

Queensland



WINE INDUSTRY ACT 1994

Act No. 80 of 1994

Queensland



WINE INDUSTRY ACT 1994

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Queensland



Wine Industry Act 1994

Act No. 80 of 1994

An Act about Queensland's wine industry

[Assented to 1 December 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Wine Industry Act 1994*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Objectives and their achievement

- 3.(1) The objectives of this Act are—

- (a) to enable the efficiency of the Queensland wine industry to be developed further; and
- (b) to help the wine industry to develop further its tourism potential; and
- (c) to establish a system under which the integrity of the Queensland wine industry is ensured.

(2) The objectives are to be achieved mainly by licensing certain persons who make and sell wine in Queensland so that they can sell their wine.

(3) A person who is licensed under this Act need not be licensed under the *Liquor Act 1992* before the person can lawfully sell wine.

(4) The objectives of the Act are also to be achieved by allowing the Minister to establish the Wine Industry Policy Council as a representative body to advise the Minister.

Division 2—Interpretation

Definitions—the dictionary

4.(1) A dictionary in Schedule 2 defines particular words used in this Act.¹

(2) Definitions found elsewhere in the Act are signposted in the dictionary.²

Division 3—Relationship between this Act and the Liquor Act

Relationship with Liquor Act

5.(1) This Act is based, in part, on the Liquor Act and some relevant issues are common to both Acts.

Example—

Principle that alcohol is not to be sold to minors.

(2) To ensure consistency with the Liquor Act, some words are defined by reference to the meaning of the word in the Liquor Act.

Example—

The definition “acceptable evidence of age” refers to a document that is acceptable evidence of age under the Liquor Act.

¹ In some Acts, definitions are contained in a dictionary that appears as the last Schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

² The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the section definitions can be found. For example, the definition “**blended wine**” see section 16’ tells the reader that the term “**blended wine**” is defined in section 16.

(3) Also, Parts 2 and 7³ of the Liquor Act apply in a way stated in sections 33 and 49.⁴

PART 2—LICENCES AND PERMITS

Division 1—Preliminary

Requirement to be licensed under this Act or the Liquor Act

6.(1) Before a person may lawfully sell wine, the person must be licensed under this Act or be authorised to sell wine under the Liquor Act.

(2) A person may obtain a licence to sell wine under this Act if the person—

- (a) grows, in the State, the fruit used to make the wine; or
- (b) makes the wine in the State.

(3) This Part sets out provisions about—

- applying for a licence
- granting a licence
- trading hours
- nominees
- transferring a licence
- advertising
- cancelling, suspending and surrendering a licence
- permits for promotional activities.

³ Part 2 (Liquor Appeals Tribunal) and Part 7 (Investigators and their powers).

⁴ Sections 33 (Appeals against decisions of the chief executive) and 49 (Investigators under the Liquor Act may exercise their powers).

(4) A licence only authorises the licensee to sell the licensee's wine and certain blended wine produced by the licensee.⁵

Form of application etc.

7.(1) An application under this Part must—

- (a) be in the form approved by the chief executive; and
- (b) include the particulars prescribed under the regulations; and
- (c) be accompanied by the fee prescribed under the regulations

(2) The chief executive, by written notice, may ask the applicant to give further information or documents relevant to the application.

Division 2—Applying for a licence

Application for licence

8. The following persons may apply for a licence to sell wine—

- (a) a person who grows, in the State, fruit used to make the wine;
- (b) a person who makes the wine in the State.

Decision on application

9.(1) The chief executive must consider an application for a licence, and the suitability of the applicant to hold a licence, and either grant the licence or refuse to grant the licence.

(2) In considering the suitability of the applicant to hold a licence, the chief executive must have regard to, and may make inquiries about—

- (a) the person's knowledge and understanding of their obligations under this Act; and
- (b) the person's character and standing.

⁵ Under section 16 (Blended wine), certain blended wine may be sold or supplied as if it were the licensee's wine.

Example—

The chief executive's inquiries about an applicant's suitability may include asking the Commissioner of the Police Service for a written report about the applicant's criminal history.

(3) Subsection (2) does not limit the matters to which the chief executive may have regard in considering an application or the suitability of the applicant.

Inquiries about applicant's criminal history

10.(1) If asked by the chief executive, the Commissioner of the Police Service must give the chief executive a written report about an applicant's criminal history.

(2) Subsection (1) applies to the criminal history in the Commissioner's possession or to which the Commissioner has access.

