



# **Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015**

**Report No. 8, 55<sup>th</sup> Parliament  
Legal Affairs and Community Safety Committee  
September 2015**

## Legal Affairs and Community Safety Committee

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### Acknowledgements

The committee acknowledges the assistance provided by Mr Ian Walker MP, Member for Mansfield, the Office of Liquor and Gaming Regulation, Department of Justice and Attorney-General, and the Queensland Parliamentary Library.



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## Abbreviations

Attorney-General	The Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
BAQ	Bar Association of Queensland
Bill	Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015
CBIA	Craft Beer Industry Association Limited
CIS	Community Impact Statement
CLP	Community Liquor Permit
Commissioner	Commissioner for Liquor and Gaming
Discussion Paper	Discussion paper titled Red Tape Reduction and Other Reform Proposals for Regulation of Liquor and Gaming
DJAG	Department of Justice and Attorney-General
Expert Panel	Liquor and Gaming Red Tape Reduction Expert Panel
Fair Trading Act	<i>Fair Trading Act 1989</i> (Qld)
FLPs	Fundamental legislative principles
Liquor Act	<i>Liquor Act 1992</i> (Qld)
LNP	Liberal National Party
QCAA	Queensland Coalition for Action on Alcohol
QHA	Queensland Hotels Association
QLRC	Queensland Law Reform Commission
RAMP	Risk Assessed Management Plan
RSA	Responsible service of alcohol
SLC	Scrutiny of Legislation Committee
Wine Industry Act	<i>Wine Industry Act 1994</i> (Qld)

## Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

Consideration of submissions from stakeholders and comparisons with other jurisdictions have supported its inquiry. The Department of Justice and Attorney-General's consultation process through its Liquor and Gaming Red Tape Reduction Expert Panel over several years has led to the development of these legislative amendments.

While the committee recommends the Bill be passed, it has made two further recommendations, relating to the definition of 'craft brewery' and the title of the Bill.

Further, government members have some reservations with aspects of the Bill and make some comments and a recommendation to that effect. These relate to the relaxation of requirements for a manager to be on-site, exemption of campdrafting events from community liquor permit requirements, permitting after-hours consumption of alcohol in foyers and other areas of hotel (and similar) accommodation, and repealing church and community organisation legislation.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Bill's sponsor Mr Ian Walker MP, Member for Mansfield, the Office of Liquor and Gaming Regulation, Department of Justice and Attorney-General and the Queensland Parliamentary Library, for the advice they have provided the committee during its inquiry.

I commend this report to the House.



**Mark Furner MP**

Chair



## Recommendations

### Recommendation 1

4

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be passed.

### Recommendation 2

23

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be amended to change the definition of 'craft brewery' such that the proposed maximum threshold of 40 million litres of beer produced in any one year period under licence be replaced with five million litres.

### Recommendation 3

31

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be amended, so that the Bill's title indicates that legislation other than Liquor and Fair Trading legislation is changed by the Bill, through the insertion of 'and Other Legislation' in its title.





## **Government members comments**

### **Government members comment 1**

**9**

Despite government members of the committee recommending the passing of the Bill 'in-principle', they oppose the relaxation of approved manager availability requirements. Although every person working within a licenced venue serving alcohol is to hold a RSA, government members believe a manager should be on the premises at all times. Government members' concerns include issues relating to the appropriate training of subordinate staff and the remuneration of subordinate staff who undertake the manager's responsibilities in his or her absence. Therefore the government members oppose the delegation of managerial responsibilities to subordinate staff of the premises.

### **Government members comment 2**

**12**

Despite government members of the committee recommending the passing of the Bill 'in-principle', they oppose introducing a Community Liquor Permit exemption for campdrafting events. They consider the proposed exemption as unsuitable, due to the hours, attendance numbers and nature of such events, which are generally family orientated. In the opinion of government members, the exemption would not create a responsible atmosphere for the service of alcohol and would not be an appropriate influence on the amount of alcohol consumed at such events. For these reasons, the government members oppose a Community Liquor Permit exemption for camp drafting events.

### **Government members comment 3**

**26**

Despite government members of the committee recommending the passing of the Bill 'in-principle', they oppose allowing after-hours consumption of alcohol in hotel and resort foyers. Government members believe that extending access to consumers of alcohol to hotel or resort foyers will increase the potential for more alcohol related harm in family friendly areas. Therefore, government members oppose the extension of the supply of alcohol in foyers of such establishments.

### **Government members comment 4**

**27**

Government members recommend that implementation of the QLRC recommendations in relation to the 14 obsolete church and community organisation Acts be delayed until the Crown Solicitor advice on the Royal Commission into Institutional Responses to Child Sexual Abuse has been received and analysed, so that all the necessary changes can be made at the same time.



## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the Parliament of Queensland Act 2001 and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

The Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 (Bill) is a Private Member's Bill introduced into the Legislative Assembly by the Member for Mansfield, Mr Ian Walker MP, and referred to the committee on 6 May 2015.

### 1.2 Inquiry process

On 4 June 2015, the committee wrote to Mr Ian Walker MP, the Bill's sponsor, seeking a briefing on the Bill; and invited stakeholders, subscribers and the general public (via the committee's website) to lodge written submissions by 5:00pm, Friday 3 July 2015.

The committee received a written briefing from Mr Walker MP on 10 July 2015, which also responded to the issues raised in the six submissions received by the Committee.<sup>2</sup>

A list of the submissions received by the committee in relation to the Inquiry is attached as Appendix A.

On 20 July 2015, the committee held a public hearing and was briefed by the Office of Liquor and Gaming Regulation, Department of Justice and Attorney-General (DJAG) on matters relating to the Bill. The committee also heard from invited witnesses at a public hearing on that day. Witnesses are listed in Appendix B.

### 1.3 Policy objectives of the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015

#### 1.3.1. Objectives of the Bill

The key objectives of the Bill are to:

- Reduce the regulatory burden on the liquor and tourism industries by amending the *Liquor Act 1992* (Liquor Act)

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<sup>1</sup> Parliament of Queensland Act 2001, section 88 and Standing Order 194.

<sup>2</sup> <http://www.parliament.qld.gov.au/documents/committees/LACSC/2015/02-LiquorFairTradRTRAB15/02-cor-10Jul2015.pdf>

- Make amendments to the Liquor Act to ensure clarity and effectiveness
- Repeal 14 obsolete church and community organisation Acts
- Relocate a number of technical and administrative provisions contained in the obsolete church and community organisation Acts into other legislation as saving and consequential amendments
- Repeal section 96 of the *Fair Trading Act 1989* (Fair Trading Act) in relation to directors' liability.<sup>3</sup>

This Bill is essentially the same as the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2014 which was introduced by the previous government on 27 November 2014. That Bill lapsed on 6 January 2015 when the 54th Parliament was dissolved.

### **1.3.2. Reasons for the Bill**

Under the previous government, the following red tape reduction legislation was introduced:

- Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013
- Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013
- Construction and Tourism (Red Tape Reduction) and Other Legislation Amendment Act 2014.<sup>4</sup>

The main rationale for this Bill is to continue the red tape reform process in relation to the liquor industry.<sup>5</sup> In this regard, the Explanatory Notes state:

*As with the previous red tape reduction bills introduced in 2013 and 2014, the reduction in red tape from this Bill will have significant benefits for Queensland. This will include benefits for the tourism industry and other business operators such as hoteliers, encouraging operators to set up in Queensland and provide greater employment opportunities for Queenslanders. Additionally, it will reduce red tape on clubs and community organisations allowing them to provide greater employment opportunities for Queenslanders.<sup>6</sup>*

In terms of background and reasoning behind the proposed amendments, Mr David Ford, the Deputy Director-General, Liquor Gaming & Fair Trading, Department of Justice and Attorney-General, provided the following information during the public hearing:

*As you know, this bill is almost identical to the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2014, which was introduced by the previous government last year. One of the priorities for the previous government was to undertake red-tape reduction and reduce regulatory inefficiencies. In response to concerns raised by participants at the 2012 DestinationQ forum, the previous government committed to reduce the regulatory burden on the liquor and gaming industries. The purpose was to support Queensland tourism and to cut red tape in a phased approach with assistance from key stakeholders.<sup>7</sup>*

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<sup>3</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 1.

<sup>4</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>5</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>6</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>7</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 18.

An additional purpose of this Bill is to repeal 14 church and community organisation Acts. These changes were recommended by the Queensland Law Reform Commission (QLRC) to remove obsolete legislation from the statute books.<sup>8,9</sup>

The Bill also repeals section 96 of the Fair Trading Act to align that legislation with other Queensland, and current Australia-wide, policy on vicarious liability of executive officers.<sup>10</sup>

### **1.3.3. Background**

By way of background to the Bill, the Explanatory Notes provide:

*Removing a regulatory inefficiency is a high priority for Queensland businesses and community organisations, disadvantaged by a large volume of red tape and its associated regulatory burden. The liquor industry has particularly been subject to an underlying micro regulatory philosophy. The industry plays a crucial role in both providing services to the community and attracting tourism to the State. However, while there have been significant technological advances in the last two decades, until 2013 the legislation and regulatory controls have not changed accordingly.<sup>11</sup>*

In September 2012, the previous government appointed a Liquor and Gaming Red Tape Reduction Expert Panel (Expert Panel) to consider and advise on red tape in the liquor and gaming industries. The Expert Panel comprising of business, Government and community representatives was charged with the task of reviewing liquor licensing and gaming laws. The Expert Panel contributed to the creation of a Government discussion paper titled *Red Tape Reduction and Other Reform Proposals for Regulation of Liquor and Gaming* (Discussion Paper) released for public consultation on 15 February 2013.<sup>12</sup>

### **1.3.4. Consultation on the Bill**

The previous government consulted on a number of the red tape reduction amendments concerning the liquor laws with the following relevant stakeholders who were part of the Expert Panel, including:

- Queensland Hotels Association
- Clubs Queensland
- RSL and Services Clubs Association
- Cabarets Queensland
- Australasian Casino Association
- Restaurants and Catering Industry Association
- Queensland Tourism Industry Council
- Gambling Help Network
- The Gold Coast Youth Service.<sup>13</sup>

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<sup>8</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>9</sup> Queensland Law Reform Commission, *A Review of Religious and Certain Other Community Organisation Acts*, Report No. 70, December 2013.

<sup>10</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>11</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>12</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 3.

<sup>13</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 13.

The Craft Beer Industry Association (CBIA) was also consulted in relation to the amendments concerning the sale of craft beer at promotional events.<sup>14</sup>

In relation to the repeal of the 14 obsolete church and community organisation Acts, as part of the review, the QLRC undertook consultation with organisations associated with each of the specific Acts included in the review and also placed a notice calling for submissions on the Queensland Government “Get Involved” website. The Queensland Law Society was also invited to make a submission.

