



# Liquor (Artisan Liquor) Amendment Bill 2020

**Report No. 4, 57<sup>th</sup> Parliament**  
**Legal Affairs and Safety Committee**  
**February 2021**

## **Legal Affairs and Safety Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

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## Abbreviations

ADA	Australian Distillers Association
artisan producer licence	The new ‘commercial other – artisan producer licence’ created under the Bill
Bill	Liquor (Artisan Liquor) Amendment Bill 2020
Commissioner	Commissioner for Liquor and Gaming
committee	Legal Affairs and Safety Committee
COVID-19	coronavirus disease
CPEP	Commercial Public Event Permit
department/DJAG	Department of Justice and Attorney-General
DESBT	Department of Employment, Small Business and Training
DRDM	Department of Regional Development and Manufacturing
EP Report	Entrepreneurial Pipeline Project Report
IBA	Independent Brewers Association
HRA	<i>Human Rights Act 2019</i>
L	litre
Liquor Act	<i>Liquor Act 1992</i>
Liquor Regulation	Liquor Regulation 2002
LSA	<i>Legislative Standards Act 1992</i>
mL	millilitre
OLGR	Office of Liquor and Gaming Regulation
QCAA	Queensland Coalition for Action on Alcohol
QCAT	Queensland Civil and Administrative Tribunal
QCBS	Queensland Craft Brewing Strategy
RSA	Responsible service of alcohol
Wine Industry Act	<i>Wine Industry Act 1994</i>

## Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Liquor (Artisan Liquor) Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General, the Department of Employment, Small Business and Training, and the Department of Regional Development and Manufacturing

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Peter Russo', with a long horizontal stroke extending to the right.

Peter Russo MP

Chair

## Recommendation

### Recommendation

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The committee recommends that the Liquor (Artisan Liquor) Amendment Bill 2020 be passed.





## 1 Introduction

### 1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 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
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.<sup>2</sup>

The Liquor (Artisan Liquor) Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 26 November 2020. The committee was required to report to the Legislative Assembly by 12 February 2021.

### 1.2 Inquiry process

On 1 December 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Two submissions were received by the closing date for submissions. A late submission was also accepted by the committee subsequent to the committee's public hearing.

The committee received a public briefing about the Bill from the Department of Justice and Attorney-General (department/DJAG), Department of Employment, Small Business and Training (DESBT) and Department of Regional Development and Manufacturing (DRDM) on 16 December 2020. A transcript is published on the committee's web page (see Appendix B for a list of officials).

The committee held a public hearing on 21 January 2021 (see Appendix C for a list of witnesses).

The committee received written advice from DJAG in response to matters raised in submissions.

The submissions, correspondence relating to the inquiry, and transcripts of the briefing and hearing are available on the committee's webpage.

### 1.3 Policy objectives of the Bill

The purpose of the Bill is 'to strengthen the artisan liquor industry in Queensland by supporting the growth and sustainability of craft breweries and artisan distilleries, while still maintaining appropriate regulatory controls and oversight'.<sup>3</sup>

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

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

<sup>3</sup> DJAG, correspondence, 10 December 2020, attachment, p 1.

The Bill proposes to amend the *Liquor Act 1992* (Liquor Act) by:

- creating a new liquor licence category for legitimate craft brewers and artisan distillers, ('commercial other – artisan producer licence')
- expanding the existing promotional event permit framework
- providing additional authorisations for eligible producer/wholesaler licensees
- encouraging the transition of existing licensees to the new artisan producer licence category.<sup>4</sup>

The proposed amendments to the liquor licensing legislation are in response to the Queensland Craft Brewing Strategy (QCBS) and recommendations arising from the Entrepreneurial Pipeline Project Report (EP Report).<sup>5</sup> Additionally, the Bill aims to assist the artisan liquor industry with the adverse effects of the coronavirus disease (COVID-19), as advised in the explanatory notes:

Before the pandemic disrupted the industry, Queensland craft brewers and artisan distillers contributed significantly to the Queensland economy and employed over 1,800 people combined. It was anticipated that by 2024 the craft beer industry would contribute over \$100 million to the Queensland economy. Members of the Australian Distilling Association [sic] (ADA) had estimated that another 106 jobs would be created in artisan distilleries throughout the State over the next two years.

In April 2020, the Independent Brewers Association (IBA) (National) reported that nationwide sales at craft breweries were down 67 per cent as a consequence of COVID-19 related business restrictions and closures.<sup>6</sup>

The Bill is substantially similar to the lapsed Liquor (Artisan Liquor) Amendment Bill 2020 introduced in the 56th Parliament on 9 September 2020.

#### **1.4 Government consultation on the Bill**

The explanatory notes provide the following summary of the consultation process for the Bill:

Consultation with the craft brewing industry on general regulatory reform occurred following the release of the QCBS in November 2018. Between December 2019 and January 2020, approximately 60 per cent of independent craft brewers were surveyed on a legislative proposal relating solely to craft brewers. Public submissions on this previous proposal were also sought in January 2020. The craft brewing industry were generally supportive of amending the Liquor Act to introduce a new licence category specifically for craft beer.

A separate consultation process relating to the recommendations of the EP Report, focusing on support for artisan liquor producers, commenced in November 2019 and concluded in March 2020. Consultation was undertaken with 13 distilleries, three wineries, 25 breweries, two meaderies, one cidery and other stakeholders, including industry representatives and social health stakeholders.

General agreement about the artisan producer licence authorisations contained in the Bill was reached at a roundtable meeting attended by representatives from the Queensland Hotels Association, ADA, Clubs Queensland, IBA, government agencies and other stakeholders on 2 March 2020.<sup>7</sup>

The Independent Brewers Association (IBA) advised the following in relation to the government's consultation on the legislative framework for the artisan liquor licence that preceded the Bill:

Queensland brewers were instrumental in the development of the original proposal for a new legislative framework and were satisfied with the outcomes of that work (see Attachment 1 – showing original proposal endorsed by the industry and the changes made subsequently by other stakeholders).

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<sup>4</sup> Statement of compatibility, p 1.

<sup>5</sup> Explanatory notes, p 1.

<sup>6</sup> Explanatory notes, p 1.

<sup>7</sup> Explanatory notes, pp 7-8.

We were confident that if legislation was introduced reflecting this framework, it would satisfy the need to simplify the liquor licensing process and create market access opportunities for artisan liquor producers as stated in the Inquiry Overview.

Subsequent to that framework being finalised, it was presented to other stakeholders for comment. While much of the original framework was retained, several critical components were subsequently amended and as a result we now consider these amendments to be a retrograde step and go some way to defeating the intention of simplifying processes, creating better market access and ensuring the continued growth of these industries.<sup>8</sup>

During the public briefing, DJAG advised that after the passage of the Bill, there will be ongoing consultation with the industry 'to iron out any implementation issues or any further considerations that those industries wish to put to government'.<sup>9</sup>

### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

<b>Recommendation</b>
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The committee recommends that the Liquor (Artisan Liquor) Amendment Bill 2020 be passed.
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<sup>8</sup> Submission 3, p 1.

<sup>9</sup> Public briefing transcript, Brisbane, 16 December 2020, p 4.

## 2 Examination of the Bill

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

### 2.1 Creation of a new artisan producer licence

#### 2.1.1 Background

The Bill will create a new 'commercial other – artisan producer' licence (artisan producer licence).

