

WINE INDUSTRY AMENDMENT BILL 2001

EXPLANATORY NOTES

Objectives of the legislation

The objectives of the Bill are to implement the proposals arising from the National Competition Policy Review of the *Wine Industry Act 1994* (“the Act”). The Bill will augment the existing policy objectives of furthering the efficiency of and developing the tourism potential of the wine industry in Queensland as well as streamlining the administration of the Act.

Reasons for the legislation

This legislation arises as a consequence of the National Competition Policy requirement to review legislation and the statutory requirement in section 61 of the Act which requires that the Act be reviewed after five years in operation.

Cost of implementation

There is no additional cost to the Government in implementing the provisions of this Bill.

Fundamental legislative principles

The legislation does not breach any fundamental legislative principles.

Consultation

Consultation occurred with the following Government agencies:

Department of Premier and Cabinet

Department of State Development—Business Regulation Review
Unit

Queensland Health

Queensland Police Service

Queensland Treasury.

In the course of conducting the review and preparing the Bill the wine industry has been consulted on a number of occasions. In addition the Queensland Hotels Association was consulted.

NOTES ON CLAUSES

Clause 1 provides for the short title of the Act.

Clause 2 provides that the Act commences on a date to be proclaimed.

Clause 3 provides that Part 2 and the schedule amend the *Wine Industry Act 1994*.

Clause 4 amends section 3 of the Act which provides for the objectives of the Act. The objectives are expanded by the addition of a paragraph specifying that it is an objective of the Act to foster investment in and growth of the Queensland wine industry and by an objective requiring that the industry be regulated in a way that is compatible with minimising the harm arising from the misuse of alcohol and the aims of the National Health Policy on Alcohol adopted by the Ministerial Council on Drug Strategy.

The objectives are also amended to reflect the introduction of a wine merchant licence for those operators who substantially contribute to the Queensland wine industry in ways other than growing fruit and making wine on the premises.

Clause 5 amends section 6 which sets out the basic requirements for eligibility for a licence under the Act. Currently a person must grow the fruit used to make the wine in Queensland or make the wine in Queensland.

The new provisions specify that 2 types of licence may be held under this Act. A wine producer licence to sell wine may be obtained by operators who either grow, at the licensed premises, the fruit used to make the wine or make the wine at the licensed premises.

A person may obtain a wine merchant licence to sell wine where the person conducts a business that contributes to the Queensland wine industry in a substantial way. New subsection (4) gives some examples of businesses that may contribute to the Queensland industry in a substantial way. Subsection (5) gives examples of operations that do not contribute in a substantial way.

Clause 6 inserts a new heading for Division 1A of Part 2 and makes some minor changes to section 7 which deals with applying for a licence.

Clause 7 inserts a new heading for Part 2, division 2. Clause 7 also omits section 8 which merely repeated the basic eligibility criteria for a licence and is unnecessary as section 6 clearly specifies the persons that are eligible to apply for a licence under the Act.

Clause 8 amends section 9 by inserting a new subsection clarifying that a wine merchant licence relates to one premises only.

Clause 9 amends section 11 to reflect the new categories of licence. Section 11 specifies that the chief executive may grant a licence only where the chief executive is satisfied as to certain things. The clause amends the Act to reflect the separate requirements relating to a wine producer licence and a wine merchant licence as specified in section 6.

Section 11(3) which requires that a licence must state the premises which are to be the main premises under the licence is amended to specify that a wine producer licence must specify the main premises. Wine producer licences are the only licences that will be able to have premises other than the main premises.

A wine merchant licence must state the premises to which the licence relates.

New subsection (4) clarifies that an application for a licence may not be granted until the business to be conducted under the licence includes the sale of wine. It is not intended that licences be granted in anticipation of future operations.

Clause 10 omits section 13 relating to nominees for new or existing licences and replaces it with a section that reflects the two categories of licence. The underlying philosophy of ensuring that there is an adult responsible for each licence and where other places are involved for each place is explained in the section.

A nominee is mandatory where the applicant is a corporation, already a licensee or is comprised of more than one person. A nominee is also mandatory where the holder of a wine producer licence is seeking approval to sell wine at premises other than the main premises. In such circumstances a nominee is a nominee for the other premises only if so specified in the licence.

