



Western Australia

Liquor Legislation Amendment Act 2015

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No. 35 of 2015

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Liquor Legislation Amendment Act 2015

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Western Australia

Liquor Legislation Amendment Act 2015

No. 35 of 2015

An Act to amend the *Liquor Control Act 1988*, to consequentially amend the *Young Offenders Act 1994*, and for related purposes.

[Assented to 2 November 2015]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Liquor Legislation Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Liquor Control Act 1988* amended

3. Act amended

This Part amends the *Liquor Control Act 1988*.

4. Section 3 amended

In section 3(1) insert in alphabetical order:

cellar door permit has the meaning given in section 61A(1);

Executive Director, Public Health has the meaning given in the *Health Act 1911* section 3(1);

5. Section 40 amended

- (1) In section 40(1) delete “shall be accompanied” and insert:

must be supported

- (2) After section 40(1) insert:

- (2A) The certificate referred to in subsection (1) is not required to be provided at the same time as the application but the application cannot be granted until the certificate has been provided to the licensing authority, unless the licensing authority otherwise determines.

6. Section 55 amended

(1) In section 55(1):

(a) after paragraph (a)(iii) insert:

(iv) beer, for consumption on a part of the licensed premises approved for the purpose by the Director;

(b) in paragraph (b) delete “Director.” and insert:

Director; and

(c) after paragraph (b) insert:

(c) to sell or supply liquor, other than liquor produced by the licensee, from the licensed premises —

(i) if the liquor is consumed ancillary to a meal in a dining area on the licensed premises; or

(ii) only for the purposes of tasting.

(2) After section 55(1a) insert:

(2A) Despite subsection (1)(a), the licensee of a producer’s licence is authorised to sell liquor produced by the licensee from any place if —

(a) the sale of liquor is made —

(i) by way of a telephone; or

(ii) by way of the internet;

and

- (b) after the sale is made under paragraph (a), the liquor is delivered to the purchaser, or to premises specified by the purchaser, from the licensed premises.

7. Section 58 amended

In section 58(1) delete “9 L,” and insert:

4 L,

8. Section 60 amended

(1) In section 60(3):

- (a) delete “An” and insert:

Unless otherwise provided in this Division, an

- (b) in paragraph (a) delete “will” and insert:

must

- (c) in paragraph (b) delete “attends” and insert:

must attend

(2) After section 60(4)(h) insert:

- (ia) authorising the licensee of a producer’s licence to sell wine or beer under the licence on specified premises on which the licensee would not otherwise be authorised to sell the wine or

beer, for the period during which the licence is current unless otherwise specified; or

9. Section 61A inserted

After section 61 insert:

61A. Extended trading permit for the sale of wine or beer (s. 60(4)(ia))

(1) In this section —

cellar door permit means an extended trading permit issued for the purpose referred to in section 60(4)(ia);

geographical indication has the same meaning as in the *Australian Grape and Wine Authority Act 2013* (Commonwealth) section 4(1);

wine producing region means a region or locality of the State that is subject to a geographical indication.

(2) A cellar door permit must not be issued in relation to a producer's licence unless —

- (a) the licencing authority has approved the premises in respect of which the permit is sought as being fit for the purpose of the sale of wine or beer; and
- (b) if the permit is sought for the purposes of the sale of wine, the premises are located in the wine producing region to which the licence relates; and
- (c) if the permit is sought for the purposes of the sale of beer, the premises are located in the district where the beer is produced; and
- (d) the licensing authority is satisfied that the purpose for which the permit is sought could

- not be more appropriately achieved by the grant of a different kind of licence; and
- (e) the applicant will, at times when the sale of wine or beer under the permit is authorised, be entitled to use the premises for that purpose; and
 - (f) the applicant satisfies the licensing authority that the local government of the district within which the premises are situated has been consulted and has approved the application.
- (3) A cellar door permit may only be issued to a licensee for the purposes of the sale of wine if the licensee does not already hold a cellar door permit for the purposes of the sale of wine in the wine producing region for which the permit is sought.
- (4) A cellar door permit may only be issued to a licensee for the purposes of the sale of beer if the licensee does not already hold a cellar door permit for the purposes of the sale of beer in the district for which the permit is sought.
- (5) A cellar door permit may be issued in respect of the same premises to 2 or more licensees of a producer's licence only if there is in force an agreement between the licensees about the management of the premises.
- (6) The regulations may prescribe conditions that are to be taken to be attached to a cellar door permit unless otherwise specified in the licence.

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10. Section 64 amended

- (1) After section 64(1b) insert:
 - (1C) For the purposes of deciding whether to impose, vary or cancel a condition under this section, the licensing authority may consult with all or any of the following persons —
 - (a) the Commissioner of Police;
 - (b) the relevant local government;
 - (c) the Executive Director, Public Health;
 - (d) any other person, body or authority the licencing authority considers may be able to provide information relevant to the decision.
- (2) In section 64(3)(e)(ii) delete “in which” (first occurrence).