Division 3—Grant of licence

Grant of licence

11.(1) The chief executive may grant a person's application for a licence only if the chief executive is satisfied—

- (a) the business the person will conduct under the licence will involve selling wine—
 - (i) made from fruit grown, in the State, by the person; or
 - (ii) made in the State by the person; and
- (b) the person is a suitable person to hold a licence; and
- (c) a person who will have authority or influence in the conduct of the business, particularly any proposed nominee, is a suitable person; and
- (d) the premises from which the wine is to be sold or to be provided are suitable for the sale or supply of wine.

(2) The chief executive may grant a licence on conditions stated in the licence.

(3) A licence must state the premises that are to be the main premises under the licence.

Licensee may hold more than 1 licence

12. A person may apply for, and hold, more than 1 licence.⁶

Division 4—Nominees

Application for nominee for new licence or existing licence

13.(1) An applicant for a licence must nominate an adult to be a nominee for the licence if the applicant—

- (a) is a corporation; or
- (b) is already a licensee; or
- (c) is more than 1 person, whether jointly or in partnership.

(2) An applicant for a licence, other than an applicant mentioned in subsection (1), may also nominate an adult to be the nominee for the licence.

(3) If a nominee is required by this Act, a licensee must nominate another adult as the nominee for a licence if, after a licence is granted—

- (a) a person ceases to be a nominee for the licence; and
- (b) there is no other nominee for the licence.

(4) A licensee may apply to the chief executive—

- (a) for an adult to be the nominee for the licence; or
- (b) for an additional nominee for the licence; or
- (c) to replace an existing nominee.

(5) An adult may be nominated as a nominee for more than 1 licence.

⁶ Under section 13 (Application for nominee for new licence or existing licence) if an applicant for a licence is already a licensee, the existing licensee must apply for another adult to be the nominee for the new licence.

Nominees

14.(1) The chief executive may approve an application under section 19 only if the nominated person is a suitable person to be a nominee.

(2) The decision whether an adult is a suitable person to be a nominee must be made in the same way as the decision whether a person is a suitable person to hold a licence.⁷

(3) A person approved as a nominee—

- (a) is responsible for ensuring that the licensee's wine is sold on the licensed premises only as authorised by the licence; and
- (b) is subject to the obligations imposed by this Act on the licensee; and
- (c) is liable as a licensee for an offence against, or any failure to perform obligations imposed by, this Act.

(4) A nominee's liability for an offence under this Act does not affect the liability of the licensee for the offence.

Division 5—Authority given by licence**Licence authorises sale of wine from licensed premises**

15.(1) A licence authorises the licensee—

- (a) to sell the licensee's wine in sealed containers for consumption off licensed premises; and
- (b) to sell or give the licensee's wine as a sample for consumption on licensed premises.

(2) The chief executive may allow the licensee, as a condition of the licence, to sell the licensee's wine in sealed containers for consumption on licensed premises.

(3) The chief executive may allow the licensee, as a condition of the licence, to sell the licensee's wine on other premises approved by the chief

⁷ See sections 9 (Decision on application) and 10 (Inquiries about applicant's criminal history).

executive for the sale of the licensee's wine under authority of the licence—

- (a) as a sample for consumption on the premises; or
- (b) in sealed containers for consumption on or off the premises.

(4) In deciding whether to allow the licensee to sell the licensee's wine—

- (a) under subsection (2) or (3)—the chief executive must have regard to the suitability of the premises for the purpose; and
- (b) under subsection (3)—the chief executive must have regard to location of the premises in relation to the main premises.

Blended wine

16.(1) This section applies if a licensee blends the licensee's wine with wine from other sources (the "**blended wine**").

(2) The licence authorises the licensee to sell the blended wine as if it were the licensee's wine.

(3) The authority under subsection (2) applies only to blended wine consisting of at least the percentage of the licensee's wine prescribed under the regulations.

Labelling of sealed containers for sale or supply

17. A licence authorises the licensee to sell the licensee's wine in a sealed container (whether for consumption on the licensed premises or otherwise) with a label stating the matters prescribed under the regulations.

Division 6—Trading hours authorised by licence

Ordinary trading hours

18.(1) A licence authorises the licensee to sell the licensee's wine on licensed premises—

- (a) for any day other than Christmas Day, Good Friday and Anzac Day—between 10.00 am and midnight on the day; and
- (b) for Anzac Day—between 1.00 pm and midnight on Anzac Day.

(2) A licensee may sell the licensee's wine on Christmas Day or Good Friday only if authorised under section 19 (Extended trading hours).

Extended trading hours

19.(1) A licensee may apply to the chief executive to extend the trading hours during which a licensee is authorised to sell the licensee's wine on licensed premises, including, for example, the sale of the licensee's wine on Christmas Day or Good Friday.

(2) If the chief executive grants the application the licensee is authorised to sell the licensee's wine during the times, and on the conditions, approved by the chief executive.