The proposed new artisan producer licence:

- provides for the subcategories of 'beer' and 'spirits' for applicants/licensees whose principal activity is the production and sale of craft beer and/or artisan spirits on the licensed premises
- restricts the granting, and continued holding, of the licence to legitimate craft brewers and/or artisanal distillers with:
  - annual production volumes of between 2,500 – 5,000,000 litres (L) of craft beer or 400 - 450,000L of artisanal spirits
  - at least 70 per cent of total annual liquor sales comprised from craft beer or artisan spirits produced on the licensed premises
  - less than 20 per cent ownership by a large brewer (annual production volume exceeding 40,000,000L of beer) or large distiller (annual production volume exceeding 2,000,000L of spirits), and
  - an appropriate licence type within the meaning of the *Excise Act 1901* (Cwlth)
- authorises the sale of the licensee's own liquor products, and 'other' Queensland artisan liquor products (including Queensland wine), for on-premises consumption under ordinary trading hours of 10am to 12 midnight
- limits late-night extended trading hours to 1am to avoid premises operating as bars/nightclubs (other licence categories can apply for extended trading hours until 2am, or 3am if located in a safe night precinct)
- authorises the sale of the licensee's own liquor products for off-premises consumption under ordinary trading hours for takeaway of 10am to 10pm
- enables licensees to apply for extended trading hours for early morning trading (9am to 10am) for on and off-premises consumption
- allows orders for the licensee's own products to be taken online
- authorises the sale of the licensee's own product wholesale
- ensures appropriate harm-minimisation measures apply to artisan producer licensees and applicants commensurate with similar licence types (e.g. the provision of risk-assessed management plans and community impact statements), and
- introduces new annual data returns to demonstrate continued eligibility for the artisan producer licence category.<sup>10</sup>

The new artisan producer licence will allow licensees to:

- sell craft beer or artisan spirits produced on the licensed premises to the public, for on-premises consumption or takeaway, in unlimited amounts
- sell for on-premises consumption:
  - craft beer and artisan spirits produced by another Queensland artisan producer licensee or a Queensland producer/wholesaler licensee

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<sup>10</sup> Explanatory notes, p 2.

- wine produced by a Queensland wine licensee under the *Wine Industry Act 1994* (Wine Industry Act) (provided these sales do not constitute more than 30% of the licensee's total liquor sales)
- apply for an enduring approval to sell samples and limited amounts of takeaways of their craft beer or artisan spirits at promotional events
- apply for a commercial public event permit to sell their craft beer or artisan spirits at a public event
- conduct online orders for the sale of their craft beer or artisan spirits
- apply for permanent extended liquor trading hours for on-premises consumption to 1am.<sup>11</sup>

To demonstrate continued eligibility for the new licence, artisan producer licensees will be required to lodge annual production and sales data returns, and to notify the Commissioner for Liquor and Gaming (Commissioner) if they cease to meet the eligibility requirements for the licence. Should an artisan producer licensee become ineligible for the licence, they will need to explore alternative licensing options, such as a commercial hotel licence.<sup>12</sup>

## 2.1.2 Stakeholder comments

### 2.1.2.1 *Support for new licence*

The Australian Distillers Association (ADA) supported the Bill in its current form and supported its 'passage by the Queensland Parliament as soon as possible'.<sup>13</sup> The ADA also made the following comments:

The Queensland distilled spirits industry is comparatively smaller than similar industries in other states, in part to some antiquated regulations and licensing laws which create unnecessary complexity and cost, and act as a disincentive to new market entrants. We welcome the Palaszczuk Government's work to remove these barriers to growth and establish a licensing regime that reflects the needs of an emerging industry with strong links to Queensland's agriculture sector, as well as its broader tourism and hospitality industry. These reforms will encourage new entrants to the Queensland distilled spirits industry, and make it easier for current producers to employ more Queenslanders and boost further investments for future growth.<sup>14</sup>

During the public hearing, the ADA provided additional background on the artisan liquor industry in Queensland and how the Bill will assist the industry and create additional jobs in Queensland:

What we produce in a year is pretty close to what the big guy does in a week. There is a big difference. We are small producers. We are craftsmen. The name of the licence suits what we do. It will benefit jobs in Queensland as well. The number of consumed spirits in Australia by Queensland or Australian producers is less than two per cent. We are not mass producers. We are responsible for what we do. All of our staff must have RSAs—responsible service of alcohol. We are very proud of that and are happy to promote the Queensland brand and to create Queensland jobs.<sup>15</sup>

### 2.1.2.2 *Concerns regarding off-premises consumption (takeaway) provisions*

The IBA supported the provisions that would allow the sale of 'other' artisanal liquor producers' products for on-premises consumption, stating it is 'an excellent step towards providing further market access and an opportunity to support small and growing local enterprises'.<sup>16</sup> However, the IBA

<sup>11</sup> DJAG, correspondence, 10 December 2020, attachment, pp 2-3.

<sup>12</sup> DJAG, correspondence, 10 December 2020, attachment, p 3.

<sup>13</sup> Submission 1, p 2.

<sup>14</sup> Submission 1, p 2.

<sup>15</sup> Public hearing transcript, Brisbane, 22 January 2021, p 2.

<sup>16</sup> Submission 3, p 4.

submitted that 'the proposed prohibition on selling those producers' products as takeaways from the same venues is not logical'.<sup>17</sup> The IBA additionally submitted:

Allowing artisanal producers to sell other take away provides an opportunistic, low risk option to ensure departing customers have the choice to take this product away for future consumption.<sup>18</sup>

The IBA explained further:

In terms of amenity and harm minimisation, there is no difference between purchasing from an existing bottle shop or a brewery/taproom. The cost of our products also do not provide for 'buy and scull' beverages.

The take-away provisions for artisan spirits, wines and other craft beers (originally shown in the Agenda Item 3) should be re-instated. Arguments against takeaways raised by other stakeholder groups are about protecting their own markets and not about improving market access and promoting growth of the artisanal liquor industry as a whole.

A conservative calculation for the total sales via artisanal producers is approximately 0.05% of total sales via bottle shops in Queensland. The effect on bottle shop chains is negligible but is significant for those small breweries and distilleries trying to reach the market, but whose production is too limited and products too expensive to be ranged in bottle shops chains.

We consider the attempts to prevent artisanal producers selling takeaways is a purposeful and anti-competitive repression of a very small group of producers.

In the interests of ensuring artisanal liquor producers do not become bottle shops and to allay fears of other stakeholders, we recommend the provision include the following, to clearly articulate our principal activity:

***The majority of sales, on premises and take-away, must be of product produced by the artisanal liquor producer under their license.***<sup>19</sup> [Emphasis in original]

DJAG provided the following response in the context of concerns raised by IBA regarding off-premises consumption:

- The IBA is advocating for a licence authority similar to that available to wine licensees, who can sell other wine for on-premises consumption and as takeaways, provided the licensee's own product comprises the majority of sales. The ability to sell up to 49% of other licensee's wine addresses the particular challenges faced by Queensland wineries as primarily agricultural enterprises, outlined above.
- Under the principal activity of an artisan producer licence, the licensee may sell other artisan liquor for on-premises consumption, provided at least 70% of sales are for the licensee's own liquor. The licensee may sell unlimited takeaways of their own liquor from their licensed premises, including the ability to take orders for their liquor online.
- As previously noted, the authorities of the licence, including the principal activity and takeaway sales ability, were agreed at the 2 March 2020 roundtable meeting, involving all relevant stakeholders and attended by the submitter.
- The Department considers the submitter's comments to be outside the scope of the Bill and will not make further comment.<sup>20</sup>

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<sup>17</sup> Submission 3, p 4.

<sup>18</sup> Submission 3, p 4.

<sup>19</sup> Submission 3, pp 4-5.

<sup>20</sup> DJAG, correspondence, 8 February 2021, attachment, p 6.

### 2.1.2.3 Impact of COVID-19 on the industry

In relation to the impact of COVID-19 on the distilled spirits industry, the ADA noted:

COVID-19 has had a significant impact on the distilled spirits industry and its value chain, and it is commendable that the government has taken decisive action to help struggling small businesses to not just remain viable, but have a path for future expansion.

The measures in this Bill and the associated regulatory decision to waive certain fees associated with the new licence to reflect the impacts of COVID-19 are particularly welcomed as the industry rebuilds and recovers from the pandemic. Further, as Federal Government measures such as JobKeeper are tapered and removed over 2021 the support of the Palaszczuk Government is acutely welcomed.<sup>21</sup>

### 2.1.2.4 Concerns regarding contract/multi-site brewing

The IBA commented that the Bill does not reflect current operating realities within the industry relating to contract/multi-site brewing. The IBA stated:

Current practices see contract brewers who do not own their own equipment brew for multiple breweries on their equipment. These contractors are engaged by a brewery to make a batch of beer (very regularly done during start-up phase) or because of capacity or space limitations are now brewing over 2 or more sites.

The definition of “licensee’s liquor” therefore needs to be amended to include provisions for product made by an artisanal liquor producer under contract or under direction of the licensee at a premise other than the licensed premises.

