



Wine Industry Act 1994

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Queensland

Wine Industry Act 1994

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Wine Industry Act 1994

An Act about Queensland's wine industry

Part 1 Preliminary

Division 1 Introduction

1 Short title

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

2 Commencement

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

3 Objectives and their achievement

(1) The objectives of this Act are—

- (a) to enable the efficiency of the Queensland wine industry to be developed further; and
- (b) to foster further investment in, and growth of, the Queensland wine industry; and
- (c) to help the Queensland wine industry to develop further its tourism potential; and
- (d) to establish a system under which the integrity of the Queensland wine industry is ensured; and
- (e) to regulate the Queensland wine industry in a way that is compatible with minimising harm arising from the misuse of liquor and the aims of the National Health

Policy on Alcohol adopted by the Ministerial Council on Drug Strategy and published by the Commonwealth.

Editor's note—

The policy is available from the department.

- (2) The objectives are to be achieved mainly by licensing, under this Act, persons so that they can sell 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

4 Dictionary

The dictionary in schedule 2 defines particular words used in this Act.

Division 3 Relationship between this Act and the Liquor Act

5 Relationship with Liquor Act

- (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.

- (3) Also, parts 2 and 7 of the Liquor Act apply in a way stated in sections 33 and 49.

Division 4 Relationship between this Act and the Personal Property Securities Act 2009 (Cwlth)

5A Declaration for Commonwealth Act

A licence is declared not to be personal property under the *Personal Property Securities Act 2009* (Cwlth).

Part 2 Licences and permits

Division 1 Preliminary

6 Requirement to be licensed under this Act or Liquor Act

- (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 wine producer licence to sell wine under this Act if the business the person will conduct under the licence will involve—
- (a) selling wine made from fruit grown by the person on the premises to which the licence will relate; or
 - (b) selling wine made by the person on the premises to which the licence will relate.

- (3) A person may obtain a wine merchant licence to sell wine under this Act if the business the person will conduct under the licence is not a business mentioned in subsection (2) but is a business that will otherwise contribute to the Queensland wine industry in a substantial way.
- (4) Without limiting subsection (3), a person's business will contribute, or does contribute, to the Queensland wine industry in a substantial way if the person—
 - (a) buys fruit grown in the State—
 - (i) to make wine in the State other than on the person's licensed premises; or
 - (ii) to have wine made, under the person's direction, on the premises of another winemaker in the State; or
 - (b) grows fruit, in the State, that will later be used to make wine but until that time buys fruit to make wine; or
 - (c) blends, in the State, different wines to create a unique wine.
- (4A) For subsection (3), the business (the *wine merchant business*) a person will conduct under a wine merchant licence is not a business mentioned in subsection (2) to the extent a minor part of the wine merchant business will involve selling wine made only from fruit grown, by the person, on the premises to which the person's wine merchant licence will relate.
- (5) A person's business will not contribute, or does not contribute, to the Queensland wine industry in a substantial way merely because the person—
 - (a) buys bulk wine from outside the State and bottles it in the State; or
 - (b) sells only wine made and bottled by other persons.
- (6) This part sets out provisions about the following—
 - (a) applying for a licence and other matters under this part;
 - (b) decision on an application;

- (c) granting a licence;
- (d) nominees;
- (e) the authority under a licence;
- (f) trading hours;
- (g) transferring a licence and an interim licence;
- (h) advertising;
- (i) varying, cancelling, suspending and surrendering a licence;
- (j) permits for promoting a winery or region.

Division 1A Applying for licence and other matters

7 Application for licence and other matters under this part

- (1) An application under this part, other than a conversion application, must—
 - (a) be in the form approved by the chief executive; and
 - (aa) be made to the chief executive; and
 - (b) include the particulars prescribed under a regulation; and
 - (c) be accompanied by the fee prescribed under a regulation.
- (2) For including a condition mentioned in section 15(2), (3) or (3A) or 16(2) in a licence—
 - (a) an applicant for a licence may apply for the condition to be included in the applicant's licence at any time before the chief executive grants or refuses to grant the licence; and
 - (b) a licensee may apply for the condition to be included in the licensee's licence at any time.

