

Disclaimer

This is a consultation paper only – it does not represent Government Policy, nor necessarily represent the views of the Minister and does not commit the Minister to a particular direction or future action.

The paper seeks comment on the *Wine Industry Act 1994*.

Minister's message



The release of this consultation paper marks another step in the Beattie Government's commitment to support the ongoing growth and development of the Queensland wine industry. One of my initial tasks as Queensland's first Minister for Wine Industry Development was to consider if reform was needed under the *Wine Industry Act 1994*.

The Act represents a balance between necessary regulation and development opportunity, and endeavours to safeguard the integrity of Queensland's wine industry while promoting its growth.

This paper seeks feedback on a range of issues that have been identified following submissions made by the Queensland Wine Industry Association, individual winemakers and other peak liquor industry bodies, and industry regulators in the past three years.

I am mindful the Act has linkages with the *Liquor Act 1992* and will ensure all care is taken to deliver complementary liquor and wine policy across all sectors, while maintaining the underlying policy objective of minimising harm arising from the misuse of liquor.

Your feedback will assist the Beattie Government to continue to deliver up-to-date, relevant and productive legislation for Queensland's wine industry.

A handwritten signature in black ink that reads "Margaret Keech". The signature is written in a cursive, flowing style.

Margaret Keech MP
Minister for Tourism, Fair Trading
and Wine Industry Development

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What is the aim of this consultation paper?

The primary aim is to obtain feedback on the *Wine Industry Act 1994* (the Act).

The paper seeks to:

- obtain views on options outlined in the paper; and
- identify any other legislative issues that may hinder industry development.

The overriding intention of this paper is to identify if the Act's provisions are still relevant and meet with industry, regulatory and community expectations.

This paper has been prepared for consultation with industry, government and community stakeholders and also gives consideration to the objectives of the Act, which are:

- to enable the efficiency of the Queensland wine industry to be developed further;
- to foster further investment in, and growth of, the Queensland wine industry;
- to help the Queensland wine industry to develop further its tourism potential;
- to establish a system under which the integrity of the Queensland wine industry is ensured; and
- to regulate the Queensland wine industry in a way that is compatible with minimising harm arising from the misuse of liquor and the aims of the National Health Policy on Alcohol.

These objectives are achieved primarily through the licensing of businesses so that they may sell wine.

How is this consultation paper structured?

The range of issues addressed in the paper are grouped by subject matter and canvassed in each relevant chapter. Discussion points are numbered and invite a response to a particular issue.

In addition, all discussion points are summarised in a feedback form at Appendix 1. Space is provided under each question for written comments. These pages can be detached and mailed or faxed to the Department of Tourism, Fair Trading and Wine Industry Development.

A copy of the paper is also available from the Department's website at www.dtftwid.qld.gov.au/wine; by calling 07 3225 2770; or by email request to wine.strategy@dtftwid.qld.gov.au.

How can I have my say?

You are invited to comment on any issue in the paper. You are encouraged to respond to the questions posed in each chapter and you are welcome to raise any additional issues that you consider relevant to the review.

The paper addresses a range of issues and provides a number of options for each. As you read through the paper, use the feedback form to record your preferred option. Further comments can be recorded on separate sheets and attached to the feedback form.

Submissions are required in writing no later than **Monday 13 February 2006** and may be made to:

Wine Industry Act Consultation Paper
Wine Industry Development Division
Department of Tourism, Fair Trading and Wine Industry Development

Mail: GPO Box 1141, Brisbane QLD 4001
Email: wine.strategy@dtftwid.qld.gov.au
Fax: 07 3235 4046

If your submission contains information that you do not wish to be disclosed to others, please mark it 'Confidential'. Respondents wishing to make confidential submissions should be aware of the *Freedom of Information Act 1992*.