11. Section 69 amended

- (1) In section 69(8a) delete “The Executive Director —” and insert:

The Executive Director, Public Health —
- (2) In section 69(8b) delete the definition of *Executive Director*.
- (3) After section 69(8b) insert:
 - (9A) The Executive Director, Public Health may authorise a person in writing to act on his or her behalf for the purposes of subsection (8a)(b) only if the person is —
 - (a) a medical practitioner who is registered under the *Health Practitioner Regulation National Law (WA) Act 2010* in the medical profession; and

(b) employed or engaged in the department principally assisting the Minister in the administration of the *Health Act 1911*.

- (4) In section 69(12):
- (a) delete “the Commissioner of Police or”;
 - (b) delete “shall” and insert:

must

12. Section 98 amended

- (1) In section 98(1)(b) delete “10 p.m.,” and insert:
- 12 midnight;

- (2) Delete section 98(1)(c).

13. Section 98A amended

- (1) In section 98A(1)(a) delete “on a Monday, Tuesday, Wednesday or Thursday — ” and insert:

on a day other than a Sunday —

- (2) Delete section 98A(1)(b).
- (3) In section 98A(1)(c) delete “midnight;” and insert:

midnight and then continuing to 2 a.m. on the next day;

s. 14

(4) Delete section 98A(2)(a) and insert:

- (a) the permitted hours under a nightclub licence on that day are from immediately after 12 midnight on the previous day to 2 a.m.; and

14. Section 98G amended

(1) In section 98G:

(a) delete “The” and insert:

(1) The

(b) in paragraph (a) before “on” insert:

except as provided in subsection (2),

(2) At the end of section 98G insert:

(2) For the purposes of section 55(1)(a)(iv) the permitted hours on a day other than Good Friday, Christmas Day or ANZAC Day are from 10 am to 10 pm.

15. Section 103AA inserted

At the beginning of Part 4 Division 3A insert:

103AA. Register of responsible practices’ training

(1) A licensee is to maintain a register on the licenced premises that records any details prescribed under section 103A(1)(b) (the *Register*).

- (2) A record referred to in subsection (1) must be maintained on the Register —
 - (a) for a period of 4 years; or
 - (b) for the duration of the employment or engagement of a person by the licensee described in section 103A(1)(a).
- (3) The Register may be kept in any way the licensee considers appropriate, including by electronic means.
- (4) The licensee, or an employee of the licensee, must, at the request of an authorised officer, allow an authorised officer to —
 - (a) inspect the Register; and
 - (b) to take copies of, or extracts from, any part of it.

16. Section 103A amended

In section 103A(1)(b) delete “require licensees to maintain a register on the licensed premises that records the prescribed” and insert:

for the purposes of paragraph (a) prescribe

17. Section 110 amended

After section 110(3) insert:

- (4AA) Subsection (3) does not apply if —
 - (a) a person takes liquor from premises to adjacent premises; and

s. 18

- (b) both premises are licensed, or deemed to be licensed, in the name of the licensee.

18. Section 116 amended

- (1) Delete section 116(1) and insert:

- (1) Unless the Director otherwise approves, a licensee must cause a copy of the following documents to be kept on the licensed premises at all times —
 - (a) the licence;
 - (b) any permit that relates to the licence;
 - (c) the plans of the premises as approved by the licensing authority showing the definition of the premises.

Penalty: a fine of \$2 000.

- (2) After section 116(1) insert:

- (2A) Unless the Director otherwise approves, a licensee of a cellar door permit must cause a copy of the plans described in subsection (1)(c) to be kept on the premises to which the permit applies at all times.

Penalty: a fine of \$2 000.

- (3) In section 116(5) delete “licence, shall” and insert:

licence or a licensee of a cellar door permit, must

- (4) After section 116(5) insert:
 - (6) The regulations may prescribe any additional matters relating to the display of, or the production of, documents by a licensee of a cellar door permit.

19. Section 116A amended

- (1) After section 116A(2) insert:
 - (3A) The record of an incident referred to in subsection (1) must be maintained on the Register for a period of 4 years.
 - (3B) The Register may be kept in any way the licensee considers appropriate, including by electronic means.
 - (2) Delete section 116A(3) and insert:
 - (3) A licensee, or the employee or agent of a licensee, must, at the request of an authorised officer —
 - (a) make the Register available for inspection by the authorised officer; and
 - (b) allow the authorised officer to take copies of, or extracts from, any part of the Register.
- Penalty: a fine of \$5 000.

