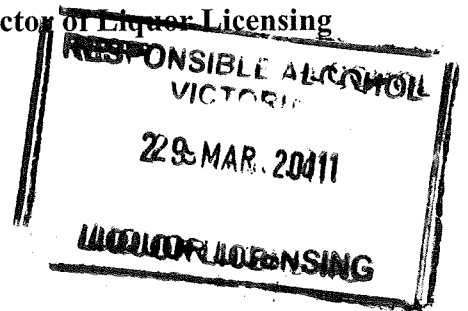


**LIQUOR CONTROL REFORM ACT 1998  
ENFORCEABLE UNDERTAKING  
SECTION 133F**

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

**BALLAARAT YACHT CLUB INC.**  
Organisation Number A0012776B  
Lake Wendouree  
BALLARAT VIC 3350



**1. Description of the licensee and other relevant particulars**

- 1.1 Ballaarat Yacht Club Inc. (**the Licensee**) is an incorporated association registered pursuant to the *Associations Incorporations Act 1981*.
- 1.2 The Licensee is the operator of 'Ballarat Yacht Club', which carries on activities as a sporting and social club, including sailing, boating and other associated activities. The Licensee carries on such activities from premises located at Lake Wendouree, Wendouree Parade, Ballarat (**the premises**), principally from a building on the premises containing a restaurant, bar and other facilities and amenities (**the club-house**).
- 1.3 The Licensee holds a Full Club licence (number 32104274) (**the full club licence**) and a Renewable Limited Licence (number 36079227) (**the renewable limited licence**).
- 1.4 The full club licence authorises the Licensee to supply liquor on the licensed premises during certain trading hours both to members of the club (for consumption on or off the licensed premises) and to any authorised gaming visitors or guests of a member (for consumption on the licensed premises only).
- 1.5 The renewable limited licence authorises the Licensee to supply liquor for consumption at pre-booked functions conducted on part of the premises during certain trading hours.
- 1.6 Both of the above licences are currently in force until 31 December 2010. *2011*
- 1.7 In this undertaking-

*Act* means the Liquor Control Reform Act 1998;

*Director* means the Director of Liquor Licensing;

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

*The club* means the Licensee;

*Member* means a person who is a member of the club/Licensee;

*Authorised person* has the same meaning as in the Act; and

**RAV** means Responsible Alcohol Victoria.

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

*Permitting another person to carry on the business of supplying liquor on licensed premises, contrary to section 106 of the Act*

2.1 Pursuant to section 106(1) of the Act, a licensee must not permit any other person to carry on a business of supplying liquor on licensed premises, or permit any person who is not employed by the licensee to be engaged in the carrying on of such a business.

2.2 In the course of investigations conducted by compliance inspectors from RAV, it was identified that in 2006 the Licensee had entered into a management agreement (**the Management Agreement**) with Stephen Wright to carry on a business on the premises known as 'Sails on the Lakes' ('Sails').

2.3 The terms of the Management Agreement included that:

- (a) the nature of the business to be carried on ~~or would be the operation~~ of a café, function venue, conference and **RESPONSIBLE ALCOHOL VICTORIA** activities of a similar nature;
- (b) Wright would be responsible for:
  - (i) the provision of food and beverage services at the premises both for member and non-member functions; **LIQUOR LICENSING**
  - (ii) employing all staff in the business and purchasing alcohol, food and other consumables for sale;
  - (iii) complying with all 'Liquor Licensing rules' and other relevant requirements; and
  - (iv) payment of 'rent' to the Licensee as well as certain other outgoings and charges in respect of the premises; and
- (c) the Licensee would be responsible for:
  - (i) paying rent to the City of Ballarat in respect of the premises, and certain other charges in respect of the premises;
  - (ii) maintenance of building works, fixtures, fittings and capital equipment; and
  - (iii) maintaining both the full club licence and the renewable limited licence, 'on the understanding that the licence will remain in the name of the [Licensee] with [Wright] to be Nominee'.

