

**LIQUOR CONTROL REFORM ACT 1998**  
**ENFORCEABLE UNDERTAKING**  
**SECTION 133F**

The commitments in this undertaking are offered to the Director of Liquor Licensing by:

**ADON HOLDINGS PTY LTD**  
**ACN 103 393 979**  
**1128 Toorak Road**  
**CAMBERWELL VIC 3124**

**1. Description of the party**

- 1.1 ADON HOLDINGS PTY LTD ACN 103 393 979 (**the licensee**) is an Australian Proprietary Company, limited by shares, registered on 15 January 2003.
- 1.2 The licensee holds a packaged liquor licence no. 32024068 (**the packaged liquor licence**) which authorises the licensee to supply liquor up to and including 31 December 2011 in accordance with the conditions of the licence.
- 1.3 The licensee trades under the name 'Kinglake Foodrite' and operates from premises situated at Lot 2 Whittlesea-Kinglake Road, KINGLAKE VIC 3763 (**the premises**).
- 1.4 The premises is a single storey building and operates as a supermarket selling general groceries, dairy and other condiments. There is a liquor display area in the south-west corner of the supermarket, which is demarked by shelving which separates it from other sections of the supermarket (**the Liquor Display Area**).
- 1.5 In this undertaking –

*Act* means the *Liquor Control Reform Act 1998* as in force prior to 1 January 2011 (except where otherwise stated);

*Director* means Director of Liquor Licensing; and

*Licensed premises* has the same meaning as in the Act.

**2. Description of the conduct that Responsible Alcohol Victoria investigated**

*Supplying liquor or permitting liquor to be supplied other than in accordance with the licence contrary to section 108(1)(a) of the Act*

- 2.1 Section 11(3) provides that a packaged liquor licence is subject to various conditions, including conditions relating to the completion of approved responsible service of alcohol (**RSA**) programs or courses by certain

persons, including every person who has the management or control of the licensed premises when it is open for business.

- 2.2 Additionally, a condition endorsed on the licence provides that:

*Each person responsible for the management or control of the licensed premises during its trading hours must have completed a training program on the Responsible Serving of Alcohol (RSA) and must update that knowledge annually through a refresher program.*

- 2.3 Section 108(1)(a) provides that it is an offence to supply liquor, or permit or cause liquor to be supplied, on the licensed premises other than in accordance with the licence and with the Act.

- 2.4 On 20 October 2010, a compliance inspector from Responsible Alcohol Victoria (**RAV**) conducted an inspection of the premises, and requested a member of staff to produce evidence of the completion of approved RSA programs or courses for relevant staff. The compliance inspector was informed that no member of staff had undertaken an RSA program or course and no such evidence was available.

*Failure to produce 'House Rules' contrary to the Code of Conduct for packaged liquor licensees*

- 2.5 Section 11(3)(aad) of the Act provides that it is a condition that the licensee comply with any code of conduct determined by the Minister for Consumer Affairs pursuant to the Act, as in force from time to time.

- 2.6 On 27 October 2006, the Minister determined a Code of Conduct for packaged liquor licensees (**the Code of Conduct**). The Code of Conduct requires licensees of packaged liquor licences to develop a set of "House Rules" for the licensed premises which sets out the responsibilities and obligations of staff in the sale and supply of alcohol in accordance with established RSA principles. It also provides that the "House Rules" must be retained on the premises in the possession of the licensee, manager or other person in charge and be made available to an authorised member of the Victoria Police if requested.

- 2.7 On 20 October 2010, compliance inspectors from RAV conducting an inspection of the premises requested the licensee to produce the "House Rules" required pursuant to the Code of Conduct. No such "House Rules" were able to be produced.

*Failure to produce plan of premises for inspection contrary to section 101B of the Act*

- 2.8 Pursuant to Section 101B of the Act, a licensee is required to keep on the licensed premises at all times a copy of the last plan of the licensed premises that was submitted to the Director as part of an application that was granted, or a subsequent plan certified by the Director (**the Authorised Plan**). The licensee must produce a copy of such plan when asked to do so by a member of the police force or a compliance inspector.