20. Section 122A inserted

After section 121 insert:

122A. Supplying juveniles with alcohol on unlicensed premises

- (1) A person is drunk for the purposes of this section if section 3A(1)(b) and (c) apply to the person.
- (2) A person must not supply liquor to a juvenile unless that person is on unlicensed premises and the person —
 - (a) is the parent or guardian of the juvenile; or
 - (b) subject to subsection (3), has obtained the consent of the parent or guardian of the juvenile to supply liquor to the juvenile on those premises.

Penalty: a fine of \$10 000.

- (3) Where under subsection (2)(b) a person has obtained the consent of the parent or guardian of a juvenile to supply liquor to a juvenile on unlicensed premises, the person must not supply the liquor —
 - (a) if, at the time that the parent or guardian of the juvenile gives consent, the parent or guardian is drunk; or
 - (b) if the person is drunk; or
 - (c) if the juvenile is drunk; or
 - (d) if the person is unable to supervise the consumption of the liquor by the juvenile; or
 - (e) in circumstances prescribed by the regulations.

Penalty: a fine of \$10 000.

21. Section 126 amended

In section 126(2a) delete “subsection (1)(b)” and insert:

subsection (1)(b)(i)(I) or (III)

22. Section 152O amended

In section 152O(1):

(a) in paragraph (a) delete “brings” and insert:

brings, or attempts to bring,

(b) in paragraph (b) delete “causes” and insert:

causes, or attempts to cause,

23. Section 152S amended

After section 152S(2) insert:

(3A) Subsections (1) and (2) do not apply to any person, or class of person, prescribed for the purposes of this section.

24. Section 155 amended

(1) After section 155(8) insert:

(9A) If a member of the Police Force suspects on reasonable grounds that a juvenile is contravening a provision of this Act, the member may seize any opened or

unopened container that the member suspects on reasonable grounds relates to that contravention.

- (2) In section 155(9) delete “(7) or (8)” and insert:

(7), (8) or (9A)

25. Section 160 amended

- (1) In section 160(1) delete “demand” and insert:

require

- (2) In section 160(3) delete “failure after being cautioned by the authorised officer,” and insert:

failure,

26. Part 7A inserted

After section 172A insert:

Part 7A — Alcohol Intervention

Division 1 — Preliminary

172B. Terms used

- (1) In this Part —

AI authorised person, in section 172I or 172L, means a person appointed under section 172D to be an

authorised person for the purposes of the section in which the term is used;

alcohol intervention requirement means a notice referred to in section 172F;

alcohol intervention session means an alcohol intervention session —

- (a) provided by a treatment provider approved under section 172J(2)(b); and
- (b) the content of which is approved under section 172J(2)(a);

alleged offender means a young person who is suspected on reasonable grounds by a police officer of having committed a minor alcohol related offence;

CEO (Health) means the chief executive officer of the department principally assisting the Minister responsible for the administration of the *Health Legislation Administration Act 1984*;

minor alcohol related offence means an offence under —

- (a) section 110(4A), 110(5), 115(2), 115(5), 115(6), 115(7), 119(1), 119(2), 119(4), 119(5), 121(4)(c), 121(7), 121(7a), 122(3), 123, 126(2), 126(4) or 126(5);
- (b) section 121(3) in relation to a juvenile only;

police officer does not include a person appointed by the Commissioner of Police as an AI authorised person under section 172D;

responsible adult has the meaning given in the *Young Offenders Act 1994* section 3;

young person means —

- (a) a person who is a juvenile; or
- (b) in relation to the commission, or alleged commission, of a minor alcohol related offence,

was a juvenile when the offence was committed, or allegedly committed.

- (2) In this Part the following abbreviations are used —
AIR for alcohol intervention requirement;
AIS for alcohol intervention session.

172C. Operation of *Young Offenders Act 1994* unaffected

Nothing in this Part prevents a young person from being dealt with under the *Young Offenders Act 1994* Part 5 in respect of a minor alcohol related offence.

172D. Appointment of AI authorised persons

The Commissioner of Police may, in writing, appoint persons or classes of persons to be AI authorised persons for the purposes of section 172I or 172L, or for the purposes of both of those sections.

Division 2 — Alcohol intervention requirements

172E. AIR may be given to alleged offender for minor alcohol related offence

- (1) Unless section 172G(1) applies, a police officer may give an alcohol intervention requirement to an alleged offender.
- (2) A police officer who suspects on reasonable grounds that —
- (a) an alleged offender has committed more than one minor alcohol related offence; and
 - (b) the alleged offences have arisen out of the same incident,

may give a single AIR in respect of all or some of the offences.

- (3) An AIR is to be given as soon as practicable, and in any event within 60 days, after an alleged offence is believed to have been committed.

