



Department of Justice and Attorney-General
Office of the Director-General

In reply please quote: 537265/4; 5470213, ORP-1971779

Your reference: A628578

19 JAN 2021

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Mr Peter Russo MP
Chair
Legal Affairs and Safety Committee
lasc@parliament.qld.gov.au

Dear Mr Russo

I refer to your letter dated 30 November 2020 requesting the Department of Justice and Attorney-General (DJAG) provide the Legal Affairs and Safety Committee (the Committee) with a written response to public submissions received in relation to the Liquor (Artisan Liquor) Amendment Bill 2020 (the Bill).

Please find **enclosed** a table outlining DJAG's response to submissions received both in support of the Bill and raising concerns about the Bill. The response addresses the two submissions that were published on the Committee's website on 13 January 2021.

Should you require any further information regarding this matter, please contact

[REDACTED]

I trust this information is of assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victoria Thomson', with a long horizontal flourish extending to the right.

Victoria Thomson
Acting Director-General

Enc.

Response to the Legal Affairs and Safety Committee

Issues raised in written submissions on the Liquor (Artisan Liquor) Amendment Bill 2020

The Department of Justice and Attorney-General was provided with two submissions received from:

- Australian Distillers Association
- Queensland Coalition for Action on Alcohol (QCAA)

Key issue	Submission	Departmental response
Support for the Liquor (Artisan Liquor) Amendment Bill 2020		
The Australian Distillers Association supports the Bill in its current form and supports its passage by the Queensland Parliament as soon as possible.	001 - Australian Distillers Association	The submitter's support for the Bill is noted.
Independent ownership of businesses operated under an artisan producer licence		
The proposed legislative framework allows for large alcohol companies to manipulate the system through ownership of multiple craft breweries.	002 - Queensland Coalition for Action on Alcohol	<p>The Bill contains a number of mechanisms to ensure the artisan producer licence can only be accessed by genuine independent craft brewers and artisan distillers.</p> <p>Eligibility for and compliance with the principal activity of an artisan producer licence is determined by reference to yearly minimum and maximum production volumes. Clause 13 of the Bill provides for a combined maximum yearly production volume of 5 million litres of beer for craft brewers and 450,000 litres of spirits for artisan distillers.</p> <p>The maximum production volume takes into account beer or spirits being produced by any companies that are related to the licensee, under any licence. Under the <i>Corporations Act 2001</i> (Cth), a company is related to another if it is a holding company or subsidiary of that company.</p> <p>This will have the effect of providing that the total volume of liquor produced by all holding companies and subsidiaries of the licensee will be counted when assessing eligibility for and compliance with the principal activity of the licence. This mechanism is intended to limit the ability of large alcohol companies to operate multiple 'craft' breweries or 'artisan' distilleries as subsidiary companies, as the production volume of the large alcohol company would render the subsidiary companies ineligible for the licence. For instance, if Brewer A, which produces 30 million litres of beer each financial year, sets up a wholly-owned subsidiary called Craft Brewer B, Craft Brewer B would not be eligible for the new artisan producer licence, as Brewer A produces more than 5 million litres of beer each financial year.</p> <p>Artisan producer licensees will be required to submit an annual return under section 203 of the <i>Liquor Act 1992</i> (Liquor Act), to ensure ongoing compliance with the yearly production volume limits. Details to be included in the annual return, including yearly production volume and details of corporate ownership, will be prescribed by regulation.</p>