(3) If the chief executive considers that the licence should be endorsed with the new trading hours, the chief executive may require the licensee to produce the licence for endorsement.

Additional time for consumption of wine

20. If a licence authorises a licensee to sell the licensee's wine for consumption on licensed premises, the licence also authorises a person to consume the licensee's wine, received from the licensee during the authorised trading hours, on the premises for 30 minutes after the end of the trading hours.

Division 7—Transfer of licences and interim licences

Application for transfer of licence

21.(1) The current licensee and the proposed licensee may apply to the chief executive to transfer the licence to the proposed licensee.

(2) However, if the current licensee is not the owner of the main premises, the owner of the premises must agree to the transfer.

(3) If the licensee has deserted or no longer has lawful possession of the main premises, the chief executive may transfer a licence on the application of the owner of the premises and the proposed licensee or, if the owner is the proposed licensee, the owner alone.

(4) If a mortgagee is in lawful possession of the main premises, the chief executive may transfer a licence on the application of the mortgagee and the proposed licensee or, if the mortgagee is the proposed licensee, the mortgagee alone.

Chief executive's responsibility on application for transfer of licence

22.(1) The chief executive must deal with an application for the transfer of a licence as if the proposed transferee were an applicant for a licence.

(2) The chief executive may transfer the licence only if the proposed transferee is a person to whom a licence could be granted.

Example—

The chief executive may only approve the application if the requirements of relevant sections of this Act have been complied with, including, for example, sections 9, 11, 12 and 13.⁸

(3) On the transfer of the licence, the transferee becomes the licensee and—

- (a) has the authority given by the licence to the licensee; and
- (b) is subject to the obligations imposed by this Act and the licence on the licensee.

Licence cannot be transferred if fees payable

23. The chief executive may transfer a licence only if all fees payable under this Act for the licence have been paid in full.

Application for interim licence

24.(1) The following persons may apply to the chief executive for an interim licence to conduct the business of a licensee on licensed premises—

- (a) if a licensee is dead—a person entitled to be appointed as the legal

⁸ Section 9 (Decision on application)
Section 11 (Grant of licence)
Section 12 (Licensee may hold more than 1 licence)
Section 13 (Application for nominee for new licence or existing licence).

personal representative of the deceased licensee;

- (b) if the licensee is bankrupt or has taken advantage of the laws of bankruptcy—a person in possession of the licensed premises who is entitled to administer the affairs of the licensee;
- (c) if the licensee is a corporation—a person in possession of the licensed premises who has been appointed to manage or wind-up the affairs of the licensee;
- (d) a guardian of a licensee or an administrator or manager of the estate of a licensee.

(2) The chief executive may grant an interim licence only if the chief executive is satisfied that the person is a suitable person to hold the interim licence.

(3) The decision whether an adult or a corporation is a suitable person to hold an interim licence must be made in the same way as the decision as to whether a person is a suitable person to hold a licence.

(4) The chief executive may grant an interim licence—

- (a) for a term, not longer than 1 year, the chief executive considers reasonable in the circumstances; and
- (b) subject to the conditions stated in the interim licence.

(5) A person to whom an interim licence is granted has the authority given by, and is subject to the obligations imposed by, this Act and the licence as if the person were the licensee.

Division 8—Advertising

Advertisement of applications

25.(1) A person must advertise an application made under this Act, in the way prescribed under the regulations.

(2) However, the chief executive may exempt the person from advertising an application—

- (a) if it is not likely that members of the public in the locality would be affected by, or concerned about, the grant of the application; or

- (b) if the application is required to be advertised as part of another process related to the application, including, for example, an application for planning approval; or
- (c) in circumstances prescribed under the regulations.

(3) This section does not apply to an application under the following sections—

- section 13 (Application for nominee for new licence or existing licence)
- section 21 (Application for transfer of licence)
- section 24 (Application for interim licence).

Submissions about an application

26.(1) A person may make a written submission, in the way prescribed under the regulations, to the chief executive objecting to the granting of an application to which section 25 applies.

(2) A regulation may prescribe the following matters—

- (a) who may make a submission;
- (b) how a submission may be made;
- (c) when a submission is to be made;
- (d) the grounds on which a submission may be made;
- (e) the procedure to be followed by the chief executive in considering a submission;
- (f) the matters to which the chief executive must have regard in deciding an application.

