

Liquor Legislation Amendment Bill 2015

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Western Australia

LEGISLATIVE COUNCIL

Liquor Legislation Amendment Bill 2015

A Bill for

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

The Parliament of Western Australia enacts as follows:

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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.

1 **Part 2 — *Liquor Control Act 1988* amended**

2 **3. Act amended**

3 This Part amends the *Liquor Control Act 1988*.

4 **4. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6

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

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

11

12 **5. Section 40 amended**

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

14

15 must be supported

16

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

18

19 (2A) The certificate referred to in subsection (1) is not
20 required to be provided at the same time as the
21 application but the application cannot be granted until
22 the certificate has been provided to the licensing
23 authority, unless the licensing authority otherwise
24 determines.

25

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1 **6. Section 55 amended**

2 (1) In section 55(1):

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

4

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

8

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

10

11 Director; and

12

13 (c) after paragraph (b) insert:

14

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

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

21 (ii) only for the purposes of tasting.

22

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

24

25 (2A) Despite subsection (1)(a), the licensee of a producer’s
26 licence is authorised to sell liquor produced by the
27 licensee from any place if —

28 (a) the sale of liquor is made —

29 (i) by way of a telephone; or

30 (ii) by way of the internet;

31 and

- 1 (b) after the sale is made under paragraph (a), the
2 liquor is delivered to the purchaser, or to
3 premises specified by the purchaser, from the
4 licensed premises.
5

6 **7. Section 58 amended**

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

8

9 4 L,
10

11 **8. Section 60 amended**

12 (1) In section 60(3):

13 (a) delete “An” and insert:

14

15 Unless otherwise provided in this Division, an

16

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

18

19 must

20

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

22

23 must attend
24

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

26

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

s. 9

1 beer, for the period during which the licence is
2 current unless otherwise specified; or
3

4 **9. Section 61A inserted**

5 After section 61 insert:
6

7 **61A. Extended trading permit for the sale of wine or beer**
8 **(s. 60(4)(ia))**

9 (1) In this section —

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

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

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

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

19 (a) the licencing authority has approved the
20 premises in respect of which the permit is
21 sought as being fit for the purpose of the sale of
22 wine or beer; and

23 (b) if the permit is sought for the purposes of the
24 sale of wine, the premises are located in the
25 wine producing region to which the licence
26 relates; and

27 (c) if the permit is sought for the purposes of the
28 sale of beer, the premises are located in the
29 district where the beer is produced; and

30 (d) the licensing authority is satisfied that the
31 purpose for which the permit is sought could

- 1 not be more appropriately achieved by the grant
2 of a different kind of licence; and
- 3 (e) the applicant will, at times when the sale of
4 wine or beer under the permit is authorised, be
5 entitled to use the premises for that purpose;
6 and
- 7 (f) the applicant satisfies the licensing authority
8 that the local government of the district within
9 which the premises are situated has been
10 consulted and has approved the application.
- 11 (3) A cellar door permit may only be issued to a licensee
12 for the purposes of the sale of wine if the licensee does
13 not already hold a cellar door permit for the purposes
14 of the sale of wine in the wine producing region for
15 which the permit is sought.
- 16 (4) A cellar door permit may only be issued to a licensee
17 for the purposes of the sale of beer if the licensee does
18 not already hold a cellar door permit for the purposes
19 of the sale of beer in the district for which the permit is
20 sought.
- 21 (5) A cellar door permit may be issued in respect of the
22 same premises to 2 or more licensees of a producer's
23 licence only if there is in force an agreement between
24 the licensees about the management of the premises.
- 25 (6) The regulations may prescribe conditions that are to be
26 taken to be attached to a cellar door permit unless
27 otherwise specified in the licence.
28

s. 10

1 **10. Section 64 amended**

2 (1) After section 64(1b) insert:

3

4 (1C) For the purposes of deciding whether to impose, vary
5 or cancel a condition under this section, the licensing
6 authority may consult with all or any of the following
7 persons —

8 (a) the Commissioner of Police;

9 (b) the relevant local government;

10 (c) the Executive Director, Public Health;

11 (d) any other person, body or authority the
12 licencing authority considers may be able to
13 provide information relevant to the decision.

14

15 (2) In section 64(3)(e)(ii) delete “in which” (first occurrence).

16 **11. Section 69 amended**

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

18

19 The Executive Director, Public Health —

20

21 (2) In section 69(8b) delete the definition of *Executive Director*.