Historically, the OLGR [Office of Liquor and Gaming Regulation] has approved a single company to produce beer at multiple sites under the same licence. In 2020, during a period when the industry did not need further administrative burdens, the OLGR changed their interpretation of the Act and determined that for all future multi-site breweries, separate licenses must be obtained for each site and record keeping and fees needed to be completed for each licence.

This gave rise to a situation where a multi-site brewery could not sell the beer that was produced at one site at the taproom of the other site by the same company, same brewers, same recipes, but no longer allowed to sell it at both sites. This seems to be another level of regulatory burden that affects the productivity and profitability of small businesses in Queensland.

We therefore request the committee address the realities of consumer behaviour/demands and a rapidly growing, successful industry by allowing them to continue to operate as they have been, without further administrative and financial burden imposed due to a lack of understanding.<sup>22</sup>

In response to IBA’s concerns that the Bill does not reflect current operating realities within the industry, DJAG provided the following response:

- A producer of liquor is an established concept under the Liquor Act. For example, the principal activity of a producer/wholesaler licence is the production and wholesale of liquor made on the licensed premises.
- The submitter's proposal seeks to fundamentally alter the operation of the framework which defines the production of liquor and how liquor producers are licensed.
- The Department therefore considers the comments made by the submitter to be outside the scope of the Bill and cannot make further comment.<sup>23</sup>

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<sup>21</sup> Submission 1, p 2.

<sup>22</sup> Submission 3, pp 5-6.

<sup>23</sup> DJAG, correspondence, 8 February 2021, attachment, p 7.

Regarding the interpretation of provisions relating to licensing of multi-site breweries, DJAG commented as follows:

- Guideline 35: Licensed areas clarifies for licensees that the Liquor Act does not contemplate the licensing of separate or detached premises under one licence, with two exceptions.
- The first is a detached bottle shop, which is only available to commercial hotel licensees and attracts significant licence fees.
- The second exemption allows producer/wholesaler licensees to include a separate office space or warehouse as part of the licensed premises under a single licence. This exemption reflects that the wholesale of liquor may be facilitated away from where liquor is brewed or distilled.<sup>24</sup>

#### 2.1.2.5 New annual data return requirements

The IBA was opposed to the Bill's introduction of new annual data return requirements to demonstrate continued eligibility for the artisan producer licence category, stating that it was a 'legacy retained from many years ago when the State Government based their licensing fees on turnover'.<sup>25</sup> The IBA continued:

The industry specifically requested removal of this annual return to reduce red-tape and unnecessary administrative burden however the OLGR are now proposing additional, onerous reporting that we feel could be addressed via our detailed volume reporting to the ATO to determine our annual excise payments.

As such, all information required by OLGR for the purposes of this license is already prepared and readily available. We recommend the legislation be amended to simply request the submission of copies of our excise returns, where OLGR believe a producer may not be complying with the legislation. We ask that the Committee does not act to further entrench red-tape, duplicate unnecessary reporting, and impose a further cost on the industry.

We also note that the penalty for these administrative record keeping obligations is set at 350 penalty units, but by comparison only 250 penalty units applies for selling Liquor to a minor (s156(3)(a)). This seems to be an unreasonable reflection of priorities by OLGR.

We request Clause 30 of the Bill be amended to entirely omit s217 from the Liquor Act and s50-52 of the Wine Industry Act and any related provisions.<sup>26</sup>

DJAG responded as follows to the concern that the requirement to submit an annual return would increase the administrative burden on industry and, as such, should be removed from the Bill:

- The Bill will obligate artisan producer licensees to provide information about their annual production volume as part of their annual return. The intent is for licensees to provide a single figure indicating the total litres of beer or spirits produced at the licensed premises during the financial year. As noted in the IBA's submission, this information can be easily obtained from the licensee's Commonwealth excise return.
- The volume of liquor produced at the licensed premises is the determinant factor for the principal activity of the licence and the licensee's continued eligibility to hold the licence. Specifically, the licence is only available to brewers who produce no more than 5 million litres of beer each year and distillers who produce no more than 450,000 litres of spirits each year.
- The benefits of the licence have been designed for small, independent producers. Collecting a total yearly production volume as part of the annual return process is the most efficient way for OLGR to ensure only legitimate artisan producers have access to the licence.<sup>27</sup>

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<sup>24</sup> DJAG, correspondence, 8 February 2021, attachment, p 8.

<sup>25</sup> Submission 3, p 5.

<sup>26</sup> Submission 3, p 5.

<sup>27</sup> DJAG, correspondence, 8 February 2021, attachment, pp 6-7.



In relation to the concern that the Bill imposes an unreasonable penalty for non-compliance with administrative requirements, DJAG responded as follows:

- All liquor licensees are required to keep records under section 217 (Records to be kept by licensee) of the Liquor Act. The information may be used to inform annual returns required to be submitted under section 203 of the Liquor Act.
- The Bill amends section 217 to provide that artisan producer licensees must maintain a true and up-to-date record of the volume of liquor produced by the licensee (a production record).
- Requiring artisan producer licensees to keep a production record ensures the licensee continues to comply with the volume restrictions under the principal activity of the licence.
- Not complying with the obligation to keep a production record incurs a maximum penalty of 350 penalty units. This is consistent with other penalties under section 217, for offences such as not maintaining a transactions record, or failing to establish accurate accounting records. The penalties generally protect the integrity of the liquor licensing framework by ensuring there is record of whether a business is being conducted in accordance with its licence type.<sup>28</sup>

#### 2.1.2.6 Potential to manipulate ownership requirements

The Queensland Coalition for Action on Alcohol (QCAA) raised concerns that the proposed legislative framework allows for large alcohol companies to manipulate the system through ownership of multiple craft breweries.<sup>29</sup>

DJAG responded as follows:

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.

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.

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 *Corporations Act 2001* (Cth), a company is related to another if it is a holding company or subsidiary of that company.

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.

Artisan producer licensees will be required to submit an annual return under section 203 of the *Liquor Act 1992* (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.

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).

<sup>28</sup> DJAG, correspondence, 8 February 2021, attachment, p 7.

<sup>29</sup> Submission 2, p 1.

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.<sup>30</sup>

#### ***2.1.2.7 Concerns regarding risk mitigation***

The QCAA was concerned that the increased scope of the new licence type was not equally matched by an increase in risk mitigation. In particular, the QCAA was concerned about the potential harm associated with increased access and availability of alcohol due to extended trading hours, for example, with an opening of 9am instead of 10am, and a 1am close instead of 12am.<sup>31</sup>

DJAG responded to these concerns as follows:

The artisan producer licence fits within the existing liquor licensing 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.

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.

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.<sup>32</sup>

## **2.2 Expansion of existing promotional event framework**

### **2.2.1 Background**

The Bill expands on the existing licence conditions and permits authorising the sale of craft beer at promotional events (eg farmers markets) to:

- enable artisan liquor producer licensees and producer/wholesaler licensees which operate an artisan distillery to sell their products for consumption off-premises as a condition of the licence (mirroring existing provisions for the sale of craft beer by producer/wholesaler licensees which operate a craft brewery)
- enable artisan liquor producer licensees and eligible producer/wholesaler licensees to sell samples of their liquor products (craft beer and/or artisan spirits) for consumption at a promotional event as a condition of the licence
- amend the existing craft beer producer permit and introduce an 'artisan spirits producer permit' to enable the sale of craft beer or artisan spirits at promotional events for off-premises consumption, and on-premises consumption for the purpose of sampling
- provide that the authority of the licence or permit to sell craft beer/artisan spirits applies for the duration of the promotional event, unless otherwise conditioned
- provide a head of power for a regulation to limit, for licensees and permittees, the total volume of samples able to be sold per person at promotional events, as well as individual samples sizes (proposed to be 150 millilitres (mL) of craft beer and 15mL of artisan spirits)

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<sup>30</sup> DJAG, correspondence, 19 January 2021, attachment, pp 2-3.

<sup>31</sup> DJAG, correspondence, 19 January 2021, attachment, p 3.

<sup>32</sup> DJAG, correspondence, 19 January 2021, attachment, p 3.