Division 9—Variation, suspension, cancellation or surrender of licence

Grounds for variation, suspension or cancellation

27.(1) Each of the following is a ground for the variation, suspension or cancellation of a licence—

- (a) the licence was obtained because of incorrect or misleading information;
- (b) the licensee has contravened a condition of the licence;
- (c) the licensee has committed an offence against this Act or the Liquor Act about the sale of wine;
- (d) the licensee is not, or is no longer, a suitable person to be a licensee;
- (e) the licensee has ceased to conduct the business.⁹

(2) The decision whether a person is a suitable person to continue to be a licensee must be made in the same way as the decision whether a person is a suitable person to hold a licence.

Procedure for variation, suspension or cancellation

28.(1) If the chief executive believes that a ground exists to vary, suspend or cancel a licence (the **“proposed action”**), the chief executive must give the licensee a written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the chief executive’s belief; and
- (d) if the proposed action is to vary a condition of the licence—states the proposed variation; and
- (e) if the proposed action is to suspend the licence—states the proposed suspension period; and
- (f) invites the licensee to show, within a stated time of at least 28 days, why the proposed action should not take place.

(2) If, after considering all representations made within the stated time, the chief executive still believes a ground exists to cancel the licence, the chief executive may—

⁹ However, apart from this Division a licence is suspended, and may be cancelled, under section 54 (Suspension and cancellation for failure to pay fee) because fees are not paid when payable.

- (a) if the proposed action is to vary a condition of the licence—vary the condition in the way proposed; or
- (b) if the proposed action is to suspend the licence for a stated period—suspend the licence for the stated period or a shorter period; or
- (c) if the proposed action is to cancel the licence—cancel the licence, suspend the licence for a period or vary a condition of the licence.

(3) The chief executive must inform the licensee of the decision by written notice.

(4) If the chief executive decides to vary, suspend or cancel a licence, the notice must state—

- (a) the reasons for the decision; and
- (b) the licensee's right to appeal the decision.

(5) The decision takes effect on the later of the following—

- (a) on the day the notice is given to the licensee;
- (b) the day stated in the notice.

Effect of suspension

29. If a licence is suspended by the chief executive, the licence ceases to be in force for the period of the suspension.

Licensee may surrender

30.(1) A licensee may surrender a licence to the chief executive at any time.

(2) However, if the licensee is not the owner of the main licensed premises the licensee must obtain the owner's agreement before surrendering the licence.

Compensation not payable

31. Compensation is not payable to any person because the chief executive—

- (a) varies a licence condition without agreement; or
- (b) suspends or cancels a licence; or
- (c) accepts the surrender of a licence.

Division 10—Permits

Permits

32.(1) A licensee may apply to the chief executive for a permit.

(2) The chief executive may grant a permit only if the chief executive is satisfied the purpose of the permit is to promote a particular winery or region.

(3) A permit authorises the licensee stated in the permit to sell the licensee's wine at the permit place stated in the permit.

(4) The permit conditions stated in the permit.

(5) A group of licensees may also apply for a permit.

(6) If a group of licensees applies for a permit—

- (a) each licensee whose wine is to be sold at the proposed permit place must agree to the permit; and
- (b) 1 licensee must be nominated as the holder of the permit.

(7) The agreement of a licensee under subsection (6)(a) is taken to be an appointment of each of the other licensees applying for the permit as nominees for the licensee.

(8) A permit granted to a group of licensees authorises the licensees stated in the permit to sell the licensees' wine at the permit place stated in the permit.

Division 11—Appeals

Appeals against decisions of chief executive

33.(1) A decision of the chief executive under this Act may be appealed

against under Part 2 of the Liquor Act as if the decision were a decision of the chief executive under the Liquor Act.

- (2) A reference in Part 2 of the Liquor Act—
- (a) to the Liquor Act is a reference to the *Wine Industry Act 1994*; and
 - (b) to a decision of the chief executive is a reference to a decision of the chief executive under this Act; and
 - (c) to an application, submission or objection is a reference to an application, submission or objection under this Act.
- (3) For this section, this Act is to be read together with the Liquor Act.

PART 3—OBLIGATORY PROVISIONS AND OFFENCES

Breach of conditions of licence or permit

34.(1) A licensee must not sell the licensee's wine unless the sale is authorised under this Act.

Maximum penalty—350 penalty units.

(2) A licensee must comply with the conditions of the licensee's licence or permit.

Maximum penalty—350 penalty units.

Wine not to be sold outside authorised trading hours

35. A licensee must not sell the licensee's wine at a time other than—

- (a) the ordinary trading hours mentioned in section 18;¹⁰ or
- (b) if the chief executive has extended the trading hours under

¹⁰ Section 18 (Ordinary trading hours).

section 19¹¹—the trading hours under the extension; or

- (c) at the times under a permit held by the licensee.

Maximum penalty—100 penalty units.

Wine prohibited to certain persons

36.(1) A person must not, on licensed premises or at a permit place, provide wine to a minor or a person who is unduly intoxicated.