Under the Freedom of Information Act, the Department must, on application, grant access to documents in its possession unless an exemption provision applies. For example, if a submission contains information about a person's affairs (his or her experiences relevant to a matter covered by this consultation paper), and it is in the public interest to protect that person's privacy, the 'personal' information in that submission will not be accessible under the Freedom of Information Act.

In the course of providing comments on this paper you may provide personal information such as your name and address. The Department does not use this information for any other purpose or disclose it to a third party.

Other useful information

To view and download a free copy of the Acts and the Regulations that apply to the Queensland wine and liquor industries, visit the Office of the Queensland Parliamentary Council website at www.legislation.qld.gov.au/Legislation.htm

Authorised hard copies can be purchased via the Queensland Government Printer (GoPrint) by contacting 07 3246 3399.

What are the next steps?

Submissions received in response to the paper will be analysed and used as a basis for the Government to consider possible amendments to the *Wine Industry Act 1994*.

1 Introduction

The *Wine Industry Act 1994* (the Act) and the *Wine Industry Regulation 1995* are the primary legislative tools designed to develop growth in, and maintain the integrity of, Queensland's growing wine industry.

The Act is administered by the Liquor Licensing Division, within the Department of Tourism, Fair Trading and Wine Industry Development.

Following the initial review of the *Wine Industry Act 1974*, the new *Wine Industry Act 1994* contained a tourism and hospitality focus. The Act was reviewed again in 1999 under National Competition Policy principles with resulting amendments commencing in 2001.

The sale of wine and associated licensing and regulatory procedures under the Act are closely linked to similar provisions under the *Liquor Act 1992*. This linkage extends to the harm minimisation objectives under both Acts, which are designed to regulate hospitality based industries in a way compatible with minimising harm arising from the misuse of liquor. Consequently, any amendments that may arise from this paper will be framed to ensure liquor and wine policy across all sectors is complementary and consistent.

In December 2004, the Queensland Wine Industry Development Strategy (the Strategy) was released following nine months of consultation with industry. The goal of the Strategy is to 'develop a sustainable, diverse and innovative Queensland wine industry'.

The Strategy is a long-term initiative with a series of development activities scheduled for implementation over a four year period from 2004 to 2008. It includes co-ordinated action plans to ensure industry-identified priorities are met and that development opportunities are exploited.

The Department of Tourism, Fair Trading and Wine Industry Development acts as lead agency to ensure Government works in partnership with the wine industry to successfully implement the Strategy.

An intended action under the Strategy is to work, in consultation with industry, to review the Act. Industry identified this review as a key action to ensure that an efficient business and regulatory environment was in place to give the Queensland wine industry greater flexibility in conducting its activities and growing its business.

The release of this paper outlines key issues of concern in the industry and the community and provides a platform for comment on the review of the Act. The paper will fulfil the preliminary step in the review process and seeks industry and community comment on issues including:

- eligibility for wine merchants to obtain promotional permits to allow the sale of their wine at locations other than the main cellar door;
- a provision to enable wine merchants to establish Queensland or regional wine centres for the purpose of selling a comprehensive range of Queensland wines;
- requiring wine merchants to use a majority of Queensland fruit or wine in producing their wines;
- abolishing the trading name restrictions that prevent wine merchants using terms such as 'vineyard', 'winery' and 'cellar door';
- the provision of a simplified process to enable the transfer of a wine merchant licensee to the wine producer licence category;

- eligibility for a genuine winemaker to be classified as either a wine producer or a wine merchant for a period of time in certain circumstances;
- requiring satellite cellar doors to be stand alone venues;
- the linkage of satellite cellar door wine sales to a food service and/or tourism component;
- limiting wine sales at satellite cellar doors to wines produced by the licensee conducting the outlet and other Queensland wines only;
- limiting the maximum number of satellite cellar doors a wine producer can operate;
- the provision of a specific definition for the term 'satellite cellar door';
- eligibility for wineries operating cellar door restaurants to obtain a limited licence under the *Liquor Act 1992* to sell beer at the restaurant;
- extending the definition of wine to include wine produced from sugarcane;
- reducing the maximum penalty for a breach of a licence condition by a winemaker from \$26,250 to \$3,000 to maintain conformity with the *Liquor Act 1992*; and
- defining commonly used industry terms in the Act such as winemaking and sampling.