- notwithstanding the sample size limits prescribed by regulation, enable a condition to be imposed on a licence or permit to further limit, on an individual basis, the volume of a sample size, and total volume of samples provided per person, for consumption at the promotional event
- require eligible producer/wholesaler licensees and artisan producer licensees to file and keep details of promotional events attended during the licence period
- require artisan spirit producer permittees to maintain a correct and up-to-date promotional events record (mirroring existing provisions for craft beer producer permittees).<sup>33</sup>

## 2.2.2 Stakeholder comments

### 2.2.2.1 *Expansion of sale opportunities*

The ADA expressed how beneficial the Bill's proposal to expand the opportunities for the sale of artisan liquor in Queensland would be for the artisan liquor industry:

As artisan producers and small companies across Queensland, under the current licence it is very tough for us to survive in that we do not have access to market. Most of our members across the country are in small regional towns. They do not have access or are not big enough to access those major retailers who control most of our sales throughout Queensland—Coles and Woolworths. This bill will allow our small, mainly family owned businesses to be able to sell their products in a responsible way that we cannot currently do under the licence we have. It is a big step forward for our industry.<sup>34</sup>

The ADA also discussed the approach of the ADA and its members to responsible drinking and the typical type of drinker in their industry:

Obviously the ADA—and I know all of our members feel the same—is very supportive of responsible drinking. In our industry we believe that we do not get the binge drinker. We are not pubs, clubs, nightclubs, bars; we are tasting rooms. People who come to us do not tend to be the sort of customers who want to drink a lot. The reason is that no-one who wants to drink a lot in fast succession wants to spend \$80 on a bottle of spirit. Because we are small producers, we are super premium. Most of our members across Queensland would not be able to buy a bottle of spirit, even 500ml, for less than \$70. We are very aware of that. We are about the experience. As an industry we have a lot to offer tourism and the export market. Every single distillery across the state has a different experience to offer. Yes, we all make spirits but we make different spirits. We all have a story behind the spirits we are making, be it a story from our region, family or the past. We do not believe that introducing this bill will in any way result in excess drinking or more violence in the community because they are not the sort of people who drink or purchase our sorts of spirits.<sup>35</sup>

### 2.2.2.2 *Concerns regarding normalisation of drinking*

In its submission, the QCAA opposed the proposal to expand the existing licencing conditions in relation to promotional events. In particular, the QCAA was concerned about:

... 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.<sup>36</sup>

DJAG responded to these concerns as follows:

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.

<sup>33</sup> Explanatory notes, pp 2-3.

<sup>34</sup> Public hearing transcript, Brisbane, 22 January 2021, p 1.

<sup>35</sup> Public hearing transcript, Brisbane, 22 January 2021, p 2.

<sup>36</sup> Submission 2, p 2.

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.

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).

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 Liquor Regulation 2002 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.

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.

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.

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.<sup>37</sup>

#### 2.2.2.3 Definition of ‘promotional events’

The IBA raised some concerns with the Bill’s proposal regarding promotional events and the ability of craft breweries and distilleries to sell their products, stating that the ‘new revised permit system ... continues to be flawed’.<sup>38</sup> The IBA explained that its primary concern is that the use of the permit is limited to ‘promotional events’. The IBA continued:

The definition of “promotional events” under Section 4 of the Liquor Act reads: ‘*promotional event* means an event held primarily for the purpose of promoting produce from a *particular region* or the *hospitality industry*’ and examples provided cover either farmers’ market-type events or trade/craft beer festivals.

All these are excellent opportunities to gain market access however, they are too limiting.

An example of this is the recent request from the Noosa Triathlon for Heads of Noosa Brewery to sponsor the event and sell their beers there. The organisers approached the brewery because they believed it had strong brand alignment and a great opportunity to support local producers.

Unfortunately, a triathlon, although promoting healthy lifestyle, does not fit in the definition of a “promotional event”. Similarly, a brewery could not participate in a local music festival, multi-cultural event or boat show under this permit.

We note that the Liquor Act under Section 11A “Exemption for the sale of liquor at fundraising events”, provides far more capacity for a non-alcohol-related business e.g. a school fete, to sell beer for a longer period of time (7am-midnight) without restrictions on sample size, and without the requirement to hold RSA qualifications.<sup>39</sup>

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<sup>37</sup> DJAG, correspondence, 19 January 2021, attachment, p 4.

<sup>38</sup> Submission 3, p 2.

<sup>39</sup> Submission 3, p 2.

The IBA argued that ‘if unqualified, non-commercial groups can run a bar without restrictions, we believe that artisanal liquor producers, controlled by OLGR and fully implementing mandatory responsible service of alcohol (RSA) requirements should be able to run a bar at a public event’.<sup>40</sup>

The IBA suggested that the solution was to follow options available through the Wine Industry Act as ‘it provides a simple permit structure that would be acceptable to the industry’.<sup>41</sup> IBA continued:

It does not limit the promotion of wine to any specific type of event therefore the *Artisan Liquor Producers Permit* should reflect this flexibility and could be implemented via a simple event permit, which is not limited by existing and dated definitions.<sup>42</sup>

In this regard, the IBA asked that the definition be revised to: ‘**promotional event** means an event held primarily for the purpose of promoting produce from a **particular region, artisanal liquor producer or the hospitality industry**’. IBA’s preference, however, was to ‘simply remove the definition altogether to mirror the guidance set out in the Wine Act’.<sup>43</sup> [Emphasis in original]

The IBA contended that such an amendment would allow a ‘wide range of activities and future proofs the Act so the industry can simply submit a request to OLGR to attend an event’. In terms of addressing harm minimisation, the IBA stated that ‘as always, the overriding legislation on all such events would still be *Responsible Service of Alcohol* and the OLGR retains the powers to determine the suitability of each application and inspect any event at any time’.<sup>44</sup>

The IBA also commented on the Commercial Public Event Permit (CPEP) as follows:

We note that the OLGR proposes that a Commercial Public Event Permit is the solution for all other events that do not fall under the promotional event classification. Using the CPEP, the OLGR are trying to apply an existing permit scheme across activities that it was not designed for. Section 103B limits sales under a CPEP to consumption on the premises only (no takeaways) and that only one license or permit can apply to a premises (s58(2)).

A CPEP requires a function to be organised by a third party and is cost prohibitive for a single day event at \$723 per permit which is completely cost prohibitive for a small business and certainly not the intention to support our industry as outlined in the **Queensland Craft Brewing Strategy**.

Using a CPEP at a street festival, for instance, prevents a producer from selling takeaway product which is allowed under the promotional event permit. A CPEP only allows one license to apply in any space (s58(2)&(3)). So, a wine maker must be set up in a separate and clearly designated space apart from a brewery not allowing a common area where our products are all sold together.

A CPEP also does not fill the gaps left by a promotional event permit, it sits at the other extreme of permits and events, designed for large scale public activities so the capacity of our industry to participate in local events is severely limited by the regulator’s insistence on using historical, flawed license arrangements.

We note that if this Artisanal Liquor Producers permit is amended as we propose, there is no need for an additional CPEP Clause. Under the revised event permit, all events would be submitted to OLGR for consideration, irrespective of size or nature of the event.

Red-tape and cost can be reduced by having one simple Permit to be submitted to OLGR for approval.<sup>45</sup> [Emphasis in original]

<sup>40</sup> Submission 3, p 3.

<sup>41</sup> Submission 3, p 3.

<sup>42</sup> Submission 3, p 3.

<sup>43</sup> Submission 3, p 3.

<sup>44</sup> Submission 3, p 3.

<sup>45</sup> Submission 3, pp 3-4.