22 (3) After section 69(8b) insert:

23

24 (9A) The Executive Director, Public Health may authorise a
25 person in writing to act on his or her behalf for the
26 purposes of subsection (8a)(b) only if the person is —

27 (a) a medical practitioner who is registered under
28 the *Health Practitioner Regulation National*
29 *Law (WA) Act 2010* in the medical profession;
30 and

1 (b) employed or engaged in the department
2 principally assisting the Minister in the
3 administration of the *Health Act 1911*.
4

5 (4) In section 69(12):

6 (a) delete “the Commissioner of Police or”;

7 (b) delete “shall” and insert:

8

9 must

10

11 **12. Section 98 amended**

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

13

14 12 midnight;

15

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

17 **13. Section 98A amended**

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

20

21 on a day other than a Sunday —

22

23 (2) Delete section 98A(1)(b).

24 (3) In section 98A(1)(c) delete “midnight;” and insert:

25

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

27

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

2

3 (a) the permitted hours under a nightclub licence
4 on that day are from immediately after
5 12 midnight on the previous day to 2 a.m.; and
6

7 **14. Section 98G amended**

8 (1) In section 98G:

9 (a) delete “The” and insert:

10

11 (1) The

12

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

14

15 except as provided in subsection (2),
16

17 (2) At the end of section 98G insert:
18

19 (2) For the purposes of section 55(1)(a)(iv) the permitted
20 hours on a day other than Good Friday, Christmas Day
21 or ANZAC Day are from 10 am to 10 pm.
22

23 **15. Section 103AA inserted**

24 At the beginning of Part 4 Division 3A insert:
25

26 **103AA. Register of responsible practices’ training**

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

- 1 (2) A record referred to in subsection (1) must be
2 maintained on the Register —
- 3 (a) for a period of 4 years; or
- 4 (b) for the duration of the employment or
5 engagement of a person by the licensee
6 described in section 103A(1)(a).
- 7 (3) The Register may be kept in any way the licensee
8 considers appropriate, including by electronic means.
- 9 (4) The licensee, or an employee of the licensee, must, at
10 the request of an authorised officer, allow an authorised
11 officer to —
- 12 (a) inspect the Register; and
- 13 (b) to take copies of, or extracts from, any part of
14 it.
- 15

16 **16. Section 103A amended**

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

20

21 for the purposes of paragraph (a) prescribe

22

23 **17. Section 110 amended**

24 After section 110(3) insert:

25

- 26 (4AA) Subsection (3) does not apply if —
- 27 (a) a person takes liquor from premises to adjacent
28 premises; and

s. 18

- 1 (b) both premises are licensed, or deemed to be
2 licensed, in the name of the licensee.
3

4 **18. Section 116 amended**

- 5 (1) Delete section 116(1) and insert:
6

- 7 (1) Unless the Director otherwise approves, a licensee
8 must cause a copy of the following documents to be
9 kept on the licensed premises at all times —

- 10 (a) the licence;
11 (b) any permit that relates to the licence;
12 (c) the plans of the premises as approved by the
13 licensing authority showing the definition of
14 the premises.

15 Penalty: a fine of \$2 000.
16

- 17 (2) After section 116(1) insert:
18

- 19 (2A) Unless the Director otherwise approves, a licensee of a
20 cellar door permit must cause a copy of the plans
21 described in subsection (1)(c) to be kept on the
22 premises to which the permit applies at all times.

23 Penalty: a fine of \$2 000.
24

- 25 (3) In section 116(5) delete “licence, shall” and insert:
26

27 licence or a licensee of a cellar door permit, must
28

- 1 (4) After section 116(5) insert:
2
- 3 (6) The regulations may prescribe any additional matters
4 relating to the display of, or the production of,
5 documents by a licensee of a cellar door permit.
6
- 7 **19. Section 116A amended**
- 8 (1) After section 116A(2) insert:
9
- 10 (3A) The record of an incident referred to in subsection (1)
11 must be maintained on the Register for a period of
12 4 years.
- 13 (3B) The Register may be kept in any way the licensee
14 considers appropriate, including by electronic means.
15
- 16 (2) Delete section 116A(3) and insert:
17
- 18 (3) A licensee, or the employee or agent of a licensee,
19 must, at the request of an authorised officer —
- 20 (a) make the Register available for inspection by
21 the authorised officer; and
- 22 (b) allow the authorised officer to take copies of, or
23 extracts from, any part of the Register.
- 24 Penalty: a fine of \$5 000.
25

1 **20. Section 122A inserted**

2 After section 121 insert:

3

4 **122A. Supplying juveniles with alcohol on unlicensed**
5 **premises**

6 (1) A person is drunk for the purposes of this section if
7 section 3A(1)(b) and (c) apply to the person.

