WINE INDUSTRY BILL 1994

EXPLANATORY NOTES

Objective of the legislation

The Wine Industry Bill 1994 will replace the *Wine Industry Act 1974*. The Bill will assist in the development of the wine industry in Queensland and facilitate the optimum development of the tourism potential of such an industry. The objectives will be mainly achieved by licensing persons who make and sell wine in Queensland so that they may sell the wine from their premises. The Bill will also increase the flexibility of operators in the industry in terms of trading hours, points of sale and conditions.

Reasons for the Bill

The Wine Industry Bill has been introduced in part to address perceived deficiencies in the existing legislation. The definitions of the various categories of registrants under the current legislation have stifled the marketing of the industry and also led to abuse of the intentions of the Act to foster development of the Queensland wine industry. The new Act will ensure that the wine industry is open only to genuine wine makers. These wine makers can then be granted more flexibility for the sale, supply and promotion of their products.

Under the current Act, there is no allowance for winemakers to sell or promote their product away from the registered premises, except under authority of a permanent licence under the Liquor Act. This Bill provides for a promotional permit to be made available to wine makers at no charge to enable them to sell and promote their products away from the premises.

It is considered appropriate that participants in the industry be subject to the same degree of scrutiny as presently exists under the Liquor Act. The integrity of the industry will be enhanced through provisions requiring the keeping of accurate records and through the creation of offences in relation to the service or supply of wine to under age or intoxicated persons.

Consultation

A Wine Industry Task Force comprising members of the industry was formed to review the legislation in 1993. In addition to the Report of the Task Force, an officer level Working Group comprised of representatives of government departments was established in February 1994 to consider the results of further consultation.

Peak industry bodies, industry participants and interested parties registered with the Business Regulation Review Unit have been consulted. Key government agencies have also been fully consulted.

Estimated costs for government implementation

There will be some increase in costs to government in implementation of the Bill. The administration of the scheme could require further resources than are currently utilised, as applications and returns will require more scrutiny and investigations will be introduced. However, the increase in resources will be kept to a minimum and be largely absorbed into the current structure. There will also be costs associated with the operation of the proposed Queensland Wine Industry Policy Council. The increase in administrative costs of implementing the legislation is estimated to be at $6,496 per annum.

Clause 1 provides that the short title of the Act is the *Wine Industry Act 1994.*

Clause 2 provides for the commencement of the Bill by proclamation.

Clause 3 sets out the objects of the Act which are:

(a) to enable the efficiency of the Queensland wine industry to be further developed.

(b) to help the wine industry to develop its tourism potential.

(c) to establish a system whereby the integrity of the wine industry and its participants is ensured.

The objectives will be mainly achieved by licensing persons who make and sell wine in Queensland so that they may sell the wine from their premises. A person not licenced under this Act will have to apply for a licence under the Liquor Act to authorise the sale and supply of wine. The objectives of the Act may be further achieved by the establishment of a Wine Industry Policy Council to provide strategic policy direction for the industry.

Clause 4 provides for the definitions of particular words used in the Act to be included in a dictionary in Schedule 2 to the Act. Definitions found elsewhere in the Act are signposted in the dictionary.

The Australian Food Standards Code, and associated Regulations govern all food and associated products in Australia and provide model definitions of wine and wine products.

The definition of wine contained in this Bill is consistent with the definition in the code.

For the purposes of this Act the use of the word 'fruit' is given its ordinary dictionary meaning which includes a vegetable.

The definition of 'sell' has the same meaning given by the Liquor Act and includes such things as:

- to barter or exchange
- offer, agree or attempt to sell
- cause or permit to be sold or offered for sale
- supply or offer, agree or attempt to supply—
  - (1) in circumstances where the supplier receives pecuniary benefit, and
  - (2) gratuitously, but to gain or keep custom or other commercial advantage.

Clause 5 sets out the relationship between the *Wine Industry Act 1994* and the *Liquor Act 1992.* This Act is based in part on the Liquor Act and there are issues common to both Acts eg. the principle that alcohol is not to be sold to minors.The Liquor Act provides an administrative model that in part is adopted by this Bill to ensure consistency in the administration of the sale of all liquor throughout Queensland.

Clause 6 provides that a person may only legally sell wine if they are licensed under the Wine Industry Act or are authorised to sell the wine under the Liquor Act. A person is able to obtain a licence to sell wine under the Wine Industry Act if the person—

(a) grows fruit in the State which is used to make the wine or

(b) makes the wine in the state.