The Explanatory Notes advise that *‘the Anglican and Catholic Churches had no objection to the amendments as included in the Bill’*.<sup>15</sup>

The Notes further advise that 18 submissions were received by the QLRC from various religious and other community organisations during its consultation process, indicating support for the repeal of the obsolete legislation.<sup>16</sup>

No general community consultation has been undertaken in respect of the proposed amendment to the Fair Trading Act. The Explanatory Notes advise that the policy approach on director’s liability was subject to public consultation when the former Legal Affairs and Community Safety Committee conducted an inquiry into the *Directors’ Liability Reform Amendment Bill 2012*. The former committee’s Report (No. 25) was tabled in the Legislative Assembly on 15 March 2013 and specifically notes the lack of any consultation undertaken by the previous government on those reforms to director’s liability.<sup>17</sup> Parliament’s consultation processes are not a substitute for government consultation in the policy development stage. However, ultimately, the repeal of s 96 of the Fair Trading Act will make the liability of executive officers in Queensland more consistent with other Australian jurisdictions and is therefore supported by the committee.<sup>18</sup>

### **1.3.5. Outcome of committee considerations**

Standing Order 132(1)(a) requires the committee after examining the Bill to determine whether to recommend that the Bill be passed.

The committee supports the Bill and recommends that it be passed. However government members have some reservations with aspects of the Bill and make some comments and recommendations to that effect. These relate to the relaxation of requirements for a manager to be on-site, exemption of campdrafting events from community liquor permit requirements, permitting after-hours consumption of alcohol in foyers and other areas of hotel (and similar) accommodation, and repealing church and community organisation legislation.

#### **Recommendation 1**

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be passed.

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<sup>14</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 13.

<sup>15</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 13.

<sup>16</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 13.

<sup>17</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 13.

<sup>18</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 14.

## 2. Examination of Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015

This section discusses issues considered during the committee's examination of the Bill.

### 2.1 Objectives of Bill and overall comments

This Bill is a 'resubmission'<sup>19</sup> of the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2014 which was introduced by the previous Liberal National Party Government in November 2014.

The main objectives of the Bill are to:

- Reduce the regulatory burden on the liquor and tourism industries by amending the Liquor Act
- Make amendments to the Liquor Act to ensure clarity and effectiveness
- Repeal 14 obsolete church and community organisation Acts
- Repeal section 96 of the Fair Trading Act in relation to directors' liability.

The committee received six submissions in total for the Bill. Overall the Bill appeared to be quite well received with most submitters being reasonably happy with most changes proposed in the Bill. However, an issue was raised in five of the six submissions: the proposed relaxation of the conditions applicable to the sale and supply of craft beers at promotional events. Concerns were either both that these changes went too far, and that the changes did not go far enough. These concerns are discussed further below.

In terms of the Bill as a whole, Clubs Queensland was very supportive of the Bill:

*We applaud the reintroduction of this Bill and support all measures contained therein, as they will positively assist with the currency and operation of community clubs, pubs and hospitality/tourism generally throughout Queensland.*

*The Bill's lapse upon dissolution of the last parliament was a significant disappointment, given industry, community groups and the government had worked tirelessly via the Red Tape Reduction Expert Panel to reach evidence-based, practical and considered consensus, i.e., the recommendations as contained in the Bill.<sup>20</sup>*

The following comments from the preamble of the submission from the Queensland Hotels Association (QHA) are helpful to set the scene generally concerning the various amendments to the liquor laws that have taken place over the past ten years:

*The Association submits that, in the ten years from 2005 to the present time, considerable progress has been made in further improving patron safety and licensed business amenity throughout Queensland. This has been achieved through a comprehensive range of regulatory and legislative measures, through ongoing commitment to improved training, facilities, and best practice by licensees, and by a steady but ongoing reduction in the per-capita liquor consumption amongst Queenslanders.*

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<sup>19</sup> Record of Proceedings (Hansard), 6 May 2015, p 421.

<sup>20</sup> Clubs Queensland, Submission No. 2, p 1.



*Unfortunately, these changes have been brought about in a piecemeal, sometimes unilateral, and iterative manner involving an uncoordinated series of Government reviews, inquiries and one-off policy and regulatory interventions which, taken as a whole, have introduced more than 100 separate changes to the policies, practices, guidelines, standards and compliance requirements which apply to licensed businesses in Queensland. The imposition of these changes has been at considerable revenue, administration, and expenditure cost to industry, including reduced revenue from shorter trading hours, higher costs through the imposition of mandatory industry training and qualifications standards, and the imposition of an annual 'liquor licence administration fee' (state tax) on licensed businesses. The conservative costs to Queensland's licensed businesses of these regulatory changes is more than \$150 million each year, recurring.<sup>21</sup>*

In terms of specific comments on the Bill, the QHA indicated that, save for their concerns regarding the proposed relaxation of restrictions concerning craft beer (discussed further below), overall it was happy with the Bill, in particular, the following measures proposed under the Bill:

- Increasing flexibility in the application of the approved manager availability conditions
- Removing duplicate register requirement for licensees located in the Brisbane City Council footprint in relation to Crowd Controller and venue Incident Registers
- Permitting after-hours consumption of liquor for residents of accommodation hotels in locations other than their accommodation rooms
- Permitting sale of takeaway liquor to signed-in guests and visitors at community clubs
- Restricting the taking of liquor into and away from an event subject to a community liquor permit (closing off a previous loophole where the regulations were silent on this situation)
- Clarifying the definition of liquor and applying common sense to exclude certain substances (cooking wines, soy sauce, pre-mixed drinks involving bitters etc.)
- Clarifying existing licencing conditions applying to the use of licensed venue car parks.<sup>22</sup>

By way of background information, and expressing broad opposition to any measures which increase the availability of alcohol, the Director of the Queensland Alcohol and Drug Research and Education Centre at the University of Queensland advised:

*I bring to your attention some of the most recent figures that have emerged...some 25 per cent of all deaths in the youngest age group in Australia are alcohol related. This is a horrendous toll in this community and one that we need to address. Recent data has emerged from the National Alcohol Indicators Project which shows, if you look at the Queensland graph, that in Queensland there has been a 60 per cent increase in emergency department admissions over the period 2005 to 2011-12, and that the rate of increased emergency department admissions that are alcohol related in Queensland is the highest of any state in the country. We lead the country in the escalation of emergency department admissions related to alcohol. We are not dealing with a trivial, occasional problem; we are dealing with a major problem that is killing many young people and injuring large numbers of others.*

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<sup>21</sup> Queensland Hotels Association, Submission No. 1, pp 1-2.

<sup>22</sup> Queensland Hotels Association, Submission No. 1, pp 1-2.

*We have a good idea of what needs to be done. The most recent example relates to the New South Wales government legislation which dealt with lockouts and similar legislation to the legislation being proposed in Queensland. The results produced by the New South Wales Bureau of Crime Statistics and Research, an independent statutory organisation, show that the effect of those lockouts and legislative changes in New South Wales was substantial. There has been an immediate and maintained reduction in emergency department admissions in assaults in the CBD and Kings Cross and there is no evidence that that change has been displaced to other areas. This finding is consistent with the findings from Newcastle and many other studies as well. We know what works.*

*...we need to have legislation that reduces the number of opening hours, reduces the number of outlets and restricts the advertising and promotion of alcohol products. Every one of those policies will contribute to reducing the harm, and that should be our focus.*

*I will add one more thing. I have noticed that the industry comes before this committee and makes submissions which are often very different from ours. My concern is that the industry engages in misleading and deceptive practices of an egregious kind. They produce figures and data and make statements of fact which are false and inaccurate. They are in effect blowing smoke. They are trying to distract this committee and committees like this from the facts as we know them. There is no scientific basis for the kinds of claims the majority of the industry makes about the limited harm created by the large numbers of opening hours that currently persist, and the reduction in what is called red tape will in fact be a licence for more people to die and for more harm to be created.<sup>23</sup>*

## **2.2 Review of key amendments proposed by the Bill**

The purpose of this section is to detail the amendments proposed in the Bill which have been the focus of the committee's attention. It highlights a number of the key amendments set out in the Bill for the attention of the Legislative Assembly to inform Members about views expressed to and by the committee, and aims thereby to assist Members with their understanding of the proposed amendments and their implications.

Where relevant, this report includes a summary of the situation in other Australian jurisdictions together with a discussion of the main points raised in the various submissions regarding these sections of the Bill.

### **2.2.1. Providing flexibility regarding the timeframe in which an approved manager must be available**

#### **Current situation**

Queensland presently has the strictest provisions in Australia around the presence of onsite managers. Under s 155AD of the Liquor Act, licensees must employ an approved manager. The approved manager is the person in control of the licensed premises or the premises to which a permit relates. The approved manager is responsible for ensuring that liquor is supplied or possessed on the premises only in accordance with the authority conferred by the licence or permit.<sup>24</sup> An approved manager for

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<sup>23</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 5.

<sup>24</sup> Part 5C of the *Liquor Act* regulates the approval of approved managers for premises.

the venue must be onsite or reasonably available (i.e. readily contactable by venue staff and able to attend the venue within one hour of being contacted) during ordinary trading hours and during extended trading hours between 7am and 10am. An approved manager *must be onsite* (rather than reasonably available) during trading hours between 12am and 5am.

#### *Proposed amendments*

The Bill seeks to provide more flexibility for venues that do not trade past midnight so that the licensee is exempt from s 155AD(2)(a) or (3)(a) meaning that an approved manager need not be present onsite provided (new s 155AG):

- the approved manager is absent for no longer than 3 consecutive days and no more than 7 cumulative days per calendar month
- during the absence, an approved manager or the licensee (if an individual) is readily contactable by telephone by venue staff
- the licensee has nominated a responsible service of alcohol (RSA) trained person (nominated person) to take on the responsibilities of an approved manager during the absence, and the nomination is in writing and contains specified information and the signature of the nominated person to show consent to the nomination<sup>25</sup>
- during the absence, the nominated person is present or reasonably available at the premises during ordinary trading hours and approved extended trading hours of 7am and 10am.<sup>26</sup>

#### *Other jurisdictions*

The requirements regarding the presence of onsite managers in other jurisdictions do not appear to be as strict as the current Queensland provisions. Some jurisdictions' legislation (i.e. Australian Capital Territory, Northern Territory and Victoria) do not appear to address the question of the presence of a manager during particular hours.

In New South Wales, licensed premises in certain areas or precincts, such as Kings Cross, and certain high risk venues require the presence of approved persons at particular times. These requirements appear to apply to venues that, among other things, operate after midnight.<sup>27</sup> Unless otherwise exempt, the South Australian legislation requires personal supervision and management by responsible persons whenever the premises are open for business.<sup>28</sup> The Western Australian legislation includes similar provisions.<sup>29</sup> The Tasmanian legislation refers to licensees maintaining effective control over liquor consumption and sales on the premises but does not expressly address the issue of onsite presence of a manager or the licensee.