The paper invites public comment on these issues.

2 Issues for consultation

The Department has received a number of submissions on suggested changes to the Act to help improve the industry. The Department has also identified other issues for consultation that have arisen through its administration of the Act and correspondence received by the Minister.

2.1 Wine merchants

In 2001, amendments to the Act were introduced to establish a new wine merchant licence category.

A wine merchant licence is available to a business that may not own a vineyard or winery, but may otherwise be substantially contributing to the Queensland wine industry by using Queensland fruit or facilities in producing wine.

2.1.1 Wine permits

Currently: Wine permits are only available to wine producers. As a means of industry support, there is no application fee for a wine permit. The principal business activity of a wine producer involves selling wine either made from fruit at their vineyard and/or made at their winery.

Section 32 of the Act entitles a licensed wine producer to obtain a wine permit to sell the 'licensee's wine' at locations other than their main cellar door. Wine producers may apply to sell their wine at festivals, trade shows, conventions and other promotional events.

Section 32 (2) provides:

"The chief executive may grant a permit only if the chief executive:

- (a) is satisfied the purpose of the permit is to promote a particular winery or region; and*
- (b) reasonably considers it is more appropriate for wine to be sold under a permit instead of a licence because the purpose of the permit is to sell the licensee's wine at a single event."*

'Licensee's wine' is defined in Schedule 2 of the Act as wine at least 85% of which is:

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

Issue: A number of wine industry representatives have suggested that wine merchants should also be entitled to obtain a wine permit to authorise the sale of their wine at off-site promotional events.

It is contended that allowing wine merchants to obtain a permit to sell wine at locations other than their cellar door supports industry development, irrespective of whether a wine producer or a wine merchant is involved in the promotional event in question.

Questions

- 1A** Should the granting of a wine permit under the Act remain unchanged?
- 1B** Should wine merchants be entitled to apply for a wine permit to authorise the sale of wine at off-site promotional events?
- 1C** If so, should only wine actually produced by the wine merchant be permitted for sale under the permit?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.1.2 Queensland or regional wine centres

Currently: A business which may be established for the purpose of selling a comprehensive range of Queensland wines (together with relevant wine industry and tourism information) such as a 'Queensland or regional wine centre', is not eligible for a wine merchant licence.

Issue: Under Section 6(3) of the Act, a wine merchant licence is available to a business that 'contributes to the Queensland wine industry in a substantial way'. The current application fee for a wine merchant licence is \$1,746. A wine merchant is not required to own a vineyard or winery, but the business under the licence must be conducted in a manner that adds value to the Queensland wine industry.

Under present licensing criteria, a business that merely involves retailing wine made by others is not eligible for a wine merchant licence. The intention of a business such as a 'Queensland or regional wine centre' would be to offer for sale a range of Queensland or regional wines at one location to improve exposure of Queensland or regional wines to the general public.

Under the current provisions, the Department does not consider that a wine merchant licence can be granted to a business that intends to operate as a retail wine outlet, even if the main focus of the business would be the sale of Queensland or regional wines.

It has been suggested that an expansion of the original intent of the wine merchant licence category to allow for the operation of a business such as a 'Queensland or regional wine centre' would provide a substantial contribution to the development of the State's wine industry.

A concern raised however is that such centres could potentially become 'wine bars'. As with wine producers, a wine merchant licence allows on-site tastings and sales, as well as takeaway sales, which could potentially lead to such centres being run as bars by operators who are just retailers of wine.

To ensure the main purpose of a business such as a 'Queensland or regional wine centre' is supporting the State's wine industry, it has also been submitted that total wine sales should be in excess of 85% regional or Queensland wine.