Clause 7 provides that an application must be in a form approved by the Chief Executive and be accompanied by other particulars and fees as prescribed. Under the Acts Interpretation Act reference to the Chief Executive is taken to mean the Chief Executive of the Department currently dealing with the matter, which in this case is the Department of Tourism, Sport and Racing.

Clause 8 sets out who may apply for a licence under the Act being—

- a person who grows fruit in the State to make the wine or
- a person who makes the wine in the state.

Clause 9 requires the Chief Executive to consider an application and to refuse or grant a licence. This Section also outlines the factors the Chief Executive is required to take into account in deciding whether or not an applicant is suitable to hold a licence. These include:

(a) the persons knowledge and understanding of their obligations and responsibilities under the Act, and

(b) the persons character and standing.

Clause 10 requires the Commissioner of the Police Service to provide a written report to the Chief Executive about an applicant's criminal history if requested.

Clause 11 provides that the Chief Executive may only grant a licence if satisfied—

- that the person is a suitable person to hold a licence
- the business to be conducted under the licence is that of selling wine made from fruit grown in the state by the person or made in the state by the person
- that all persons of authority or influence in relation to the conduct of the business, and in particular any proposed nominee, are suitable persons
- that the premises proposed to be the subject of the licence are suitable for the sale of wine.

Clause 12 allows a person to apply for and hold more than one licence.

Clause 13 requires that a nominee be appointed where the licence is to be held by any of the following—

- a corporation
- an existing licensee
- more than one person whether jointly or in partnership.

This section also allows a licensee to apply to the Chief Executive to:

- nominate an adult to be nominee for the licence
- to nominate an additional nominee
- replace an existing nominee.

An adult may be nominated as a nominee for more than one licence. This provision will allow the same nominee to oversee the management of each of the wine producer's premises.

Clause 14 provides that the same criteria used for establishing whether a person is suitable to hold a licence are to be applied by the Chief Executive in considering whether an adult is suitable to be a nominee.

This section also provides that any nominee will be subject to the same obligations and responsibilities as a licensee.

Clause 15 provides that a licence authorises the licensee to sell the licensee's wine in sealed containers for consumption off the licensed premises and to sell or give the licensee's wine as a sample for consumption on the licensed premises. Licensee's wine is defined in the Bill to include:

— wine made from fruit grown by the licensee in the state, or

— wine made in the state by the licensee.

The Chief Executive may allow the licensee, as a condition of the licence to sell or supply the wine in sealed containers for consumption on the licensed premises.

The Chief Executive may also allow the licensee, as a condition of the licence to sell the wine on other approved premises for the sale or supply of the wine under authority of a licence for consumption—

(a) as a sample—on the premises, or

(b) in sealed containers—for consumption on or off the premises.

The Chief Executive is required to have regard to the suitability of the premises and their location in relation to the licensees main premises.

Clause 16 authorises the licensee to sell blended wine (a mix of licensee's wine and wine made from other sources) as if it were the licensee's wine. The Regulations will stipulate the percentage of licensee's wine which will constitute blended wine.

Clause 17 provides that the licensee is only able to sell the wine in a sealed container if the container is labelled in a manner prescribed under the regulations.

Clause 18 provides for the trading hours to be between 10am and 12 midnight except for Christmas Day, Good Friday and Anzac Day. Trading may be allowed on Christmas Day or Good Friday provided the Chief Executive has approved an extended trading hours application by the licensee.

Trading is not permitted at any time before 1pm on Anzac Day.

Clause 19 allows the licensee to apply to the Chief Executive for an extension of the trading hours.

Clause 20 provides for a period of 30 minutes after close of trading during which a person may consume wine bought from the licensee during authorised trading hours.

Clause 21 allows the Chief Executive to transfer a licence upon application of the current licensee and the proposed licensee and with the agreement of the owner of the premises (if applicable). If the licensee has deserted or no longer has lawful possession of the premises, then the owner and the proposed licensee may apply. If a mortgagee is in lawful possession of the premises the Chief Executive may transfer the licence upon application of the mortgagee and the proposed licensee.

Clause 22 provides that the Chief Executive must deal with an application for transfer as if the proposed transferee were an applicant for a licence. This includes deciding whether the applicant has demonstrated a satisfactory knowledge of his/her obligations under the Act.

Clause 23 provides that the Chief Executive may only transfer a licence if all outstanding fees have been paid.