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

8 Conversion of wine merchant licence to wine producer licence

- (1) This section applies if the holder of a wine merchant licence proposes to conduct a business involving either—
 - (a) selling wine made from fruit grown by the holder on the holder's licensed premises; or
 - (b) selling wine made by the holder on the holder's licensed premises.
- (2) The holder may apply to the chief executive to convert the holder's licence to a wine producer licence (a ***conversion application***).
- (3) The conversion application must—
 - (a) be in writing; and
 - (b) include particulars of the business the applicant proposes to conduct.
- (4) The chief executive may, by written notice, ask the applicant to give further information or documents relevant to the application.
- (5) The following provisions of this part apply to a conversion application as if the application were an application for a wine producer licence.
- (6) However, the chief executive is not obliged to consider whether the applicant is a suitable person to hold a wine producer licence.
- (7) Subsection (5) is subject to any express statement about conversion applications contained in the provisions.

Division 2 Decision on application

9 Decision on application

- (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.

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.
- (4) A wine merchant licence must relate only to 1 premises.

10 Inquiries about applicant's criminal history

- (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

11 Grant of licence

- (1) The chief executive may grant a person's application for a licence only if the chief executive is satisfied—
 - (a) for a wine producer licence—the business the person will conduct under the licence will involve—
 - (i) selling wine made from fruit grown by the person on the premises to which the licence will relate; or
 - (ii) selling wine made by the person on the premises to which the licence will relate; and
 - (ab) for a wine merchant licence—the business the person will conduct under the licence is not a business mentioned in paragraph (a) but is a business that will contribute to the Queensland wine industry in a substantial way; 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.
- (1A) For subsection (1)(ab), the business (the *wine merchant business*) the person will conduct under a wine merchant licence is not a business mentioned in subsection (1)(a) to the extent a minor part of the wine merchant business will involve selling wine made only from fruit grown, by the person, on the premises to which the person's wine merchant licence will relate.
- (2) The chief executive may grant a licence on conditions stated in the licence.
- (3) A licence must state—

- (a) for a wine producer licence—the premises that are to be the main premises under the licence; and
 - (b) for a wine merchant licence—the premises under the licence.
- (4) However, the chief executive must not grant a person's application for a licence until the business that the person is to conduct under the licence is to include the sale of wine.
- (5) If the application is a conversion application and the chief executive decides to grant the application, the chief executive must—
- (a) cancel the applicant's wine merchant licence; and
 - (b) issue the applicant with a wine producer licence.
- (6) For issuing the wine producer licence mentioned in subsection (5)(b)—
- (a) the premises under the wine merchant licence are the main premises under the wine producer licence; and
 - (b) if the wine merchant licence stated that a person was the nominee for the licence, the person is the nominee for the main premises for the wine producer licence and is taken to have been approved under section 14.

12 Licensee may hold more than 1 licence

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

Note—

Under section 13, if an applicant for a licence is already a licensee, the applicant must apply for another adult to be the nominee for the new licence.

Division 4 Nominees

13 Application for nominee for new licence or existing licence

- (1) The purpose of this section is to ensure there is an adult responsible for each licence and, if a licence relates to more than 1 place that comprise premises, a responsible individual for each premises to which the licence applies.
- (2) An applicant for a licence must nominate an adult to be a nominee for the licence if—
 - (a) the applicant is a corporation, already a licensee, or is comprised of more than 1 person whether jointly or in partnership; or
 - (b) the application seeks an approval under section 15(3) to sell wine at a satellite cellar door.
- (3) An applicant for a licence, other than an applicant mentioned in subsection (2), may also nominate an adult to be the nominee for the licence.
- (4) Subsection (5) applies if—
 - (a) a nominee is required under subsection (2); and
 - (b) after the licence is granted, a nominee ceases to perform the role of a nominee; and
 - (c) there is no other nominee relating to the premises.
- (5) The licensee must apply to nominate another adult as the nominee for the licence relating to the premises.
- (6) Subsections (7) and (8) apply at any time after a licence is granted.
- (7) The licensee must nominate an adult to be a nominee for the licence if the licensee applies for—
 - (a) an approval under section 15(3) to sell wine at a satellite cellar door; or

- (b) an approval under section 44(2) to be absent from the management and control of the business for a continuous period of more than 28 days and there is no other nominee for the licence.
- (8) A licensee may apply—
 - (a) for an adult to be the nominee for the licence relating to premises; or
 - (b) for an additional nominee relating to premises if it is a wine producer licence.
- (9) If a licence states a person is a nominee for a licence relating to a satellite cellar door but not the main premises, the nominee is the nominee for the licence relating to the satellite cellar door stated in the licence.
- (10) An adult may be nominated—
 - (a) as a nominee for a licence relating to more than 1 premises; and
 - (b) as a nominee for more than 1 licence.

