

Liquor and Other Acts Amendment Bill 2005

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Margaret Keech MP Minister for Tourism, Fair Trading and Wine Industry Development

Title of the Bill

The short title of the Bill is the *Liquor and Other Acts Amendment Bill 2005* (the Bill).

Objectives of the Amendments

It is proposed to make amendments to the Bill during consideration in detail to mitigate the impact of the proposed *Brisbane City Safety Action Plan* (Action Plan) amendments to the *Liquor Act 1992* on licensees in the Brisbane City Council area with permission to trade after 1am. The Action Plan amendments seek to enhance public safety through the imposition of stricter licence conditions on all licensees in the Brisbane City Council area with permission to trade after 1am.

It is also proposed to make amendments to the Bill concerning the *Property Agents and Motor Dealers Act 2000* during consideration in detail. These amendments will provide that sellers or sellers' agents may include other documents in the same fax or other electronic communication as the warning statement, information sheet (if applicable), and proposed relevant contract or completed contract without reducing buyers' rights and interests.

Achievement of the Objectives

While it is the Government's intention to toughen the conditions under which premises operate to minimise harm, it is not the intention to place excessive financial burdens on legitimate businesses or curtail responsible practices. The proposed changes to the Bill lessen the impact of the

conditions during low risk trading periods, and seek to strengthen the conditions only during high risk trading periods.

They will also clarify the areas of a licensed premise to which the conditions apply. This will be achieved by removing the requirements for specified crowd controller ratios on days when the premises does not trade after 1am and the requirement to have crowd controllers permanently stationed at each entrance during the trading period. The proposed amendments will clarify that the conditions will not apply to detached bottleshop premise and specify that the prohibition on liquor as a prize in a competition relates only to liquor for consumption on the premise.

The proposed amendments will also delay commencement of the Action Plan amendments. The conditions relating to crowd controllers, closed-circuit television, training and house policies will commence on 1 March 2006. This delay will allow industry sufficient time to implement the necessary changes to their businesses. The conditions relating to competitions and drinking practices will not commence until 1 April 2006. This delay will allow sufficient time to prepare, in consultation with industry, regulations that will prohibit specific activities that may encourage the rapid of excessive consumption of liquor or promote intoxication.

These changes will not compromise the objectives of the Bill to enhance public safety on licensed premises.

The proposed amendments to the *Property Agents and Motor Dealers Act 2000* allow for the inclusion of other documents in a fax or other electronic communication transmitting contractual documents will further facilitate the communication of sales documents between seller and buyer without compromising the buyers' statutory rights and interests.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

Any financial impact will be met from the Department of Tourism, Fair Trading and Wine Industry Development's (DTFTWID) existing budget allocations.

Consistency with Fundamental Legislative Principles

There is consistency with fundamental legislative principles.

Consultation for the Liquor Act 1992

Government

The Department of the Premier and the Cabinet

Community

The Queensland Hotels Association, the Lion Nathan Group and Carlton and United Breweries

Consultation for the *Property Agents and Motor Dealers Act 2000*

Government

The Department of the Premier and the Cabinet

Queensland Treasury

Body Corporate and Community Management Division of the Department of Tourism, Fair Trading and Wine Industry Development

Community

Real Estate Institute of Queensland

Queensland Law Society Inc.

Urban Development Institute of Australia

Notes on Provisions

Clause 1

Clause 1 omits current clause 2 which outlines the commencement dates for the Bill under subsection 1 and 2 and inserts new subsections 1 to 4.

The proposed amendments will delay commencement of the Action Plan amendments. The conditions relating to crowd controllers, closed-circuit television, training and house policies will commence on 1 March 2006. This delay will allow industry sufficient time to implement the necessary changes to their businesses. The conditions relating to competitions and drinking practices will not commence until 1 April 2006. This delay will allow sufficient time to prepare, in consultation with industry, regulations

that will prohibit specific activities that may encourage the rapid of excessive consumption of liquor or promote intoxication.

The commencement date for the amendments to the *Property Agents and Motor Dealers Act 2000* (PAMD Act) and the *Body Corporate and Community Management Act 1997* (BCCM Act), contained in Part 4 and 5 of the Bill, remains as 1 December 2005.

