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## RACING, GAMING AND LIQUOR

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RA301\*

Liquor Control Act 1988

### Liquor Control Amendment Regulations (No. 5) 2011

Made by the Governor in Executive Council.

#### 1. Citation

These regulations are the *Liquor Control Amendment Regulations (No. 5) 2011*.

#### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

#### 3. Regulations amended

These regulations amend the *Liquor Control Regulations 1989*.

#### 4. Regulation 8 amended

- (1) After regulation 8(1)(i) insert:
  - (ja) the sale or supply of liquor on a commercial vessel in the course of an inter-State voyage or overseas voyage of the vessel;
- (2) Delete regulation 8(3) and (4) and insert:
- (3) In subregulation (1)(ja) —
  - commercial vessel* has the meaning given in the *Western Australian Marine Act 1982* section 3(1);
  - inter-State voyage* and *overseas voyage* have the meanings given in the *Navigation Act 1912* section 6 (Commonwealth).

## 5. Regulations 8A to 8F inserted

After regulation 8 insert:

### 8A. Exemption: live entertainment venues

(1) In this regulation —

*entertainment* —

- (a) means musical, theatrical, dance or comic entertainment; but
- (b) does not include a sporting contest;

*live entertainment* —

- (a) means continuous entertainment provided by one or more persons present in person; but
- (b) does not include any of the following —
  - (i) entertainment provided by way of recorded music (including music videos), whether or not by a disk jockey, unless merely incidental to the continuous entertainment to which paragraph (a) applies;
  - (ii) the presentation, visually or acoustically (or both), of entertainment taking place at another venue, where what is presented is received from a broadcast or any other transmission (including Internet streaming) in real time or with a delay;

*negative determination*, in relation to a person, means —

- (a) a refusal of an application under the Act for the grant of a licence, or for approval to the transfer of a licence, if the ground, or one of the grounds, for the refusal of the application was that the person —
  - (i) was not a fit and proper person to be a licensee of the premises to which the application related; or
  - (ii) was not a fit and proper person to occupy a position of authority in a body corporate that is a licensee of the premises to which the application related; or
  - (iii) was not a fit and proper person to be directly or indirectly interested in the application or in the business, or the profits or proceeds of the business, to be carried on under the licence;

or

- (b) a refusal of an application under the Act for the approval of a person to occupy a position of authority in a body corporate that holds a licence, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to occupy that position in the body corporate; or
- (c) a refusal of an application under the Act for the approval of the person as a trustee to hold a licence, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person for the position; or
- (d) a refusal of an application under the Act for the approval of the person as an approved unrestricted manager or an approved restricted manager or (in the case of an application made before the day on which the *Liquor Control Amendment Act 2010* Part 2 came into operation) as a manager of licensed premises, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to be a manager of licensed premises; or
- (e) a refusal of an application under section 86 for the approval of the person to carry on the business of a licensee, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to carry on the business of a licensee; or
- (f) a refusal of an application under section 87 for the grant of a protection order, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to carry on the business of a licensee; or
- (g) a refusal of an application under section 104 for the approval of an agreement or arrangement, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to act as an unlicensed agent; or
- (h) a refusal of an application under section 119A for approval to conduct a non-liquor business on licensed premises, if the ground, or one of the grounds, for the refusal of the application was that the person was not a fit and proper person to conduct the non-liquor business on the premises;

**responsible adult** has the meaning given in section 125(2)(b);

**restricted material** means —

- (a) a publication, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth), that has been classified or reclassified RC (refused classification), Category 1 restricted or Category 2 restricted under that Act; or
  - (b) a film, within the meaning of that Act, that has been classified or reclassified RC (refused classification), X 18+ or R 18+ under that Act; or
  - (c) a computer game, within the meaning of that Act, that has been classified or reclassified RC (refused classification) under that Act.
- (2) For the purpose of determining whether or not entertainment is continuous, no account is to be taken of reasonable intervals between acts, or between the performances of persons, as long as substantial compliance with the requirement for continuity is observed.
- (3) For the purposes of subregulation (4)(e)(i), a person has a **current negative determination** if a negative determination has at any time been made in relation to that person, unless since that negative determination was made —
- (a) an application of any of the kinds mentioned in the definition of **negative determination** in subregulation (1) has been made to the licensing authority; and
  - (b) the determination of the application required the licensing authority to determine whether or not the person was a fit and proper person in relation to a matter relevant to the application; and
  - (c) the application was granted.
- (4) The consumption of liquor by a person who is at least 18 years of age is exempted from the application of the Act if —
- (a) the liquor is consumed on premises while live entertainment is being provided on the premises; and
  - (b) the primary purpose of the premises is to facilitate the provision of live entertainment; and