#### *Submissions*

One of the six submissions received, that from the Queensland Coalition for Action on Alcohol (QCAA), referred to the proposal under the Bill to provide additional flexibility regarding the timeframe in which an approved manager must be available. The QCAA opposed the proposal and argued that, in fact, the current requirements should be strengthened:

*It is imperative that people involved in the management of venues that serve alcohol are suitable and appropriately trained. Alcohol is a harmful product and needs particular consideration to minimise harm related to its consumption. The*

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<sup>25</sup> The notification must be reattained at the premises and available for inspection by an investigator: new s 155AH.

<sup>26</sup> See Clauses 35 and 36 of the Bill.

<sup>27</sup> *Liquor Act 2007* (NSW), Part 5, Division 6.

<sup>28</sup> See section 97 of the *Liquor Licensing Act 1997* (SA).

<sup>29</sup> See section 100 of the *Liquor Control Act 1988* (WA).

*Queensland Police have called for an approved manager to be on site from 10pm. It could therefore be argued that the current requirements should go further to ensure that an approved manager is on site from 10pm rather than from midnight.<sup>30</sup>*

### **Government members comment 1**

Despite government members of the committee recommending the passing of the Bill ‘in-principle’, they oppose the relaxation of approved manager availability requirements. Although every person working within a licenced venue serving alcohol is to hold a RSA, government members believe a manager should be on the premises at all times. Government members’ concerns include issues relating to the appropriate training of subordinate staff and the remuneration of subordinate staff who undertake the manager’s responsibilities in his or her absence. Therefore the government members oppose the delegation of managerial responsibilities to subordinate staff of the premises.

### **2.2.2. Use of car parks for sale and consumption of liquor**

#### *Current situation*

Section 153A of the Liquor Act currently provides that, if licensed premises include a car park, the licensee must not sell or supply liquor (or allow it to be consumed) in the car park unless the Commissioner for Liquor and Gaming (the Commissioner) has given approval for this activity.<sup>31</sup>

Given that car park events are normally outdoor events conducted on the boundaries of licensed premises, these events have a greater potential to cause disturbance to neighbouring areas than events conducted inside licensed premises. Generally, this is related to ‘*the lack of noise attenuation afforded by car park areas*’.<sup>32</sup>

#### *Proposed amendments*

In relation to the use of car parks for the sale and consumption of liquor, the Bill amends the Liquor Act to:

- require licensees to apply for approval from the Commissioner to sell, supply or allow the consumption of liquor in the car park of the licensee’s licensed premises
- provide guidance as to matters the Commissioner must consider in relation to a car park approval
- clarify that a car park approval is a specific time-limited approval applying only on the days, and during the hours, stated in the approval
- clarify that a car park approval is subject to conditions, as determined by the Commissioner.

#### *Discussion*

In terms of background and reasoning behind the proposed amendments regarding car park licensing, the Commissioner provided the following information during the committee’s public hearing:

*The car parking amendments were intended to provide a consistency across all licensees in terms of how they could use their car parks for liquor supply for events. There have been, over a number of years, for a whole variety of reasons, a number of different approaches taken with the licensing of car parks. Some of those have*

<sup>30</sup> Queensland Coalition for Action on Alcohol, Submission No. 4, p 2.

<sup>31</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 19.

<sup>32</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 9.

*worked. Some of those have caused us some regulatory difficulties. I should say, as a matter of context, that one of the largest areas of complaint that the Office of Liquor and Gaming Regulation gets is about noise and a significant proportion of those noise complaints come from car parks. Car parks obviously do not have any noise attenuation around them—no roofs, no walls—so the noise travels.<sup>33</sup>*

During the public briefing, the Commissioner was asked to provide information on the number of complaints that his office had received in relation to car park noise and the locations of those complaints. He subsequently advised as follows:

*A search of the Office of Liquor and Gaming Regulation's databases shows that in 2014-15, it commenced 416 investigations relating to noise concerns at 255 licensed premises. Of those investigations, five were related to noise coinciding with the sale and supply of liquor in the car parks at four licensed premises which were the Royal Exchange, Toowong (two investigations); Normanby Hotel, Red Hill; Springwood Hotel, Springwood; and Ooonooba Hotel, Townsville.<sup>34</sup>*

DJAG officers provided the following background information on the proposed changes:

*Approval of the Commissioner for Liquor and Gaming is required if a licensee wishes to sell, supply or allow consumption of liquor in a car park that is part of the licensee's licensed premises. However, unlike other approvals under the Liquor Act 1992, there are no supporting provisions which specify the matters the Commissioner may consider when determining whether to provide the requested approval.*

*The proposed amendments would remedy this situation and make the issues for consideration consistent with other decisions of the Commissioner under the Liquor Act that may have an effect on the health and safety of members of the public or the amenity of a community or locality.<sup>35</sup>*

### **2.2.3. Exempting campdrafting events from the requirement for a community liquor permit**

#### **Current situation**

Campdrafting is an Australian sport involving a horse and rider working cattle. Currently, for other than a 'small regional show', a Community Liquor Permit (CLP) must be obtained if liquor is to be sold. A CLP can only be granted if the Commissioner is satisfied the proceeds will go to the benefit of the community, and the event must start and end on the same day. The Bill seeks to put campdrafting on the same footing as a 'small regional show', so that liquor may be sold for campdrafting fundraising events that go for more than 8 hours and are held for up to three consecutive days.

Currently, a CLP authorises the permit holder to sell liquor at the event or occasion and at the times on the day or days subject to the conditions stated in the permit. A CLP can only be granted to a non-proprietary club; or another entity if the Commissioner is satisfied all the net proceeds from the sale of liquor under the permit will be used for the benefit of the community (ss 103C and 103D).

Under s13 of the Liquor Act, a CLP is not required for a sale of liquor by an eligible entity at a fundraising event if the sale of liquor is ancillary to the fundraising event and all the net proceeds from

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<sup>33</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 7.

<sup>34</sup> Correspondence from the department to the committee dated 31 July 2015.

<sup>35</sup> Correspondence from the department to the committee dated 31 July 2015.

the sales will be used for the benefit of the community and provided that the other specified criteria in s 13(1) are met. Among these is the requirement under s 13(1)(d) of the Liquor Act that for a fundraising event other than a small regional show, the liquor is sold during a period not exceeding a total of eight hours. Further, unless the event is a small regional show, the fundraising event must start and finish on the same day.<sup>36</sup> A small regional show does not need to obtain a CLP even if it sells liquor for more than eight hours and it lasts over a number of days. Campdrafting events are also often held over several days and tend to sell liquor for more than eight hours.

### *Proposed amendments*

The Explanatory Notes express the position that campdrafting events are low risk in a way similar to small regional shows.<sup>37</sup> Accordingly, the Bill proposes to amend the Liquor Act to provide a specific exemption for campdrafting events in line with the exemption provided for small regional shows. The effect is that the sale of liquor at campdrafting fundraising events will be able to occur for longer than eight hours and over three consecutive days.<sup>38</sup>

Specifically, the Bill seeks to define a campdrafting event which will have to meet various requirements set out in the Liquor Act regulations regarding prescribed numbers of attendees, the number of hours liquor can be sold, the maximum duration of the event and setting out criteria for minimising adverse effects on public health and safety and public amenity. In addition, the definition of a 'fundraising event' is proposed to be amended by providing that a one-off campdrafting event is a fundraising event. Section 13(1)(d) of the Liquor Act would be amended by including a campdrafting event in the exceptions to the requirements regarding the 8 hour maximum and same day duration.

Regarding the intent of the campdrafting provisions of the Bill, the following relevant exchange occurred between a committee member and the Commissioner during the public briefing:

*Mr RYAN: ... There is a proposal in the bill to exempt campdrafting events from the requirement for a community liquor permit. Would you say that that would be deregulating the sale and supply of alcohol in those instances?*

*Mr FORD: Up to a point that is true. It removes the need for the group running the campdrafting activity to seek a community liquor permit. What it does not do is give them carte blanche to do whatever they like in reality because they are still bound by the very many provisions that apply. The move to remove the requirement to get community liquor permits for low-risk activities was simply a removal of the requirement to apply for the community liquor permit; it was not a free-for-all as a result of that. The normal provisions of the Liquor Act around supply and so forth still continue to apply.<sup>39</sup>*

### *Other jurisdictions*

The committee understands that no specific mention is made about campdrafting events or small regional shows in any other state or territory laws. Only New South Wales provides for exemptions to fundraising events from license or permit requirements, where a number of requirements are met, including that the event cannot go for more than four hours.<sup>40</sup> Campdrafting events are not specified. In Western Australia, the Act does not apply to liquor sold or supplied at functions if specified

<sup>36</sup> See section 4 of the Liquor Act.

<sup>37</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 4.

<sup>38</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 4.

<sup>39</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 19.

<sup>40</sup> Under the newly commenced section 6(5) of the *Liquor Act 2007* (NSW).

requirements are met.<sup>41</sup> In other jurisdictions, some form of permit or licence must be obtained although the requirements for such may be less rigorous (such as there being no requirement for preparing a Risk Assessed Management Plan (RAMP) under the Australian Capital Territory's provisions regarding applying for a non-commercial permit and there being no fee payable for the required limited licence in South Australia).<sup>42</sup>

### **Submissions**

In its submission, the QCAA opposes the proposal under the Bill to exempt campdrafting events from the requirement for a community liquor permit. The QCAA noted:

*By exempting these events from requiring a community liquor permit, the appropriate risk assessment and harm minimisation principles are not being put in place. These events should be subject to community liquor permits to ensure that the appropriate considerations are given by the commissioner when approving liquor permits.*<sup>43</sup>

No other submissions referred to the campdrafting exemption.

However, during the public briefing, a number of questions were asked of DJAG about the proposed changes involving campdrafting. In this regard, the following exchange between a committee member and the Executive Director, Office of Liquor and Gaming Regulation is relevant:

**Mr PERRETT:** ... Is the Department aware of any problems currently occurring in relation to the sale of or availability of alcohol at camp drafting events?

**Mr SARQUIS:** No. We have no evidence of any problems there. They are largely family-type events, so we generally do not have problems with those sorts of events.<sup>44</sup>

### **Government members comment 2**

Despite government members of the committee recommending the passing of the Bill 'in-principle', they oppose introducing a Community Liquor Permit exemption for campdrafting events. They consider the proposed exemption as unsuitable, due to the hours, attendance numbers and nature of such events, which are generally family orientated. In the opinion of government members, the exemption would not create a responsible atmosphere for the service of alcohol and would not be an appropriate influence on the amount of alcohol consumed at such events. For these reasons, the government members oppose a Community Liquor Permit exemption for camp drafting events.