Maximum penalty—

- (a) if the person is the licensee of, or the nominee for, the licensed premises or the permit place—250 penalty units; or
- (b) in any other case—40 penalty units.

(2) In this section—

“**unduly intoxicated**” has the meaning given by the Liquor Act.

Prohibitions affecting minors

37.(1) A minor must not, on licensed premises or at a permit place—

- (a) drink wine; or
- (b) be in possession of wine.

Maximum penalty—25 penalty units.

(2) Subsection (1)(b) does not apply to a minor who is in possession of wine—

- (a) while performing duties as an employee of the licensee of the licensed premises; or
- (b) while receiving training for employment or work experience.

False representation of age

38.(1) A person must not, for a wrongful purpose under this Act, falsely

¹¹ Section 19 (Extended trading hours).

represent himself or herself to have reached 18 years.

Maximum penalty—25 penalty units.

(2) A person must not—

- (a) make a false document that could reasonably be taken to be genuine acceptable evidence of age of the person or someone else; or
- (b) give a false document mentioned in paragraph (a) to someone else;

knowing the document to be false and with intent that the document be used as acceptable evidence of age of a person.

Maximum penalty—

- (a) for a minor—25 penalty units; and
- (b) for an adult—40 penalty units.

(3) A person must not, for a wrongful purpose, falsely represent to an entity that the person has reached 18 years to obtain a document that is acceptable evidence of age of the person, knowing the representation to be false.

Maximum penalty—25 penalty units.

(4) In this section—

“wrongful purpose” of a minor means intending wine to be sold or provided to the minor on the licensed premises or at a permit place.

Wrongful dealing with genuine evidence of age

39.(1) A person must not knowingly give a document that is acceptable evidence of age of the person mentioned in the document (the **“specified person”**) to someone else, if the person giving the document knows or has reasonable grounds to suspect that the document may be used as acceptable evidence of age of someone other than the specified person.

Maximum penalty—40 penalty units.

(2) A person must not wilfully or negligently deface or interfere with a

document that is acceptable evidence of age of the person or someone else.

Maximum penalty—40 penalty units.

Seizure of document wrongly used as evidence of age

40.(1) If a document is shown to a person and the person believes, on reasonable grounds, that the document has been used by someone else in contravention of section 38(2) or (3),¹² the person may seize the document.

(2) The person must give the seized document to an investigator within 3 days of the seizure or, if that is not reasonably practicable, must notify an investigator about the seizure within the 3 day period.

Maximum penalty—25 penalty units.

Finding out age

41.(1) An authorised person may require someone else whom the authorised person suspects on reasonable grounds to be a minor and to be contravening a provision of this Act—

- (a) to state all relevant particulars about the person's age; and
- (b) to produce evidence of the person's age.

(2) In this section—

“authorised person” includes—

- (a) a licensee; and
- (b) an employee or agent of a licensee; and
- (c) an investigator.

False or misleading statements

42.(1) A person must not—

- (a) state anything for this Act that the person knows is false or misleading in a material particular; or

¹² Section 38 (False representation of age).

- (b) omit from a statement made for this Act anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

43.(1) A person must not give a document for this Act containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

Example—

An applicant knowingly giving the chief executive an application form containing false information.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the person to whom the document is given, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person giving the document has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

Authorised person to be in control of premises and places

44. A licensee must not leave licensed premises or a permit place in the control of a person unless the person is a nominee for the licence or the permit.

Maximum penalty—100 penalty units.

Keeping licence or permit at licensed premises

45.(1) A licensee must keep the licence at the main licensed premises, unless the licensee has a reasonable excuse for not doing so.

Maximum penalty—25 penalty units.

(2) A licensee must keep the permit at the permit place, unless the licensee has a reasonable excuse for not doing so.

Maximum penalty—25 penalty units.

Production of licence or permit

46.(1) An investigator may ask the person who appears to be in control of licensed premises or a permit place to produce the licence or permit for inspection.

(2) The person must produce the licence or permit immediately for inspection by the investigator, unless the person has a reasonable excuse for not producing it.

Maximum penalty—25 penalty units.

(3) A person does not commit an offence against subsection (2) if at the time the investigator asked the person to produce the licence or permit under subsection (1), the person was not, in fact, in control of the licensed premises or permit place.

Notice to be given of change of business name

47. A licensee must notify the chief executive of a change in the licensee's business name and must give the chief executive evidence of the registration of the change under the *Business Names Act 1962*.

Maximum penalty—25 penalty units.

Notice of change of licensee details

48.(1) Within 14 days after a change happens in the structure or nature of the entity that holds a licence, the licensee must give the chief executive written notice of the details of the change.