14 Nominees

- (1) The chief executive may approve an application under section 13 only if—
 - (a) for a wine producer licence—the nominated person is a suitable person to be a nominee; and
 - (b) for a wine merchant licence—the nominated person is a suitable person to be a nominee and there will not be more than 1 nominee for the licence.
- (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.

Note—

See sections 9 and 10.

- (3) A person approved as a nominee—

[s 15]

- (a) is responsible for ensuring that 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 under licence

15 Authority under wine producer licence

- (1) A wine producer licence authorises the licensee—
- (a) to sell the licensee's wine in sealed containers for consumption off the licensed premises; and
 - (b) to sell or give the licensee's wine as a sample for consumption on the licensed premises.
- (2) The chief executive may allow the licensee, as a condition of the licence, to sell the licensee's wine, other than as a sample, for consumption on the licensed premises.
- (3) The chief executive may allow the licensee, as a condition of the licence, to sell or give the licensee's wine on other premises (a *satellite cellar door*) approved by the chief executive for the sale of the licensee's wine under authority of the licence—
- (a) as a sample for consumption at the satellite cellar door; or
 - (b) other than as a sample, for consumption at the satellite cellar door; or
 - (c) for consumption away from the satellite cellar door.
- (3A) The chief executive may allow the licensee, as a condition of the licence, to sell wine, other than the licensee's wine—

- (a) for consumption on the licensed premises; and
 - (b) for consumption off the licensed premises but only if the sale is in the amounts, and in the circumstances, prescribed under a regulation.
- (3B) However, the total amount of wine sold by a licensee under subsection (3A) in a financial year must not be more than the total amount of the licensee's wine sold by the licensee in the year.
- (4) In deciding whether to allow the licensee to sell the licensee's wine under subsection (2), the chief executive must have regard to the suitability of the premises for the purpose.
 - (5) In deciding whether to approve premises as a satellite cellar door, the chief executive must have regard to—
 - (a) the suitability of the premises for the purpose; and
 - (b) the location of the premises in relation to the main premises; and
 - (c) the ability of the licensee to control the premises; and
 - (d) the types of business activities being conducted at the premises; and
 - (e) the number of satellite cellar doors already approved for the licensee's licence; and
 - (f) other matters prescribed by regulation.
 - (6) If, on a conversion application, the chief executive issues a wine producer licence to the applicant under section 11(5)(b), the chief executive must include the condition mentioned in subsection (3A) on the licence.

16 Authority under wine merchant licence

- (1) A wine merchant licence authorises the licensee—
 - (a) to sell wine on the licensed premises in sealed containers for consumption off the licensed premises; and

- (b) to sell or give wine on the licensed premises as a sample for consumption on the licensed premises.
- (2) The chief executive may allow the licensee, as a condition of the licence, to sell wine on the licensed premises, other than as a sample, for consumption on the licensed premises.
- (3) In deciding whether to allow the licensee to sell wine under subsection (2), the chief executive must have regard to the suitability of the licensed premises for the purpose.

17 Labelling of sealed container

If a licensee sells wine in a sealed container, the licensee must ensure the container has a label stating the matters required under a regulation.

Maximum penalty—40 penalty units.

Division 6 Trading hours authorised by licence

18 Ordinary trading hours

- (1) A licence authorises the licensee to sell wine on the licensed premises for the licence—
 - (a) between 8a.m. and midnight on any day other than Christmas Day, Good Friday and Anzac Day; and
 - (b) between 1p.m. and midnight on Anzac Day.
- (2) A licensee may sell wine on the licensed premises on Christmas Day or Good Friday, or before 1.00p.m. on Anzac Day, only if authorised under section 19.

19 Extended trading hours

- (1) A licensee may apply to the chief executive to extend the trading hours during which a licensee is authorised to sell wine on the licensed premises, including, for example, the

sale of the wine on Christmas Day or Good Friday, or before 1.00p.m. on Anzac Day.

- (2) If the chief executive grants the application the licensee is authorised to sell 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.

20 Additional time for consumption of wine

If a licence authorises a licensee to sell wine for consumption on the licensed premises, the licence also authorises a person to consume the 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

21 Application for transfer of licence

- (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.

22 Chief executive's responsibility on application for transfer of licence

- (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.