### **2.2.4. Risk Assessed Management Plans (RAMPs) Exemptions**

#### **Current situation**

Currently, an application for or relating to a licence or restricted liquor permit made under s 105 of the Liquor Act must be accompanied by a proposed RAMP for the licensed premises. However where the application is for subsidiary on-premises licence for a low risk premises (i.e. where liquor is not sold between 12am and 5am, where the premises are not the subject of an adult entertainment

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<sup>41</sup> See section 6 of the *Liquor Control Act 1988* (WA).

<sup>42</sup> In relation to the ACT, see *Liquor Act 2010* (ACT) and the ACT Office of Regulatory Services, *Liquor Practice Manual*, November 2011, Chapter 5. In relation to South Australia, see *Liquor Licensing Act 1997* (SA).

<sup>43</sup> Queensland Coalition for Action on Alcohol, Submission No. 4, p 2.

<sup>44</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 22.

permit and not situated in a residential area) it is exempt from providing a RAMP unless the Commissioner determines otherwise.

A premises is a “low risk premises” if liquor will not be sold at the premises between 12am and 5am; and the premises would not be the subject of an adult entertainment permit; and the premises are not situated in a restricted area.

### *Proposed amendments*

The Explanatory Notes note that RAMPs can be a burden for business and that the regulatory burden on low risk premises is not commensurate with the level of risk posed. Therefore, it is proposed that the Bill will extend the exemption from preparing a RAMP beyond low risk cafes and restaurants to these other low risk licence types:

- subsidiary on-premises licence (meals);
- subsidiary off-premises licence with a principal activity of florist
- subsidiary off-premises licence with a principal activity of gift baskets
- subsidiary on-premises licence with a principal activity of caterer
- subsidiary on-premises licence with a principal activity of education
- industrial canteen licence
- producer/wholesaler licence (provided there is no on-site consumption)
- community other licences.<sup>45</sup>

The current safeguard which enables the Commissioner to require a RAMP nevertheless be prepared by the low risk premises in certain circumstances would continue to apply.

### *Other jurisdictions*

The committee understands that the only other jurisdiction with legislation specifically providing for the preparation of a RAMP to accompany a licence application is the Australian Capital Territory. There the relevant Act requires a RAMP to be prepared for licensed premises where liquor is consumed, regardless of the level of risk presented. However, it appears that the level of detail required for the RAMP is commensurate with the level of risk posed by the premises.<sup>46</sup>

While the New South Wales legislation does not require the preparation of a RAMP to accompany licence applications, some licences and authorisations require the application to be supported by various documents, including a community impact statement (CIS). A CIS tends to be required for venues where liquor is served without another service or which have extended trading hours or the nature or the possible impact of the venue warrants a CIS.<sup>47</sup> A recent review of liquor licensing laws in Tasmania<sup>48</sup> and a 2013 review of the Western Australian Act<sup>49</sup> have both proposed that a CIS be prepared for certain ‘high risk’ applications.

### *Submissions*

This proposed amendment was not addressed in any of the submissions to the committee on the Bill.

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<sup>45</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 4.

<sup>46</sup> See Liquor Act 2010 (ACT).

<sup>47</sup> *Liquor Act 2007* (NSW) and *Liquor Regulation 2008* (NSW).

<sup>48</sup> Review of the *Liquor Licensing Act 1990* (Tas) – Proposals Paper July 2014, p 13.

<sup>49</sup> 2013 Review of the *Liquor Control Act 1988* (WA).



### **2.2.5. Allowing the sale of craft beer at promotional events**

#### *Current situation*

In Queensland, there is currently no provision in the Liquor Act which enables producers of craft beer to sell or supply their liquor produce off-premises by way of a promotion at events such as food and wine festivals or farmers' markets. It is only possible to hold a promotional event offering liquor at a venue which itself holds a liquor licence.

In its submission, the CBIA summarised the current situation as follows:

*In Queensland, craft breweries cannot sell or supply their beer away from their licensed production premises – there is simply no ability to apply for a suitable permit for a market festival or similar event. The only limited scope to expose craft beer products for sale direct to consumers away from the main premises relies on using a host venue such as a Convention Centre or licensed venue. Access to these is often limited for smaller players.<sup>50</sup>*

At the public hearing, the CBIA provided the following more detailed explanation of the current situation:

*At the moment we cannot even go to an event and give away samples unless there is already a licence in place for that event, so whether it is at the convention centre or some other food and wine festival that might have an umbrella licence that allows us to giveaway free samples, which is a form of promotion, obviously, it comes at great cost. You usually pay to be there. You pay staff for the weekend and then they are back brewing on Monday. But even within that context at the moment there is no ability to allow people to take a carton home to maybe even partly offset the cost of being there. At most trade shows and things you go to people have a stall, but then they have trade specials so they can sell some stuff and pay for being there. You cannot do that. There is absolutely no way to recoup any costs at all.<sup>51</sup>*

The owner of the Scenic Rim Brewery, Mr Mike Webster, also attended the public hearing and made the following explanatory comments:

*I am the owner of the Scenic Rim Brewery, which is a very small craft brewery that is only in its early stages. The submission that I have put forward has probably two facets to it. One relates to the sale of our product at markets and food events and the like. We feel that it is restrictive on our trade, because we go along, we give samples of beer. People come along and say, 'We like your samples. We would like to take some with us,' and there is shock and horror on their faces when we say, 'Sorry, the law does not allow you to do it. You must go to established licenced premises to do so.' As already mentioned, this would bring us into line with the wine industry. The Wine Industry Act 1994 was enacted when the wine industry was considered to be a fledgling industry requiring additional support.*

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<sup>50</sup> CBIA, Submission No. 6, p 1.

<sup>51</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, pp 12-13 and p 17.

*The other side of my submission is that as a producer/wholesaler with a cellar door, I can have people come in, I can give them a tour, they can sample my product but, when it comes time to leave, they are allowed to take product with them but only in the quantity of a souvenir sample, which has not been defined. So it is very difficult to work out how much I am allowed to give them.<sup>52</sup>*

### **Proposed amendments**

The Bill proposes to enable craft beer producers to sell liquor at promotional events in two ways:

- allowing the Commissioner to impose a condition on a licence issued to a producer or wholesaler under the Liquor Act which will allow the licensee to sell craft beer at a promotional event. The proposed laws will provide a single approval process which will enable the licensee's craft beer to be marketed at any number of appropriate and eligible events, subject to certain conditions (*conditioning method*); **or**
- providing a permit system where craft producers from other jurisdictions (who cannot use the conditioning method because they do not hold a Queensland liquor licence) can apply for a permit which allows them to market their craft beer at eligible events in Queensland. They will be able to market their craft beer each time the nominated event occurs during the period set out in the permit. A Queensland licence holder can also apply for a permit if they prefer it to the conditioning power method (*permit method*).

The Bill provides a definition of 'craft brewery' to ensure only genuine craft breweries can market their product under the above conditioning power method or permit method. A 'craft brewery' will be defined as premises that are licensed premises at which no more than 40 million litres of beer is produced in any one year period under the licence (see discussion below).<sup>53</sup> A 'promotional event' will be an event or occasion held primarily for the purpose of promoting produce from a particular region (e.g. farmers markets, agricultural shows, food and wine events) or for promoting the hospitality industry (e.g. trade fairs, craft beer festivals).

Under the conditioning method, a new s 74A allows the Commissioner to impose conditions on the licence to sell or supply the craft beer (e.g. limits on the amounts that may be sold or supplied at the event). Further, unless a condition provides otherwise, the licensee must not sell or supply more than 9 litres of craft beer to a person at a promotional event.

Under the permit method, the permit will authorise the permittee to sell or supply a sample of craft beer produced at the permittee's craft brewery at a promotional event if the organiser has given written consent. The permit can be granted for a single event or recurring events. The permit can be subject to conditions, such as volume limits, similar to the abovementioned conditions on a licence. The duration of the permit is a maximum of three months.

The Explanatory Notes also provide:

*To ensure the safe and responsible supply of craft beer at promotional events, the Bill regulates the manner in which, and to whom, craft beer may be sold at such events. The existing obligations and offence provisions under Part 6 of the Liquor Act will, for the most part, apply to licensees and permittees who sell or supply craft beer at promotional events, including the provisions relating to responsible service, supply and promotion of liquor, preservation of amenity and prohibition on sale to minors. However, particular requirements of Part 6 – such as the requirement to*

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<sup>52</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 12.

<sup>53</sup> See clause 8 of the Bill seeking to amend section 4 of the Liquor Act.

*have an approved manager and to display signage containing the licensee's information – will not apply to the sale of craft beer at promotional events in order to avoid imposition of unnecessary red tape.*<sup>54</sup>

The proposed Bill requires a licensee or permittee to maintain relevant records in relation to craft beer sold, supplied or ordered at promotional events. Failure to comply with these record-keeping requirements will constitute an offence, with maximum penalties consistent with similar, existing offences under the Liquor Act.<sup>55</sup> It is noted that these offences attract a maximum penalty of 350 penalty units under the Bill.<sup>56</sup>

### *Other jurisdictions*

Other jurisdictions provide for special permits or conditions on existing licences for craft brewers or winemakers so they can hold tastings and make sales at shows away from the licensed premises. Safeguards such as RSA requirements continue to apply (as they would under this Bill). More specifically, the liquor legislation in other states and territories tend to allow for the promotion of a wine producer's or brewer's own product under special types of permits or conditions or authorisations on existing licences. Most jurisdictions' legislation set out the circumstances in which a person or body corporate will qualify as a producer or brewer etc. of wine, beer etc. (generally requiring the content of a designated amount of the producer's own product). Some jurisdictions appear to have legislative provisions which embrace the promotion of producers' products and attempt to reduce red tape regarding undertaking onsite and off-site activities.

For example:

- In New South Wales, recent changes have been made to *the Liquor Act 2007* (NSW) as a result of the 2013 statutory review which recommended the introduction of a framework to ensure there is equity between all producers in the sale of liquor on licensed premises and at promotional events such as farmers' markets.<sup>57</sup> Since these changes came into effect on 1 March 2015, brewers and distillers can sell their products directly to the public at industry liquor shows, producers' markets or fairs. Notice must first be provided to the Independent Liquor and Gaming Authority, the local police and the local council.
- In the relevant South Australian legislation, extensive provision is made for enabling a number of licensees to collectively market their own products under one licence and for the endorsement of producers' licences to allow them to offer tastings and sales at wine fairs and shows away from the licensed premises.<sup>58</sup>
- The Victorian liquor legislation also allows promotional activities on the licensed premises and, via a promotional event authorisation, at other temporary venues such as festivals and shows.<sup>59</sup>
- In Western Australia, an exemption is provided under the Western Australian liquor regulations from having to obtain a licence or permit for sales or supplies of producers' products, subject to specified requirements.<sup>60</sup>

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<sup>54</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, pp 6-7.

<sup>55</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, pp 6-7.

<sup>56</sup> Clause 43 of the Bill (amending section 217 of the Liquor Act (Records to be kept by licensee)).