In response to IBA's concerns about the craft beer producer permit and the fact that the permit does not allow craft brewers to attend large events such as the Noosa Triathlon or music festivals, DJAG made the following comments:

- Under existing provisions of the *Liquor Act 1992* (Liquor Act), craft brewers may attend 'promotional events' to give away samples and sell limited takeaways of their beer. A promotional event means an event held primarily for the purpose of promoting produce from a particular region or the hospitality industry, for example, a farmer's market or craft beer festival.
- The other type of event provided for under the Liquor Act is a 'public event'. A public event means an event held away from the licensee's main premises which is not a private event.
- Public events may be publicly advertised, open for casual attendance from members of the public, and a fee may be charged for admission. Examples include festivals, races and concerts.
- The existing craft beer producer permit legislation was specifically created to allow interstate producers access to Queensland promotional events (although Queensland licensees are not prevented from applying).
- The primary mechanism for Queensland craft brewers to attend promotional events is by licence condition. Applying for this condition incurs a once-off fee of \$112.60. The condition is then perpetually endorsed to allow the licensee to attend as many promotional events as they wish without reapplying to the Office of Liquor and Gaming Regulation (OLGR).
- Since the craft beer producer permit was introduced, it has been issued to two interstate licensees.
- Approximately 39 Queensland craft brewers have had a promotional events condition endorsed on their licence.
- These numbers reflect that the intent of the current craft beer promotional events framework under the Liquor Act is being achieved, with interstate producers accessing the permit and Queensland craft brewers obtaining the licence condition.
- The Bill replicates this framework for artisan liquor producers and will also allow craft brewers and artisan distillers to sell samples at promotional events, rather than give samples away for free.
- The approved framework for promotional events is not intended to allow attendance at commercial public events, such as the Noosa Triathlon or music festivals. A commercial public event permit (CPEP) is the existing mechanism under the Liquor Act for attendance at such events. The Bill will provide artisan producer licensees with access to a CPEP. Notably, a CPEP has previously been issued for the Noosa Triathlon.
- It should also be noted, the authorities of the artisan producer licence, including the expansion of the existing promotional events framework and the ability to apply for a CPEP, were agreed to at a roundtable meeting chaired by the Director-General of the former Department of State Development, Manufacturing, Infrastructure and Planning on 2 March 2020. The meeting, involving all relevant stakeholders, was attended by the submitter (Mr David Kitchen — Independent Brewers Association (IBA) Board Director).<sup>46</sup>

In the context of IBA's suggestion that craft brewers should have access to a permit like the permit available under the Wine Industry Act, DJAG provided the following commentary:

The Department considers the comments made by the submitter about the definition of promotional events fall outside the scope of the Bill.

The ability for artisan producer licensees to attend promotional events within the existing framework was agreed at the 2 March 2020 roundtable meeting, involving all relevant stakeholders and attended by the submitter, about the licence authorisations.<sup>47</sup>

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<sup>46</sup> DJAG, correspondence, 8 February 2021, attachment, p 2.

<sup>47</sup> DJAG, correspondence, 8 February 2021, attachment, p 3.

DJAG also provided a detailed summary on how wine permits operate and the intent of the provisions under the Wine Industry Act.<sup>48</sup>

Regarding IBA's concerns that a CPEP does not meet the needs of craft brewers, DJAG responded:

*Takeaway sales*

- Takeaway liquor is able to be sold at a public event under a CPEP, if the relevant licence authorises takeaway sales. However, this authorisation is not automatic and must be approved as a condition of the CPEP. Prior to endorsing a takeaway condition OLGR must be assured there are adequate controls in the management plan for the event to ensure the same level of responsible sale of liquor occurs at the event as expected from the main premises. This is to minimise harm, and the potential for harm associated with the event, and allows appropriate takeaway limits to be applied relevant to the nature and risk profile of the event.
- This same process would apply to artisan producer licensees for takeaway sales of their own liquor at a public event under a CPEP.

*Inability for multiple licensees to share space at public events*

- Sections 58(2) and (3) of the Liquor Act state that only one licence may be granted over a premises, or part of the premises. However, a licence under the Liquor Act and a licence under the Wine Industry Act may be held in relation to the same premises or part of the premises.
- The applicant for a CPEP must describe the area where liquor will be sold and consumed. This area is taken to form part of the licensee's licensed premises. Defining the area where liquor must be sold as the licensee's premises ensures the obligations which ordinarily apply to the licensed premises apply to the area where liquor is sold at an event and licensees remain accountable. For example, an obligation to ensure minors are not allowed on the premises. This helps achieve the objects of the Liquor Act to preserve amenity, ensure community safety and minimise the risk of alcohol-related harm.
- A CPEP may be issued jointly to two or more licensees. In this case, there is one defined area under the permit for which the licensees are collectively responsible.
- CPEPs have previously been issued for events such as the Craft Beer and Cider Festival attended by numerous liquor producers.

*Fees*

- Application fees and licence fees under the Liquor Act are intended to reflect the cost of administration and enforcement of the provisions.<sup>49</sup>

In regard to the existing exemptions under the Liquor Act which allow liquor to be sold at public events without RSA qualifications, DJAG responded as follows:

- Section 11A exempts non-profit entities, such as non-proprietary clubs, from the licensing requirements under the Liquor Act. However, the sale of liquor by such entities has been identified as low-risk and there are number of limitations under the Liquor Act on how liquor may be sold.
- For example, a non-profit entity will only be authorised to sell liquor at a fund-raising event if the Commissioner for Liquor and Gaming is satisfied the sale of liquor is ancillary to the event and the net proceeds will be used to benefit the community.
- The exemptions are not intended to allow commercial liquor producers to operate bars at events such as school fetes.<sup>50</sup>

<sup>48</sup> For additional information in this regard, see DJAG, correspondence, 8 February 2021, attachment, pp 3-4.

<sup>49</sup> DJAG, correspondence, 8 February 2021, attachment, p 5.

<sup>50</sup> DJAG, correspondence, 8 February 2021, attachment, p 6.

## **2.3 Encourage transition of existing eligible licensees to artisan producer licence**

### **2.3.1 Background**

To encourage existing eligible licensees, anticipated to be mainly producer/wholesaler licensees, to transition to the new artisan producer licence, the Bill proposes to:

- waive the artisan producer licence application fee for producer/wholesaler licensees who make an application to transition to an artisan producer licence on or before 30 June 2021
- provide that any conditions, extended trading hours approvals and permits relating to an existing licence may be carried over to the artisan producer licence to the extent allowed by the authority of an artisan producer licence. However, the Commissioner will retain the ability to vary existing conditions and/or apply new conditions to the artisan producer licence.<sup>51</sup>

The explanatory notes also provide the following details on the transitional provisions:

Separate amendments to the Liquor Regulation 2002 (Liquor Regulation) will waive the annual licence fees for the 2020-21 licence period for transitioning licensees whose fees have already been waived by the Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020.

Consequential and minor technical amendments to support the above proposed amendments and ensure the continued effective operation of the Liquor Act are also included in the Bill.<sup>52</sup>

### **2.3.2 Stakeholder comments**

#### **2.3.2.1 Waiver of licence application fees**

The QCAA expressed caution about waiving artisan producer licence application fees for licensees who transition before 30 June 2021 (totalling approximately \$146,046 of foregone revenue). The QCAA also noted that this revenue could be allocated to preventative health measures.<sup>53</sup>

In response to this concern, DJAG stated:

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.<sup>54</sup>

#### **2.3.2.2 Transitional arrangements**

The QCAA also expressed caution about 'automatically carrying over extended trading hour approvals and permits given to existing licence holders and recommended that consideration be given to the Commissioner reviewing all applications'.<sup>55</sup>

In response to this concern, DJAG stated:

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.

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<sup>51</sup> Explanatory notes, p 3.

<sup>52</sup> Explanatory notes, pp 3-4.

<sup>53</sup> Submission 2, p 2.

<sup>54</sup> DJAG, correspondence, 19 January 2021, attachment, p 5.

<sup>55</sup> Submission 2, p 2.



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.

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 1am.<sup>56</sup>

## **2.4 Increased power for Commissioner**

### **2.4.1 Background**

The Bill amends the Liquor Act to enable the Commissioner to impose conditions on a licence or permit. More specifically, the explanatory notes state:

The Liquor Act is amended by the Bill to enable the Commissioner to impose conditions on relevant producer/wholesaler licensees, artisan producer licensees, craft beer producer permittees and artisan spirits producer permittees to limit/specify the sample size and total volume of samples which can be sold per customer at promotional events. The imposition of such a condition overrides the general restriction on sample sizes prescribed in the Liquor Regulation.

Similar amendments enable the Commissioner to condition a limit on the volume of craft beer and/or artisan spirits that can be sold for consumption away from a promotional event, despite takeaway amounts being specified in the Liquor Act. This conditioning power mirrors the existing provision in section 74A(4) of the Liquor Act which provides that the Commissioner may condition a takeaway limit for promotional events which overrides the 9L takeaway limit on craft beer limit specified in the Act.<sup>57</sup>

### **2.4.2 Stakeholder comments**

The QCAA submitted that it:

... 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.<sup>58</sup>

DJAG responded as follows:

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).

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 with minimising the risk of alcohol-related harm.