- (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.

23 Licence cannot be transferred if fees payable

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

24 Application for interim licence

- (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 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

25 Advertisement of applications

- (1) The chief executive must decide whether an applicant should be required to advertise an application made under this Act having regard to—
- (a) whether members of the public, in the area of the State to which the application relates, are likely to be affected by, or concerned about, the grant of the application; and
 - (b) whether the application is required to be advertised as part of another process, for example, an application for planning approval; and
 - (c) any other matters prescribed under a regulation.

- (a) the licence was obtained because of incorrect or misleading information;
- (b) the licensee or a nominee has contravened a condition of the licence;
- (c) the licensee or a nominee 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 of selling wine;
- (f) for a wine merchant licence—the licensee is not conducting, or no longer conducts, a business that contributes to the Queensland wine industry in a substantial way.

Note—

Apart from this division, a licence is suspended, and may be cancelled, under section 54 because fees are not paid when payable.

- (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.
- (3) If the holder of a wine producer licence ceases to conduct the business of selling wine because of a natural disaster, subsection (1)(e) does not apply for 12 months after the cessation.

Example of a natural disaster—

crop destruction because of fire, hail, flood, drought, insect infestation or disease

- (4) The chief executive may extend the period under subsection (3) by not more than 12 months if the chief executive is satisfied there are special circumstances for the wine producer not having wine available to sell including, for example, adverse weather conditions for growing the fruit from which the wine is to be made.

28 Procedure for variation, suspension or cancellation

- (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 vary, suspend or cancel the licence, the chief executive may—
 - (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 comply with the QCAT Act, section 157(2).
- (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.

29 Effect of suspension

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

30 Licensee may surrender

- (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 premises the licensee must obtain the owner's agreement before surrendering the licence.

31 Compensation not payable

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

32 Permits to promote particular wineries or regions

- (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—
 - (a) is satisfied the purpose of the permit is to promote a particular winery or region; and
 - (b) reasonably considers it is more important for wine to be sold under a permit instead of a licence because the purpose of the permit is to sell the licensee's wine—

- (i) at a single event; or
 - (ii) at more than 1 event if the events are of the same type and held at the same place.
- (3) A permit authorises the licensee stated in the permit—
 - (a) to sell the licensee's wine in sealed containers, at the permit place stated in the permit, for consumption away from the permit place; and
 - (b) to sell or give the licensee's wine as a sample for consumption at the permit place.
- (4) The permit is subject to the conditions stated in the permit.
- (5) A group of licensees may also apply for a permit other than a permit mentioned in subsection (2)(b)(ii).
- (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—
 - (a) to sell the licensees' wine in sealed containers, at the permit place stated in the permit, for consumption away from the permit place; and
 - (b) to sell or give the licensees' wine as a sample for consumption at the permit place.

32A Approval to notify chief executive of event

- (1) This section applies to a licensee who, on more than 1 occasion—
 - (a) has been granted a permit under section 32; and

-
- (b) has complied with the conditions of the permit.
 - (2) The licensee may apply to the chief executive for approval to merely notify the chief executive if—
 - (a) the licensee again proposes to sell the licensee's wine, or give the wine as a sample, at an event for which a permit could be granted under section 32; and
 - (b) the event is a private event.
 - (3) The chief executive may grant the approval only if the chief executive is satisfied of the matters mentioned in subsection (1).
 - (4) An approval—
 - (a) applies only to a private event; and
 - (b) authorises the licensee stated in the approval—
 - (i) to sell the licensee's wine in sealed containers, at the place stated in the notification for the event, for consumption away from the place; and
 - (ii) to sell or give the licensee's wine as a sample for consumption at the place; and
 - (c) is subject to the conditions stated in the approval.

32B Notification of event

- (1) A notification given under an approval must—
 - (a) state the time, date and place of the private event; and
 - (b) be given to the chief executive at least 7 days before the event.
- (2) A licensee granted an approval under section 32A is not required to hold a permit under section 32 for an event for which the licensee has given the chief executive a notification under subsection (1).
- (3) For part 3 and section 49(3)(b) and (c) of this Act—
 - (a) a notification under subsection (1), for a private event, is taken to be a permit for the event; and

- (b) the place stated in the notification for the event is taken to be the permit place stated in the permit.

