

Queensland



WINE INDUSTRY AMENDMENT ACT 2001

Act No. 40 of 2001

Queensland



WINE INDUSTRY AMENDMENT ACT 2001

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MINOR AMENDMENTS OF WINE INDUSTRY ACT 1994

Queensland



Wine Industry Amendment Act 2001

Act No. 40 of 2001

An Act to amend the *Wine Industry Act 1994*, and for other purposes

[Assented to 7 June 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Wine Industry Amendment Act 2001*.

2 Commencement

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

PART 2—AMENDMENT OF WINE INDUSTRY ACT 1994

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Wine Industry Act 1994*.

4 Amendment of s 3 (Objectives and their achievement)

(1) Section 3(1)(b) and (c)—

omit, insert—

- (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.¹.

(2) Section 3(2)—

omit, insert—

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

5 Replacement of s 6 (Requirement to be licensed under this Act or the Liquor Act)

Section 6—

omit, insert—

‘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; or

¹ The policy is available from the department.

- (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.

‘(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’.

6 Amendment of s 7 (Form of application etc.)

(1) Section 7, heading—

omit, insert—

‘7 **Application for licence and other matters under this part’.**

(2) Section 7(1)—

insert—

‘(aa) be made to the chief executive; and’.

(3) Section 7(1)(b) and (c), ‘the regulations’—

omit, insert—

‘a regulation’

(4) Section 7(2)—

renumber as section 7(3).

(5) Section 7—

insert—

‘(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.’.

7 Replacement of pt 2, div 2 hdg and s 8 (Application for licence)

Part 2, division 2, heading and section 8—

omit, insert—

‘Division 2—Decision on application’.

8 Amendment of s 9 (Decision on application)

Section 9—

insert—

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

9 Amendment of s 11 (Grant of licence)

(1) Section 11(1)(a)—

omit, insert—

‘(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’.

(2) Section 11(3)—

omit, insert—

‘(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.’.

10 Replacement of s 13 (Application for nominee for new licence or existing licence)

Section 13—

omit, insert—

‘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 on premises (the **“other premises”**) other than the main premises.

‘(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 on other premises; 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 other premises but not the main premises, the nominee is the nominee for the licence relating to the other premises 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.’.

11 Amendment of s 14 (Nominees)

(1) Section 14(1)—

omit, insert—

‘(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) Section 14(3)(a), ‘the licensee’s’—

omit.

12 Amendment of s 15 (Licence authorises sale of wine from licensed premises)

(1) Section 15, heading—

omit, insert—

‘15 Authority under wine producer licence’.

(2) Section 15(1), ‘A licence’—

omit, insert—

‘A wine producer licence’.

(3) Section 15(1), before ‘licensed premises’—

insert—

‘the’.

(4) Section 15(2), from ‘in sealed containers’—

omit, insert—

‘, other than as a sample, for consumption on the licensed premises.’.

(5) Section 15(3), after ‘sell’—

insert—

‘or give’.

(6) Section 15(3)(a) and (b)—

omit, insert—

- ‘(a) as a sample for consumption on the premises; or
- (b) other than as a sample, for consumption on the premises; or

(c) for consumption off the premises.’.

(7) Section 15—

insert—

‘(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.’.

(8) Section 15(4)(b)—

omit, insert—

- ‘(b) under subsection (3)—the chief executive must have regard to—
 - (i) the location of the other premises in relation to the main premises; and
 - (ii) the ability of the licensee to control the other premises.’.

13 Replacement of ss 16 and 17

Sections 16 and 17—

omit, insert—

‘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.’.

14 Replacement of s 18 (Ordinary trading hours)

Section 18—

omit, insert—

‘18 Ordinary trading hours

‘(1) A wine producer licence authorises the licensee to sell wine—

(a) on the main premises—

- (i) for any day other than Christmas Day, Good Friday and Anzac Day—between 8.00 a.m. and midnight on the day; and
- (ii) for Anzac Day—between 1.00 p.m. and midnight on Anzac Day; and

(b) if the licence allows the licensee to sell wine on premises other than the main premises—on the other premises—

- (i) for any day other than Christmas Day, Good Friday and Anzac Day—between 10.00 a.m. and midnight on the day; and
- (ii) for Anzac Day—between 1.00 p.m. and midnight on Anzac Day.

‘(2) A wine merchant licence authorises the licensee to sell wine on the licensed premises—

- (a) for any day other than Christmas Day, Good Friday and Anzac Day—between 10.00 a.m. and midnight on the day; and
- (b) for Anzac Day—between 1.00 p.m. and midnight on Anzac Day.

‘(3) A licensee may sell wine on the licensed premises on Christmas Day or Good Friday, or before 1.00 p.m. on Anzac Day, only if authorised under section 19.’.

15 Amendment of s 20 (Additional time for consumption of wine)

(1) Section 20, ‘sell the licensee’s wine for consumption on’—

omit, insert—

‘sell wine for consumption on the’.

(2) Section 20, ‘consume the licensee’s wine’—

omit, insert—

‘consume the wine’.

