

LIQUOR CONTROL REFORM ACT 1998
ENFORCEABLE UNDERTAKING
SECTION 133F

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

PAYNESVILLE MOTOR CRUISER CLUB INC.
ORGANISATION NUMBER A0010020U
PO BOX 44
PAYNESVILLE VIC 3880

1. Description of the Licensee and other relevant particulars

1.1 Paynesville Motor Cruiser Club Inc. (**the Licensee**) is an incorporated association, registered pursuant to the *Associations Incorporations Act 1981*, registration number A0010020U, registered on 10 July 1986.

1.2 The Licensee carries on its activities from premises situated at Slip Bight Marina, Slip Road, Paynesville (**the premises**). The activities of the club include boating and other marine activities, as well as the provision of amenities for the benefit of club members at the premises including a bistro/restaurant and bar.

1.3 The Licensee holds a Full Club Licence (number 32122727) (**the Licence**), which authorises the Licensee to supply liquor on the premises up to and including 31 December 2011 in accordance with the conditions of the licence.

1.4 In this undertaking—

Act means the Liquor Control Reform Act 1998;

Authorised person has the same meaning as in the Act;

Director means Director of Liquor Licensing;

Licensed Premises has the same meaning as in the Act;

Member means a person who is a member of the Licensee; and

RAV means Responsible Alcohol Victoria.

2. Description of the conduct that Responsible Alcohol Victoria investigated

2.1 Section 106(1) of the Act provides that a licensee must not permit any person who is not employed by the licensee to be engaged in the carrying on of a business involving the supply of liquor on licensed premises, except in accordance with the consent of the Director.

- 2.2 On or about 16 March 2011, a committee member of the Licensee, Sam Beechey (acting on behalf of the Licensee) entered into a verbal agreement with Ian Pescod to manage the bistro, kitchen and bar on behalf of the Licensee for a trial period of 3 months.
- 2.3 The terms of the agreement between the Licensee and Pescod included that:
- (a) Pescod would be responsible for:
 - (i) management and operation of the bistro, kitchen and bar (including the sale and supply of liquor);
 - (ii) ordering the stock of liquor for the bistro and bar;
 - (iii) employing staff to perform duties in connection with the operation of the bistro, kitchen and bar; and
 - (iv) managing catering and hospitality functions generally at the premises; and
 - (b) the Licensee would be responsible for:
 - (i) making payment for the stock of liquor for the bistro and bar ordered by Pescod; and
 - (ii) payment of rent, outgoings and other fees and charges in respect of the premises.
- 2.4 In about late March or early April 2011, Pescod commenced operating the bistro and bar facilities at the premises under the trading name 'Cruisers@PMCC'.
- 2.5 The Licensee did not notify the Director that Pescod had been engaged in the carrying on of the bistro and bar (which involves the supply of liquor) at the premises.

3. Brief details of the investigation by Responsible Alcohol Victoria

- 3.1 Compliance Inspectors from RAV conducted an inspection of the premises on 16 May 2011. During this inspection it was identified that the Licensee had entered into the agreement with Pescod, who had been engaged in the carrying on of the bistro and bar at the premises.
- 3.2 Inspectors interviewed Beechey on behalf of the Licensee during the inspection, who was fully cooperative and provided information concerning the agreement with Pescod and arrangements in respect of the operation of the bistro and bar.

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

- 4.1 The Director considers that the matters described in paragraph 2 of this undertaking may be in contravention of section 106(1) of the Act.

5. Voluntary admissions

- 5.1 The Licensee acknowledges the Director's concerns set out in paragraph 4 above, and admit the facts, matters and circumstances described 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 member of the committee of management of the Licensee undertakes (at the Licensee's expense) the course entitled 'Licensee Compliance Certificate' delivered by 'Franklyn Scholar'.

The Licensee will give effect to this provision within 3 months of the date of execution of this undertaking, or such longer period as the Director may approve (if necessary).

- 6.2 The Licensee shall do all things necessary to reduce into writing the agreement between the Licensee and Pescod, detailing the proposed operating arrangements and the respective responsibilities of each in relation to the supply of liquor from the premises, and shall provide a copy of such written agreement to the Director.

The Licensee will give effect to this provision within 1 month of the date of execution of this undertaking, or such longer period as the Director may approve (if necessary).

- 6.3 The Licensee shall do all things necessary to make an application to the Director for approval for Pescod to continue to be engaged in the management and operation of the bistro and bar on the premises.

The Licensee will give effect to this provision within 1 month of the date of execution of this undertaking, or such longer period as the Director may approve (if necessary).

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 of Liquor Licensing accepts and signs the undertaking.
- (b) continues in effect for a period of two (2) years from the date of execution of this undertaking.

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 of undertaking

EXECUTED BY PAYNESVILLE MOTOR)
CRUISER CLUB INC. Number A0010020U)
in accordance with its Constitution or Rules)

Sam Beechey
Name of Committee Member (print)

Sam Beechey
Signature of Committee Member

Commodore
Office held (print)

AND BY

ROBERT CRAIG SOLLY
Name of Committee Member / Public Officer
(print) (delete as applicable)

Craig Solly
Signature of Committee Member / Public
Officer (delete as applicable)

VICE COMMODORE
Office held (print)

Dated the 18TH day of JULY 2011

Accepted by:

DIRECTOR OF LIQUOR LICENSING

Mark Brennan
Director of Liquor Licensing

Dated the 10th day of AUGUST 2011