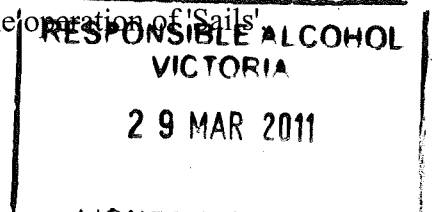
- 2.4 The Management Agreement permitted the operator of 'Sails' to retain all of the profits made by 'Sails' from the sale of alcohol after payment of any rent and other expenses.
- 2.5 According to records held by RAV there has been no application made to the Director for consent to permit any other person to carry on business in the sale of liquor, or permitting any other person not employed by the Licensee to be engaged in the carrying on of such business, in accordance with section 106(1). No such consent has been given by the Director to the Licensee in respect of the premises.

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

- 2.6 Pursuant to section 108(1)(a) of the Act, a licensee must not permit liquor to be supplied on the licensed premises other than in accordance with the licence and the Act.
- 2.7 As noted above, the full club licence only authorises the Licensee to supply liquor on the licensed premises to members of the club or to any guests of a member.
- 2.8 During investigations undertaken by compliance inspectors from RAV, it was identified that:
- (a) There were no systems in place for ensuring that alcohol would only be supplied to members or guests of members (other than where a pre-booked functions is being conducted on the licensed premises in accordance with the renewable limited licence);
  - (b) The person who was carrying on the business of supplying liquor on the premises pursuant to the management agreement (Stephen Wright) was unfamiliar with the conditions of the full club licence, and was not trading in accordance with those conditions; and
  - (c) Representatives of the Licensee were unfamiliar with the nature of either of the licences held by the club or the conditions of such licences, and had no control of the operation of 'Sails'.

**3. Brief details of the investigation by RAV**

- 3.1 Compliance inspectors from RAV conducted an inspection of the premises on 31 October 2010. They subsequently made other enquiries to obtain information regarding the operation of the premises and the business.
- 3.2 An interview was conducted with a committee member of the Licensee on 8 November 2010 in relation to the above matters, where admissions were made in relation to the relevant conduct. The Licensee has been fully co-operative with compliance inspectors in the course of conducting their investigations.



3.3 An interview was also conducted with Stephen Wright on 18 November 2010.

**4. Explanation as to why the Director considers that the conduct contravenes the Act**

4.1 The Director is of the view that many of the instances of conduct described in paragraph 2 constitutes a contravention of the following provisions of the Act:

**Section 106(1) of the Act:** Permitting any other person to carry on a business of supplying liquor on licensed premises, and/or permitting persons not employed by the licensee to be engaged in the carrying on of such a business.

**Section 108(1)(a) of the Act:** Permitting liquor to be supplied, on the licensed premises other than in accordance with the licence or the Act.

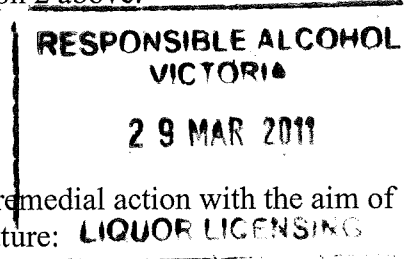
4.2 Furthermore, the Director considers that the matters described in paragraph 2 of this undertaking raises concerns about the Licensee's understanding of its responsibilities under the licence and the Act.

**5. Acknowledgement of the breach**

5.1 The Licensee acknowledges the contraventions of the Act and the concerns of the Director set out in paragraph 4 above, and admits the facts, matters and circumstances described in paragraph 2 above.

**6. Undertakings**

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



6.1 Unless and until the Licensee has obtained the consent of the Director pursuant to section 105 of the Act, the Licensee shall:

- (a) Not permit any person, other than:
  - (i) a member of the committee of management of the Licensee;
  - (ii) a delegate of the committee of management of the Licensee who is a member of the club; or
  - (iii) a person employed by the Licensee--

who is over the age of 18 years to supply liquor on any part of the licensed premises in respect of either the full club licence or the renewable limited licence, whether or not in exchange for any form of payment or consideration;

- (b) Not enter into any contract, agreement, understanding or arrangement that entitles any person other than the Licensee to receive the proceeds of the sale of liquor pursuant to the full club licence or the renewable limited licence; and
- (c) Ensure that it retains full control over the supply of alcohol on the licensed premises in respect of the full club licence or the renewable limited licence.