An alternative means of licensing a wine centre may be achieved by using a 'special facility' licence under the Liquor Act. The current application fee for this type of licence is \$1,286. This licence could be adapted to allow for the tasting and sale of Queensland wines and associated products for tourist development in the State.

Questions

- 1D** Should the current criteria for obtaining a wine merchant licence remain unchanged in the Act?
- 1E** Should a business such as a 'Queensland or regional wine centre' be eligible for a wine merchant licence?
- 1F** If 1E is supported, should such centres be required to sell a minimum amount of regional or Queensland wine?
- 1G** Alternatively, should applications for a business such as a 'Queensland or regional wine centre' be considered for a 'special facility' licence under the Liquor Act?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.1.3 Definition

Currently: A wine merchant is not required to own a vineyard or winery, but the business under the licence must be conducted in a manner that 'contributes to the Queensland wine industry in a substantial way'. The Act goes further by providing examples of activities that would be considered to contribute in a substantial way and those that would not – refer Sections 6(4) and 6(5).

An applicant may be considered eligible for a wine merchant licence if they purchase Queensland fruit and use that fruit to be made into wine at another premises. This would be adding value to the Queensland industry by using Queensland product and facilities that might otherwise be under-utilised.

An applicant may also be eligible if they have planted a vineyard, with an intention of making wine from the fruit at a later date. The lead time from planting to having wine made from that fruit can be quite extensive. In these circumstances, a person could apply for a wine merchant licence in the meantime, to enable them to commence business using other fruit and facilities, and convert to a wine producer licence later when their own wine becomes available.

A wine merchant can also operate as a blender of wine. Blending parcels of wine to create a unique wine is a common practice in other States and is an acceptable practice for a wine merchant in Queensland.

Just as the Act gives detailed examples of the type of activities a wine merchant could undertake to contribute to the Queensland wine industry, it also gives examples of activities that would not be considered sufficient. A business that merely involves bottling imported bulk wine is not acceptable, nor is a business that merely involves retailing wine made by others.

Issue: Whether the proposed activities of some wine merchant licence applications will, in fact, substantially contribute to the Queensland wine industry. Conversely some activities that would make a substantial contribution to the Queensland wine industry may not meet the requirements of this section.

Consideration, therefore, needs to be given as to how to address this issue to ensure such a business will 'substantially contribute' to the Queensland wine industry in a practical way.

It has been suggested the current definition be amended to include that wine merchants must use a majority of Queensland fruit, or wine originating from a Queensland wine producer, in sourcing their product.

The definition of 'licensee's wine' under the Act means wine of which at least 85% has been made from fruit grown by the licensee or that is made by the licensee at their premises. It is further submitted that this same percentage be used for consistency purposes if action is taken to revise the current 'wine merchant' definition.

Questions

1H Should the wine merchant definition remain unchanged under the Act?

1I Should wine merchants be required to use a majority of Queensland fruit, or wine originating from a Queensland wine producer, in sourcing their product?

1J For the purpose of 1I above, do you consider that the term 'majority' should mean at least 85%?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.1.4 Permitted business trading names

Currently: Section 47(2) of the Act applies the following business name restrictions to wine merchants:

"The holder of a wine merchant licence must not use the following terms to describe the licensed premises or the business the licensee conducts under the licence, including, for example, on any signs, advertising or promotional material –

- (a) vineyard;*
- (b) winery;*
- (c) cellar door;*
- (d) another term prescribed under a regulation."*

These name restrictions were introduced in the 2001 amendments to the Act following consultation with wine industry representatives who sought a distinction between the two licence categories. This provision was adopted so no inference could arise in the mind of a customer at a wine merchant outlet that any aspects of wine production were occurring on the premises.

Issue: A number of wine merchants have a vineyard or cellar door on-site and are not permitted to use the terms as stated in the Act. Some wine industry representatives have questioned whether this restrictive provision is realistic and have supported the use of a single generic term, readily understood by the public, to describe winery facilities.