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).<sup>59</sup>

<sup>56</sup> DJAG, correspondence, 19 January 2021, attachment, p 5.

<sup>57</sup> Explanatory notes, pp 6-7.

<sup>58</sup> Submission 2, p 2.

<sup>59</sup> DJAG, correspondence, 19 January 2021, attachment, p 6.

## **2.5 Regulate the sale of artisan liquor at promotional events to minimise the risk of alcohol-related harm**

### **2.5.1 Background**

In relation to harm minimisation, the statement of compatibility provided that:

Harm-minimisation obligations under the Liquor Act, such as the requirement to submit a community impact statement with a licence application and develop a risk-assessed management plan, will also apply to artisan producer licensees.

The proposed licence is consistent with the government's Tackling Alcohol-Fuelled Violence Policy Review as it will be subject to the same harm minimisation measures and responsible service of alcohol obligations as other licence categories within the Liquor Act.<sup>60</sup>

During the public briefing, DJAG advised:

Harm minimisation measures, such as the development of a risk assessment management plan, will apply to artisan producer licence applicants given the on-premises consumption trading element of the new licence; however, these requirements may be waived if they have already been undertaken and remain satisfactory for the purposes of the premises.<sup>61</sup>

### **2.5.2 Stakeholder comments**

In the context of alcohol-related harm, the ADA commented on the declining alcohol consumption trend in Australia over the past 10 years:

If we look at how the consumer in Australia has been going in the last 10 years, we have seen consumption of alcohol drop considerably ... We are seeing in the market that there is a big trend towards drinking less but drinking more quality. We are even seeing that now in the younger generation. People in their late 20s and mid 30s are enjoying a drink. They are not buying a carton of beer, they are not buying a cask of wine, they are not buying 750 millilitre bottles; they are buying 500 millilitre bottles or buying a four pack of beer that costs the same as what a carton used to cost. We are seeing this trend towards less drinking but drinking better quality and enjoying what they drink rather than just going out to get smashed. Excise is helping with that, obviously.<sup>62</sup>

During the public briefing, DJAG also addressed the harm minimisation concerns raised during consultation with social health stakeholders on amendments contained in the Bill:

Throughout the consultation obviously we also had social health stakeholders. They are very keen to ensure that harm minimisation is embedded within this licence type as well. I am not aware of any particular issues in relation to concerns from the industry about the harm minimisation measures that have been built into this licence. I think they provide a level of parity with other licence types where they are doing similar activities. We have tried to make sure that is all embedded. As I said, if there is an opportunity to assist the industry who are currently operating to transition to the new licence without added harm minimisation elements in terms of their risk assessment management plan that I talked about before, that is something we will be hoping to help them through early in the new year.<sup>63</sup>

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<sup>60</sup> Statement of compatibility, pp 1-2.

<sup>61</sup> Public briefing transcript, Brisbane, 16 December 2020, p 1.

<sup>62</sup> Public hearing transcript, Brisbane, 22 January 2021, pp 3-4.

<sup>63</sup> Public briefing transcript, Brisbane, 16 December 2020, p 6.

## **2.6 Consistency with legislation in other jurisdictions**

In terms of consistency with similar legislation in other jurisdictions, the explanatory notes state:

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However, other jurisdictions, including New South Wales and Tasmania, have introduced legislative initiatives to support the craft brewing and/or artisanal distilling industry.<sup>64</sup>

## **2.7 Suggestions for improvements to the Bill**

The committee received evidence from stakeholders regarding how it would assist the industry if independent grocers across Queensland could sell products from small producers who have the artisan producers licence.<sup>65</sup> More specifically, the ADA stated:

Distilling has been around a long time but this artisan segment has really grown phenomenally across the country and in Queensland in the last couple of years. It has not grown so rapidly in Queensland because of our current laws. In terms of having a fair playing field, small producers will never have the finances to be able to produce that sort of volume that allows us to go into those big, major retailers, the ones that Coles and Woolworths control. It would be nice in the future if the something like 750 small independent grocers across the state had something that allowed just people with the artisan producers licence, this new licence, to sell to them. It would then make it a bit more of an even playing field for us and at least the consumer would see us. At the moment, the reality is that when most consumers want to buy something they go to Dan Murphy's, First Choice or Liquorland. They do not see all those other brands that we produce across the state because we are not as visible.

In a lot of cases, we are in small towns. Having a network like independent grocers, for example, would then allow us to be more visible, and that would 100 per cent result in creating more jobs. Obviously, it will help tourism because the more people who know about these small brands, the more tourists will want to see them. As consumers now we really strive for experience; we want that experience. We are not happy anymore with just the norm; we want that personal experience. In our industry, you are talking to the person who makes the spirit. You are talking to the family who owns the business. They are there 15 hours a day, seven days a week. If those other outlets were able to showcase what we do, that would be fantastic.<sup>66</sup>

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<sup>64</sup> Explanatory notes, p 8.

<sup>65</sup> Public hearing transcript, Brisbane, 22 January 2021, pp 2-3; Andrew Aschman, correspondence, 28 January 2021, p 1.

<sup>66</sup> Public hearing transcript, Brisbane, 22 January 2021, pp 2-3.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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 liberties of individuals
- the institution of Parliament.

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

##### 3.1.1 Rights and liberties of individuals - general rights and liberties - restrictions on ordinary business activities; reasonableness and proportionality of penalties

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

The Bill creates some new offences and penalties and also extends the reach of existing offence and penalty provisions in the Liquor Act to apply to the new liquor licence category. This raises the issue of ‘general rights and liberties of individuals’ and a consideration of section 4(2)(a) of the LSA.

###### 3.1.1.1 *Ordinary activities should not be unduly restricted*

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

###### 3.1.1.2 *Proportionality and relevance of penalties*

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether, for example, penalties and other consequences imposed by the legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>67</sup>

The relevant clauses, together with the corresponding justification offered in the explanatory notes, are set out below.

**Clause 13** inserts section 75J in the Liquor Act, which provides, in part, that section 142ZZC of the Liquor Act applies to an artisan producer licensee selling liquor at a promotional event. Section 142ZZC prohibits certain unacceptable advertising practices or promotions regarding consumption of alcohol, such as ‘2 for the price of 1’ and ‘happy hours’, with a maximum penalty of 100 penalty units. A penalty unit is currently \$133.45. (This equates to \$13,345). The explanatory notes state:

Expanding these existing offences to artisan producer licensees ensures that the advertising restrictions aimed at reducing harm are consistently applied to all relevant licensees and permittees. Further, applying the advertising restrictions and offences to licensees authorised to sell liquor at promotional

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<sup>67</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

events mirrors existing section 75A (Venue of promotional event not licensed premises for producer/wholesaler licence).<sup>68</sup>

**Clause 24** replaces section 148AB of the Liquor Act, which deals with restrictions on the sale of craft beer at a promotional event. Under the amended provision, a licensee or permittee commits an offence if they sell craft beer *or artisan spirits* at a promotional event, for consumption away from the event, in an unsealed container. The provision retains a maximum penalty amount of 100 penalty units. The explanatory notes provide:

The expanded parameters and penalty amount of the offence is appropriate and justifiable as it ensures the same obligations apply to licensees in relation to the sale of craft beer and artisan spirits.<sup>69</sup>

The amendment to section 148AB also creates a new offence in relation to selling craft beer or artisan spirits at a promotional event which exceeds the volume limit set either by the Commissioner or in the regulation. It applies to producer/wholesaler licensees, artisan producer licensees, craft beer producer permittees and artisan spirits producer permittees. The maximum penalty for this offence is 100 penalty units.<sup>70</sup> In relation to this amendment, the explanatory notes state:

The imposition of this penalty is justified to ensure that liquor sold for consumption at a promotional event is for the purposes of sampling only and deter licensees or permittees from operating de-facto bars at such events. The proposed maximum penalty also aligns with the existing penalty in section 148AB relating to the sale of craft beer at promotional events in unsealed containers.<sup>71</sup>

**Clause 25** adds two new offences to the Liquor Act relating to notification obligations – section 150A (Notification of change – artisan producer licence (beer)) and section 150B (Notification of change – artisan producer licence (spirits)). The offences apply if the holder of an artisan producer licence is a corporation, and the licensee fails to give the Commissioner written notice, within the required timeframe, of the licensee becoming related to, or owned by, a large brewer or distiller.<sup>72</sup> The maximum penalty for these offences is 100 penalty units. The explanatory notes provide this justification:

The provisions ensure licensees are required to report circumstances where they may become ineligible to continue to hold an artisan producer licence ... The penalties ... are considered reasonable and appropriate given the nature of the offence and align with similar offence provisions in section 150 (Notification of change in controlling interest in licensee) of the Liquor Act.<sup>73</sup>

**Clause 29** amends section 203 of the Liquor Act to require artisan producer licensees to file a return with the Commissioner within 21 days after the end of the licence period.<sup>74</sup> Failure to do so will be an offence, with a maximum penalty of 25 penalty units (currently \$3,336.25). The explanatory notes

<sup>68</sup> Explanatory notes, p 5.