Division 11 Review of decisions of the chief executive

33 Review of decisions of chief executive

- (1) A decision of the chief executive under this Act may be reviewed 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

34 Breach of conditions of licence or permit

- (1) A licensee must not sell wine unless the sale is authorised under this Act.
Maximum penalty—350 penalty units.
- (2) However, a person does not commit an offence against subsection (1) if the person—

- (a) holds a licence or permit under the *Liquor Act 1992* to sell wine; and
 - (b) sells the wine under the authority of the licence or permit.
- (3) A licensee must comply with the conditions of the licensee's licence or permit.

Maximum penalty—40 penalty units.

35 Wine not to be sold outside authorised trading hours

A licensee must not sell wine at a time other than—

- (a) the ordinary trading hours mentioned in section 18; or
- (b) if the chief executive has extended the trading hours under section 19—the trading hours under the extension; or
- (c) at the times under a permit held by the licensee.

Maximum penalty—100 penalty units.

36 Wine prohibited to certain persons

- (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 a nominee for, the licensed premises or the permit place—250 penalty units; or
 - (b) in any other case—40 penalty units.
- (2) For subsection (1), a person may be taken to be unduly intoxicated if—
- (a) the person's speech, balance, co-ordination or behaviour is noticeably affected; and

- (b) there are reasonable grounds for believing the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor, drugs or another intoxicating substance.

37 Prohibitions affecting minors

- (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.

38 False representation of age

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

39 Wrongful dealing with genuine evidence of age

- (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.

40 Seizure of document wrongly used as evidence of age

- (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), 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.

41 Finding out age

- (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.

42 False or misleading statements

- (1) A person must not—
 - (a) state anything for this Act that the person knows is false or misleading in a material particular; or
 - (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.

43 False, misleading or incomplete documents

- (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.

44 Licensee not to be absent for more than 28 days without approval

- (1) A licensee must not leave the licensed premises or a permit place in the control of another person unless the person is an agent or employee of the licensee.

Maximum penalty—100 penalty units.

- (2) A licensee must not, without the chief executive's approval, be absent from the management and control of the business conducted under the licence for a continuous period of more than 28 days.

Maximum penalty—100 penalty units.

- (3) In deciding whether to grant an approval under subsection (2), the chief executive must have regard to the arrangements for a

nominee for the licence to manage and control the business conducted under the licence during the licensee's absence.

45 Keeping licence or permit at licensed premises

- (1) A licensee must keep the licence at the main 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.

46 Production of licence or permit

- (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.

47 Business names and related matters

- (1) 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 Registration Act 2011* (Cwlth).

Maximum penalty—25 penalty units.

- (2) The holder of a wine merchant licence must not use the following terms to describe the licensed premises or the

business the licensee conducts under the licence, including, for example, on any signs, advertising or promotional material—

- (a) vineyard;
- (b) winery;
- (c) cellar door;
- (d) another term prescribed under a regulation.

Maximum penalty—25 penalty units.

Note—

Subsection (2) is intended to operate concurrently with the *Business Names Registration Act 2011* (Cwlth). See section 12 of that Act.

- (3) However, subsection (2)(c) does not apply to the holder of a wine merchant licence who operates a sales outlet on the holder's licensed premises.

48 Notice of change of licensee details

- (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

49 Investigators under Liquor Act may exercise their powers

- (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 section 175 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.

Part 5 Records and annual fees

Division 1 Record keeping

50 Records to be kept by licensee

- (1) A licensee must keep the records prescribed under a regulation.
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—
 - (i) for a wine producer licence—the main premises; and
 - (ii) for a wine merchant licence—the licensed premises; 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.

51 Licensee to provide annual return

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

Maximum penalty—25 penalty units.

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

Maximum penalty—25 penalty units.

52 False or misleading records or returns

- (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

[s 53]

- (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

53 Payment of fee

- (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 a regulation.
- (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.

54 Suspension and cancellation for failure to pay fee

- (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

55 Establishment and functions of council

- (1) The Minister may establish the Queensland Wine Industry Policy Council.
- (2) The council must perform the functions prescribed under a regulation.

56 Appointment of council members

- (1) The Minister may appoint persons to be members of the council.
- (2) A regulation 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

57 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service employee.
- (2) In this section—

appropriately qualified includes having the qualifications experience or standing appropriate to exercise the power.

Example of standing—

a person's classification level in the public service

58 Register of licences and permits

- (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.

59 Register open to inspection

The chief executive must keep the register open for inspection at the department in Brisbane—

- (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 a regulation.