172F. Alcohol intervention requirement

- (1) An AIR is a notice in a form prescribed by the regulations —
- (a) containing a description of the alleged offence, or offences; and
 - (b) informing the alleged offender that —
 - (i) he or she may, in writing, elect to be prosecuted for the alleged offence, or offences, in a court, and informing the alleged offender how to make that election; and
 - (ii) if he or she does not wish to be prosecuted for the alleged offence or offences in a court, the alleged offender may, within a period of 28 days after the giving of the AIR, complete an AIS;
- and
- (c) informing the alleged offender as to how the alleged offender may arrange to complete an AIS.
- (2) An alleged offender need only complete a single AIS for each AIR given to the alleged offender, even if the AIR is given in respect of more than one alleged offence.

172G. Special requirements about AIRs

- (1) An AIR cannot be given in respect of an alleged offence (the *new offence*) if the alleged offender —

- (a) had been convicted of, or given an AIR in respect of, 2 or more minor alcohol related offences before the new offence was allegedly committed; and
 - (b) at least 2 of those offences arose, or are alleged to have arisen, out of separate incidents.
- (2) A police officer who gives an alleged offender an AIR is to ensure that a responsible adult is given a copy of the AIR as soon as is reasonably practicable after the AIR is given to the alleged offender, unless —
 - (a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or
 - (b) in the circumstances it would be inappropriate to give a responsible adult a copy of the AIR.
- (3) An alleged offender who has been given 2 AIRs need only complete a single AIS in respect of the AIRs if both AIRs were given before the completion of the AIS.

172H. Referral of young persons at risk to juvenile justice teams

- (1) In this section —
young person at risk means an alleged offender —
 - (a) to whom the police officer would have given an AIR, but for section 172G(1); or
 - (b) who has been given an AIR and has not completed an AIS within 28 days or any further time allowed under section 172L, unless —
 - (i) the AIR has been withdrawn under section 172I; or

- (ii) the alleged offender has elected to be prosecuted for the alleged offence in a court.
- (2) A police officer may refer a young person at risk to a juvenile justice team where appropriate under the *Young Offenders Act 1994* in preference to charging the young person under this Act.

172I. Withdrawal of AIR

- (1) An AI authorised person may withdraw an AIR by sending to the alleged offender a notice in a form prescribed by the regulations stating that the AIR has been withdrawn.
- (2) An AIR cannot be withdrawn if the alleged offender has completed an AIS in relation to the AIR.
- (3) An AIR that is withdrawn is taken not to have been given to an alleged offender for the purposes of section 172G(1).

Division 3 — Alcohol intervention sessions

172J. Alcohol intervention session

- (1) The purpose of an alcohol intervention session is to inform those who complete it about —
 - (a) the adverse health and social consequences of alcohol use; and
 - (b) the laws relating to the possession of alcohol; and
 - (c) effective strategies to address alcohol using behaviour.
- (2) The CEO (Health) may, in writing, do any of the following —

- (a) having regard to subsection (1), approve the content of an alcohol intervention session;
 - (b) approve treatment providers to provide alcohol intervention sessions;
 - (c) give an approval under paragraph (b) subject to conditions to be obeyed by the treatment provider approved;
 - (d) cancel or amend an approval given under paragraph (a) or (b).
- (3) For the purposes of this section, this Act is to be taken to be a relevant Act as referred to in the *Health Legislation Administration Act 1984* section 9.

172K. Benefit of completing AIS

- (1) If the alleged offender has completed an AIS in respect of an AIR within 28 days or such further time as is allowed under section 172L, the bringing of proceedings and the imposition of penalties are prevented to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (2) Completion of an AIS is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

172L. Extension of time to complete AIS

- (1) An AI authorised person may, in a particular case, extend the period of 28 days within which the alleged offender may complete an AIS.
- (2) The extension may be allowed whether or not the period of 28 days has elapsed.

172M. Certificate of completion of AIS

- (1) A treatment provider approved to provide an AIS under section 172J(2)(b) is to —
 - (a) give to a person who has completed an AIS a certificate of completion; and
 - (b) send a copy of the certificate to the Commissioner of Police.

- (2) A certificate of completion is to be in a form prescribed by the regulations and is to set out —
 - (a) the name and address of the person who has completed the AIS; and
 - (b) the date of completion; and
 - (c) the details of the AIR in respect of which the AIS was completed.

Part 3 — *Young Offenders Act 1994* amended

27. Act amended

This Part amends the *Young Offenders Act 1994*.

28. Section 25 amended

In section 25(3) in the definition of *infringement notice*:

(a) in paragraph (b) delete “IIIA.” and insert:

IIIA; or

(b) after paragraph (b) insert:

(c) an alcohol intervention requirement given
under the *Liquor Control Act 1988* Part 7A.

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