<sup>69</sup> Explanatory notes, p 5.

<sup>70</sup> Note that the amendments to s 148AB also remove the previous offence of charging a person for a sample at a promotional event.

<sup>71</sup> Explanatory notes, p 5.

<sup>72</sup> Notices must be given within 14 days of the end of the financial year in which the brewer or distiller becomes a large brewer or distiller or within 14 days of the day the licensee becomes related to the large brewer or distiller. A large brewer is defined as one producing more than 40,000,000L of beer per financial year and a large distiller as one which produces more than 2,000,000L of spirits per financial year. Ownership restrictions relate to large brewers or distillers holding more than 20% of the licensee corporation's shares or more than 20% of voting ability.

<sup>73</sup> Explanatory notes, p 5.

<sup>74</sup> The return must include liquor sold or produced under the authority of the licence; ownership details and the owner's production volumes (if any), for a licensee which is a corporation; and promotional events attended by the licensee for the duration of the licence period.

state that the maximum penalty is consistent with other offences in that section and ‘considered appropriate due to the low-level nature of the offence’.<sup>75</sup>

Clause 29 also amends the existing return requirements for producer/wholesaler licensees to require the provision of details about promotional events attended by the licensee during the licence period. The maximum penalty remains at 25 penalty units. The explanatory notes state:

While additional information is required, the penalty amount for the offence remains unchanged at 25 penalty units, consistent with the rest of section 203.<sup>76</sup>

**Clause 30** amends section 217 of the Liquor Act to insert a requirement for artisan producer licensees to make and maintain a true and up to date record of the volume of liquor produced by the licensee (‘a production record’). The maximum penalty for this offence is 350 penalty units (currently, \$46,707.50). The explanatory notes provide:

Requiring artisan producer licensees to keep a production record ensures that the licensee continues to comply with the volume restrictions stated in the principal activity of the licence, and accordingly, can continue to hold that licence type. The maximum penalty is consistent with other penalties in section 217.<sup>77</sup>

The amendments to section 217 also require artisan spirits producer permittees to maintain a correct and up to date ‘promotional events record’. The current promotional event record requirements for craft beer producer permittees are also amended to include an obligation to include information on the sale of craft beer for consumption at the promotional event. The maximum penalty for contravention of these provisions is 350 penalty units. The explanatory notes state:

While the parameters of the offence provisions have expanded, the penalty amount remains unchanged. The imposition of such an amount is considered justified to ensure permittees are not operating de-facto bars at promotional events.<sup>78</sup>

Generally, the offences contained in this Bill mirror existing offences for other licence categories or arise as a result of expanding the capability of licensees and permittees to sell liquor at promotional events. The penalties are consistent with existing penalties in the Liquor Act and reflect the principle that more serious offences (eg those that relate to the failure to keep records that go towards continued eligibility for the licence) attract a higher penalty than less serious offences.

In addition to providing justifications for each offence individually, the explanatory notes set out the overall approach that was taken in determining the penalty amounts for each new offence provision:

... each proposed penalty unit amount was assessed to ensure it: aligns with similar offence provisions within the same (or associated) legislation; and is commensurate with the nature of the offence and the harm that may arise from a breach. Accordingly, it is considered any potential breaches of individual rights and liberties under section 4(2)(a) of the LSA initiated by the proposed new offence provisions are justified and appropriate...<sup>79</sup>

#### Committee comment

The committee is satisfied that these clauses have sufficient regard to the rights and liberties of individuals in that the offence provisions are justified and contain proportionate penalties.

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<sup>75</sup> Explanatory notes, p 6.

<sup>76</sup> Explanatory notes, p 6.

<sup>77</sup> Explanatory notes, p 6.

<sup>78</sup> Explanatory notes, p 6.

<sup>79</sup> Explanatory notes, p 4.

### 3.1.2 Rights and liberties of individuals – administrative power

Various clauses in the Bill provide for increased administrative powers of the Commissioner, largely relating to the ability to impose conditions on the various licence and permit categories, including the new artisan liquor category. Conditions on licences and permits may, for example, limit the size and volume of liquor to be sold at promotional events or limit the hours during which liquor can be sold at promotional events. This raises the issue of administrative power and a consideration of section 4(3)(a) of the LSA.

Whether legislation has sufficient regard for the rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Provisions that do not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power require careful scrutiny.<sup>80</sup> Further:

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.<sup>81</sup>

As noted above, the Commissioner can impose conditions on producer/wholesaler licensees, artisan producer licensees, craft beer producer permittees and artisan spirits producer permittees to limit or specify the sample size and total volume of samples which can be sold per customer at promotional events. The imposition of such conditions overrides the general restriction on sample sizes prescribed in the Liquor Regulation 2002. The Commissioner can also impose conditions that limit the volume of craft beer and/or artisan spirits that can be sold for consumption away from a promotional event, despite takeaway amounts being specified in the Liquor Act.<sup>82</sup>

The explanatory notes set out some safeguards and provide this justification for the Commissioner's increased powers:

Providing the Commissioner the administrative power to set alternative sample sizes/volumes to the Liquor Regulation and different takeaway limits to the Liquor Act is intended to provide a safeguard to individually restrict non-compliant licensees and permittees from supplying inappropriate amounts of liquor at promotional events. The limits of the conditions are clearly defined, reflect existing provisions contained in the Liquor Act and the decision to impose a condition is subject to review by the Queensland Civil and Administrative Tribunal (QCAT). Accordingly, it is considered the proposed amendments do not unreasonably impinge on the rights and liberties of individuals and is necessary to minimise harm, and the potential for harm, from alcohol abuse and misuse and associated violence under the main purposes of the Liquor Act.<sup>83</sup>

Though not a safeguard, the explanatory notes also state:

It is envisaged the Commissioner would only use these administrative powers if the behaviour of non-compliant individual licensees necessitated setting alternative limits lower than those provided by the Act or Regulation.<sup>84</sup>

<sup>80</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 15, citing Scrutiny of Legislation Committee, *Annual Report 1998-1999*, para 3.10.

<sup>81</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

<sup>82</sup> See, for example, clause 9 (sale of craft beer by producer/wholesaler licensee), clause 10 (sale of artisan spirits by producer/wholesaler licensee), clause 13 (artisan producer licence), clause 22 (craft beer producer permits), clause 23 (artisan spirits producer permits).

<sup>83</sup> Explanatory notes, p 7.

<sup>84</sup> Explanatory notes, p 7.

Further amendments provide that the Commissioner may authorise a relevant licensee or permittee to sell craft beer or artisan spirits at promotional events via a condition on the licence or permit. The Liquor Act states the conditioned authority to sell craft beer or artisan spirits at a promotional event covers the entirety of the hours in which the promotional event takes place, 'unless otherwise conditioned by the Commissioner'.<sup>85</sup> Essentially, this provides the Commissioner with administrative power to set alternate operating hours for licensees and permittees at promotional events.

The explanatory notes state that the purpose of these amendments is to restrict the sale of liquor at inappropriate times (giving an example of farmers' markets or similar events operating in the very early morning or late at night).<sup>86</sup>

The explanatory notes state that the Commissioner can only condition alternative times within the spread of hours in which a promotional event takes place.<sup>87</sup> Further, the administrative power is clearly defined and subject to a merits review:

The limits of the conditions are clearly defined and are for the purposes of minimising harm, and the potential for harm, under the main purposes of the Liquor Act. Further, licensees and permittees can apply for QCAT to review a decision of the Commissioner to impose such a condition.<sup>88</sup>

#### Committee comment

The committee is satisfied that the Commissioner's powers are sufficiently defined and subject to appropriate review.