A licensee may appoint a nominee in other cases if desired.

The section also requires a licensee to appoint a nominee where the licensee proposes to be absent from the licensed premises for more than 28 days continuously.

Clause 11 amends section 14(1) which provides that a nominee must be a suitable person before the chief executive may approve the nomination. A new subsection (1) is inserted to reflect the two licence types. In addition, it provides that there is to be no more than one nominee in the case of a wine merchant licence.

Subsection (3) of section 14 provides that a nominee must only sell “licensee’s wine” as authorised by the licence. This subsection is amended by deleting a reference to “licensee’s wine” as a wine merchant licence authorises the sale of wine other than licensee’s wine. Nominees must only sell wine as authorised by the licence.

Clause 12 amends existing section 15 which specifies what a licence authorises. Section 15 will now specify the authority of a wine producer licence. A wine producer licence will allow the licensee to sell, on the licensed premises, the licensee’s wine (defined in Schedule 2) in sealed containers for consumption off the premises and to sell or give the licensee’s wine as a sample for consumption on licensed premises. This is the same authority licensee’s currently have.

Section 15(2) provides that the chief executive may allow the licensee to sell wine on the main premises, in sealed containers, for consumption on the licensed premises with the chief executive’s approval. The requirement to sell in sealed containers is deleted. This will allow wine producers more flexibility in the style of operation they conduct and enhance the tourism potential of the industry.

Subsection (3) is amended to clarify that licensees may give, as well as sell, licensee’s wine as a sample for consumption on or off the premises where the premises are other than the main premises. The amendment further specifies that licensee’s wine may be sold for consumption on the

premises. This amendment ensures consistency with subsections (1) and (2) which specify what licensees can do at their main premises.

New subsection (3A) is inserted and specifies that the chief executive may allow the licensee to sell wine other than the licensee's wine, for consumption on the premises and off the premises in the amounts and circumstances prescribed. However, new subsection (3B) specifies that the total amount of wine sold by a licensee under such an approval must not be more than the total amount of licensee's wine sold by the licensee in the year. This allows the licensee some flexibility in operating, for example, offering meals at a winery and being able to offer other wines but ensures that the primary focus of the operation remains that of a wine producer. The other operations are to remain ancillary to the primary purpose.

Subsection (4)(b) requires that when considering an application to operate premises other than the main premises the chief executive must have regard to the location of the premises with respect to the main premises and the ability of the licensee to control the other premises.

Clause 13 replaces sections 16 and 17. New section 16 specifies the authority given by a wine merchant licence. The holder of a wine merchant licence can sell wine in sealed containers for consumption off the licensed premises and sell or give wine as a sample for consumption on the licensed premises. Where the chief executive approves, wine may be sold for consumption on the premises.

Repealed section 16 dealt with "blended wine", a concept that is no longer applicable as the definition of "licensee's wine" is to be amended to specify the permissible level of blending.

New section 17 continues the requirement for licensee's who sell wine in a sealed container to ensure that the container has a label stating the matters prescribed under a regulatio

Clause 14 omits section 18(1) and inserts a new provision specifying ordinary trading hours of the two licence types. Wine producers may now commence trading on the main premises at 8am rather than 10am. This reflects the requirements of tourism industry. Other premises approved by the chief executive for trading continue to have a 10am commencement time.

Wine merchants may trade between 10am and midnight.

Existing restrictions relating to Christmas Day, Good Friday and Anzac Day are retained.

Clause 15 amends section 20 by deleting references to “licensee’s wine”.

Clause 16 amends section 27 by inserting references to nominees to ensure that the grounds for variation suspension or cancellation of a licence include failures by nominees to comply with the Act.

Clause 16 further amends section 27 by inserting a new ground for having a licence varied, suspended or cancelled. In the case of a wine merchant licence, if the licensee does not continue to operate the business in a way that substantially contributes to the Queensland wine industry, the licence may be subject to variation, suspension or cancellation. This provision is necessary to ensure that licensees continue to meet the conditions that made them eligible for a licence in the first instance.

Clause 17 inserts a new section 31A specifying that Part 2, Division 10 – Permits applies to persons who hold a wine producer licence.