8 (2) A person must not supply liquor to a juvenile unless
9 that person is on unlicensed premises and the person —

10 (a) is the parent or guardian of the juvenile; or

11 (b) subject to subsection (3), has obtained the
12 consent of the parent or guardian of the juvenile
13 to supply liquor to the juvenile on those
14 premises.

15 Penalty: a fine of \$10 000.

16 (3) Where under subsection (2)(b) a person has obtained
17 the consent of the parent or guardian of a juvenile to
18 supply liquor to a juvenile on unlicensed premises, the
19 person must not supply the liquor —

20 (a) if, at the time that the parent or guardian of the
21 juvenile gives consent, the parent or guardian is
22 drunk; or

23 (b) if the person is drunk; or

24 (c) if the juvenile is drunk; or

25 (d) if the person is unable to supervise the
26 consumption of the liquor by the juvenile; or

27 (e) in circumstances prescribed by the regulations.

28 Penalty: a fine of \$10 000.

29

1 **21. Section 126 amended**

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

3

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

5

6 **22. Section 152O amended**

7 In section 152O(1):

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

9

10 brings, or attempts to bring,

11

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

13

14 causes, or attempts to cause,

15

16 **23. Section 152S amended**

17 After section 152S(2) insert:

18

19 (3A) Subsections (1) and (2) do not apply to any person, or
20 class of person, prescribed for the purposes of this
21 section.

22

23 **24. Section 155 amended**

24 (1) After section 155(8) insert:

25

26 (9A) If a member of the Police Force suspects on reasonable
27 grounds that a juvenile is contravening a provision of
28 this Act, the member may seize any opened or

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1 unopened container that the member suspects on
2 reasonable grounds relates to that contravention.
3

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

5

6 (7), (8) or (9A)
7

8 **25. Section 160 amended**

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

10

11 require
12

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

15

16 failure,
17

18 **26. Part 7A inserted**

19 After section 172A insert:
20

21 **Part 7A — Alcohol Intervention**

22 **Division 1 — Preliminary**

23 **172B. Terms used**

24 (1) In this Part —

25 *AI authorised person*, in section 172I or 172L, means
26 a person appointed under section 172D to be an
27 authorised person for the purposes of the section in
28 which the term is used;

- 1 **alcohol intervention requirement** means a notice
2 referred to in section 172F;
- 3 **alcohol intervention session** means an alcohol
4 intervention session —
- 5 (a) provided by a treatment provider approved
6 under section 172J(2)(b); and
- 7 (b) the content of which is approved under
8 section 172J(2)(a);
- 9 **alleged offender** means a young person who is
10 suspected on reasonable grounds by a police officer of
11 having committed a minor alcohol related offence;
- 12 **CEO (Health)** means the chief executive officer of the
13 department principally assisting the Minister
14 responsible for the administration of the *Health*
15 *Legislation Administration Act 1984*;
- 16 **minor alcohol related offence** means an offence
17 under —
- 18 (a) section 110(4A), 110(5), 115(2), 115(5),
19 115(6), 115(7), 119(1), 119(2), 119(4), 119(5),
20 121(4)(c), 121(7), 121(7a), 122(3), 123, 126(2),
21 126(4) or 126(5);
- 22 (b) section 121(3) in relation to a juvenile only;
- 23 **police officer** does not include a person appointed by
24 the Commissioner of Police as an AI authorised person
25 under section 172D;
- 26 **responsible adult** has the meaning given in the *Young*
27 *Offenders Act 1994* section 3;
- 28 **young person** means —
- 29 (a) a person who is a juvenile; or
- 30 (b) in relation to the commission, or alleged
31 commission, of a minor alcohol related offence,
32 was a juvenile when the offence was
33 committed, or allegedly committed.

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

4 **172C. Operation of *Young Offenders Act 1994* unaffected**

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

8 **172D. Appointment of AI authorised persons**

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

13 **Division 2 — Alcohol intervention requirements**

14 **172E. AIR may be given to alleged offender for minor**
15 **alcohol related offence**

- 16 (1) Unless section 172G(1) applies, a police officer may
17 give an alcohol intervention requirement to an alleged
18 offender.
- 19 (2) A police officer who suspects on reasonable grounds
20 that —
- 21 (a) an alleged offender has committed more than
22 one minor alcohol related offence; and
- 23 (b) the alleged offences have arisen out of the same
24 incident,
- 25 may give a single AIR in respect of all or some of the
26 offences.
- 27 (3) An AIR is to be given as soon as practicable, and in
28 any event within 60 days, after an alleged offence is
29 believed to have been committed.