Clause 24 provides for executors, administrators or persons appointed to manage or wind up affairs of a licensee to apply for an interim licence. An interim licence may be granted for a term no longer than one year and are subject to conditions stated in the interim licence.

Clause 25 sets out the advertising requirements associated with applications made under the Act. The Chief Executive is required to consider the following factors in deciding whether advertising is required:

- the extent to which members of the public in the locality are likely to be affected by, or be concerned about the grant of the application
- whether the application is required to be advertised as part of some other process related to the application, such as an application for town planning approval
- other circumstances prescribed by regulation.

Clause 26 allows a person to make a written submission in a way prescribed under the regulations objecting to an application. The regulation may prescribe the following:

- who by, how and when a submission may be made,
- the grounds of objection,
- the procedures to be followed by the Chief Executive in considering a submission,
- the type of matters the Chief Executive must have regard to in deciding the application.

Clause 27 sets out the grounds for the cancellation, suspension or variation of a license, including failure to comply with this Act or the Liquor Act, a condition of the license, or various other cases impacting upon the suitability to hold a license.

Clause 28 sets out the procedure for the variation, suspension or cancellation of a licence. The Chief Executive is required to give the licensee written notice if he/she considers there are grounds to vary, suspend or cancel a licence. The notice will:

- state the proposed action and the grounds for the proposed action
- outline the facts and circumstances forming the basis for the Chief Executive's belief
- state the proposed variation or period of suspension
- invite the licensee to show cause within 28 days as to why the licence should not be varied, cancelled or surrendered.

The Chief Executive upon finding that cause is not shown, may:

- vary the conditions attaching to the licence
- suspend the licence or
- cancel the licence.

The Chief Executive must then notify the licensee of his/her decision stating the reasons for the decision and rights of appeal.

Clause 29 provides that if the licence is suspended, the license ceases to be in force for the period of the suspension.

Clause 30 allows a licensee to surrender a licence, with the agreement of the owner (if applicable) to the Chief Executive.

Clause 31 provides that compensation will not be payable as a result of the Chief Executive varying the licence without agreement , suspending or cancelling the licence or accepting the surrender of the licence.

Clause 32 provides for the issue of a promotional permit authorising the sale of licensee's wine at premises specified in the permit, provided the Chief Executive is satisfied that the purpose for which the permit is to be used promotes a particular winery or region. These permits would be appropriate for trade shows, local shows and tourist venues and to promote the product of a particular winery or region.

This section also allows a group of licensees to apply for a permit.

Clause 33 provides for appeals from any decision made by the Chief Executive to the Liquor Appeals Tribunal.

Clause 34 provides that a licensee must not sell the licensee's wine unless authorised by the Act.

This section also provides that a licensee must not breach any of the conditions attached to a licence or permit.

Clause 35 creates an offence for a licensee or permittee to trade outside authorised trading hours.

Clause 36 provides that a person must not provide wine to a minor or a person unduly intoxicated on a premises to which a license or permit relates.

Clause 37 provides that it is an offence for a minor to drink or be in possession of wine on a premises to which a permit or licence relates.

Minors who are in possession of wine in the course of performing duties as an employee or receiving training for employment or work experience do not commit an offence.

Clause 38 makes it an offence for a person to falsely represent himself or herself to have reached 18 years with the intent of being provided with wine.

A person must not falsify a document for the purpose of misrepresentation of age, or provide such documentation to someone else.

It is an offence for a person to supply false evidence to obtain a document that is acceptable evidence of age for the purposes of the Act, for examle, using a false birth certificate to obtain a proof of age card.

Clause 39 makes it an offence for a person to give another person a document that is evidence of age, for example, a drivers licence to another person to use as evidence of age, for the purposes of the Act.

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.

Clause 40 provides that a person may seize material associated with false representation of age and give it to an investigator within 3 days, or alternatively notify an investigator about the seizure within 3 days. This gives licensees and their staff authority to seize false identity cards.

Clause 41 provides that an authorised person may require someone suspected to be a minor to state particulars of age and produce evidence of age. An authorised person includes a licensee or permittee, an employee or agent of a licensee or permittee, and an investigator. This section authorises licensees etc, to insist on the production of proof of evidence of age.

Clause 42 makes it an offence for a person to make a false or misleading statement in a material particular.

Clause 43 makes it an offence for a person to use a document containing information that the person knows as false, misleading, or incomplete in a material particular.

