form 1: Advertisement of application—section 52(2)(b) of the Act

Liquor Licensing Act 1997—Notice of application

.....
[insert full name and address of applicant]

has applied to the licensing authority for

.....
[insert category of application as set out in section 52(1) of the Act
and the category of licence to which the application relates]

in respect of premises *situated/*to be situated at

.....
[*include relevant wording only; insert address of premises]

*The following licence conditions are sought in the application:

.....
[*include if applicable]

The application has been set down for hearing on
[insert date]

Any person may object to the application by lodging a notice of objection in the prescribed form with the Liquor and Gaming Commissioner (and serving a copy of the notice on the applicant) at least 7 days before the hearing date.

The applicant's address for service is

.....
[insert address for service]

*Plans relevant to the application may be inspected without fee at the office of the Liquor and Gaming Commissioner.
[*include only if plans required to accompany application]

Date: Applicant:
[signature]

Liquor Licensing (General) Regulations 1997

Form 2: Notice of application on premises or land—section 52(2)(c) of the Act

The bold headings in this form must be at least 20 mm in height and the remainder of the typeface at least 10 mm in height.

Liquor Licensing Act 1997—Notice of application

.....
[insert full name and address of applicant]

has applied to the licensing authority for

.....
[insert category of application as set out in section 52(1) of the Act
and the category of licence to which the application relates]

in respect of *these premises/*premises to be situated on this land. [include relevant wording only]

*The following licence conditions are sought in the application:

.....
[include if applicable]

The application has been set down for hearing on
[insert date]

Any person may object to the application by lodging a notice of objection in the prescribed form with the Liquor and Gaming Commissioner (and serving a copy of the notice on the applicant) at least 7 days before the hearing date.

The applicant's address for service is

.....
[insert address for service]

*Plans relevant to the application may be inspected without fee at the office of the Liquor and Gaming Commissioner.
[include only if plans required to accompany application]

Date: Applicant:
[signature]

Form 3: Notice of objection to application—section 77 of the Act

Liquor Licensing Act 1997—Notice of objection to application

[This notice must be lodged with the licensing authority, and a copy served on the applicant, at least 7 days before the hearing date for the application.]

1. [full name of objector]
of

..... [address of objector]
object to the application by

..... [name of applicant]
for

..... [nature of application]
in respect of the following premises:

..... [address of premises or proposed premises]

2. The hearing date for the application is [The objector must attend the hearing.]

3. The objection is made on the following grounds:
.....
.....
..... [objection can only be on the grounds listed in section 77(5) or 78]

4. [tick one box and fill in details if required]
 I served a copy of this notice of objection on the applicant on [date]
 I have not yet served a copy of this notice of objection on the applicant but will do so at least 7 days before the hearing date.
[The objection will not proceed unless a copy is served on the applicant within the time required.]

Date: Objector: [signature]

Liquor Licensing (General) Regulations 1997

Form 4: Notice of exclusion of minors from part of licensed premises under section 111 of the Act
The sides of the outer most octagon in the stop sign symbol must be at least 5 centimetres in length.

Liquor Licensing Act 1997 section 111

PERSONS UNDER 18 NOT TO ENTER

This area is out of bounds to persons under 18.

Persons suspected of being under 18 may be required to provide evidence of their age.

Form 5: Notice of exclusion of minors from part of licensed premises under section 112 of the Act
The sides of the outer most octagon in the stop sign symbol must be at least 5 centimetres in length.

Liquor Licensing Act 1997 section 112

PERSONS UNDER 18 NOT TO ENTER

This area is out of bounds to persons under 18 between the hours of *9 pm on one day and 5 am of the next/*midnight and 5 am. [include relevant hours only*]**

Persons suspected of being under 18 may be required to provide evidence of their age.

Form 6: Notice for areas to which access is permitted to minors—section 113 of the Act

Liquor Licensing Act 1997 section 113

LIQUOR MUST NOT BE SUPPLIED TO PERSONS UNDER 18

You must be at least 18 to consume liquor on these premises.

A person under 18 who obtains or consumes liquor on these premises, and any person who supplies liquor to the person under 18, are each guilty of an offence (max. fine: \$2 500).

Persons suspected of being under 18 may be required to provide evidence of their age.

Liquor Licensing (General) Regulations 1997

Form 7: Order barring person from entering or remaining on licensed premises—section 125 of the Act

Liquor Licensing Act 1997: section 125—Order barring person from licensed premises

To:
[insert name of person to be barred]
of:
.....
[address, if known]

1. You are barred from the following licensed premises:
.....
.....
[name and address of licensed premises]

for the following period:
.....
[this period may not exceed 3 months]

2. The reasons for this order are as follows:
.....
.....
.....
[insert brief description of the offence committed by the person or the offensive or disorderly behaviour of the person or the other reasonable grounds and the date, time and place of the relevant incidents]

- 3. It is an offence if you enter or remain on the specified premises during the specified period (max. fine \$2 500).
- 4. If you are barred from premises for a period exceeding 1 month or for periods exceeding 1 month in aggregate during a period of 3 months, you may apply to the Liquor and Gaming Commissioner for a review of the order. The Commissioner may suspend the order pending determination of the review.

Date: Licensee/Manager:
[signature]

Liquor Licensing (General) Regulations 1997

Form 8: Revocation of order barring person—section 127 of the Act

Liquor Licensing Act 1997: section 127—Revocation of order barring person from licensed premises

To:
[insert name of person to be barred]

of:
.....
[address, if known]

1. The order made on
[date]

barring you from the following licensed premises:

.....
.....

for the following period:

.....
is revoked.

2. You are no longer barred from the above premises under that order.

Date: Licensee/Manager:
[signature]

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 4:

definition of "alcoholic ice confection" inserted by 16, 1999, reg. 3

Regulation 6:

varied by 16, 1999, reg. 4

Regulation 8(2):

varied by 216, 1997, reg. 3; 28, 1998, reg. 3; 217, 1998, reg. 3

Schedule 1:

substituted by 118, 1998, reg. 3