Although it would seem this restriction is anti-competitive, it does not infringe the national competition scheme as it forms part of a licensing scheme. The 2001 amendments to the Act resulted from the National Competition Policy review of the Act.

Questions

1K Should restrictions under the Act which prevent the use of trading terms such as vineyard, winery and cellar door by wine merchants be abolished?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.2 Licensing procedures

2.2.1 Conversion from a wine merchant to wine producer

When the 2001 amendments to the Act were introduced to establish the new wine merchant category, a review of all existing and pending licences was undertaken by the Liquor Licensing Division.

This review was undertaken to determine if the business activities were suitable for a wine merchant or wine producer licence. Appropriate licences were subsequently issued.

Currently: The Act does not have provisions to allow for the ready conversion of wine merchant licences to wine producer licences.

Issue: Some stakeholders have expressed a view that the Act should allow for the convenient transfer or 'migration' of wine merchants into the wine producer category without the need to lodge an entirely new application.

Questions

2A Should the wine merchant licensing provisions in the Act remain unchanged?

2B Should a provision be introduced to enable the transfer of a wine merchant licence into the wine producer category using a simplified process?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.2.2 Category of licence to be granted

Currently: To be licensed as a wine producer under the Act, the operator must be involved in selling wine that has either been made from fruit grown at the licensed premises, or wine physically made at the premises. In other words a wine producer must operate a vineyard or a winery.

Issue: If a vineyard or winery is destroyed (by hail, fire or similar) and no 'licensee's wine' can be produced or sold, there is no provision under the Act to allow the licensee to continue to conduct business as a wine producer in the short term.

It has been suggested by some stakeholders that a wine producer have the option of holding a wine merchant licence for a specified period of time in this type of circumstance, provided the producer meets the eligibility criteria of a wine merchant under the Act.

This may provide additional flexibility for a wine producer to nominate the most appropriate licensing arrangement for their current operations.

Questions

2C Should the existing wine producer eligibility criteria of operating a vineyard or a winery remain unchanged in the Act?

2D Should the Act be amended to allow a wine producer to be categorised as either a wine producer or wine merchant for a period of time in certain circumstances?

2E If so, how do you consider that such an entitlement should be managed, monitored and assessed?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.3 Satellite cellar doors

Satellite cellar door approvals for wine producers were created in 1994 to allow producers to showcase their wine at another location and to assist them to grow their sales and regional profile. For example, the satellite cellar door provisions allow a wine producer based at the Granite Belt to operate a satellite cellar door in Noosa and benefit from exposure to the strong tourist market in that area.

There are now over 60 satellite cellar door outlets operating across the State. They are unique to Queensland and are strongly supported by the industry as an effective industry development mechanism. Satellite cellar door outlets include tourist shops and restaurants and are seen as a method of enhancing wine tourism experiences.

In light of satellite cellar doors having been in operation in Queensland for over 10 years, it is now considered appropriate to review the existing appropriateness of the provisions in the Act.

2.3.1 'Stand alone' satellite cellar doors

Currently: In practice, satellite cellar door outlets are a stand alone outlet or a small designated area (or shelf space) within an existing retail shop.

Issue: While the concept is comparable to a hotel's detached bottle-shop, satellite cellar door outlets presently operate within a niche market offering a limited range of wines and related information concerning the winery involved.

It has been suggested by some stakeholders that satellite cellar doors should operate as 'stand alone' venues and not as part of an existing retail outlet.

However consideration needs to be given to the establishment and on-going costs involved in operating and staffing a 'stand alone' satellite cellar door, which may potentially make such a venture unviable for some wine producers.

2.3.2 Food service/tourism promotional component

Currently: Satellite cellar doors allow wine producers to promote and sell their wines (and other wine, with approval) at locations other than their main vineyard or winery.