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		<p>In addition, the Bill ensures businesses operated under an artisan producer licence are genuinely independent by placing restrictions on ownership by large liquor producers. Clause 13 provides that, in order to be eligible for the licence, a craft brewer cannot be 20% or more owned by a “large brewer” (i.e. a brewer producing more than 40 million litres of beer in any financial year). Similarly, an artisan distiller cannot be 20% or more owned by a “large distiller” (i.e. a distiller producing more than 2 million litres of spirits in any financial year).</p> <p>Clause 25 imposes an ongoing requirement for an artisan producer licensee to give notice to the Commissioner for Liquor and Gaming (Commissioner) if they become related to a large brewer or large distiller, or a large brewer or large distiller increases its stake in the licensee’s business to 20% or more. Should this occur, the artisan producer licensee will no longer be eligible for the licence and will need to consider alternative licensing options.</p>
Creation of a new ‘commercial other – artisan producer licence’		
<p>QCAA is concerned the increased scope of the new licence type is not equally matched by increased risk mitigation. In particular the potential harm associated with increased access and availability of alcohol due to extended trading hours – 9am instead of 10am opening, and 1am close instead of 12am.</p>	<p>002 - Queensland Coalition for Action on Alcohol</p>	<p>The artisan producer licence fits within the existing liquor licencing framework under the Liquor Act. Holders of the new licence will therefore be subject to the same harm minimisation requirements which apply to all Queensland liquor licences, such as the development of a risk-assessed management plan and community impact statement, where required.</p> <p>Extended trading hours for artisan producer licensees will be to 1am only and an application will be required. This aligns with the limits on extended liquor trading hours available to restaurants and cafés. Extended liquor trading hours applications are generally required to be publicly advertised. Artisan producer licensees will not be permitted to seek later extended liquor trading hours, i.e. until 2am (or 3am in safe night precincts), available to other licence types.</p> <p>The ability for artisan producer licensees to apply for extended liquor trading hours between 9am and 10am is consistent with the availability of extended morning liquor trading hours for other licences under the Liquor Act. It should be noted, under existing section 86(3) of the Liquor Act, licensees must demonstrate a community need for extended trading hours between 9am and 10am for the application to be successful.</p>
Expanding the existing promotional events framework		

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<p>QCAA opposes the proposal to expand on the existing licencing conditions in relation to promotional events. In particular the normalisation of drinking that is associated with alcohol availability at spaces such as farmers markets in early hours of the morning, as well as unstated regulation limits on sample and takeaway volumes.</p>	<p>002 - Queensland Coalition for Action on Alcohol</p>	<p>Craft brewers operating under a producer/wholesaler licence have been able to provide free samples and sell limited takeaways at promotional events with approval since 2016. The Office of Liquor and Gaming Regulation advises that no concerns have been raised regarding craft brewers attending promotional events during this time period.</p> <p>The Bill will allow approved eligible licensees and permittees (including artisan producer licensees) to sell craft beer or artisan spirits at a promotional event during the hours of the event. It is possible that these promotional events will commence prior to 10am, which will allow liquor to be sold at that time.</p> <p>However, clauses 12 and 13 of the Bill provide for relevant provisions in Part 6 of the Liquor Act to apply to an area designated for the sale of craft beer or artisan spirits at the event. This means that the obligatory provisions and offences binding all licensees and permittees will apply to liquor sales at the event. These provisions deal with obligations such as the responsible service of alcohol, providing a safe environment and preserving amenity, and not selling liquor to minors. The Commissioner will also have the ability to limit the hours during which liquor can be sold at the promotional event (clauses 9, 10, 13, 19 and 23).</p> <p>As a further measure to minimise the risk of harm at promotional events, the Bill introduces a head of power to prescribe sample sizes by regulation (clauses 9, 10, 13, 22 and 23). If the Bill is passed, a sample size limit of 150ml of craft beer and 15ml of artisan spirits will be prescribed in the <i>Liquor Regulation 2002</i> to commence with the Bill. The head of power to prescribe sample sizes by regulation will provide flexibility to amend allowable sample sizes if issues become apparent.</p> <p>In addition, the Bill provides the Commissioner with the power to further limit sample sizes by licence or permit condition (clauses 9, 10, 13, 22 and 23). This power may be used to address any issues arising from the sale of samples by an individual licensee or permittee at promotional events, by obligating the licensee or permittee to sell smaller samples or limiting the total volume of liquor which may be sold to an individual.</p> <p>The Bill also places limits on the volume of takeaway liquor that may be sold at a promotional event (clauses 10, 13 and 23). Takeaway sales will be limited to 9 litres of craft beer (consistent with the existing limit under the Liquor Act for a craft brewer operating under a producer/wholesaler licence) and 1.5 litres of artisan spirits. This is equivalent to a carton of beer and two bottles of spirits, respectively.</p> <p>The Commissioner will also have the ability to condition the licence to override the takeaway limits on craft beer and artisan spirits, if necessary, as a harm-minimisation measure.</p>