### **3.2 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. In general, the notes are detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims, origins and content.

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<sup>85</sup> See, for example, clauses 8, 9, 13, 19 and 23.

<sup>86</sup> Explanatory notes, p 7.

<sup>87</sup> Explanatory notes, p 7.

<sup>88</sup> Explanatory notes, p 7.



## 4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.<sup>89</sup>

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.<sup>90</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>91</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

Although provisions in the Bill might limit the human right of recognition and equality before the law by prescribing eligibility requirements for an artisan producer licence, such limitation has been balanced with the purpose of creating a licence category targeted specifically at small, independent craft beer and artisan liquor producers to assist them in establishing their businesses and deriving an income.

As noted in the statement of compatibility, in most cases the holder of a liquor licence will be a corporation.<sup>92</sup> Corporations do not have human rights.<sup>93</sup> However, the Liquor Act does provide for liquor licences to be granted to individuals, so this analysis will apply to individuals who apply for and hold an artisan producer licence.

### 4.1 Human rights compatibility

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The statement of compatibility notes that the Bill might limit the human right of recognition and equality before the law under section 15 of the HRA.<sup>94</sup> An analysis of whether this limitation is justified, in accordance with section 13 of the HRA, is set out below.

<sup>89</sup> HRA, s 39.

<sup>90</sup> HRA, s 8.

<sup>91</sup> The human rights protected by the HRA are set out in ss 15 to 37 of the HRA. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in the HRA or is only partly included; HRA, s 12.

<sup>92</sup> Statement of compatibility, p 2.

<sup>93</sup> HRA, s 11(2).

<sup>94</sup> Statement of compatibility, p 2.

#### **4.1.1 HRA, s 13(2)(a) – nature of the human right**

The protection of the right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being human, rather than because of a particular characteristic or membership of a particular group. The right places an obligation on public entities to treat people equally and not apply the law in a discriminatory or arbitrary way.<sup>95</sup>

The Bill may limit this right to the extent that it limits eligibility for the new licence category to artisan liquor producers.<sup>96</sup> Specifically, clause 13 of the Bill:

- prescribes production and sale of craft beer and/or artisan spirits on the licensed premises as the principal activity business for the artisan producer
- restricts the grant of an artisan producer licence to craft brewers who produce a minimum of 2,500 litres and maximum of five million litres of craft beer per annum at the licensed premises; and to artisan distillers who produce a minimum of 400 litres and maximum of 450,000 litres of artisan spirits per annum at the licensed premises
- restricts the grant of an artisan producer licence to an artisan liquor producer business that is independently owned. To meet this requirement, not more than 20% of an artisan liquor producer business can be owned by a large liquor producer.

The statement of compatibility explained:

The consequence of prescribing eligibility requirements for the artisan producer licence and penalties for an artisan producer licensee that ceases to meet the eligibility requirements is that the benefits of the new licence will not be available to all liquor producers equally.<sup>97</sup>

#### **4.1.2 HRA, s 13(2)(b) – nature of the purpose of the limitation**

The statement of compatibility outlined that the purpose of the limitation is:

... to provide targeted support, for an identified area of economic growth in a free and democratic society by introducing a licence for the artisan liquor industry. The introduction of the 'Commercial other – artisan producer' licence is intended to support the development of small, independent craft beer and artisan liquor producers to establish their businesses and derive an income, which is a necessity in supporting human dignity.<sup>98</sup>

Additionally, the statement of compatibility highlights that another purpose of this limitation is to maintain consistency with the regulatory framework of the Liquor Act, which has been designed to:

- be compatible with minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence
- facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change.<sup>99</sup>

The granting of licences and prescription of fee amounts under the Liquor Act are designed to be by reference to the level of potential risk of alcohol-related harm associated with a particular licence type. Consistent with this approach, the licence requirements for an artisan producer and relevant fees are aimed at entry level businesses on the basis that this type of licence holder is expected to pose a lower level risk of harm than, say, a commercial hotel. However, there is also a minimum

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<sup>95</sup> Statement of compatibility, p 2.

<sup>96</sup> Clause 13 inserts a new Part 4, Division 4, Subdivision 7 (Artisan producer licence) comprising new ss 75B-75J. New subdivision 7 outlines the types, principal activity, authorities, restrictions and conditions on the granting of a licence with respect to the new artisan producer licence.

<sup>97</sup> Statement of compatibility, p 3.

<sup>98</sup> Statement of compatibility, p 3.

<sup>99</sup> Statement of compatibility, p 3.

threshold of production to ensure that the licence is granted to genuine small business and not home brewers or distillers.

In summary, the statement of compatibility stated:

The nature of the purpose of the limitation of the right to recognition and equality under the law presented by the eligibility requirements for the licence is therefore consistent with the values of a free and democratic society as it both supports the emerging artisanal liquor industry whilst also enhancing the equity and integrity of the State's risk-based liquor licensing framework.<sup>100</sup>

#### **4.1.3 HRA, s 13(2)(c) – the relationship between the limitation and its purpose**

The eligibility requirements set out in clause 13 of the Bill help ensure that the new artisan producer licence is only granted to genuine emerging boutique liquor businesses, in order to further the Bill's objective of supporting the growth and development of the Queensland artisanal liquor industry.

#### **4.1.4 HRA, s 13(2)(d) – whether there are less restrictive and reasonably available ways to achieve the purpose**

In addressing this element, the statement of compatibility provided:

There are no less restrictive ways of ensuring the artisan producer licence can only be granted to and held by emerging artisanal liquor businesses. All Queensland liquor licensees must comply with the principal activity of their licence. The restrictive approach to the grant of the artisan producer licence is consistent with the approach to the grant of all other licences provided for under the Liquor Act.<sup>101</sup>

#### **4.1.5 HRA, s 13(2)(e), (f) and (g) – the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation**

In assessing the balance between the limitation and the human right, the statement of compatibility stated:

On balance, the limitation is considered reasonable and justifiable because it supports a burgeoning small business sector in Queensland and ensures the authorisations of the new licence apply only to businesses that are deemed to have a principal activity that poses a low risk of alcohol-related harm. The limitation on holding an artisan producer licence does not preclude a large liquor producer from holding a different liquor licence that is more appropriate to their business operations. As the limitation also has the effect of benefiting artisan liquor businesses whose needs were not being met by the authorisations and conditions available under other licence types, the limitation ultimately enhances the overall equity and fairness of the liquor licensing framework.<sup>102</sup>

#### **Committee comment**

The committee is satisfied that any limits on human rights are reasonable and demonstrably justified, such that the Bill is compatible with human rights, as any limitation on the human right of recognition and equality before the law is only to an extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

The committee finds the Bill is compatible with human rights.

<sup>100</sup> Statement of compatibility, p 4.

<sup>101</sup> Statement of compatibility, p 4.

<sup>102</sup> Statement of compatibility, p 5.

## **4.2 Statement of compatibility**

Section 38 of the HRA requires a statement of compatibility to be tabled for a Bill.

The statement of compatibility was tabled with the introduction of the Bill and a sufficient level of information was provided to facilitate understanding of the Bill in relation to its compatibility with human rights.

**Appendix A – Submitters**

<b>Sub #</b>	<b>Submitter</b>
001	Australian Distillers Association Inc.
002	Queensland Coalition for Action on Alcohol
003	Independent Brewers Association

## **Appendix B – Officials at public departmental briefing**

### **Department of Employment, Small Business and Training**

- Andrea Humphreys, Manager, Policy Setting, Strategic Policy
- Grant Stidiford, Director, Policy Setting, Strategic Policy

### **Department of Justice and Attorney-General**

- Victoria Thomson, Deputy Director-General, Liquor, Gaming and Fair Trading,
- David McKarzel, Executive Director, Office of Regulatory Policy
- Nina Starling, Principal Adviser, Office of Regulatory Policy

### **Department of Regional Development, Manufacturing and Water**

- Bill Walker, Director, Manufacturing Strategy

## **Appendix C – Witnesses at public hearing**

### **Australian Distillers Association Inc**

- David Ridden, President, Australian Distillers Association; and Owner and Director, Granddad Jack's Craft Distillery, Gold Coast
- Rick Prosser, Owner and Director, Kalki Moon Distillery and Brewing Company, Bundaberg