Section 15(3) of the Act (authority under wine producer licence) provides:

“The chief executive may allow the licensee, as a condition of the licence, to sell or give the licensee’s wine on other premises approved by the chief executive for the sale of the licensee’s wine under authority of the licence –

- (a) as a sample for consumption on the premises; or*
- (b) other than as a sample, for consumption on the premises; or*
- (c) for consumption off the premises.”*

Issue: Increasingly, applications have been made for satellite cellar doors in a variety of existing retail outlets such as delicatessens, butcher shops and other specialised retail outlets.

The development objectives of the Act to promote growth in the industry via satellite cellar door sales may have the potential to undermine restrictions contained in the *Liquor Act 1992* (sections 60, 94, 96), which prohibit the supermarket sale of liquor by various licence types.

The complementary relationship between food and wine may be a desired message under the Act. However the promotion and display of wine products at existing retail food outlets without limitation has the potential to erode the Queensland Government’s broader policy position on prohibiting the sale of liquor at supermarkets.

The Act does not presently contain any limitations on where a satellite cellar door may be located, nor does it place any boundaries on the nature of other activities conducted at the proposed outlet.

Consideration therefore needs to be given as to how to address this issue. It has been suggested by some stakeholders that the sale of wine at a proposed satellite cellar door outlet should demonstrate a food service or tourism promotional component.

2.3.3 Sale of ‘licensee’s wine’ only at satellite cellar door outlets

Currently: Sections 15(3A) and 15(3B) of the Act enable a wine producer to apply for approval to sell wine other than the licensee’s wine from their main or satellite cellar door. However if approval is granted, the total amount of other wine sold must not exceed the total amount of licensee’s wine sold in any year. This limitation is prescribed to ensure the principal activity of the licensee is the sale of their own wine.

Section 15(3A) provides:

“The chief executive may allow the licensee, as a condition of the licence, to sell wine, other than the licensee’s wine –

- (a) for consumption on the licensed premises; and*
- (b) for consumption off the licensed premises but only if the sale is in the amounts, and in the circumstances, prescribed under a regulation.”*

Section 15(3B) provides:

“However, the total amount of wine sold by a licensee under subsection (3A) in a financial year must not be more than the total amount of the licensee’s wine sold by the licensee in the year.”

In practice, these provisions enable licensees to offer a wider variety of local or comparable interstate wines to customers. As many wineries operating satellite cellar doors have only a limited variety of their own wines available, the ability to sell other producers’ wines potentially supports overall industry development and enhances wine tourism experiences for regional visitors.

Issue: Concern has been raised by some stakeholders that the current limitation under Section 15(3B) of the Act does not appear to apply individually to a licensee’s main cellar door and each satellite cellar door, and allows the amalgamation of sales figures across several premises.

It has been suggested that to overcome this concern, satellite cellar door outlets should be limited to licensee’s wine and, with authority, other bottled wine produced by Queensland wine producers only.

Questions

- 3A** Should the satellite cellar door provisions in the Act remain unchanged?
- 3B** Should the Act be amended to require satellite cellar doors to be situated in ‘stand alone’ venues?
- 3C** Should satellite cellar doors demonstrate that the sale of wine at the proposed outlet has a food service and/or tourism promotional component?
- 3D** Should sales from satellite cellar door outlets be confined to licensee’s wine only?
- 3E** Should sales from satellite cellar door outlets be confined to Queensland wines only?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.3.4 Permissible number of satellite cellar doors

Currently: The Act does not limit the number of satellite cellar doors a wine producer may operate.

Under the *Liquor Act 1992*, a hotel licensee may operate up to a maximum of three detached bottle shops at separate locations within 10 kilometres of the main hotel.

Issue: It has been suggested that the total number of satellite cellar doors able to be operated by a wine producer should be subject to the same restriction as that of a hotel licensee (i.e. up to a maximum of three) or another prescribed maximum.

Questions

3F Should the Act remain unchanged with no limit to the number of satellite cellar doors that a wine producer may operate?