<sup>57</sup> See 2013 Review of the *Liquor Act 2007* and *Gaming and Liquor Administration Act 2007*, November 2013, p 66 (especially Recommendation 40) and the Liquor Legislation Amendment (Statutory Review) Act 2014, especially section 33.

<sup>58</sup> Liquor Licensing Act 1997 (SA).

<sup>59</sup> Liquor Control Reform Act 1988 (Vic).

<sup>60</sup> *Liquor Control Act 1988* (WA) and Liquor Control Regulations 1989.

### *Submissions*

The proposal to allow the sale of craft beer at promotional events is the most contentious of all the proposed changes under the Bill. All but one of the submissions canvassed this aspect of the Bill.

The main issues raised in the submissions are:

- the provisions in the Bill regarding the sale of craft beer at promotional events are not what the Expert Panel recommended
- the Bill does not take into account the relatively low risk associated with the craft beer industry generally
- the changes do not address the “uneven playing field” that exists for craft beer marketing activities compared with wine or cider sales at promotional events
- the need to reduce the maximum threshold of 40 million litres in the definition of craft brewery
- concerns about the proposed dual license / permit system
- proposed high penalties for craft brewers especially when compared with wine producers
- some additional issues relating to trading hours and samples.

Each of these aspects is examined below.

### *Contrary to Expert Panel Recommendations*

In its submission, the QHA raised a concern that a number of provisions in the Bill differ from the recommendations made by the Expert Panel:

*During consideration of this matter in 2014 by the Red Tape Reduction Panel, it was proposed to support the limited sale of (Queensland) craft beer at specific promotional events such as industry expositions and one-off food and wine festivals, in order to further stimulate commercial activity for these Queensland producers. Although the Queensland Hotels Association representative on the Panel opposed this proposal, it was subsequently supported by the majority of panel members, and included in the panel’s recommendations to the Minister.*

*However, sometime between the considerations of the Red Tape Reduction Panel and the drafting of the Bill, the goalposts were apparently changed to propose the approval of routine sale of cartons of craft beer at regular retail activities such as farmers markets.<sup>61</sup>*

The QHA raised this issue again in the context of its overall concerns about the proposal to allow craft beer to be sold at farmers markets:

*That single measure which the hotel industry is very concerned about and opposed to is the proposal to permit the sale of packaged craft beer at regular retail activities such as farmers markets. The proposal to permit the selling of cartons of craft beer at farmers markets was not discussed by the red-tape-reduction panel and, in our view, represents a clear potential weakening of the harm minimisation principles which are the main objective of the Liquor Act. In the view of the Queensland Hotels Association, this change extends the sale conditions well away*

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<sup>61</sup> Queensland Hotels Association, Submission No 1, pp 6-7.

*from the original intent of the proposal discussed which was increased promotional and sales potential at bona fide trade expos and one-off promotional events, and provides clear potential for the widespread, unsupervised sale of package beer at weekly commercial markets across the state, despite there being no established case for community demand.<sup>62</sup>*

In its submission the QHA said that:

*Given the proliferation of such markets, the absence of definition around what constitutes such markets, and the irregular and early trading times of such markets, it is contended that relaxation of this kind in relation of craft beer represents a clear potential breach of the main purposes of the Liquor Act as they relate to its harm minimisation provisions.<sup>63</sup>*

In light of its concerns, the QHA recommended that the Bill be amended to:

*... remove the potential for beer to be sold at regular farmers markets and similar retail events, and limit the sale of craft beer to the provisions which relate to bona fide trade expos and one-off promotional events under the conditions specified in the Bill.<sup>64</sup>*

#### Low risk

A common theme that emerged during the committee's Inquiry was that the craft beer industry could be considered to be relatively low risk in terms of community harm.

Mr Webster from the Scenic Rim Brewery indicated in his submission:

*We are fully aware of the need for restrictions when dealing with alcoholic venues but what we are talking about is not high risk.<sup>65</sup>*

During the public hearing, he added:

*When these events happen we obviously have all of our RSA members there and we act responsibly. As I say, I am new to the industry but after the four or five events that I have been to, it is very low key, very low risk. We are not there trying to pump alcohol into them. We are trying to market our product, so they come along for the experience rather than to get full of alcohol. I guess it is a bit of a catchphrase, but education and appreciation rather than inebriation is what we are about.<sup>66</sup>*

In the context of the purported relative low risk of harm associated with craft beer, the QCAA made the following comments at the public hearing:

*I suppose if we had to have a hierarchy of harms, you have more difficulty seeing the kinds of harms we are talking about ... in that context. In a hierarchy, where*

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<sup>62</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 6.

<sup>63</sup> Queensland Hotels Association, Submission No 1, pp 6-7.

<sup>64</sup> Queensland Hotels Association, Submission No 1, pp 6-7.

<sup>65</sup> Scenic Rim Brewery, Submission No. 5, p 1.

<sup>66</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 15.

*you are dealing with really very severe drinking problems, ... the craft area is likely to be less involved and a less serious contributor to the problem.*<sup>67</sup>

The Commissioner was also questioned about the risks associated with the sale of craft beer and indicated he was unaware of any complaints.<sup>68</sup>

*Lack of 'Level Playing Field' for Craft Beer Brewers*

The issue of craft beer brewers not being afforded a level playing field in the context of the sale of other types of alcohol, for example wine or cider, at promotional events was canvassed during the public hearing and briefing and in a number of the submissions.

During the public hearing, committee member Mr Jon Krause MP made the following comments:

*Over the last 10 or 15 years the wine industry has been in a position different to brewers and craft brewers in particular where they have been able to enjoy that opportunity to market their products. I think it was part of the Beattie government's role to promote the Queensland wine industry. Now we are seeing an emergence of the Queensland craft brewing industry as well. I think there has to be some semblance of a level playing field put in place there.*<sup>69</sup> ...

*I do not understand the difference between a local small scale wine producer and a small scale craft beer producer. Can you elaborate as to why there is a difference? I do not think there should be.*<sup>70</sup>

Mr Webster from Scenic Rim Brewery commented on this issue in his submission:

*We ...feel we are being discriminated against and our possibilities for trade are being restricted. Small business growth in Australia is on the decline and this situation certainly does not help things.*

*I am not asking for a relaxation of legislation relating to alcohol consumption just the right to sell our product in a responsible non-restrictive manner to our customers.*

*The wine industry does not face these same restrictions and it would be good to come in line with them.*<sup>71</sup>

The requirements for the sale of wine and cider are relevant when reviewing the situation concerning the requirements for the sale of craft beer for promotional events:

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<sup>67</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 5.

<sup>68</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 19.

<sup>69</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 5.

<sup>70</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 9.

<sup>71</sup> Scenic Rim Brewery, Submission No. 5, p 1.

## Requirements for the sale of wine and cider

To lawfully sell wine in Queensland, a person must be licensed under the *Wine Industry Act 1994 (Qld)* (Wine Industry Act) or be authorised to sell wine under the Liquor Act.<sup>72</sup> 'Wine', for the purposes of both the Wine Industry Act and the Liquor Act, means certain fermented or distilled fluids of an intoxicating nature intended for human consumption. The term is defined in such a way as to expressly include cider.<sup>73</sup> Accordingly, the sale of cider under both these Acts is regulated in the same manner as the sale of wine.

There are two types of wine licences available under the Wine Industry Act:

- a 'wine producer licence' allows the licensee to operate a vineyard or winery
- a 'wine merchant licence' allows the licensee to conduct business that contributes to the Queensland wine industry in a substantial way, without the operator necessarily having a vineyard or winery of their own.<sup>74</sup>

A wine producer licence holder who wants to sell wine at a one-off event, such as a festival, trade show or convention, can apply for a wine permit under the Wine Industry Act.<sup>75</sup> Wine permits can be issued for unlicensed venues, such as a booth at a carnival, or for venues licensed under the Liquor Act, such as a convention centre.<sup>76</sup>

A wine permit can be issued to an individual wine producer or to a group of wine producers wishing to operate from the same area at the same event, for example a Queensland wine booth at a major festival.<sup>77</sup>

The chief executive may grant a wine permit only if:

- satisfied that the purpose of the permit is to promote a particular winery or region, and
- he or she 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:
- at a single event, or
- at more than one event, if the events are of the same type and held at the same place.<sup>78</sup>

A wine permit authorises the relevant licensee:

- to sell the licensee's wine in sealed containers, at the permit place stated in the permit, for consumption away from the permit place

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<sup>72</sup> Wine Industry Act 1994 (Qld), s 6(1). The maximum penalty for selling wine without the appropriate authorisation is 350 penalty units (\$41 230): Wine Industry Act 1994 (Qld), ss 34(1), (2); Penalties and Sentences Act 1992 (Qld), s 5A; Penalties and Sentences Amendment Regulation (No. 1) 2015 (Qld), s 4.

<sup>73</sup> Wine Industry Act 1994 (Qld), schedule 2; Liquor Act 1992 (Qld), s 4.

<sup>74</sup> *Wine Industry Act 1994* (Qld), s 6; Queensland Government, Business and Industry Portal: Types of liquor and wine licences; and Australian Business Licence and Information Service, Wine producer licence and Wine merchant licence for Queensland.

<sup>75</sup> *Wine Industry Act 1994* (Qld), s 6; Queensland Government, Business and Industry Portal: Liquor permits and changes to liquor licences; and Australian Business Licence and Information Service, Wine permit for Queensland. The Office of Liquor and Gaming Regulation has an approved form (see Application for wine permit).

<sup>76</sup> Australian Business Licence and Information Service, Wine permit - Queensland.

<sup>77</sup> Australian Business Licence and Information Service, Wine permit - Queensland.

<sup>78</sup> *Wine Industry Act 1994* (Qld), s 32(2). A group of licensees may only apply for a permit to sell wine at a single event: *Wine Industry Act 1994* (Qld), s 32(5).

- to sell or give the licensee’s wine as a sample for consumption at the permit place.<sup>79</sup>

The permit will be subject to the conditions stated in the permit.<sup>80</sup> A licensee who has been granted a wine permit on more than one occasion and who has complied with the conditions of the permit, may apply to the chief executive for approval to merely notify the chief executive if:

- the licensee again proposes to sell the licensee’s wine, or give the wine as a sample, at an event for which a wine permit could be give
- the event is a private event.<sup>81</sup>

The maximum penalty for a licensee who fails to comply with the conditions of their licence or any permit is 40 penalty units (currently \$117.80 per penalty unit, so the maximum penalty is \$4 712).<sup>82</sup>

### *Other jurisdictions*

There have been reforms in this area in a number of Australian jurisdictions to bring the craft beer industry in line with wine producers. In this context, the committee has notes with interest the recommendations of the 2013 NSW government statutory review of the *Liquor Act 2007* (NSW). Recommendation 40 is:

*The framework for producer /wholesaler licences, as it applies to wine producers, should be extended to the producers of beer and spirits to enable them to apply for a drink on-premises authorisation and to conduct tastings and takeaway sales of their products at a producer’s market or fair.*<sup>83</sup>

The committee understands that similar reforms which achieved this purpose were introduced in Victoria in 2011.