Clause 18 inserts a new section 32(2) which requires the chief executive to consider an additional factor when considering an application for a permit. As well as being satisfied that the permit is to promote a particular winery or region the chief executive must reasonably consider that it is more appropriate for the wine to be sold under a permit instead of a licence because the purpose is to sell the licensee’s wine at a single event. A single event is not restricted to one day. It may include, for example, an event that runs over a number of consecutive days. It is not intended however that a permit be obtained for operations of a permanent nature, such as, selling a particular wine in a specific restaurant. In that case the operator of the restaurant should obtain a licence under the *Liquor Act 1992* or the wine producer should seek approval under section 15(3) to operate on other premises.

Clause 19 amends section 34 by specifying that a licensee must not sell wine unless it is authorised under this Act or the *Liquor Act 1992*.

Clause 20 replaces section 44. The new section specifies that a licensee not leave licensed premises or a permit place in the control of another person unless that person is an agent or employee of the licensee. Nominees must be agents or employees of the licensee.

The requirement that a licensee not be absent from the management and control of the business conducted under the licence for more than 28 days without the approval of the chief executive mirrors a requirement placed on licensees under the *Liquor Act 1992*. The requirement reflects the personal responsibility that attaches to the holder of a licence and is an integral part of the licensing regime for both the liquor and wine industries.

Clause 21 inserts a new subsection in section 47 restricting the use of certain terms. The holder of a wine merchant licence may not use certain specified terms to describe the licensed premises. The use of such terms may give rise to an inference that some aspects of wine production are occurring on the premises.

Clause 22 amends section 49 in a way that will allow investigators under the *Wine Industry Act* to exercise the powers under section 187 of the *Liquor Act 1992* relating to the abatement of nuisance or dangerous activity. These powers are most often exercised in relation to noise from licensed premises. With the introduction of the wine merchant licence and the continued expansion of the style of operation in the wine industry it is necessary that such premises be able to be controlled in a similar way to other licensed premises.

Clause 23 omits existing section 63 which is no longer required and inserts a new section 63 dealing with transitional matters arising from the legislation.

The section requires the chief executive to conduct a review of existing licences under the Act, including where a licence is held in conjunction with a limited licence under the *Liquor Act 1992*. The chief executive must then issue the licence most suited to the business conducted under the licence ie a wine producer licence, a wine merchant licence or a licence under the *Liquor Act 1992*.

This clause also inserts a new section 64 which details how applications before the chief executive but not decided at the commencement of the Act are to be handled. The details of the application will dictate how the application is to be dealt with ie if it fits the criteria for a wine producer licence it will be dealt under those provisions of the Act. If the application is taken to be one for a wine merchant, the chief executive can require the applicant to pay the relevant fee (less the amount already paid for the application) for a wine merchant licence within 14 days. If the applicant does not pay the fee the application lapses.

Clause 24 amends Schedule 2 of the Act by inserting a new definition of “licensee’s wine” which requires that at least 85% of the wine be made from fruit grown on the licensed premises by the licensee or made on the licensed premise by the licensee. The previous definition did not refer to a percentage of the wine. All the wine had to be grown or made on the licensed premises. Licensees were only authorised to sell “licensee’s wine”. However, the Act did allow a licensee to blend wine and sell it as if it were licensee’s wine where 70% of the wine complied with the definition.

With the introduction of the two types of licence and the amendments allowing wine producers to sell other wines the concept of blended wines is unnecessary. The percentage referred to is in accordance with federal law.

Additionally, the clause amends the definition of “licensed premises” to reflect the two categories of licence and the fact that a wine producer licence may have premises other than the main premises.

New definitions of “wine merchant licence” and “wine producer licence” are introduced.

The definition of “wine” is amended by deleting some examples, which may no longer be referred to, as a result of Australia’s agreement with the European Community regarding wine, which restricts the use of regional appellations.

Clause 25 provides that Part 3 of the Bill amends the *Liquor Act 1992*.

Clause 26 amends section 84 of the *Liquor Act 1992* to allow the holder of a producer/wholesaler licence under that Act to sell liquor to a licensee under the *Wine Industry Act 1994*. This corrects an anomaly in the existing scheme.

The *Schedule* to the Bill makes minor amendments to the Act.