3G Do you consider that a limit should be introduced. For example – a maximum of three in line with hotel licensees?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.3.5 Definition

Currently: The Act does not contain a definition of ‘satellite cellar door’.

Issue: Under section 15(3) - Authority under a wine producer licence – approval can be sought to sell licensee’s wine ‘on other premises’ approved by the Chief Executive. Such premises are commonly called satellite cellar doors. The term is not formally mentioned in the Act, even though it is commonly used in the industry.

The inclusion of a specific definition in the Act for this generally accepted term may assist in providing clarity and consistency in dealing with such applications.

Questions

3H Do you consider that the Act should specifically define ‘satellite cellar door’?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.4 Cellar door restaurants**2.4.1 Sale of beer**

A number of wineries operate restaurants or cafes at the cellar door to provide meals to visitors.

Currently: Under section 15(2) of the Act, as well as offering tasting samples licensees can be authorised to sell their wines for consumption at the winery, in conjunction with a meal being provided.

In addition to supporting responsible service of alcohol procedures, the opportunity to enjoy local foods with local wines at a cellar door is an important component in providing a full range of services to visitors and promoting a positive tourism experience.

When eating at a cellar door restaurant some diners also seek an alternative drink, such as a glass of beer. To allow beer to be provided, licensees operating a cellar door restaurant must apply for a separate On-premises (meals) licence under the Liquor Act to enable liquor other than wine to be offered to diners. The fee for this licence application is currently \$1,286 and a range of associated licensing procedures such as advertising and town planning compliance must be met.

Issue: Some stakeholders have expressed concern that obtaining an on-premises (meals) licence to enable the service of alcohol other than wine in a winery/restaurant environment is cost prohibitive.

One suggestion is that licensees operating cellar door restaurants be authorised via a limited licence (current application fee \$135) under the Liquor Act to sell beer without needing to make an application for an on-premises (meals) licence.

The sale of beer to patrons under a limited licence could be made conditional upon patrons eating a meal at the restaurant, or when genuinely attending a function at the premises.

This approach would provide a cost effective method of allowing a winemaker to offer a glass of beer to certain diners and guests attending the cellar door restaurant.

Questions

4A Do you consider that venues operating cellar door restaurants should be able to obtain a limited licence under the Liquor Act to allow the sale of beer to diners and guests attending the cellar door restaurant?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.5 Fruit wine

2.5.1 Sugarcane wine

An amendment to the definition of 'wine' under the Act has been sought to extend the current definition to include sugarcane to enable the sale of sugarcane-based wines in Queensland.

Currently: Sugarcane is not included as a product from which wine can be produced. Schedule 2 of the Act provides the following definitions:

“wine” means any of the following fermented or distilled fluids of an intoxicating nature intended for human consumption –

- (a) *a fluid resulting from the complete or partial fermentation of only grapes and, at 20°C, containing ethyl alcohol (ethanol) of at least 80 mL/L (8%);*
- (b) *a fluid resulting from the complete or partial fermentation of fruit (other than wholly from grapes) and, at 20°C, containing ethyl alcohol (ethanol) of at least 11.5 mL/L (1.15%);*
- (c) *a fluid resulting from the complete or partial fermentation of honey and at 20°C, containing ethyl alcohol (ethanol) of at least 11.5 mL/L (1.15%);*
- (d) *a fluid resulting from the distillation of any fruit to obtain a fluid possessing the taste, aroma and other characteristics generally attributed to brandy and, at 20°C, containing ethyl alcohol (ethanol) of at least 250 mL/L (25%);*
- (e) *a fluid resulting from adding a fluid mentioned in paragraph (d) with a fluid mentioned in paragraph (a), (b) or (c) and, at 20°C, containing ethyl alcohol (ethanol) of at least 170 mL/L (17%).*

Examples of paragraphs (a) to (e) –

- (a) table wine and sparkling wine;
- (b) cider, perry and other fruit and vegetable wines;
- (c) mead and sparkling mead;
- (d) brandy and fruit brandy including Calvados, Fraise, Framboise, Kirsch, Kirschwasser, Quetsch, Mirabella and Slivovitz;
- (e) fortified fruit and vegetable wines

“fruit” includes:

- (a) the juices of fruit used to make wine; and
- (b) honey used to make mead.