Examples of change to be notified—

1. A change in the directors of a licensee that is a corporation.
2. A change in the beneficial ownership of a licensee that is a corporation.

Maximum penalty—100 penalty units.

(2) The chief executive, by written notice, may ask the licensee to give further information or documents relevant to the change within the time stated in the notice.

(3) The licensee must give the further information or documents to the chief executive within the time stated in the notice, unless the licensee has a reasonable excuse for not giving the further information or documents.

Maximum penalty—100 penalty units.

PART 4—INVESTIGATIONS

Investigators under Liquor Act may exercise their powers

49.(1) An investigator may exercise the powers of an investigator under Part 7 of the Liquor Act as if a reference in the Part to the Liquor Act were a reference to the *Wine Industry Act 1994*.

(2) Subsection (1) does not apply to an investigator's powers under sections 175 and 187¹³ of the Liquor Act.

(3) A reference in Part 7 of the Liquor Act—

- (a) to a licensee is a reference to a licensee under this Act; and
- (b) to licensed premises is a reference to licensed premises or a permit place under this Act; and
- (c) to a licence or permit is a reference to a licence or permit under this Act; and
- (d) to liquor is a reference to wine under this Act.

(4) For this section, this Act is to be read together with the Liquor Act.

¹³ Sections 175 (Power to stop and search vehicles etc.) and 187 (Abatement of nuisance or dangerous activity).

PART 5—RECORDS AND ANNUAL FEES

Division 1—Record keeping

Records to be kept by licensee

50.(1) A licensee must keep the records prescribed under the regulations.

Maximum penalty—350 penalty units.

(2) The licensee must—

- (a) keep the records in the way approved by the chief executive; and
- (b) keep the records on the main licensed premises to which the licence relates; and
- (c) keep the records for 5 years after the harvest of the fruit, or the making of the wine to which the records relate; and
- (d) produce the records to an investigator if asked by the investigator; and
- (e) allow an investigator to take copies of the records.

Maximum penalty—350 penalty units.

Licensee to provide annual return

51.(1) A licensee must, by the day prescribed under regulations, give to the chief executive a return about the matters included in the licensee's records.

Maximum penalty—350 penalty units.

(2) The return must be made in a form approved by the chief executive and include the particulars prescribed under the regulations.

Maximum penalty—350 penalty units.

False or misleading records or returns

52.(1) A person must not—

- (a) keep records, or provide a return, for this Act that the person knows is false or misleading in a material particular; or
- (b) omit from a record or return made for this Act anything without which the record or return is, to the person's knowledge, misleading in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the record or return made was false or misleading to the person's knowledge.

Division 2—Annual fee

Payment of fee

- 53.(1)** A licensee must pay a fee for the licence on an annual basis.
- (2) The amount of the fee is the amount prescribed under the regulations.
 - (3) The fee is not payable until the licensee receives a notice stating—
 - (a) the amount of the fee payable; and
 - (b) the day by which the fee is payable.

Suspension and cancellation for failure to pay fee

54.(1) If a fee payable for a licence is not paid when it is payable, the licence is immediately suspended and is cancelled at the end of 14 days.

(2) However, if within the 14 days, the fee is paid to the department in cash or by bank cheque or electronic funds transfer, the suspension is lifted from the time of payment and the cancellation does not take effect.

PART 6—QUEENSLAND WINE INDUSTRY POLICY COUNCIL

Establishment and functions of Council

55.(1) The Minister may establish the Queensland Wine Industry Policy Council.

(2) The Council must perform the functions prescribed under the regulations.

Appointment of Council members

56.(1) The Minister may appoint persons to be members of the Council.

(2) The regulations may prescribe—

- (a)** the number of members; and
- (b)** matters to which the Minister must have regard when appointing members, including, for example, qualifications.

PART 7—ADMINISTRATION

Delegation

57. The chief executive may delegate the chief executive's powers to an officer or employee of the department.

Register of licences and permits

58.(1) The chief executive must keep a register of licences and permits.

(2) The register must contain the particulars the chief executive considers necessary or desirable for the effective administration of this Act, including, for example, names and addresses of licensees, nominees and transferees.

Register open to inspection

59. The chief executive must keep the register open for inspection at the department in Brisbane¹⁴—

- (a) by an investigator while performing duties under this Act or the Liquor Act—free of charge; and
- (b) by anyone else—on payment of the fee prescribed under the regulations.

Protection from liability

60.(1) The chief executive, an officer or employee of the department and an investigator do not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

PART 8—MISCELLANEOUS**Review of legislation**

61.(1) The Minister must ensure a review of this Act is performed 5 years after the commencement.