- (c) the consumption of liquor on the premises is ancillary to the live entertainment being provided; and
- (d) the person in charge of the premises notifies the Director, in the form and manner approved by the Director and at least 14 days before that person first intends to rely on the exemption conferred by this regulation to permit the consumption of liquor on the premises, that liquor is to be consumed on the premises in reliance on the exemption conferred by this regulation; and
- (e) neither the person in charge of the premises, nor any person who is an employee, contractor or agent of that person and is providing services on the premises —
  - (i) has a current negative determination; or
  - (ii) is the holder of a licence or protection order the operation of which is suspended under section 96(1)(d) or (4); or
  - (iii) has had a licence or protection order held by the person cancelled under section 96(1)(e) or (4), unless since that cancellation the person has been granted a licence or protection order; or
  - (iv) is disqualified under section 96(1)(f) from holding a licence; or
  - (v) is disqualified under section 96(1)(g)(i) from being the holder of a position of authority in a body corporate that holds a licence; or
  - (vi) is disqualified under section 96(1)(g)(ii) from being interested in, or in the profits or proceeds of, a business carried on under a licence; or
  - (vii) has had the approval of the person as a manager revoked under section 102F(2)(a) or withdrawn (other than for a specified period) under the former section 35B (as in force immediately before its repeal by the *Liquor Control Amendment Act 2010* section 8), unless since that revocation or withdrawal the person has been approved as a manager; or
  - (viii) is an approved manager whose approval is suspended under section 102F(2)(b); or

- (ix) is the subject of a prohibition order made under section 152E;
  - and
  - (f) there are no more than 200 patrons on the premises at any one time; and
  - (g) the person in charge of the premises is not a juvenile; and
  - (h) juveniles (other than juveniles mentioned in subregulation (5)) are not allowed to enter or remain on the premises unless accompanied by, and under the supervision of, a responsible adult; and
  - (i) water suitable for drinking is provided, free of charge, at all times when liquor is being consumed on the premises; and
  - (j) a drunk person is not allowed to consume liquor on the premises; and
  - (k) neither the person in charge of the premises, nor any person who is an employee, contractor or agent of that person and is providing services on the premises, nor any person who is providing live entertainment on the premises —
    - (i) is indecently dressed on the premises; or
    - (ii) allows any other person to be indecently dressed on the premises; or
    - (iii) takes part in, or allows any other person to take part in, any activity on the premises in an indecent manner; or
    - (iv) shows or allows to be shown on the premises any restricted material or any extract from restricted material.
- (5) The juveniles to which subregulation (4)(h) does not apply are as follows —
- (a) a juvenile who is providing services on the premises (such as serving food or providing security);
  - (b) a juvenile who is providing live entertainment on the premises, or assisting a person who is providing such entertainment.

**8B. Exemption: occasional functions**

- (1) The sale or supply of liquor to a person who is at least 18 years of age is exempted from the application of the Act if —
- (a) the liquor is supplied at a function; and
  - (b) the supply of liquor at the function is ancillary to the function; and

- (c) the function starts not earlier than 6 a.m. on any day, and finishes not later than 10 p.m. on the same day; and
  - (d) either —
    - (i) the total number of attendees over the course of the function does not exceed 100, and liquor is served during one continuous period not exceeding 2 hours; or
    - (ii) the total number of attendees over the course of the function does not exceed 75, and liquor is served during one continuous period not exceeding 4 hours;
  - and
  - (e) liquor is not supplied at the function to a drunk person; and
  - (f) a drunk person is not allowed to consume liquor at the function.
- (2) For the purposes of subregulation (1)(d), an *attendee* does not include a person who is at a function for the sole or principal purpose of —
- (a) managing or supervising the function; or
  - (b) providing services at the function (such as serving food or liquor, or providing security); or
  - (c) providing entertainment at the function, or assisting a person who is providing such entertainment.

**8C. Exemption: complimentary supply of liquor by business**

- (1) In this regulation —  
*standard drink* means a drink containing not more than 10 grams of ethanol measured at 20°C.
- (2) The sale or supply of liquor to a person who is at least 18 years of age is exempted from the application of the Act if —
- (a) the liquor is supplied by a person who carries on a business, or by an employee, contractor or agent of such a person; and
  - (b) the liquor is supplied to a customer of the business; and
  - (c) the supply of the liquor —
    - (i) is ancillary to the business; and
    - (ii) is without charge; and

- (iii) takes place on the business premises;  
and
- (d) the quantity of liquor that is supplied to the customer on those business premises on any one day is either —
  - (i) not more than 2 standard drinks for consumption by the customer on those premises; or
  - (ii) not more than one litre in aggregate, in one or more sealed containers, for consumption off those premises;and
- (e) the liquor is not supplied to a drunk customer;  
and
- (f) a drunk customer is not allowed to consume the liquor on those business premises.

**8D. Exemption: farmers' markets**

- (1) In this regulation —
  - agricultural region* —
    - (a) means an area of the State in which the land use is primarily for primary production; and
    - (b) includes any townsite within an area of that kind;

*farmers' market* means a market or fair at which primary producers display and sell their products directly to the public;

*primary production* means agriculture, pastoral pursuits, horticulture, grazing, dairy farming, bee-keeping, orcharding, viticulture, silviculture or other similar farming activities;

*producers' association* means any society, body, organisation or association, whether incorporated or not, the purpose of which, or one of the purposes of which, is to represent or promote, whether generally or within a particular area, the interests of producers of liquor or producers of one or more particular kinds of liquor.