- 2.9 On 20 October 2010 compliance inspectors from RAV conducting an inspection of the premises requested a copy of the plan, however no such plan was able to be produced.

*Use place other than licensed premises for supply of liquor contrary to section 108(2) of the Act*

- 2.10 Pursuant to section 11(1) of the Act, a licensee of a packaged liquor licence is only authorised to supply on the licensed premises. The licensed premises is comprised of the area identified by a red line in the Authorised Plan of the premises (**the Red Line Area**). Accordingly, any payment for liquor sold by the licensee must be received at a 'checkout' located within the Red Line Area, unless the Director authorises the licensee to receive payment at another checkout within the supermarket pursuant to section 11(2) of the Act.
- 2.11 Additionally, section 108(1)(b) of the Act makes it an offence for a licensee to use any place or premises, other than the licensed premises or authorised premises, for the supply of liquor.
- 2.12 On 20 October 2010, compliance inspectors from RAV who attended the premises observed that there were no checkouts located within the Red Line Area. The only checkouts observed on the premises were located at the entrance to the supermarket. The licensee was not authorised by the Director to receive payment at another checkout within the supermarket pursuant to section 11(2) of the Act.
- 2.13 Additionally, compliance inspectors observed the Liquor Display Area to extend approximately 500-1000 mm beyond the Red Line Area.

**3. Brief details of the investigation by Responsible Alcohol Victoria**

- 3.1 On 20 October 2010 compliance inspectors from RAV conducted an unannounced inspection of the premises.
- 3.2 During this inspection the matters set out in paragraph 2 above were identified. Compliance inspectors spoke to a representative of the licensee at the premises and discussed these matters. Compliance inspectors provided the licensee's representative with a copy of the Authorised Plan of the premises which the licensee had been unable to produce.

**4. Explanation as to why the Director of Liquor Licensing considers that the licensee has contravened the Act**

- 4.1 The Director considers that the matters identified in paragraph 2 above constitute contraventions of the following provisions of the Act:
- (a) Section 108(1)(a) - Supplying liquor, or permitting liquor to be supplied, other than in accordance with the licence contrary to section 108(1)(a) of the Act, by carrying on the business while

relevant persons had not completed approved RSA programs or courses as required by the Act and the licence.

- (b) Section 101B(2) - Failure to produce the Authorised Plan of the licensed premises when asked to do so by a compliance inspector.
- (c) Section 11(3)(aad) - Failure to comply with the Code of Conduct for packaged liquor licensees by failing to produce a copy of the "House Rules" as required paragraph 6.1 of the Code of Conduct.
- (d) Section 108(1)(b) - Using a place other than the licensed premises for the supply of liquor.

## 5. Acknowledgement of the breach

- 5.1 The licensee acknowledges the breaches of the Act outlined in paragraph 4 above and admits the facts, matters and circumstances set out in paragraph 2 above.

## 6. Undertakings given by licensee

The licensee agrees to undertake the following remedial action with the aim of ensuring that it does not contravene the Act in future:

- 6.1 The licensee will ensure that:
- (a) any person who sells, offers for sale or serves liquor on the licensed premises;
  - (b) any person responsible for the management or control of the premises when they are open for business-

**(relevant persons)** who have not completed an approved RSA program or course within the preceding 3 years, complete such a program or course **within one (1) month of the date of execution of this undertaking.**

The licensee will provide to the Director evidence of the completion of RSA programs or courses undertaken by all relevant persons in accordance with this undertaking within **two (2) months from the date of execution of this undertaking.**

- 6.2 The licensee will ensure that all relevant persons complete refresher RSA programs or courses approved by the Director within three years from the date that such person last completed an approved RSA program or course.
- 6.3 The licensee will ensure that all new employees or other persons engaged to work on the premises and whose duties will include the sale or offer for sale of liquor on the premises shall have completed an approved RSA program or course prior to commencing employment.