Key issue	Submission	Departmental response
Encouraging eligible licensees to transition to an artisan producer licence		
Waiving application fees for licensees who transition before 30 June 2021		
<p>QCAA cautions the proposal to waive artisan producer application fees (approx. \$146,046 of foregone revenue) and notes that this revenue could be allocated to preventative health measures.</p>	<p>002 - Queensland Coalition for Action on Alcohol</p>	<p>The waiver of application fees for the artisan producer licence is time limited, and will apply only to current holders of a producer/wholesaler licence (clause 32). This is intended as a mechanism to encourage uptake of the new licence. The waiver of application fees will also assist Queensland's artisan liquor industry with recovery from the economic impacts of the COVID-19 public health emergency.</p>
Carry over of extended trading hours and permits		
<p>QCAA expresses caution at automatically carrying over extended trading hour approvals and permits given to existing licence holders and recommends that consideration is given to the Commissioner reviewing all applications.</p>	<p>002 - Queensland Coalition for Action on Alcohol</p>	<p>Time-limited transitional arrangements are included in clause 32 of the Bill to encourage uptake of the new licence. However, existing licensees wishing to transition to an artisan producer licence will still be required to apply to the Commissioner. This means the usual safeguards under the Liquor Act, such as the requirement for an appropriate risk-assessed management plan for the licensed premises and a community impact statement, will apply to licensees taking up the new licence. However, the Commissioner will retain the current discretions under the Liquor Act to waive requirements if they have been previously satisfied under the operation of the existing licence.</p> <p>While existing conditions will generally carry over to the new licence, the Commissioner will also retain the ability to change the conditions on an artisan producer licence granted to an existing licensee if considered necessary.</p> <p>In addition, licensees may carry over their existing approvals and permits only to the extent authorised by an artisan producer licence. For example, a licensee with approval to trade until 2am may carry over their extended trading hours approval only until 1 am.</p>

Key issue	Submission	Departmental response
Increased powers for the Commissioner for Liquor and Gaming		
<p>QCAA cautiously supports increasing the administrative power of the Commissioner outside of the Liquor Act. While it is acknowledged in the Explanatory Notes that it is envisaged that the Commissioner would only use these administrative powers to set limits below what is provided in the Act or regulation, and that the power to further restrict sample sizes and trading hours is acknowledged as a positive outcome, QCAA is concerned that the legislation equally allows for the Commissioner to permit higher sample sizes and extended trading hours at promotional events such as farmers markets that commence as early as 6am.</p>	<p>002 - Queensland Coalition for Action on Alcohol</p>	<p>The Commissioner's power to administratively set alternative sample sizes, total volume of samples sold to an individual, and takeaway volume limits is intended to provide a safeguard to limit the amount of liquor a licensee or permittee can supply at a promotional event in the event that issues arise (for instance, from inappropriate liquor consumption).</p> <p>The Bill provides an administrative power for the Commissioner to increase or decrease maximum sample sizes that can be sold at promotional events. However, any decision to increase sample sizes would need to account for the potential impact on alcohol-related harm and the safety of promotional events for the general public, and on the amenity of the area. Further, it is considered unlikely that the power would be used to increase the prescribed amount of liquor that may be sold, given the main purpose of the Liquor Act is to regulate the liquor industry in a way compatible within minimising the risk of alcohol-related harm.</p> <p>Liquor sales at a promotional event will be permitted to occur during the hours the promotional event takes place. However, the Commissioner will have the ability to place further conditions on the licence or permit, including to limit the hours during which liquor can be sold if necessary, as a harm-minimisation measure (clauses 9, 10, 13, 19 and 23).</p>