- 1 **172F. Alcohol intervention requirement**
- 2 (1) An AIR is a notice in a form prescribed by the
- 3 regulations —
- 4 (a) containing a description of the alleged offence,
- 5 or offences; and
- 6 (b) informing the alleged offender that —
- 7 (i) he or she may, in writing, elect to be
- 8 prosecuted for the alleged offence, or
- 9 offences, in a court, and informing the
- 10 alleged offender how to make that
- 11 election; and
- 12 (ii) if he or she does not wish to be
- 13 prosecuted for the alleged offence or
- 14 offences in a court, the alleged offender
- 15 may, within a period of 28 days after the
- 16 giving of the AIR, complete an AIS;
- 17 and
- 18 (c) informing the alleged offender as to how the
- 19 alleged offender may arrange to complete an
- 20 AIS.
- 21 (2) An alleged offender need only complete a single AIS
- 22 for each AIR given to the alleged offender, even if the
- 23 AIR is given in respect of more than one alleged
- 24 offence.

25 **172G. Special requirements about AIRs**

- 26 (1) An AIR cannot be given in respect of an alleged
- 27 offence (the *new offence*) if the alleged offender —
- 28 (a) had been convicted of, or given an AIR in
- 29 respect of, 2 or more minor alcohol related
- 30 offences before the new offence was allegedly
- 31 committed; and

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- 1 (b) at least 2 of those offences arose, or are alleged
2 to have arisen, out of separate incidents.
- 3 (2) A police officer who gives an alleged offender an AIR
4 is to ensure that a responsible adult is given a copy of
5 the AIR as soon as is reasonably practicable after the
6 AIR is given to the alleged offender, unless —
- 7 (a) after reasonable enquiry, neither the
8 whereabouts nor the address of a responsible
9 adult can be ascertained; or
- 10 (b) in the circumstances it would be inappropriate
11 to give a responsible adult a copy of the AIR.
- 12 (3) An alleged offender who has been given 2 AIRs need
13 only complete a single AIS in respect of the AIRs if
14 both AIRs were given before the completion of the
15 AIS.
- 16 **172H. Referral of young persons at risk to juvenile justice**
17 **teams**
- 18 (1) In this section —
- 19 *young person at risk* means an alleged offender —
- 20 (a) to whom the police officer would have given an
21 AIR, but for section 172G(1); or
- 22 (b) who has been given an AIR and has not
23 completed an AIS within 28 days or any further
24 time allowed under section 172L, unless —
- 25 (i) the AIR has been withdrawn under
26 section 172I; or
- 27 (ii) the alleged offender has elected to be
28 prosecuted for the alleged offence in a
29 court.
- 30 (2) A police officer may refer a young person at risk to a
31 juvenile justice team where appropriate under the

1 *Young Offenders Act 1994* in preference to charging
2 the young person under this Act.

3 **172I. Withdrawal of AIR**

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

13 **Division 3 — Alcohol intervention sessions**

14 **172J. Alcohol intervention session**

- 15 (1) The purpose of an alcohol intervention session is to
16 inform those who complete it about —
- 17 (a) the adverse health and social consequences of
18 alcohol use; and
- 19 (b) the laws relating to the possession of alcohol;
20 and
- 21 (c) effective strategies to address alcohol using
22 behaviour.
- 23 (2) The CEO (Health) may, in writing, do any of the
24 following —
- 25 (a) having regard to subsection (1), approve the
26 content of an alcohol intervention session;
- 27 (b) approve treatment providers to provide alcohol
28 intervention sessions;

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- 1 (c) give an approval under paragraph (b) subject to
2 conditions to be obeyed by the treatment
3 provider approved;
- 4 (d) cancel or amend an approval given under
5 paragraph (a) or (b).
- 6 (3) For the purposes of this section, this Act is to be taken
7 to be a relevant Act as referred to in the *Health*
8 *Legislation Administration Act 1984* section 9.

9 **172K. Benefit of completing AIS**

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

20 **172L. Extension of time to complete AIS**

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

26 **172M. Certificate of completion of AIS**

- 27 (1) A treatment provider approved to provide an AIS under
28 section 172J(2)(b) is to —
- 29 (a) give to a person who has completed an AIS a
30 certificate of completion; and

- 1 (b) send a copy of the certificate to the
2 Commissioner of Police.
- 3 (2) A certificate of completion is to be in a form prescribed
4 by the regulations and is to set out —
- 5 (a) the name and address of the person who has
6 completed the AIS; and
- 7 (b) the date of completion; and
- 8 (c) the details of the AIR in respect of which the
9 AIS was completed.
- 10

1 **Part 3 — *Young Offenders Act 1994* amended**

2 **27. Act amended**

3 This Part amends the *Young Offenders Act 1994*.

4 **28. Section 25 amended**

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

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

7

8 IIIA; or

9

10 (b) after paragraph (b) insert:

11

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

14

15
