

LIQUOR CONTROL REFORM ACT 1998
ENFORCEABLE UNDERTAKING
SECTION 133F

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

Smiths Beach General Store
59-61 Smiths Beach Road
COWES VIC 3922

1. Description of the licensee and other relevant particulars

1.1 Matthew Williams (**the Licensee**) holds a packaged liquor licence no. 32024343 (**the licence**) which authorises the Licensee to supply liquor up to and including 31 December 2011 in accordance with the conditions specified in the licence.

1.2 The Licensee trades in respect of the licence under the name 'Smiths Beach General Store'.

1.3 The Licensee operates from the premises situated at 59-61 Smiths Beach Road, Cowes, Victoria 3922 (**the premises**).

1.4 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; and

RAV means Responsible Alcohol Victoria.

2. Description of the conduct that Responsible Alcohol Victoria investigated

2.1 *Licensee supplied liquor outside areas licensed or authorised, as shown in red line plan*

2.1.1 Pursuant to section 11(1) of the Act, a Licensee holding a packaged liquor licence is only authorised to supply liquor on the licensed premises. The licensed premises is 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.

2.1.2 The packaged liquor licence authorises the Licensee to supply liquor in sealed containers, bottles or cans on the licensed premises for 'off premises' consumption within the area shown by the red line. The area within the red line plan is situated in Shop 2, number 61 Smiths Beach Road, Cowes.

- 2.1.3 The layout of the premises has changed since the approval of the red line plan on 22 December 1997. The doors to Shop 2, number 61 Smiths Beach Road, Cowes are now permanently locked.
- 2.1.4 Packaged liquor is kept in glass-fronted commercial fridges in Shop 2, number 61 Smiths Beach Road, Cowes within the area shown by the red line plan.
- 2.1.5 However, liquor sales are transacted from a service counter located in Shop 1, number 59 Smiths Beach Road, Cowes. This service counter is located outside the area shown by the red line plan.

2.2 *Licensee failed to develop set of House Rules as per Packaged Liquor Code of Conduct*

- 2.2.1 Section 11(3)(aad) of the Act provides that a packaged liquor licence is subject to a condition that the Licensee comply with the relevant Code of Conduct determined by the Minister.

- 2.2.2 Pursuant to this section, the licence included the following condition:

The licensee must comply with the Code of Conduct determined by the Minister pursuant to Section 11(5) of the Liquor Control Reform Act 1998.

- 2.2.3 Clause 6.1 of the Code of Conduct for Packaged Liquor Licensees (**Code of Conduct**) provides that the Licensee must develop, within 3 months of the publishing of the Code of Conduct in the Government Gazette, a set of "House Rules" for the licensed premises which will set out the responsibilities and obligations of staff in the sale and supply of alcohol in accordance with established responsible serving of alcohol principles.
- 2.2.4 Clause 6.2 of the Code of Conduct provides that the "House Rules" must be retained on the premises in possession of the Licensee, manager, or other person in charge and be made available to an authorised officer under the Act if requested.
- 2.2.5 During an inspection of the premises on 26 February 2011, the Licensee was unable to produce a developed set of "House Rules" as required by the Act.

2.3 *Licensee failed to apply to vary licence to reflect departure of licensee*

- 2.3.1 During an inspection on 26 February 2011, the Licensee advised that a joint licensee and business partner, Colin Earle, had left the licensed premises and was no longer a partner in the business trading as 'Smiths Beach General Store.'
- 2.3.2 No application had been made to the Director to remove Colin Earle's name as a licensee in respect of the licence.

3. Brief details of the investigation by RAV

- 3.1 Compliance Inspectors from RAV conducted an inspection of the premises on 26 February 2011, as well as conducting other enquiries to obtain information regarding the operation of the premises and business.
- 3.2 An interview was conducted with Licensee on 4 March 2011 in relation to the matters set out in paragraph 2 above.

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 constitute contraventions of the Act, including:
 - (a) Pursuant to section 108(1)(a)(i) of the Act, the Licensee has failed to supply liquor in accordance with the licence, by supplying liquor outside of areas licensed or authorised, as shown in the approved red line plan.
 - (b) Pursuant to section 108(1)(a)(i) of the Act, the Licensee has failed to supply liquor in accordance with the licence, by failing to comply with the Code of Conduct for Packaged Liquor Licensees.
- 4.2 It is of concern to the Director that the Licensee has not applied to the Director to remove Colin Earle's name as a licensee in respect of the licence. Pursuant to section 65 of the Act, if the Director is satisfied that a member of a partnership who is a licensee has left the licensed premises and has no intention of returning to the premises to take up his or her duties as a licensee, the Director may remove the name of that person from the licence.
- 4.3 The Director considers the matters described in paragraph 2 of this undertaking raise concerns regarding the conduct and practices of the Licensee.
- 4.4 In particular, the Director considers that those matters demonstrate poor management practices which are conducive to or encourage the misuse or abuse of alcohol, and an insufficient knowledge of the requirements of the Act and of the licence.

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. Undertaking

- 6.1 The Licensee agrees to undertake the following remedial action to address the Director's concerns and ensure that it does not contravene the Act in future:
 - 6.1.1 The Licensee will submit an application for approval to the Director to vary the red line plan of the premises to ensure that liquor sales are only transacted within the defined area shown by the red line plan approved by the Director.

- 6.1.2 The Licensee will develop a set of “House Rules” setting out the responsibilities of staff in the sale and supply of alcohol in accordance with the established serving of alcohol principles.
- 6.1.3 The Licensee will retain the “House Rules” on the premises in possession of the Licensee, manager, or other person in charge and be made available on request by an authorised officer under the Act within one month of the execution of this undertaking.
- 6.1.4 The Licensee will develop and retain at the premises a folder with respect to the licence containing the following:
- (a) a copy of the red line plan approved by the Director;
 - (b) a copy of the “House Rules” setting out the responsibilities of staff in the sale and supply of alcohol in accordance with the established serving of alcohol principles;
 - (c) a copy of the Code of Conduct for Packaged Liquor Licensees; and
 - (d) a copy of this enforceable undertaking executed by the parties.
- 6.1.5. This folder must be developed within one (1) month of the execution of this undertaking and must be made available to be produced for inspection by any authorised person conducting an inspection of the premises.
- 6.1.6 In accordance with legislative requirements under the Act, the Licensee will ensure that each relevant person supplying alcohol undertakes approved Responsible Service of Alcohol training and undertakes an approved RSA refresher program every three (3) years.
- 6.1.7 The Licensee subject to packaged liquor licence RSA training requirements shall maintain an up-to-date RSA training register.
- 6.1.8 The Licensee undertakes (at the Licensee's expense) to complete the course ‘Licensee Compliance Certificate’ delivered by 'Franklyn Scholar'.

The Licensee will give effect to this provision within six (6) months 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

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 one (1) year 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:

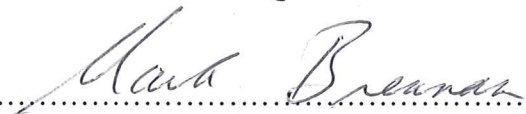


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Matthew Williams

Dated this 16th day of August 2011

Accepted by:

THE DIRECTOR OF LIQUOR LICENSING, VICTORIA



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Director of Liquor Licensing

Dated this 27th day of SEPTEMBER 2011