(2) The review must consider, and make recommendations to the Minister about—

- (a) amending the Act as is considered appropriate; and
- (b) the situation in other States about the assessment and payment of licence fees.

¹⁴ The department's office in Brisbane is located at Mineral House, 41 George Street, Brisbane.

Regulations

62. The Governor in Council may make regulations under this Act.

PART 9—TRANSITIONAL PROVISIONS

Definitions

63. In this Part—

“**repealed Act**” means the *Wine Industry Act 1974*.

Continuation of existing registrations

64.(1) A certificate of registration that was granted under the repealed Act and is in force immediately before the commencement (an “**existing registration**”) has effect after the commencement, according to its terms, as if it were a licence granted by the chief executive under this Act.

(2) As soon as is practicable after the commencement, the chief executive must perform a review of the existing registrations.

(3) If, after an existing registration has been reviewed, the chief executive decides a person who holds a certificate of registration under the repealed Act—

- (a) is a person who grows fruit in the State from which wine is made or makes wine in the State—the chief executive must grant the person a licence; or
- (b) is not a person mentioned in paragraph (a)—the person must, if the person is to continue selling wine, apply for a licence under the Liquor Act.

(4) A person mentioned in subsection (3)(b) is taken to be a licensee under this Act for 6 months after the person is given notice of the chief executive’s decision about the person’s certificate or the person is granted a licence under the Liquor Act, whichever is the sooner.

(5) This section expires 1 year after the commencement or, if another

date (no longer than 2 years after the commencement) is prescribed under the regulations, on that date.

Transitional regulations

65.(1) The Governor in Council may make regulations about any matter for which—

- (a) it is necessary or convenient to assist the transition from the operation of the repealed Act to the operation of this Act; and
- (b) this Act does not make provision or enough provision.

(2) A regulation may be given retrospective operation to a date not earlier than the commencement.

(3) This section expires 1 year after it commences.

PART 10—REPEALS AND AMENDMENTS

Acts repealed

66. The following Acts are repealed—

- Wine Industry Act 1974 No. 45
- Wine Industry Act Amendment Act 1974 No. 54
- Wine Industry Act Amendment Act 1982 No. 66.

Acts amended—Sch 1

67. Schedule 1 amends the Acts mentioned in it.

SCHEDULE 1**CONSEQUENTIAL AMENDMENTS**

section 67

LIQUOR ACT 1992**1. Section 4, definition “wine”—***omit, insert—*‘**“wine”** has the meaning given by the *Wine Industry Act 1994*.’**2. Section 21(1), after ‘made to it under this Act’—***insert—*

‘or another Act’.

3. Section 169(a)(i)—*omit, insert—*

- ‘(i) in the case of wine—the sale is made under the authority of a licence or permit under this Act or the *Wine Industry Act 1994*; or’.

4. Section 203(1)(a)(ii)—*omit, insert—*

- ‘(ii) a limited licence relating to premises used for the conduct of a business by a person who holds a licence under the *Wine Industry Act 1994*;’.

SCHEDULE 1 (continued)

5. Section 203(1)(c), from ‘certificate’ to ‘vigneron—vintner’—

omit, insert—

‘licence under the *Wine Industry Act 1994*’.

6. Section 203(1)(c)(ii), after ‘wines’—

insert—

‘, other than the licensee’s wine,’.

7. Section 203—

insert—

‘(6) In this section—

“**licensee’s wine**” has the meaning given in the *Wine Industry Act 1994*.’.

8. Section 205(2)(b)—

omit, insert—

‘(b) a limited licence relating to premises used for the conduct of a business selling wines by a person who holds a licence under the *Wine Industry Act 1994*;’.

9. Section 205(3)(b) and (c)—

omit, insert—

‘(b) a limited licence relating to premises used for the conduct of a business selling wine by a person who holds a licence under the *Wine Industry Act 1994*;’.

SCHEDULE 1 (continued)

TRADING (ALLOWABLE HOURS) ACT 1990**1. Section 5(2)(s)—***omit, insert—*

‘(s) licensed premises under the *Liquor Act 1992* or the *Wine Industry Act 1994*; or’.

2. Section 33(2)(d)—*omit, insert—*

‘(d) on licensed premises under the *Liquor Act 1992* or the *Wine Industry Act 1994*; or’.

SCHEDULE 2

DICTIONARY

section 4

“**acceptable evidence of age**” of a person means a document that is acceptable evidence of age of the person under section 6 of the Liquor Act.¹⁵

“**blended wine**” see section 16.

“**criminal history**” of a person means the person’s criminal record within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and, despite section 6 of that Act, includes a conviction to which the section applies.