The licensee will give effect to this provision **immediately upon execution of this enforceable undertaking.**

- 6.2 The Licensee will, in consultation with the Director (or his delegate), develop and implement written guidelines for monitoring compliance with the requirement of the full club licence that liquor is only supplied to members of the club or guests of members (except where a pre-booked functions is being conducted on the licensed premises in accordance with the renewable limited licence) (**the Guidelines**).

The Guidelines must:

- (a) include the use of a guest register to be signed by all guests of members or visitors who enter the licensed premises; and
- (b) provide a method for differentiating between guests of members or visitors, and persons who are attending a pre-booked function being conducted on the licensed premises in accordance with the renewable limited licence.

The Licensee will take all reasonable steps to ensure that persons whose responsibilities include the supply of liquor on the licensed premises are familiar with and comply with the Guidelines at all times.

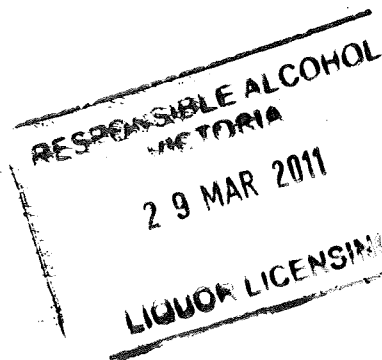
The Licensee will provide a copy of the Guidelines to the Director signed by a compliance inspector from RAV to indicate his/her approval **within one (1) month of the date of execution of this undertaking.**

The Licensee will thereafter retain a copy of the Guidelines on the licensed premises at all times and ensure that they are available for inspection by an authorised person in accordance with the Act.

- 6.3 The Licensee will erect and maintain, at its own expense, signage at all exit points to the licensed premises displaying the words:

**“NO ALCOHOL ALLOWED PAST THIS POINT, MEMBER EXEMPT”--**

in letters no less than 20mm in height, followed by the words:



“THE LIQUOR CONTROL REFORM ACT 1998 REQUIRES THAT ALCOHOL PURCHASED FROM THESE PREMISES ARE TO BE CONSUMED INSIDE AND ARE NOT TO BE TAKEN OUTSIDE, MEMBERS EXEMPT. PENALTIES MAY APPLY”--

in letters no less than 15mm in height.

The Licensee will give effect to this provision **within one (1) month of the date of execution of this undertaking.**

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

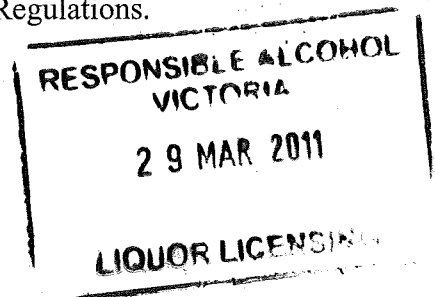
7.1 This undertaking:

- (a) comes into effect when:
  - (i) it is executed by the Licensee; and
  - (ii) the Director accepts and signs the undertaking.
- (b) continues in effect for a period of two (2) years from the date of commencement.

**8. Acknowledgement of compliance to undertaking**

8.1 The Licensee acknowledges that:

- (a) The Director and other relevant parties specified in the Act may make an application to the Victorian Civil and Administrative Tribunal to conduct an enquiry 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 inspection;
- (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 which is the subject of this undertaking, or a breach of the Act or Regulations.



9. Execution

EXECUTED BY BALLAARAT YACHT )  
CLUB INC Number A0012776B in )  
accordance with its Constitution or Rules )

*Brian Conn*  
.....  
Name of Committee Member (print)

*[Signature]*  
.....  
Signature of Committee Member

*Commodore*  
.....  
Office held (print)

AND BY

*Rama Sivas*  
.....  
Name of Committee Member / Public Officer  
(print) (delete as applicable)

*[Signature]*  
.....  
Signature of Committee Member / Public  
Officer (delete as applicable)

*Treasurer / Public officer*  
.....  
Office held (print)

Dated the *23<sup>RD</sup>* day of *MARCH* 2011

ACCEPTED BY:

*Mark Brennan*  
.....  
Director of Liquor Licensing

Dated the *30<sup>TH</sup>* day of *March* 2011