### *Need to reduce maximum 40 million litre threshold in the definition of craft brewery definition*

The definition of a “craft brewery” under the Bill requires that the relevant brewery not produce more than 40 million litres of beer in any 1 year period.<sup>84</sup> This maximum threshold of 40 million litres was discussed during the public hearing. It appears that this maximum threshold derives from the CBIA’s Membership By-Laws which breaks down the brewers into sub-categories.<sup>85</sup> The largest category is the “national craft brewer”, being an Australian craft brewer with beer sales of between 5,000,000

<sup>79</sup> *Wine Industry Act 1994* (Qld), s 32(3). ‘Permit place’ means a place stated in the permit to be a permit place for the licence: *Wine Industry Act 1994* (Qld), schedule 2. ‘Licensee’s wine’, for the holder of a wine producer licence, means wine at least 85% of which is either made from fruit grown by the licensee on the licensee’s licensed premises or made by the licensee on the licensee’s licensed premises: *Wine Industry Act 1994* (Qld), schedule 2.

<sup>80</sup> *Wine Industry Act 1994* (Qld), s 32(4).

<sup>81</sup> *Wine Industry Act 1994* (Qld), s 32A. A ‘private event’ is one held at premises other than licensed premises, if:

- the event is not publicly advertised or is not open to the public or to casual attendance, or
- attendance at the event is restricted by personal invitation by the event’s host, or
- 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 are a 21<sup>st</sup> birthday party, a boardroom lunch, a company cocktail party, a wedding, a wine tasting or promotion for a winery: *Wine Industry Act 1994* (Qld), schedule 2.

<sup>82</sup> *Wine Industry Act 1994* (Qld), s 34(3); *Penalties and Sentences Act 1992* (Qld), s 5A; Penalties and Sentences Amendment Regulation (No. 1) 2015 (Qld), s 4.

<sup>83</sup> NSW Government 2013 Statutory Review of the Liquor Act 2007 and Gaming and Liquor Administration Act 2007, p 66.

<sup>84</sup> See clause 8(2) of the Bill amending section 4 of the Liquor Act.

<sup>85</sup> See Clause 4 of the Membership By-Laws of the Craft Beer Industry Association Limited.



and 40,000,000 litres in the most recent calendar year ended 31 December.<sup>86</sup> This maximum threshold and a more appropriate alternative threshold of 5 million litres in the context of the definition at hand, was discussed by the CBIA, during the public hearing:

*The 40 million figure, I imagine, just to answer a question that you asked before, came from the definition that the Australian Craft Beer Industry Association has. I think it is perhaps where it was picked up from, because for membership purposes of the association we have a 40-million litre cut-off. That is to try to be as broadly inclusive as possible. No craft brewer in Australia is anywhere near that yet.*

*We also have within that definition, though, up to five million litres being a regional brewer. Perhaps that might be a more appropriate subset of the definition to adopt. Forty million litres is a huge figure and I can tell you that we are not even halfway to being at the capacity of the regional brewers. If the number is scary—and I can understand why it would be, because I do not think that a P&C school fete would be particularly relevant for a brewer producing 40 million litres—I think that can certainly be looked at.<sup>87</sup>*

Later, the CBIA indicated again that the maximum threshold could go lower than the 5 million litre mark:

**Mr RYAN:** *I accept your submission about the 40 million litre number. Why not four million? Why not one million? If it is about the microbreweries, your members, why should this committee submit or accept 40 million? Why can't we submit or accept one million?*

**Ms Fielding:** *I think you can. I think you can certainly look at a lower number. I think the key is having that avenue to promote something new when it is new and unknown, because why would a bottle shop give up valuable space for an unknown product? It is not the bottle shop's job to promote it. The brewers want to be able to do it, create the demand, and then go to the bottle shop and say, 'Look, I have a product that your customers will want. Can I have a spot?' The ability is not there to do that really at the moment. And yes, that—*

**Mr RYAN:** *Is there a number that you have in mind that would be acceptable to your members?*

**Ms Fielding:** *Without being able to go back and talk to them and so on, as I say, one definition to adopt may be the Craft Beer Industry Association's definition of a regional brewer, which is up to five million litres. That could be one to look at, but it could go lower than that.<sup>88</sup>*

#### **Committee comment**

The committee notes the existing definition of a 'craft brewery' under the Bill requires that the relevant brewery not produce more than 40 million litres of beer in any one year period. The committee acknowledges concerns raised about this threshold, including observations that no craft brewer in

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<sup>86</sup> See Clause 4.1.1 of the Membership By-Laws of the Craft Beer Industry Association Limited.

<sup>87</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 14.

<sup>88</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 14.

Australia produces a quantity of beer that even approaches it. As a result of its inquiries, the committee considers the threshold should be significantly reduced, in order to more properly reflect the distinction between the quantity of beer produced by craft brewers and other brewers.

### **Recommendation 2**

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be amended to change the definition of 'craft brewery' such that the proposed maximum threshold of 40 million litres of beer produced in any one year period under licence be replaced with five million litres.

#### Concerns about the proposed dual license / permit system

A number of submissions raised concerns about the confusing nature of the proposed license system for Queensland craft brewers and the permit system for interstate craft brewers. The CBIA made the following comments in its submission:

*The Bill proposes adding a broad condition to a craft brewer's licence to enable participation at events outside of the brewery, without the need to apply for approval each time. The Bill includes a 'primary purpose' test for a Promotional Event that shifts the risk of determining compliance to the craft brewer – with significant consequences for getting it wrong! The proposal in its current form in clause 8 provides a narrow definition of a promotional event that is not necessary if the permit scheme we initially sought and recommended is preferred and adopted.<sup>89</sup> ...*

During the hearing, the CBIA confirmed its preference for a permit system only (rather than a licence system) and explained that the proposed dual license / permit model may result in a lack of clarity for craft brewers around the conditions of a conditional licence and the imposition of disproportionately high penalties for inadvertent mistakes.<sup>90</sup>

In its written submission, the CBIA proposed the following alternatives:

- 1. ...the entire removal of the license condition and related license authority provisions which are too restrictive and complicated to support any likely uptake by industry. Even the red tape of seeking "consent" from the event organiser is surprisingly complicated at times, consent is surely implied by the event organiser inviting a craft brewery to occupy a stall. The proposals requiring consent are contrary to similar red tape reduction measures which removed owners' consent requirements for low risk matters. The license condition scheme would only apply to Queensland breweries and creates one rule for some breweries and another rule for others. The model proposed creates substantial confusion when both local and interstate breweries participate in a single event and it will be impossible to achieve compliance with differing approvals and conditions.*
- 2. Alternatively, we propose one single permit based model for both Queensland and interstate brewers – in identical format to the current permit model under*

<sup>89</sup> CBIA, Submission No. 6, p 1.

<sup>90</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 July 2015, p 16.

*the Wine Act, which has been in operation for a great number of years, but expanded to be available to interstate craft brewers.*

3. *Any permit scheme must enable brewers to charge for their beers for consumption onsite subject to all other probity requirements regarding responsible service and appropriate conditions imposed by the Commissioner.*

*How would it work?*

*Breweries (whether Queensland or interstate) could apply for permits on an event by event basis, giving the Commissioner the ability to:*

- *Confirm the applicant is a craft brewer*
- *Determine whether the event is appropriate*
- *Impose any further conditions deemed necessary in light of the location / nature of the event.*

*The CBIA seeks the removal from the Amendment Bill of all provisions relating to licence conditions. These provisions are unnecessary and confusing and shift the 'red tape' burden and risk directly onto the licensee. Only the permit scheme supports all Australian Craft Brewers and the permit scheme alone should be adopted over a confusing mix of both options. Accordingly, the CBIA seeks the following amendments to the Bill:*

- *Clauses 17-20 (License Conditions and related authority) should be completely omitted*
- *Clause 23 should be amended to remove the requirement for free samples and allow sale of craft beer for consumption on the permit premises*
- *Proposed section 103ZA in Clause 23 should be deleted*
- *Clause 31 should be deleted*
- *Clause 43 MUST be deleted, it imposes a 350 penalty unit offence (\$38,000+) for an admin failure that serves no purpose*
- *Clause 45 can be deleted as it is not required when clauses 17-20 are removed.<sup>91</sup>*

#### *Some additional issues relating to trading hours and samples*

The CBIA also raised the following issues concerning the craft beer provisions in the Bill in its submission:

- **Trading hours:**

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<sup>91</sup> CBIA, Submission No. 6, p 2.

*Trading hours will also prove problematic because standard trading hours of licensed premises if conditioned do not commence until 10am and these hours may not suit, for example, an early morning market environment.<sup>92</sup>*

- Charging for samples:

*The stipulation (in proposed s74A(2)(b)(ii) and elsewhere) that brewers cannot charge for samples and/or beers for consumption on site means these activities will largely be uneconomical for brewers and the desired opportunity otherwise created by the Amendment Bill will be foregone. Breweries must cover the cost of staff (events are often after hours and sometimes go for several days), the cost of logistics, stock and attending (stall fees can be astronomical at food and wine events), without any way to recoup even a portion of the costs. It also limits a brewer's ability to refuse a sample to people who are clearly not interested in the brewer's product, but rather just want a free beer sample.<sup>93</sup>*

- Recording number of samples dispensed

*The requirement for craft brewers to potentially keep track of how many samples a visitor to an event has consumed (and risk significant penalties for getting it wrong) presents a risk that outweighs participation. Responsible service and related requirements already bind licence (or permit holders) in this regard.<sup>94</sup>*

## **2.2.6. Permitting after-hours consumption of liquor for residents of accommodation hotels in location other than their accommodation rooms**

### *Current situation*

Under Part 4 of the Liquor Act, commercial hotel licences, commercial special facility licences and subsidiary on-premises licences whose principal activity is the provision of accommodation are authorised to sell liquor on the licensed premises, for consumption on the premises, at any time to a resident, or to a guest of a resident in the resident's company, but only for consumption in a residential unit outside of approved trading hours.<sup>95</sup>

### *Proposed amendments*

According to the Explanatory Notes, '*...this restriction is overly burdensome on industry, as residents may wish to consume liquor afterhours in other areas of the premises such as foyer bars, and could generally do so safely*'.<sup>96</sup>

The Bill seeks to provide greater flexibility by proposing to amend:

*...section 62, 65A and 67B(3) to allow afterhours consumption of liquor by residents and guests in their company to take place either in a residential unit, or in another part of the premises approved by the Commissioner for the purpose.<sup>97</sup>*

<sup>92</sup> CBIA, Submission No. 6, p 1.

<sup>93</sup> CBIA, Submission No. 6, p 1.

<sup>94</sup> CBIA, Submission No. 6, p 1.