Editor's note—

The department's office in Brisbane is located at Level 26, 111 George Street, Brisbane.

60 Protection from liability

- (1) The chief executive, a public service employee 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

62 Regulations

The Governor in Council may make regulations under this Act.

Part 9 Transitional provisions

Division 1 Transitional provisions for the Wine Industry Amendment Act 2001

63 Transitional provision for licences existing before Wine Industry Amendment Act 2001

- (1) This section applies to a person who, immediately before the commencement of this section—
 - (a) held a licence (an *existing licence*) under this Act; or
 - (b) held a limited licence under the *Liquor Act 1992* in conjunction with a licence under this Act (the *joint licences*).
- (2) The chief executive must conduct a review of the person's existing licence or joint licences.
- (3) If, after the person's existing licence or joint licences have been reviewed, the chief executive decides the person—
 - (a) is a person who grows fruit on the licensed premises from which wine is made or makes wine on the licensed premises, the chief executive must cancel the person's existing licence or joint licences and grant the person a wine producer licence; or
 - (b) is not a person mentioned in paragraph (a) but conducts a business that contributes to the Queensland wine

- industry in a substantial way, the chief executive must cancel the person's existing licence or joint licences and grant the person a wine merchant licence; or
- (c) is not a person mentioned in paragraph (a) or (b), the chief executive must cancel the person's existing licence or joint licences and grant the person an appropriate licence under the *Liquor Act 1992*.
- (4) Until the chief executive completes the review of the person's existing licence or joint licences and grants the person a licence under subsection (3), the person's licence under this Act is taken to be a wine producer licence.

64 Transitional provision for applications for licences not decided before commencement of Wine Industry Amendment Act 2001

- (1) This section applies to an application made, and not decided, before the commencement of this section.
- (2) The application is taken to be an application for a wine producer licence if the business the applicant will conduct under the licence will involve—
- (a) selling wine made from fruit grown, on the premises to which the licence will relate, by the applicant; or
- (b) selling wine made, on the premises to which the licence will relate, by the applicant.
- (3) The application is taken to be an application for a wine merchant licence if the business the applicant will conduct under the licence is not a business mentioned in subsection (2) but is a business that will contribute to the Queensland wine industry in a substantial way.
- (4) If the application is taken to be an application for a wine merchant licence, the chief executive may, by written notice given to the applicant, require the applicant, within a reasonable time of at least 14 days stated in the notice, to pay the relevant fee for a wine merchant licence.

(5) If the applicant does not pay the relevant fee by the day stated in the notice, the application is taken to have lapsed.

(6) In this section—

relevant fee, for a wine merchant licence, means the fee prescribed under a regulation for an application for a wine merchant licence less the amount of the fee that accompanied the application for the licence.

Division 2 Transitional provision for the Wine Industry Amendment Act 2008

65 Advertising applications

Section 25, as in force immediately before the commencement of this section, continues to apply to an application under this Act, made but not decided before the commencement.

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.

conversion application see section 8(2).

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—

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

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

licence means a licence under this Act.

licensed premises means—

- (a) for a wine producer licence—the main premises and any satellite cellar door for the licence; or
- (b) for a wine merchant licence—the premises to which the licence relates.

licensee means a person who holds a licence.

licensee's wine—

- (a) for the holder of a wine producer licence, means wine at least 85% of which is—
 - (i) made from fruit grown by the licensee on the licensee's licensed premises; or

- (ii) made by the licensee on the licensee's licensed premises; and
- (b) for the holder of a wine merchant licence, means wine made only from fruit grown by the licensee on the licensee's licensed premises.

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.

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

private event means an event, held at premises other than licensed premises, if—

- (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

provide wine to a person means—

- (a) supply wine to the person; or
- (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.

satellite cellar door, for a wine producer licence, see section 15(3).

sell has the meaning given by the Liquor Act.

Note—

See the Liquor Act, section 4, definition *sell*.

Tribunal has the meaning given by the Liquor Act.

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 grapes and, at 20°C, containing ethyl alcohol (ethanol) of at least 80mL/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 11.5mL/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 11.5mL/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 250mL/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 170mL/L (17%).

Examples of paragraphs (a) to (e)—

- (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) fortified fruit and vegetable wines.

wine merchant licence means a licence granted under section 9(1) that states it is a wine merchant licence.

wine producer licence means a licence granted under section 9(1) that states it is a wine producer licence.