- (2) The sale or supply of liquor to a person who is at least 18 years of age is exempted from the application of the Act if —
  - (a) the liquor is sold or supplied from a stall at a farmers' market held in an agricultural region;  
and
  - (b) the stall is provided by a producers' association for the benefit of 2 or more producers of liquor;  
and

- (c) the liquor supplied or sold has been produced by the producers for whose benefit the stall is provided; and
- (d) the liquor is sold or supplied from the stall —
  - (i) by way of free sample for consumption at the farmer's market; or
  - (ii) in an aggregate quantity of not more than 2.5 litres to any one person on any one day, in one or more sealed containers, for consumption away from the farmers' market; or
  - (iii) by way of an order taken for the sale or supply of liquor at a future date;and
- (e) the liquor is not sold or supplied to a drunk person; and
- (f) a drunk person is not allowed to consume the liquor in the area immediately surrounding the stall in which customers of the stall congregate to sample or purchase liquor from the stall.

**8E. Exemption: organisers of functions on licensed premises**

- (1) In this regulation —
    - authorised arrangement*** means an arrangement —
      - (a) that is between the organiser of a function and the licensee of the licensed premises on which the function is to be held; and
      - (b) under which —
        - (i) the licensee is to provide the venue, food and liquor for the function for a fixed price to the organiser; and
        - (ii) the organiser is to arrange for the function to be advertised to the public and for the sale of tickets for the function;and
    - (c) that is approved under section 104;
- organised function*** means a function —
- (a) that is held on licensed premises (other than premises to which a club licence applies); and
  - (b) that is held under an authorised arrangement; and
  - (c) the price of a ticket for which includes admission to the function as well as the

- provision of liquor, food and entertainment during the function; and
- (d) all advertising for which includes a reference to the terms of the licence under which the supply of liquor at the function is authorised.
- (2) The sale or supply of liquor by the organiser of an organised function to a person who attends the function and is at least 18 years of age is exempted from the application of the Act.

**8F. Exemption: small charter vehicles**

- (1) In this regulation —
- country charter vehicle** means a vehicle —
- (a) that is equipped to carry a maximum of 14 adult passengers (excluding the driver); and
- (b) that is licensed under the *Transport Co-ordination Act 1966* section 47ZD to be operated as a taxi-car, with the following conditions (or conditions to the same effect) attached to the licence —
- (i) that the vehicle must not have a taximeter fitted to it;
- (ii) that the vehicle must not display taxi signs;
- (iii) that the vehicle must not be operated from taxi ranks, in plying for hire, or in soliciting passengers on roads or other public places for the purpose of hiring;

**function** means a gathering, occasion or event;

**responsible adult** has the meaning given in section 125(2)(b);

**school** has the meaning given in the *School Education Act 1999* section 4;

**small charter vehicle** means a vehicle —

- (a) that is equipped to carry a maximum of 14 adult passengers (excluding the driver); and
- (b) that is licensed under the *Transport Co-ordination Act 1966* to be operated as an omnibus; and
- (c) that has fixed to it number plates that —
- (i) are issued under section 32A of that Act in respect of that vehicle; and
- (ii) include the words “small charter vehicle” and either the words “Western Australia” or the letters “WA”.

- (2) The consumption of liquor by a person who is at least 18 years of age is exempted from the application of the Act if —
- (a) the liquor is consumed by the person while he or she is a passenger in a vehicle being operated as a country charter vehicle or a small charter vehicle; and
  - (b) any juveniles in the vehicle are accompanied by, and under the supervision of, a responsible adult; and
  - (c) the driver of the vehicle does not allow a drunk person to consume liquor in the vehicle.
- (3) The exemption conferred by subregulation (2) does not apply if the vehicle is under charter for the purposes of, or for purposes that include, taking one or more school students to or from a function organised, by or on behalf of a school, for students who attend the school (for example, a school ball), whether or not the function is held at the school and whether or not other persons also attend the function.

**6. Regulation 18 replaced**

Delete regulation 18 and insert:

**18. Regulated premises (Act s. 122(1)(f))**

For the purposes of section 122, the following premises are regulated premises —

- (a) a theatre;
- (b) an educational institution, including any grounds surrounding that institution;
- (c) premises on which the consumption of liquor by a person who is at least 18 years of age is exempted from the application of the Act by regulation 8A;
- (d) premises on which the sale or supply of liquor to a person who is at least 18 years of age is exempted from the application of the Act by regulation 8B or 8C;
- (e) premises on which the sale or supply of liquor to a person who is at least 18 years of age is exempted from the application of the Act by regulation 8D, consisting of —
  - (i) the stall at the farmers' market from which liquor is sold or supplied; and
  - (ii) the area immediately surrounding the stall in which customers of the stall

