

Wine Industry Amendment Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Wine Industry Amendment Bill 2007*.

Policy Objectives of the Legislation

The primary policy objective of the Bill is to amend the *Wine Industry Act 1994* to support innovation and growth in the State's wine industry and to avoid unnecessary regulation.

Reasons for the Bill

Reviewing the Act is an action under the Queensland Wine Industry Development Strategy which was released in December 2004. The primary goal of this strategy is to '*develop a sustainable, diverse and innovative Queensland wine industry*'.

Achieving the Objectives

The Bill will implement a range of amendments to support innovation and growth in the industry and avoid unnecessary regulation to:

- streamline wine producer licensing procedures to allow a wine merchant to conveniently convert into the wine producer licence category;
- maintain a wine producer's licence during times of unexpected natural events such as drought, storm, fire, insect infestation or disease;
- simplify wine permit procedures;
- make a wine merchant licence holder eligible to obtain a wine permit;
- establish 8am as the standard opening time for wine producers, satellite cellar door outlets and wine merchants;

- simplify licensing procedures to reduce applicant costs and minimise the time taken to obtain a wine industry licence in the majority of cases; and
- implement a number of minor amendments to clarify existing provisions.

Administrative costs

There is no additional cost to the Government in implementing the provisions of this Bill. Any costs arising from the implementation of initiatives in the Bill will be met from the Department of Tourism, Fair Trading and Wine Industry Development's existing budget allocations.

Fundamental Legislative Principles

The legislation does not breach any fundamental legislative principles.

Consultation

The proposals in the Bill were developed following release of a consultation paper entitled *Review of the Wine Industry Act 1994* in November 2005. Extensive consultation was undertaken in developing the Bill with feedback provided by all industry sectors, including major stakeholders such as the Queensland Wine Industry Association, regional wine associations, a cross section of wine producers and the Queensland Hotels Association.

In conducting the review and developing the Bill, consultation also occurred with the following Government agencies:

- Department of Premier and Cabinet;
- Department of State Development (Office of Regulatory Efficiency); and
- Queensland Treasury.

Notes on Provisions

Clause 1 sets out the short title by which the Act will be known.

Clause 2 provides for the commencement date of the Act, which will be a date fixed by proclamation.

Clause 3 states the Act amends the Wine Industry Act.

Clause 4 inserts a new dictionary definition section.

Clause 5 clarifies Section 6(4)(a)(i) to identify this subsection relates to the making of wine other than on the person's licensed premises. This clause also inserts new section 6(4A) to clarify a wine merchant licence may be granted where a minor part of an applicant's business also involves selling wine made from fruit grown at the applicant's property, which is traditional wine producer activity.

Clause 6 amends subsection 7(1) to remove the need for an applicant to lodge the prescribed particulars and fee where a 'conversion application' is made to transfer an existing wine merchant licensee into the wine producer category.

Clause 7 inserts new section 8 (*Conversion of a wine merchant licence to a wine producer licence*) into the Act. This section establishes the process for a 'conversion application' of a wine merchant licence into a wine producer licence. Currently, applicants who may have significantly invested in establishing a vineyard need to initially hold a wine merchant licence due to the 3-5 year lead time for their vines to become fully productive.

Once the licensee's vines become productive and wine is being made from that fruit, a further application and supporting documentation must be lodged, and additional lodgement fees paid, to obtain an appropriate wine producer licence. This clause provides a 'conversion application' must be in writing and include particulars of the business the applicant intends to conduct, to enable a decision to be made on the application by the chief executive. This new process will reduce applicant 'red-tape' and the payment of another application fee when converting from a wine merchant to the wine producer licence category.

New subsection 8(6) provides that the chief executive is not obliged to consider a conversion applicant's suitability to hold a wine licence. As an assessment was previously undertaken before the conversion applicant gained their wine merchant licence, a further suitability assessment is not mandatory to avoid an unnecessary duplication of this procedure. However, an assessment may still be conducted if it was desirable, such as when a new licensee is involved in the application.

Clause 8 amends Section 11 (*Grant of licence*) to clarify a wine merchant licence can be granted where a minor part of the applicant's proposed

business involves selling wine made only from grapes grown at their premises. New subsection (5) provides where a 'conversion application' is granted the chief executive must cancel the wine merchant licence and issue a wine producer licence. New subsection (6) validates that the licensed premises and nominee under the wine merchant licence become the licensed premises and nominee for the wine producer licence.

Clause 9 amends section 12 by relocating the existing footnote into the section itself.

Clause 10 replaces the term 'other premises' throughout section 13 with the precise term 'satellite cellar door'.

Clause 11 replaces the term 'other premises' throughout section 15 with the precise term 'satellite cellar door'.

New subsection 15(5) prescribes two new matters the chief executive must consider before premises may be approved as a satellite cellar door:

- the number of satellite cellar doors already approved for the licence; and
- the types of business activity being conducted at the proposed premises.

These new provisions will assist decision making on applications in support of the Act's objective to minimise harm from alcohol arising from proliferation of liquor outlets throughout the community. This change also supports the Government's policy position to prevent the sale of liquor at supermarkets.

New subsection 15(6) provides that a conversion applicant will also be authorised to sell other producer's wines 'as of right' as provided for under existing subsection 15(3A) to eliminate the need for a further application to be made to obtain this common entitlement.