16 Amendment of s 27 (Grounds for variation, suspension or cancellation)

(1) Section 27(1)(b) and (c), after ‘licensee’—

insert—

‘or a nominee’.

(2) Section 27(1)(e)—

omit, insert—

‘(e) the licensee has ceased to conduct the business of selling wine;²

(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.’.

17 Insertion of new s 31A

Part 2, division 10—

insert—

² However, apart from this division a licence is suspended, and may be cancelled, under section 54 (Suspension and cancellation for failure to pay the fee) because fees are not paid when payable.

‘31A Definition for div 10

‘In this division—

“**licensee**” means a person who holds a wine producer licence.’.

18 Amendment of s 32 (Permits)

(1) Section 32, heading—

omit, insert—

‘32 Permits to promote particular wineries or regions’.

(2) Section 32(2)—

omit, insert—

‘(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 appropriate 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 at a single event.’.

19 Amendment of s 34 (Breach of conditions of licence or permit)

(1) Section 34(2)—

renumber as section 34(3).

(2) Section 34(1)—

omit, insert—

‘(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.’.

20 Replacement of s 44 (Authorised person to be in control of premises and places)

Section 44—

omit, insert—

‘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.’.

21 Amendment of s 47 (Notice to be given of change of business name)

(1) Section 47, heading—

omit, insert—

‘47 Business names and related matters’.

(2) Section 47—

insert—

‘(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.

‘(3) Subsection (2) applies despite the *Business Names Act 1962*.’.

22 Amendment of s 49 (Investigators under Liquor Act may exercise their powers)

Section 49(2), ‘sections 175 and 187¹⁴’—

omit, insert—

‘section 175³’.

23 Replacement of s 63 (Definitions)

Section 63—

omit, insert—

‘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

3 Section 175 (Power to stop and search vehicles etc.)

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.’.

24 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions “blended wine”, “licensed premises” and “licensee’s wine”—

omit.

(2) Schedule 2—

insert—

‘**“licensed premises”** means—

- (a) for a wine producer licence—the premises stated in the licence as the main premises and other premises approved under section 15(3)⁴ for the licence; or
- (b) for a wine merchant licence—the premises to which the licence relates.

“licensee’s wine” means wine at least 85% of which is—

- (a) made from fruit grown on the licensed premises by the licensee; or
- (b) made on the licensed premises by the licensee.

“wine merchant licence” means a licence granted under section 9(1)⁵ 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.’.

(3) Schedule 2, definition “wine”, examples, paragraph (e)—

omit, insert—

‘(e) fortified fruit and vegetable wines.’.

4 Section 15 (Authority under wine producer licence)

5 Section 9 (Decision on application)

PART 3—AMENDMENT OF LIQUOR ACT 1992**25 Act amended in pt 3**

This part amends the *Liquor Act 1992*.

**26 Amendment of s 84 (Restriction on sale of liquor under producer/
wholesaler licence)**

Section 84(1)—

insert—

‘(aa) a licensee under the *Wine Industry Act 1994*; or’.

SCHEDULE

MINOR AMENDMENTS OF WINE INDUSTRY ACT 1994

section 3

1 Part 2, division 5, heading—

omit, insert—

‘Division 5—Authority under licence’.

2 Section 19(1), from ‘to sell the licensee’s wine’ to ‘of the licensee’s wine’—

omit, insert—

‘to sell wine on the licensed premises, including, for example, the sale of the wine’.

3 Section 19(2), ‘the licensee’s’—

omit.

4 Section 25(1) and(2)(c), ‘the regulations’—

omit, insert—

‘a regulation’.

5 Section 26(1), ‘the regulations’—

omit, insert—

‘a regulation’.

SCHEDULE 1 (continued)

6 Section 30(2), ‘main licensed premises’—

omit, insert—

‘main premises’.

7 Section 35, ‘the licensee’s’—

omit.

8 Section 36(1), penalty, paragraph (a), ‘the nominee’—

omit, insert—

‘a nominee’.

9 Section 36(2)—

omit.

10 Section 45(1), ‘main licensed premises’—

omit, insert—

‘main premises’.

11 Section 50(1), ‘the regulations’—

omit, insert—

‘a regulation’.

12 Section 50(2)(b)—

omit, insert—

‘(b) keep the records on—

SCHEDULE 1 (continued)

- (i) for a wine producer licence—the main premises; and
- (ii) for a wine merchant licence—the licensed premises; and’.

13 Section 50(2)(c), ‘wine’—

omit, insert—

‘wine.’

14 Section 51(1), ‘regulations’—

omit, insert—

‘a regulation’.

15 Section 51(2), ‘the regulations’—

omit, insert—

‘a regulation’.

16 Section 53(2), ‘the regulations’—

omit, insert—

‘a regulation’.

17 Section 55(2), ‘the regulations’—

omit, insert—

‘a regulation’.

18 Section 56(2), ‘The regulations’—

omit, insert—

‘A regulation’.

SCHEDULE 1 (continued)

19 Section 59(b), ‘the regulations’—*omit, insert—**‘a regulation’.***20 Section 61—***omit.*