Amendments in the Bill relating to following administrative changes to the *Liquor Act 1992* will commence on 1 January 2006 (previously 1 December 2005): 3, 4(2), 5 to 24, 32 to 35, and section 36 (excluding new sections 274 and 275) this delay will enable sufficient time to notify licensees of the amendments.

Clause 2

Clause 2 inserts into current clause 26, at section 142AE(2)(b) new subsections (i) and (ii). These new subsections provide that the Division does not apply to that part of licensed premises which is used principally for the residential accommodation of guests or a detached bottle-shop. This amendment will clarify any uncertainty regarding the application of the Action Plan amendments.

Clause 3

Clause 3 inserts into current clause 26, at subsection 142AE(4) a new subsection (c) which exempts licensed premises in the Brisbane City Council area from the crowd controller ratios prescribed under section 142AG, on nights when the licensed premises are not open for business after 1am.

Clause 4

Clause 4 deletes from current clause 26, subsection 142AG(b) which requires that crowd controllers prescribed under 142AG(a) are located at each entrance and exit point of the licensed premises. This deletion will remove an inconsistency with subsection 142AG(a).

Clause 5

Clause 5 extends subsection 142AL(1)(a)(ii). Current subsection 142AL(1) provides that the licensee or permittee must not conduct on the licensed premises a competition or game in which contestants or players consume liquor on the premises. The addition to subsection 142AL(1)(a)(ii) ensures that free or discounted liquor given as a prize is not for consumption on the premises. Therefore free or discounted liquor may be given as a prize for consumption off the premises.

Clause 6

Clause 6 deletes 142AL(2) and 142AL(3) as it is considered that 142AL(1)(b) will adequately provide for the declaration of regulations to incorporate the provisions of the deleted subsections. It will provide further flexibility to enable the Liquor Licensing Division to respond to changing industry practices.

Clauses 7 to 12

Clauses 7 to 12 will amend the current clause 57 which proposes to insert a new section 365 into the PAMD Act which relates to completed contracts for residential property and the binding of the parties to those contracts. The new section maintains the requirement the warning statement, the information sheet (in the case of a unit sale), and the relevant contract, signed by both the buyer and seller, must be physically attached when given or posted to the buyer by the seller or seller's agent, the warning statement must be attached as the first or top sheet of the relevant contract.

Where the documents are provided by facsimile or by other means of electronic communication, that is, when the documents cannot be physically attached, the provisions detail new processes for giving a cover page or message providing information about the documents; the warning statement, information sheet (in the case of a unit sale); and relevant contract.

Following industry stakeholder representation, it is now proposed to allow other documents to be included in a transmission but in a manner that ensures contract documents remain sufficiently prominent. In fax transmissions, any other document must follow after the prescribed contract documents. In the case of any other electronic communication, other material can be included in that communication but the warning statement, information sheet and completed contract must be joined as a single file with no other material in that document. In the case of emails this will usually require the use of separate file attachments.

Clauses 13 to 18

Clauses 13 to 18 amend clause 60 of the Bill which proposes to insert new sections 366, 366A, 366B, 366C and 366D relating to sending the warning statement, information sheet (in the case of a unit sale) and a proposed relevant contract for the purchase of residential property.

The proposed new section 366B confirms that where the warning statement, the information sheet (in the case of a unit sale), and the proposed relevant contract to be signed by the buyer is given or posted to

the buyer by the seller or seller's agent, the warning statement must be attached as the first or top sheet of the relevant contract. Where the documents are provided by facsimile or by other means of electronic communication, that is, when the documents cannot be physically attached, the proposed new sections 366 and 366A detail new processes for giving a cover page or message providing information about the documents; the warning statement, information sheet (in the case of a unit sale); and proposed relevant contract.

Following industry stakeholder representation it is now proposed to allow other documents to be included in a transmission but in a manner that ensures contract documents remain sufficiently prominent. In fax transmissions, any other document must follow after the prescribed contract documents. In the case of any other electronic communication, other material can be included in that communication but the warning statement, information sheet and completed contract must be joined as a single file with no other material in that document. In the case of emails this will usually require the use of separate file attachments. The one exception is the disclosure statement in a unit sale (clause 18) which may be included in the file if it does not appear before the information sheet.

The proposed amendment in committee makes complementary amendments to the proposed new section 365.