



Victorian Commission for Gambling and Liquor Regulation

Liquor licensing 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 *Competition and Consumer Act 2010*
- to articulate the rights and obligations of all parties.

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

The conditions in this Code will apply to a general licence under which a licensee supplies packaged liquor as the whole of the licensee's ordinary business of supplying liquor that is subject to a condition under clause 26(2)(a) of Schedule 3 to the Act.

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, a Commissioner of the Victorian Commission for Gambling and Liquor Regulation and members from the following organisations:

- Master Grocers Australia
- Liquor Retailers Australia
- Coles Liquor
- Woolworths Ltd
- the Office of the Small Business Commissioner.

3.2 The Code Committee shall convene on a regular basis, at the request of the Victorian Commission for Gambling and Liquor Regulation.

4. Activity in Licensed Premises

Licensees must observe existing requirements of the Act 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 Victorian Commission for Gambling and Liquor Regulation, pursuant to section 102 of the Act, requires licensees to display the following signs in a manner that invites customers' attention:
- Intoxicated? Drunk? Disorderly?
 - Under 18? No supply
 - Do not attempt to buy liquor for under 18s.
- 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 is 1800 888 236
 - 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
 - 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 or a gambling and liquor inspector under the meaning of the *Liquor Control Reform Act 1998*.
- 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 three 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 or responsible person and be made available to an authorised member of the Victoria Police or a gambling and liquor inspector under the meaning of the Liquor Control Reform Act 1998 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 gambling and liquor inspector under the meaning of the Liquor Control Reform Act 1998, or a person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation, 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 Victorian Commission for Gambling and Liquor Regulation will not grant an application for a packaged liquor licence unless satisfied that the applicant and any other person responsible for the management or control of the licensed premises has completed a Responsible Service of Alcohol (RSA) training course approved by the Victorian Commission for Gambling and Liquor Regulation.
- 7.2 The licensee must ensure that all staff who are employed to sell, offer for sale, or serve alcohol have completed a RSA training course approved by the Victorian Commission for Gambling and Liquor Regulation within the three years prior to their commencement in employment at the licensed premises or that all staff who are employed to sell, offer for sale, or serve alcohol complete an approved RSA program within one month of their commencement in employment at the licensed premises.
- 7.3 The licensee must maintain a register of certificates of completion of the RSA training course approved by the Victorian Commission for Gambling and Liquor Regulation completed by licensees and employees, which is available upon request for viewing by an authorised officer of Victoria Police or a gambling and liquor inspector under the meaning of the *Liquor Control Reform Act 1998*.
- 7.4 The licensee must ensure that the licensee and responsible person complete the RSA refresher course within three years of completing their last RSA program.
- 7.5 The licensee must ensure that any person who sells, offers for sale or serves liquor on the licensed premises completes the RSA refresher course within three years of completing their last RSA program.

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 \$19,000]
- For a person under the age of 18 years to purchase or receive liquor [Penalty exceeds \$800]”

- 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 anticompetitive 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 (e.g. the Victorian Commission for Gambling and Liquor Regulation, 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 *Competition and Consumer Act 2010* 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.
- 10.4 The *Competition and Consumer Act 2010* 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 Victorian Commission for Gambling and Liquor Regulation 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
 - 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.

This publication avoids the use of legal language. Information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. Authorised by the Victorian Government.

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Extracts from the *Liquor Control Reform Act 1998*

Attachment 1

4. Objects

The objects of this Act are:

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including 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
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community, 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, and
- (d) to regulate licensed premises that provide sexually explicit entertainment.

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) between 11pm on any particular day until 1am on the following day, if so determined by the Commission and specified in the licence, and
 - (c) subject to section 15A, between a time (not being earlier than 5am) before the commencement of ordinary trading hours and the commencement of ordinary trading hours on a particular day, if so determined by the Commission 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 Commission 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
 - (aad) a condition that the licensee comply with the code of conduct (if any) determined by the Minister under subsection (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 Commission and specified in the licence.
- (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 subsection (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 subsection (5).

3. Definitions

“ordinary trading hours” means:

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

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