Clause 44 makes it an offence for a licensee to leave the licensed premises in the control of a person unless the person is a nominee for the licence.

Clause 45 requires a licensee to keep the licence or permit at the main premises or permit place unless there is a reasonable excuse for not doing so.

Clause 46 requires the licence document or permit to be produced if requested by an investigator.

Clause 47 requires the licensee to notify the Chief Executive of any change in business name and furnish evidence of registration under the *Business Names Act 1962*. This position will ensure the records of the Department are kept up to date.

Clause 48 requires a licensee to notify the Chief Executive within 14 days of any changes in the structure or nature of the entity which holds the licence. This includes changes in directors or beneficial ownership of a corporation. The Chief Executive may ask the licensee to provide further information or documents relevant to the change. This provision will ensure that appropriate people are responsible for the sale of liquor.

Clause 49 authorises investigators to exercise powers as if the licensee and licensed premises were licensed under the Liquor Act. Investigators are authorised Departmental officers and police officers. To maintain a level of consistency with the *Liquor Act 1992*, the investigators will be given similar powers under the Wine Industry Bill. This includes the power to inspect records and books to ensure compliance with the Act. The exercise of these powers will not extend to powers authorised under section 175 (Power to stop and search vehicle) and Section 187 (Abatement of nuisance or dangerous activity) of the Liquor Act.

Clause 50 requires a licensee to keep records as prescribed. The licensee must—

- keep the records in a form approved by the Chief Executive
- keep the records on the premises
- keep the records for of 5 years after the grapes have been harvested or the production of the wine
- produce the records to an investigator if asked and
- allow an inspector to take copies of the records.

Any breach of this provision provides for a maximum penalty of $21,000.

Clause 51 requires a licensee to submit an annual return to the Chief Executive. The return must include particulars prescribed by regulation.

Maximum Penalty—350 Penalty Units—($21,000).

Clause 52 creates an offence for a person to keep records or provide a return which is false or misleading or to omit from a record or return anything which is misleading in a material particular.

Clause 53 requires the payment of an annual fee by the licensee. The amount of the fee will be prescribed by regulation. The licensee will receive a notice stating the amount and the day when the fee is payable.

Clause 54 provides that failure to pay a licence fee results in immediate suspension and cancellation of the licence at the end of 14 days. If within the 14 day period, the fee is paid to the Department, the suspension is lifted and the cancellation does not take effect. The Acts Interpretation Act provides that reference to the Department in this instance means the Department which deals with the matters to which the Act relates, which is currently the Department of Tourism, Sport and Racing.

Clause 55 provides that a Queensland Wine Industry Policy Council may be established. The functions of the Council will be prescribed by regulation.

Clause 56 provides for the appointment of Council members.

Clause 57 allows the Chief Executive to delegate his or her powers to an officer of the Department.

Clause 58 requires the Chief Executive to keep a register of licenses and permits containing particulars necessary for the effective administration of the Act. This includes such things as the names and addresses of licensees, nominees and transferees.

Clause 59 states that the register must be available for inspection at the Department in Brisbane by an investigator free of charge, or any other person upon payment of the prescribed fee.

Clause 60 provides that the State is vicariously liable for civil liability in relation to an Act or omission done honestly and without negligence by officials, and that officials are not personally liable.

Clause 61 provides the Act is to be reviewed five years after its commencement. The review is required to consider the desirability or otherwise of amending the Act and to examine the situation in other states relating to the assessment and payment of licence fees.

Clause 62 provides for a general regulation making power.

Clause 63 provides for a transitional definitions section.

Clause 64 provides that existing registrations remain in force and are considered a licence under this Act. A review is to be undertaken by the Chief Executive of all existing registrations. If after the review is completed and the Chief Executive decides that the person qualifies for registration under the *Wine Industry Act 1994*, then the Chief Executive must grant the person a licence. In other cases, the person will have to apply for a more appropriate licence under the Liquor Act authorising the sale of wine.

This section expires one year after its commencement, or any other date as prescribed.

Clause 65 provides that regulations may be made for anything necessary to facilitate the transition from the operation of the former Act to the operation of this Bill.

Clause 66 repeals the *Wine Industry Act 1974.*

Clause 67 provides for consequential amendment of certain Acts.

SCHEDULE 1

This schedule states the Acts amended by this Bill.

SCHEDULE 2

This schedule provides for a dictionary of terms used throughout the Act.