<sup>95</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 5.

<sup>96</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 6.

<sup>97</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 6.

### **Government members comment 3**

Despite government members of the committee recommending the passing of the Bill ‘in-principle’, they oppose allowing after-hours consumption of alcohol in hotel and resort foyers. Government members believe that extending access to consumers of alcohol to hotel or resort foyers will increase the potential for more alcohol related harm in family friendly areas. Therefore, government members oppose the extension of the supply of alcohol in foyers of such establishments.

#### **2.2.7. Repeal of 14 obsolete church and community organisation Acts**

The Bill proposes to repeal the following 14 church and organisation Acts:

1. All Saints Church Lands Act 1924 15 Geo 5 No. 23
2. Anglican Church of Australia Act 1895 Amendment Act 1901 1 Edw 7 No. 21
3. Anglican Church of Australia Act 1977
4. Anglican Church of Australia (Diocese of Brisbane) Property Act 1889 53 Vic
5. Ann Street Presbyterian Church Act 1889 53 Vic
6. Boonah Show Ground Act 1914 5 Geo 5
7. Chinese Temple Society Act 1964
8. Presbyterian Church of Australia Act 1971
9. Queensland Congregational Union Act 1967
10. Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 9 Geo 6
11. Roman Catholic Church (Northern Lands) Vesting Act 1941 6 Geo 6
12. Roman Catholic Relief Act 1830 10 Geo 4 No. 9 (NSW)
13. Wesleyan Methodists, Independents, and Baptists Churches Act 1838 2 Vic No. 7 (NSW)
14. Wesleyan Methodist Trust Property Act 1853 17 Vic (NSW).

The proposed repeal of the above legislation has been recommended by the QLRC due to the fact that the legislation is considered to be obsolete.<sup>98</sup>

The Bill includes provisions to relocate a number of technical and administrative provisions contained in the above obsolete church and community organisation Acts into the following Acts, as saving and consequential amendments:

1. Anglican Church of Australia Act 1895
2. Anglican Church of Australia Constitution Act 1961
3. Oaths Act 1867
4. Presbyterian Church of Australia Act 1900.

The fundamental legal principle issue concerning the omnibus nature of this Bill that arises as a consequence of the inclusion of these provisions relating to the repeal of the 14 obsolete church and community Acts is discussed in detail in Section 3.2 below.

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<sup>98</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

**Government members comment 4**

Government members of the committee support the repeal 'in-principle' but recommend it be deferred until the Royal Commission into Institutional Responses to Child Sexual Abuse has delivered its report with options for reform. It is understood this is due to be finalised by December 2017.

Significantly, the Royal Commission into Institutional Responses to Child Sexual Abuse has highlighted difficulties that survivors and their legal advisers face in pursuing civil litigation, namely, identifying: (a) proper defendants to sue with regards to faith-based institutions; and (b) whether the institution had sufficient assets.

The Acts proposed for repeal are all relevant to the legal status of these bodies, including incorporation of the bodies and the use of trusts. These factors may have a bearing on matters related to compensation for survivors of abuse.

Upon release of the Royal Commission's report, it is likely that advice of the Crown Solicitor will be required regarding the impact of the Royal Commission's recommendations on the implementation of the QLRC recommendations.

Government members recommend that implementation of the QLRC recommendations in relation to the 14 obsolete church and community organisation Acts be delayed until the Crown Solicitor advice on the Royal Commission into Institutional Responses to Child Sexual Abuse has been received and analysed, so that all the necessary changes can be made at the same time.

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and co-liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill and brings the following to the attention of the Legislative Assembly.

#### 3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

##### 3.1.1. Use of car parks for sale and consumption of liquor

Clause 46 inserts transitional provisions for this Bill. Amongst the transitional provisions are new sections 331 and 332 which deal with existing authorisations to conduct the sale, supply and consumption of liquor in a car park of licensed premises. Section 331 states that the new section 142ZZE applies to a licensee despite any condition on the licensee’s licence that may authorise the use of the car park for the sale, supply or consumption of liquor.

As advised in the Explanatory Notes:

*The intention is that all licensees in Queensland will be required to seek new approval under section 142ZZE for every specific occasion on which it is intended to sell, supply or allow liquor to be consumed in a car park – regardless of any pre-existing authorisation to conduct these activities. This will allow the Commissioner to consider the impact of each proposed event (as provided for in section 142ZZG) and condition any resultant approval appropriately. To remove any doubt, section 331 declares that any pre-existing authorisation granted by licence condition cannot be considered a car park approval under section 142ZZE.<sup>99</sup>*

Section 332 provides that an approval to use a car park for the sale, supply or consumption of liquor that was granted under section 153A prior to the commencement of new clause 30, will no longer have effect. As advised in the Explanatory Notes:

*This is intended to prevent a situation in which licensees may avoid the enhanced consideration and conditioning powers (inserted by clause 30) by applying for car park approvals under the existing section 153A prior to commencement.<sup>100</sup>*

Section 153A of the Act, under which some car park liquor trading authorisations have been previously granted, will be removed from the Act by clause 32, to enable the new Division 1AB in part 6 to operate instead. The current section 153A prohibits the sale, supply or consumption of liquor in the car park of licensed premises without approval of the Commissioner. Both sections 331 and 332 will remove any current (pre-commencement) authorisations that allow licensees to sell, supply or allow consumption of liquor in car parks.

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<sup>99</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 21.

<sup>100</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 21.

These provisions raise potential FLP issues. The Explanatory Notes identify that:

*Clause 30 of the Bill provides for a new Division 1AB under Part 6 of the Liquor Act that requires a licensee to seek the Commissioner's approval for the sale, supply or consumption of liquor in a car park. A new section 331 inserted by Clause 47 of the Bill intends that the requirement to seek this approval applies even if the licensee is authorised by a licence condition to use a car park for the sale, supply and consumption of liquor.*

*This amendment will prevent a licensee from exercising an existing authority under a licence condition to conduct car park events without formally seeking the Commissioner's further approval for each event. Accordingly, a licensee will have to seek approval from the Commissioner prior to each car park event being conducted. Therefore, the Bill breaches fundamental legislative principles, as it could affect a previously held ability of a licensee (under a licence condition) to conduct certain commercial activities without further approval.*

*Nevertheless, the amendments are considered justifiable as it will place all licensed premises in Queensland on equal footing in terms of the requirement to seek approval for car park events. The amendments therefore provide for an appropriate balance between the legitimate business activities of licensees and relevant amenity and harm minimisation considerations. Licensees, generally, may benefit from the amendment because the Commissioner's ability to apply approval conditions to car park events may make the prospect of approval far more likely.<sup>101</sup>*

#### **Committee Comment**

It could be argued that removing current authorisations is removing an existing right to trade from those licensees who may have organised aspects of their business operations on the basis of their having that pre-existing trading authorisation. Conversely, it must be recognised that any approval to trade liquor is a creature of statute and administrative licence and, as such, the 'right' to trade liquor in a particular way or in a particular place (such as a car park) is not an inalienable right and it can be removed under the law in much the same way as it was granted. Licensees will still be able to trade from their car park if they obtain a new car park approval under section 142ZZE(2), although it appears that it is intended that such approval will need to be sought for each occasion that a licensee wishes to trade from a car park of licensed premises, rather than it being automatically approved under a condition of their licence.

The committee considered whether the policy goal of allowing 'the Commissioner to consider the impact of each proposed event and condition any resultant approval appropriately'<sup>102</sup> outweighed any business inconvenience or revenue loss that may occur for those licensees who, from the commencement of sections 331 and 332, will no longer be able to trade from/in a car park using their (current) authorisation and who will be required to seek a fresh approval for each occasion under section 142ZZE(2). The committee concluded, on balance, that in this case the provisions were appropriate given the policy goal concerned.

<sup>101</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, pp 12-13.

<sup>102</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, pp 12-13.



### **3.1.2. Empowering investigators to issue a notice requiring documents to be produced at a nominated time**

The Bar Association of Queensland (BAQ) raised a concern that clause 42 of the Bill, which would insert a new s 183AA in the Act allowing investigators to issue notices requiring a person to produce documents at a nominated time, goes beyond the current provisions and allows notices to be given to any person, and without any limitations equivalent to those in place now around powers of entry to premises. The BAQ points out that this expansion of power is not supported by the purpose of the proposed new section, and that the Explanatory Notes do not acknowledge or give reasons for this departure from fundamental legislative principles.<sup>103</sup>

#### **Committee comment**

The committee is satisfied that the requirement in s 183AA that the documents be produced ‘at a reasonable time and place’ is, in the context of the State’s responsibilities with regard to alcohol regulation, not an unreasonable breach of fundamental legislative principles.

## **3.2 Institution of Parliament**

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

### **3.2.1. Omnibus Bill**

In addition to primarily amending the Liquor Act, the Bill also repeals 14 obsolete church and community organisation Acts and relocates a number of technical and administrative provisions contained in the obsolete Acts into other Acts, as saving and consequential amendments. It also repeals a section of the Fair Trading Act in respect of directors’ liability to ‘align that Act with Queensland and Australia-wide policy on vicarious liability of executive officers’.<sup>104</sup>

Bills of this nature which combine a number of amendments of various unrelated Acts from within one portfolio are commonly referred to as ‘omnibus bills’. They are typically used as a vehicle by which to facilitate convenient passage of a number of smaller disparate policy amendments that are ‘piggybacked’ onto a larger bill. Ideally, omnibus bills should carry some recognition of their nature in the Bill’s short title by containing the phrase ‘and other Legislation Amendment Bill’. That phrase serves to alert the Parliament (and others) to the fact that the bill contains amendments often unrelated to the main subject area and purpose of the bill.

Whilst the Explanatory Notes for the Bill indicate the church and community organisation amendments that it contains, because there is no reference in the title to ‘and other Legislation’ a person who merely saw the Bill’s name would not be alerted to the significant number of amendments it makes to legislation governing church and community organisations.<sup>105</sup>

Accordingly it would have been preferable for the title to have contained the additional words ‘and other Legislation’. Failing to have those words in the title of an omnibus bill leaves the Bill open to criticisms regarding its transparency, especially on those occasions where the minor and consequential amendments contain controversial changes, of which the title gives no hint. The apparently mechanical and uncontroversial nature of the non-liquor-related amendments in this Bill, and their prominent listing on the first page of the Explanatory Notes, suggests it was the convenience

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<sup>103</sup> The Bar Association of Queensland, Submission 3, p 3.

<sup>104</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 2.

<sup>105</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 1.

of a shorter title, rather than any lack of transparency, that was the determinant factor in the Bill's short title.

