

Liquor (Artisan Liquor) Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (Human Rights Act), I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the Liquor (Artisan Liquor) Amendment Bill 2020 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Liquor Act 1992* (Liquor Act) to give effect to Government commitments under the Queensland Craft Brewing Strategy (QCBS) and particular recommendations arising from the Entrepreneurial Pipeline Project Report (EP Report). Relevantly, the QCBS and the EP Report identified the need to simplify the liquor licensing process and create market access opportunities for artisan liquor producers.

To achieve the objective of supporting the growth and development of the Queensland artisanal liquor industry, while maintaining appropriate regulatory oversight, the Bill proposes to amend the Liquor Act to do the following:

- create a new liquor licence category for legitimate craft brewers and artisan distillers (i.e. commercial other – artisan producer licence);
- expand the existing promotional event permit framework;
- provide additional authorisations for eligible producer/wholesaler licensees; and
- encourage the transition of existing licensees to the new artisan producer licence category.

Artisan producer licensees will be authorised to do the following:

- sell their own liquor products and other Queensland artisan liquor products for consumption on the premises;
- sell their own liquor products for consumption off the premises;
- sell their own liquor products wholesale;
- take orders for their own liquor products online;
- apply for a licence condition to sell samples and takeaway of their liquor products at promotional events, subject to volume limits; and
- apply for a commercial public event permit.

Harm-minimisation obligations under the Liquor Act, such as the requirement to submit a community impact statement with a licence application and develop a risk-assessed management plan, will also apply to artisan producer licensees.

The proposed licence is consistent with the government's Tackling Alcohol-Fuelled Violence Policy Review as it will be subject to the same harm minimisation measures and responsible service of alcohol obligations as other licence categories within the Liquor Act.

Queensland's emerging craft brewing and artisanal distilling industry is struggling to deal with the adverse economic impacts of the COVID-19 pandemic. Licensing concessions proposed in the Bill are also intended to assist in the rebuilding and recovery of this vulnerable sector of the State's liquor industry.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

In most cases, the holder of a liquor licence will be a corporation, which does not have human rights. However, the Liquor Act provides for liquor licences to be granted to individuals. The following analysis relates to individuals who apply for and hold an artisan producer licence.

In my opinion, the Amendment Bill may help promote property rights under section 24 of the Human Rights Act, by creating a new licence type which suits the business needs of artisanal liquor producers.

However, the Bill may limit the human right of recognition and equality before the law under section 15 of the Human Rights Act.

The right to recognition and equality before the law may be limited by the Bill to the extent the new licence is only available to craft brewers and artisan distillers that meet prescribed eligibility requirements.

Despite these limitations, for the reasons outlined below, I am of the view that the Bill is compatible with human rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Recognition and equality before the law (section 15)

(a) the nature of the right

The protection of the right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being human, rather than because of a particular characteristic or membership of a particular group. The right places an obligation on public entities to treat people equally and not apply the law in a discriminatory or arbitrary way.

The following clauses of the Bill may limit this right to the extent they limit the eligibility for the new licence to artisan liquor producers:

- Clause 13 prescribes production and sale of craft beer and/or artisan spirits on the licensed premises as the principal activity business for the artisan producer licence.

- Clause 13 restricts the grant of an artisan producer licence to craft brewers who produce a minimum of 2,500 litres and maximum of five million litres of craft beer per annum at the licensed premises; and to artisan distillers who produce a minimum of 400 litres and maximum of 450,000 litres of artisan spirits per annum at the licensed premises.
- Clause 13 restricts the grant of an artisan producer licence to an artisan liquor producer business that is independently owned. To meet this requirement, not more than 20 per cent of an artisan liquor producer business can be owned by a large liquor producer.

The consequence of prescribing eligibility requirements for the artisan producer licence and penalties for an artisan producer licensee that ceases to meet the eligibility requirements is that the benefits of the new licence will not be available to all liquor producers equally.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

To the extent the Bill limits the right to recognition and equality before the law, the limitation is considered justified. The Bill imposes a limitation, the purpose of which is to provide targeted support, for an identified area of economic growth in a free and democratic society by introducing a licence for the artisan liquor industry. The introduction of the ‘Commercial other – artisan producer’ licence is intended to support the development of small, independent craft beer and artisan liquor producers to establish their businesses and derive an income, which is a necessity in supporting human dignity.