Clause 12 amends section 18 (*Ordinary trading hours*) to establish 8am as the standard opening time for all licensees, regardless of licence or outlet type. This amendment supports licensing consistency and overcomes the requirement on a wine merchant licensee and a wine producer operating a satellite cellar door to apply for a specific authority to commence trading from 8am.

Clause 13 amends section 25 (*Advertisement of applications*) to allow the chief executive to consider whether or not public advertising of a wine licence application is required. Under the existing provisions, an applicant for a licence can be required to place a public notice in their local

newspaper on two occasions, once in the Government Gazette and also to erect a sign at the proposed premises. This can be a considerable cost depending on the locality and newspapers used. When public advertising is required, section 25(2) provides that the form of advertising will be as prescribed under a regulation. This amendment will reduce applicant costs and minimise the time taken to obtain a wine industry licence in the majority of cases.

Clause 14 amends subsection 26(1) (*Submissions about an application*) to provide that a written objection may be made to an application which has been required to be advertised.

Clause 15 amends section 27 (*Grounds for variation, suspension or cancellation*) by inserting new subsection 27(3) to allow a wine producer's licence to be maintained for 12 months where the business of selling wine has ceased due to a natural disaster. Examples of a natural disaster are provided and include drought, fire, hail, flood, insect infestation or disease. A 12 month period will provide for the regrowth of a damaged crop during the subsequent growing season. An extension of time may also be granted in certain circumstances as outlined in new subsection 27(4). Subsection 27(1) is also amended by relocating the existing footnote into the section itself.

Clause 16 clarifies section 28(2) (*Procedure for variation, suspension or cancellation*) by including the words 'vary' and 'suspend' in this subsection to ensure consistency with the title of this provision.

Clause 17 abolishes section 31A which allowed only the holder of a wine producer licence to apply for a permit to sell wine at locations away from the licensed premises. Consequently, the holder of a wine merchant licence may now also apply for a permit. Allowing wine merchants to sell their wines at locations away from their main cellar door will provide a practical means of increasing public awareness and ready availability of licensee's wine at appropriate marketing locations.

Clause 18 amends section 32(2)(b) (*Permits to promote particular wineries or regions*) to enable the chief executive to grant one permit to cater for regularly conducted events, such as weekly markets, held at the same location. This will allow a licensee attending regular promotional events to make one application, listing the proposed dates when the promotional activities will be conducted. This will overcome the need for a permit application to be lodged each time a regular event is being attended by the licensee.

New subsection 32(5) confines the entitlement to acquire one permit for regularly conducted events to individual licensees, rather than a group of licensees to ensure the sale and supply of wine at larger scale regular events is appropriately reviewed, approved and monitored.

New subsections 32(3) and 32(8) clarify a permit issued to an individual licensee, or a group of licensees, authorises the sale of licensee's wine in sealed containers for takeaway purposes, and for the sale or giving of licensee's wine as a sample at the permit place.

Clause 19 inserts new subsections 32A and 32B. Subsection 32A establishes a new 'notification' procedure - rather than a permit application procedure - to allow wine sales and tastings at private events.

A 'private event' is defined in the Dictionary as an event not held at the licensed premises where:

- (a) the event is not publicly advertised or is not open to the public or to casual attendance; or
- (b) attendance at the event is restricted by personal invitation by the event's host; or
- (c) admission to the event does not involve paying a fee for admission or for entertainment or services provided at the event.

Examples of a private event - a 21st birthday party, a boardroom lunch, a company cocktail party, a wedding, a wine tasting or promotion for a winery.

Subsection 32A (1) to (4) provides a licensee must first obtain approval to use the 'notification' process. Before an approval may be granted by the chief executive, the applicant must have previously held a permit and complied with the conditions of the permit. This will assist in ensuring an applicant is capable of properly conducting the proposed private event for which the 'notification' procedure can be used.

Subsection 32B provides a 'notification' must be given to the chief executive at least 7 days before the private event, specifying the date, time and location of the event. The 'notification' is taken to be the permit exclusively for the private event and the place stated in the 'notification' is taken to be the permit place.

Clause 20 amends section 34 to reduce the existing 350 penalty unit penalty for a breach of a licence condition to 40 penalty units. This amendment provides consistency with the *Liquor Act 1992* for comparable offences.

Clause 21 amends section 47 (*Business names and related matters*) to allow the holder of a wine merchant licence to use the term ‘cellar door’ provided a sales outlet is operated at the licensed premises. Easing this business name restriction will allow a wine merchant who has established a cellar door to use this term in their business operations to properly describe their wine selling activities and better promote and grow their business.

Clause 22 amends section 59 by relocating the existing footnote into the section itself.

Clause 23 inserts the heading *Division 1 – Transitional provisions for the Wine Industry Amendment Act 2001* which relates to the current transitional provisions under the Act.

Clause 24 inserts new *Division 2 – Transitional provisions for the Wine Industry Amendment Act 2007* concerning advertising applications that are before the chief executive but not decided at the commencement of the Act.

Clause 25 inserts new definitions into *Schedule 2 - Dictionary* for the following terms:

- conversion application;
- licensee’s wine;
- private event; and
- satellite cellar door.

Clause 25(3) revises the existing definition of ‘fruit’ to include ‘concentrated fruit juice’ to include products also used in winemaking. Clause 25 also removes various examples of ‘wine’ products as these are not necessary for administrative purposes under the Act.