“**fruit**” includes—

¹⁵ Section 6 of the Liquor Act provides as follows—

‘Acceptable evidence of age

6. For the purposes of this Act, acceptable evidence of the age of a person is a document—

- (a) that is—
 - (i) a proof of age card issued to the person—
 - (A) by a department prescribed under the regulations or an entity of another State or a Territory performing functions similar to the functions of the department; or
 - (B) by an entity approved in writing by the chief executive; or
 - (ii) a motor vehicle driver’s or rider’s licence or permit issued to the person under a law of the State or a law of another State or a Territory; or
 - (iii) an Australian or foreign passport issued to the person; and
- (b) that bears a photograph of the person; and
- (c) that indicates by reference to the person’s date of birth or otherwise that the person has attained a particular age.’

SCHEDULE 2 (continued)

- (a) the juices of fruit used to make wine; and
- (b) honey used to make mead.

“investigator” means a person authorised under section 174(1)¹⁶ of the *Liquor Act 1992* or a police officer.

“licence” means a licence under this Act.

“licensed premises” of a licence means premises stated in the licence as the main premises and other premises approved under section 15(3)¹⁷ for the licence.

“licensee” means a person who holds a licence.

“licensee’s wine” means—

- (a) wine made from fruit grown in the State by the licensee; or
- (b) wine made in the State by the licensee.

“Liquor Act” means the *Liquor Act 1992*.

“main premises” means the premises stated in the licence to be the main premises for the licence.

“permit” means a permit granted under section 32.¹⁸

“permit place” means a place stated in the permit to be a permit place for the licence.

“premises” includes land, and a building or structure on or in land.

Examples—

vineyard, apiary or orchard.

“provide wine” to a person means—

- (a) supply wine to the person; or

¹⁶ Section 174 (Investigators).

¹⁷ Section 15 (Licence authorises sale of wine from licensed premises).

¹⁸ Section 32 (Permits).

SCHEDULE 2 (continued)

- (b) allow wine to be supplied to the person; or
- (c) allow wine to be consumed by the person.

“register” means the register of licences and permits kept by the chief executive under section 58.¹⁹

“sell” has the meaning given by the Liquor Act.²⁰

“Tribunal” has the meaning given by the Liquor Act.

“unduly intoxicated” has the meaning given by the Liquor Act.²¹

“wine” means any of the following fermented or distilled fluids of an intoxicating nature intended for human consumption—

- (a) a fluid resulting from the complete or partial fermentation of only

¹⁹ Section 58 (Register of licences and permits).

²⁰ Section 4 of the Liquor Act defines **“sell”** as follows—

‘ **“sell”** includes—

- (a) barter or exchange; and
- (b) offer, agree or attempt to sell; and
- (c) expose, send, forward or deliver for sale; and
- (d) cause or permit to be sold or offered for sale; and
- (e) supply or offer, agree or attempt to supply—
 - (i) in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
 - (ii) gratuitously, but to gain or keep custom or other commercial advantage.’.

²¹ Section 4 of the Liquor Act defines **“unduly intoxicated”** as follows—

‘ **“unduly intoxicated”** means a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.’.

SCHEDULE 2 (continued)

grapes and, at 20° C, containing ethyl alcohol (ethanol) of at least 80 mL/L (8%);

- (b) a fluid resulting from the complete or partial fermentation of fruit (other than wholly from grapes) and, at 20° C, containing ethyl alcohol (ethanol) of at least 11.5 mL/L (1.15%);
- (c) a fluid resulting from the complete or partial fermentation of honey and at 20° C, containing ethyl alcohol (ethanol) of at least 11.5 mL/L (1.15%);
- (d) a fluid resulting from the distillation of any fruit to obtain a fluid possessing the taste, aroma and other characteristics generally attributed to brandy and, at 20° C, containing ethyl alcohol (ethanol) of at least 250 mL/L (25%);
- (e) a fluid resulting from adding a fluid mentioned in paragraph (d) with a fluid mentioned in paragraph (a), (b) or (c) and, at 20° C, containing ethyl alcohol (ethanol) of at least 170 mL/L (17%).

Examples of paragraphs (a) to (e)—²²

- (a) table wine and sparkling wine;
- (b) cider, perry and other fruit and vegetable wines;
- (c) mead and sparkling mead;
- (d) brandy and fruit brandy including Calvados, Fraise, Framboise, Kirsch, Kirschwasser, Quetsch, Mirabella and Slivovitz;
- (e) frontignac, madeira, marsala, muscat, port, sherry, tokay, fortified mead and other fortified fruit and vegetable wines.

²² For further information about the types of wine covered by this definition, P2, P3 and P4 of the Australian Food Standards Code should be considered.