- 6.4 The licensee agrees to comply with the undertakings given in paragraphs 6.1 to 6.3 above notwithstanding any other requirements for the completion of approved RSA programs or courses provided in the Act, the licence, the Code of Conduct, or any other law.
- 6.5 The licensee will develop a set of "House Rules" as required by the Code of Conduct. The licensee will provide a copy of the "House Rules" developed in accordance with this undertaking to the Director **within one (1) month of the date of execution of this undertaking.**
- 6.6 The licensee will retain at the premises a folder containing the following:
- (a) Evidence of completion of the completion of RSA programs or courses for all relevant persons;
  - (b) A copy of the Authorised Plan of the premises;
  - (c) A copy of the "House Rules" developed in accordance with the Code of Conduct approved by the Director; and
  - (d) A copy of this enforceable undertaking executed by the licensee and the Director.

This folder must be available and produced for inspection by any authorised person conducting an inspection of the premises. The folder must be completed **within two (2) months of the date of execution of this undertaking.**

- 6.7 If it is the licensee's intention to maintain the liquor display area in its current configuration (where the liquor display area extends beyond the Red Line Area), the licensee will make an application to the Director to vary the size or perimeter of the Red Line Area to accord with the current size of the liquor display area.

The licensee will make any such application **within one (1) month of the date of execution of this undertaking.**

**NB:** The licensee may apply to vary the size or perimeter of the Red Line Area by submitting an 'Application for a Variation to an Existing Licence or Permit' to Liquor Licensing, RAV.

- 6.8 If it is the licensee's intention to continue to receive payment for the sale of alcohol at a check-out located outside of the Red Line Area, the licensee will make an application to the Director to so determine and specify in the licence that the licensee is authorised to receive such payment at any checkout located in the supermarket provided that the person receiving the payment is of or over the age of 18 years.

The licensee will make any such application **within one (1) month of the date of execution of this undertaking.**

**NB:** The licensee may apply to the Director for authorisation in accordance with this undertaking by submitting an 'Application for a Variation to an Existing Licence or Permit' to Liquor Licensing, RAV.

**7. Commencement and duration of the undertaking**

7.1 This undertaking comes into effect when:

- (a) it is executed by the licensee;
- (b) the Director of Liquor Licensing accepts and signs the undertaking;  
and
- (c) continues in effect for a period of two (2) years from the date of commencement.

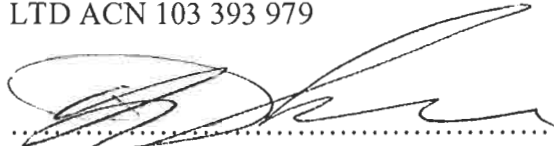
**8. Acknowledgements by licensee**

8.1 The licensee acknowledges that:

- (a) the Director and other interested parties specified in the Act may make an application to the Victorian civil and Administrative Tribunal (**the VCAT**) to conduct an inquiry pursuant to section 90(1)(bb) on the basis of any contravention of this undertaking by the licensee;
- (b) pursuant to section 133G of the Act, the Director will register this undertaking in the register of undertakings on the Department of Justice Website and the undertaking will be available for public inspections;
- (c) the Director and/or Minister for Consumer Affairs may from time to time publicly refer to this undertaking; and
- (d) this undertaking in no way derogates from any of the rights and remedies available to any other person in the State of Victoria arising from the conduct that is the subject of this undertaking, or a breach of the Act or regulations.

**9. Execution of undertaking**

EXECUTED BY ADON HOLDINGS PTY  
LTD ACN 103 393 979



.....  
Signature of Sole Director and Sole Company  
Secretary

.....  
who states that he/she is the sole director  
and company secretary of the company

*DUSAN NICESKI*  
.....

Name of Director (Print)

Dated the *28* day of *FEB* 2011

**ACCEPTED BY:**



.....  
Director of Liquor Licensing

Dated the *4<sup>th</sup>* day of *MARCH* 2011