The nature of the purpose of the limitation of the right to recognition and equality before the law presented by eligibility requirements for the licence is also considered consistent with a free and democratic society based on human dignity given the nature of the purposes of the Liquor Act with which it is also consistent, particularly:

- to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with—minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and
- to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change.

Under Queensland’s liquor licensing framework, licences are defined in reference to the principal activity of the business and categorised based on the level of potential risk of alcohol-related harm associated with the authorisations of the licence. Annual liquor licence fee amounts are similarly prescribed based on risk to ensure licensees contribute proportionately and equitably to the costs of regulating the liquor industry.

The authorisation and associated licence fee for the proposed artisan licence are consistent with the broad range of risk-based licences available to industry participants under Queensland’s liquor licensing framework. A concessionary application fee for the artisan producer licence is aimed at entry level businesses. The annual base licence fee for an artisan producer licence

reflects that the authorisations under the licence pose a lower level risk of harm than other licences that allow the sale of takeaway liquor, such as a commercial hotel.

A business no longer fits the criteria for the proposed artisan licence if it produces more than the prescribed maximum annual volume limit for the artisan producer licence or sells more than a 20 per cent stake in the business to a large liquor producing company. The minimum annual volume threshold prevents the licence from being granted to home brewers and distillers, both on harm-minimisation grounds and to ensure the licence is available only to genuine small businesses. Operators that are ineligible for the artisan producer licence will not be disadvantaged as the other licences provided in the Liquor Act will still be available.

Artisan alcoholic beverages are associated with a ‘premiumisation trend’ characterised by Australians opting to drink less alcohol and preferring to consume higher quality artisan alcohol in lower quantities. Artisan alcoholic beverage producers who focus on technique and provenance rather than volume of production are contributing to driving a cultural shift in the consumption of alcoholic beverages in Queensland. This is a key focus of the final two-year evaluation of the government’s *Tackling Alcohol-Fuelled Violence Policy*. It is anticipated that the artisan liquor licence will increase growth of the artisan alcoholic beverage industry in Queensland, and this may contribute to further developing a more mature culture of alcohol consumption among the public.

The nature of the purpose of the limitation of the right to recognition and equality under the law presented by the eligibility requirements for the licence is therefore consistent with the values of a free and democratic society as it both supports the emerging artisanal liquor industry whilst also enhancing the equity and integrity of the State’s risk-based liquor licensing framework.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation presented by the licence eligibility requirements relating to principal business activity, annual product volume and independent ownership ensures that the licence is only granted to genuine emerging boutique liquor businesses. The proposed maximum annual production limit excludes large liquor producers; minimum thresholds for annual volume limit the licence to producers operating a viable business, as opposed to recreational ‘home-brewers’. Limiting a large business’s ownership stake in a craft brewery or artisan distillery is necessary to ensure artisan producer licensees are genuinely independent businesses and prevent large businesses from obtaining a sizeable stake in artisan liquor companies in order to exploit the benefits of the new licence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive ways of ensuring the artisan producer licence can only be granted to and held by emerging artisanal liquor businesses. All Queensland liquor licensees must comply with the principal activity of their licence. The restrictive approach to the grant of the artisan producer licence is consistent with the approach to the grant of all other licences provided for under the Liquor Act.

Authorisations and eligibility requirements for the new licence introduced by the Bill have been developed in consultation with representatives from the artisan liquor sector. Stakeholders including the Independent Brewers Association and the Australian Distillers Association, Queensland Hotels Association and Clubs Queensland are satisfied with proposed amendments.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the limitation is considered reasonable and justifiable because it supports a burgeoning small business sector in Queensland and ensures the authorisations of the new licence apply only to businesses that are deemed to have a principal activity that poses a low risk of alcohol-related harm. The limitation on holding an artisan producer licence does not preclude a large liquor producer from holding a different liquor licence that is more appropriate to their business operations. As the limitation also has the effect of benefiting artisan liquor businesses whose needs were not being met by the authorisations and conditions available under other licence types, the limitation ultimately enhances the overall equity and fairness of the liquor licensing framework.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Liquor (Artisan Liquor) Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because although it may potentially limit human rights, it is only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

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ATTORNEY-GENERAL AND MINISTER FOR JUSTICE,
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DOMESTIC AND FAMILY VIOLENCE**

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