Another criticism that is often levelled at omnibus bills is that, in respect of their passage through the House, members are required to vote for or against such a bill in its entirety, containing as it does a number of unrelated matters and unrelated amendments of varying significance, some of which they may agree with and others with which they may disagree. It can therefore be argued that omnibus bills breach the fundamental legislative principle in s 4(2)(b) of the *Legislative Standards Act 1992* because they fail to have sufficient regard to Parliament, forcing members to vote to support or oppose a bill in its entirety when that omnibus bill may contain a number of significant unrelated amendments to existing Acts that would have been more appropriately presented in topic-specific stand-alone bills.

#### Committee comment

The repeal of the 14 Acts is the one matter which has been identified by government members of the committee as worthy of particular attention, given the potential for their relevance to forthcoming recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Bill's title should indicate that other legislation than Liquor and Fair Trading legislation is changed by the Bill, through the use of 'and Other Legislation' in its title.

#### Recommendation 3

The committee recommends that the Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015 be amended, so that the Bill's title indicates that legislation other than Liquor and Fair Trading legislation is changed by the Bill, through the insertion of 'and Other Legislation' in its title.

#### 3.2.2. Amendment of an Act only by another Act

Section 4(4)(c) of the *Legislative Standards Act 1992* requires legislation to allow or authorise the amendment of an Act only by another Act.

Clause 9 replaces the current section 4B of the Liquor Act which defines the term 'liquor'. The new section 4B(1) provides that liquor is a spirituous or fermented fluid or another substance in which the level of ethyl alcohol is more than 0.5% by volume at 20 degrees Celsius, that is intended for human consumption. Under subsection (2), liquor also includes any other substance containing ethyl alcohol that is prescribed by regulation as liquor.

A Bill should only authorise the amendment of an Act by another Act.<sup>106</sup> A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is known as a Henry VIII clause.

It could be argued that section 4B(2) operates as a Henry VIII clause because it allows the definition in the Act of what constitutes liquor to be expanded by regulatory prescription. The only criteria for something to be prescribed as liquor by regulation is that it is a substance containing ethyl alcohol. This differs from the stricter requirement set out in subsection (1) which requires 'liquor' to be a spirituous or fermented fluid or other substance in which the level of ethyl alcohol is more than 0.5% by volume at 20 degrees Celsius, and that is intended for human consumption.

<sup>106</sup> *Legislative Standards Act 1992*, section 4(4)(c).

Parliamentary committees have in the past expressed opposition to Henry VIII clauses where they are not justified, by requesting that Parliament disallow that part of the instrument.<sup>107</sup> Henry VIII clauses have been considered justified in the following limited circumstances:

- To facilitate immediate executive action
- To facilitate the effective application of innovative legislation
- To facilitate transitional arrangements
- To facilitate the application of national scheme legislation.<sup>108</sup>

The existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause did not fall within any of the above situations, such clauses have previously been classified as ‘generally objectionable’.<sup>109</sup>

In respect of the ‘liquor’ definition, the Explanatory Notes advise:

*The Bill amends the Liquor Act to ensure that certain substances that contain the specified amount of ethanol to constitute liquor, such as food additives and personal hygiene products, are not subject to the Liquor Act, except where prescribed in the Liquor Regulation. ....*

*This potential breach of fundamental legislative principles is considered justifiable. It is generally not the intention of the Act to regulate products such as food additives, as they are not intended to be directly consumed as liquor. However, because of their alcohol content, there is a risk that these substances could be misused. If misuse occurs, swift action will be required to regulate sale of the substance and minimise the harm from this misuse. Therefore, it is considered appropriate for this action to be facilitated by amendment to subordinate legislation, to allow immediate executive action to protect the community.*

*It is also noted that the Bill does not seek to extend the meaning of liquor by amending the Act via subordinate legislation. Instead, the Bill provides the ability to bring certain liquors back into the ambit of the Act if it becomes apparent that the sale of the substance requires regulation to ensure community safety.<sup>110</sup>*

#### **Committee Comment**

In the circumstances, the committee is satisfied with the rationale provided in the Explanatory Notes for the provision of section 4B(2) in the Bill which could be considered a “Henry VIII” clause.

### **3.3 Natural Justice**

Section 4(3)(b) of the *Legislative Standards Act 1992* requires legislation to be consistent with the principles of natural justice.

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<sup>107</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 159.

<sup>108</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 159.

<sup>109</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 159; *Alert Digest* 2006/10, p 6, paras 21-24; *Alert Digest* 2001/8, p 28, para 31.

<sup>110</sup> *Explanatory Notes*, Liquor and Fair Trading Legislation (Red Tape Reduction) Amendment Bill 2015, p 12.

### 3.3.1. Use of car parks for sale and consumption of liquor

**Relevant provision:** Clause 26 of the Bill inserts new section 137CB into the Liquor Act 1992, to apply where the Commissioner believes on reasonable grounds that there has been a failure to comply with a condition stated in a car park approval for licensed premises that grounds the taking of disciplinary action in relation to a licence. Under new subsection (2) of section 137CB, the Commissioner may immediately suspend the car park approval by written notice to the licensee. The suspension takes effect immediately after notice is given to the licensee (137CB(3)).

The notice of immediate suspension must be accompanied by a notice under section 137(1) that is essentially an information notice and show cause notice hybrid advising that the Commissioner proposes to take disciplinary action relating to the licence and containing the information required under that section. The notice must invite the licensee, to show cause (within a stated period [minimum of 28 days]) why the proposed action should not be taken, and must advise the licensee how to make submissions and representations about the proposed action.

The suspension advised under section 137CB will continue until either the Commissioner revokes it, takes disciplinary action under section 137A, or 60 days has elapsed since the suspension commenced.

**Potential FLP issue:** Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision maker; (2) the decision maker must be unbiased; and (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.<sup>111</sup>

The section 137CB(2) immediate suspension will occur before the licensee is given an opportunity to respond to the allegation of a breach and without first allowing them to be heard as to why their approval should not be suspended. This is a *prima facie* breach of natural justice, although it should be noted that a breach of natural justice may on occasion be justified, typically for exigent or emergency circumstances.

**Discussion:** In the case of proposed section 137CB, the power to immediately suspend under this section arises when the ground mentioned in section 136(1)(a)(iv) exists for taking disciplinary action for that licence. The ground (newly inserted) under section 136(1)(a)(iv) is a failure to comply with a condition stated in a car park approval for the licensed premises. That failure, as a ground for disciplinary proceedings, is of itself unremarkable when compared with the other grounds for disciplinary proceedings listed in section 136(1).

What is unusual in the case of the new ground in section 136(1)(a)(iv) is that, unlike the other grounds in section 136(1), the failure to comply with a car park approval is the *only* ground in section 136(1) that appears to automatically give the Commissioner discretion to *immediately* suspend a licence, with the suspension continuing pending the outcome of the show cause process or the elapsing of 60 days suspension. The power to immediately suspend for breach of a car park condition is given to the Commissioner under new section 137CB(2), whereas, for the other grounds in section 136(1), section 137 sets out a more typical disciplinary process, involving the normal show cause periods, consideration of representations by the licensee etc., that must occur before any form of suspension or other disciplinary consequences take effect. The only existing power for immediate licence suspension to occur is in section 137C which allows the Commissioner to immediately suspend a licence where a ground for disciplinary action exists and harm may be caused to members of the public

<sup>111</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 25.

if urgent action to suspend the licence is not taken (or, more rarely, where a ground in section 136(2) exists).<sup>112</sup>

Given the above, the committee considers it important to be clear about the intent of the Bill, and whether it is the legislation's intention to treat a breach of a car park approval as if it inherently brings with it a risk of harm to the public (such as noise disturbance or potential affray) that could therefore justify an immediate licence suspension such as already occurs under the 'emergency suspension provision' in section 137C.

The committee sought clarification from Mr Ian Walker MP as to whether the intent of the Bill is that a breach of a condition of a car park approval would be treated differently to the other grounds for disciplinary action given under section 136(1), due to a perceived need to be able to act immediately in the case of car park disturbances; and the circumstances in which it is contemplated that the immediate suspension power under section 137CB might be invoked.

Mr Walker responded:

*As was stated in the explanatory notes, "the amendments are considered justifiable as it will place all licensed premises in Queensland on equal footing in terms of the requirement to seek approval for car park events. The amendments therefore provide for an appropriate balance between the legitimate business activities of licensees and relevant amenity and harm minimisation measures."*

*As I stated in my correspondence to the Committee of 10 July 2015, administrative decisions made by the Commissioner are judicially reviewable.*

*The intention of clause 26 is that the Commissioner may approve a car park to be used, but prior to the event taking place, still retains the ability to immediately suspend a licence. That is what is referred to by "the intention is that the suspension may be applied to car park approvals granted in respect of future events that have not yet occurred."*

*Deputy Director-General Mr David Ford stated in the Departmental briefing, "in establishing whether there is a case for a permit in the model going forward, we would have the opportunity to actually go and look at the site to see what they were planning to do to impose decibel levels. As Mr Sarquis added, "I would add that, irrespective of the conditions that are imposed on the licensee, the licensee has an obligation to not make unreasonable noise."*

*If a licensee breaches their licence conditions in relation to unreasonable noise on other occasions prior to an event in which they sought car park approval, the Commissioner may need to consider those breaches as part of the original car park approval and may need to immediately suspend that car park approval, pending the consideration of other breaches by the licensee between the time the car park approval was granted and the scheduling of the event in which the car park approval was sought.*

*I note that the comment is made that natural justice rules may not be required to apply "typically for exigent or emergency circumstances". The reason that our bill suggests immediate suspension – putting the onus back on the applicant to set that*

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<sup>112</sup> Relates to licences held for a corporation where an executive officer is a disqualified person etc.

*suspension aside – is that the potential public nuisance which might be caused were a car park event to proceed in breach of the approval outweighs the procedural fairness in only suspending after a hearing.*<sup>113</sup>

**Committee comment**

The committee is satisfied with Mr Walker's response.

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<sup>113</sup> Correspondence from Mr Ian Walker MP to Committee secretariat, 1 September 2015.

## **Appendix A – List of Submissions**

Sub #	Submitter
001	Queensland Hotels Association
002	Clubs Queensland
003	Bar Association of Queensland
004	Queensland Coalition for Action on Alcohol
005	Scenic Rim Brewery
006	Craft Beer Industry Association

## **Appendix B – List of Witnesses**

In order of appearance before the Committee:

Professor Jake Najman, Chairman, Queensland Coalition for Action on Alcohol

Dr Dennis Young, Secretary, Queensland Coalition for Action on Alcohol

Mr Justin O'Connor, Chief Executive, Queensland Hotels Association

Ms Peta Fielding, Chair, Craft Beer Industry Association

Mr Mike Webster, Director, Scenic Rim Brewery

Mr David Ford, Deputy Director-General, Liquor Gaming & Fair Trading, Department of Justice and Attorney General

Mr Mike Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney General

Ms Shayna Smith, Director, Office of Regulatory Policy, Department of Justice and Attorney General

Mr Dominic Tennison, Director, Office of Regulatory Policy, Department of Justice and Attorney General