The Queensland wine industry includes a small fruit wine sector predominantly located in Far North Queensland. There are currently 16 fruit wine producers in this emerging niche sector who use tropical fruits such as mango, plums and lychees to produce boutique wines for domestic and export consumption.

Most Australian States define ‘wine’ as liquor resulting from the fermentation of grapes or fruit, however Queensland also includes vegetable based wines, together with mead (honey based wine) and brandy in the definition.

Issue: Sugarcane is a species of herb belonging to the grass family. Under the Act, sugar cane is not specifically included in the current definition of what wine may be produced from.

While the fruit wine sector is only a small part of the Queensland wine industry, an extension to the existing definition to include sugarcane could be seen as a method of supporting the development of new beverages based on this product. It has also been suggested this amendment would provide additional support to the maintenance of the North Queensland sugar industry.

Questions

5A Should the definition of ‘wine’ be extended to include other products such as sugarcane?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.6 Penalties

2.6.1 Licence and permit compliance

An unauthorised sale of wine is treated as a serious offence under the Act with a maximum penalty of \$26,250 being prescribed under section 34. The Act also provides the same level of penalty when a licensed wine producer or merchant does not comply with a condition of their licence or permit.

Currently: The offence provisions of the Act are specified in Part 3 of the legislation.

Section 34(3) Breach of conditions of licence or permit, provides:

- (3) A licensee must comply with the conditions of the licensee’s licence or permit.
Maximum penalty – 350 penalty units.

As each penalty unit has a current value of \$75 under Section 5 of the *Penalties and Sentences Act 1992*, a breach of a single licence condition could potentially equate to a fine of up to \$26,250.

Issue: Concerns have been raised by some stakeholders that the current penalties cannot be considered justified as the majority of licence conditions applied by the Department relate to routine operational procedures to be adhered to by the licensee.

For comparative purposes, the *Liquor Act 1992* provides a maximum of 40 penalty units (\$3,000) for breach of a licence condition (Section 226).

Questions

6A Should the maximum penalty for a breach of conditions of a licence or permit remain unchanged?

6B Should the maximum fine for breach of a licence condition be reduced from 350 penalty units (maximum fine \$26,250) to 40 penalty units (maximum fine \$3,000), in line with the *Liquor Act 1992*?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.7 Definitions

2.7.1 Winemaking

Currently: While the Act provides a definition of wine (see chapter 2.5.1), it does not contain a definition of what actually constitutes ‘winemaking’.

Issue: This omission has led to wine producer licences being granted that do not involve traditional winemaking procedures in the production of wine. Traditionally, wine is made from the fermentation of fruit, particularly grapes.

Section 6(2) of the Act provides:

“A person may obtain a wine producer licence if the business being conducted will involve –

- (a) selling wine made from fruit grown by the person at the premises to which the licence will relate; or*
- (b) selling wine made by the person on the premises to which the licence will relate.”*

Under these current provisions, the making of wine from kits and/or a powder base technically complies with part (b) of this definition. However, it is open to argument whether the ‘production’ of wine in this manner is properly supporting the effective development of the Queensland wine industry.

Questions

7A Do you consider that the insertion of an industry definition of the processes involved in winemaking from 'fresh fruit' or 'must' (including fermentation) to the production of finished wine should be provided in the Act?

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

2.7.2 Sample

Currently: The Act does not define what is meant by the term 'as a sample for consumption' in reference to wine that may be sold or given away by winemakers at wine tastings.

Issue: Traditionally, winemakers offer wine samples at their cellar door or other outlets to allow visitors to taste a selection of wines before making a final purchasing decision.

The practice of offering wine tastings is acknowledged by the Act, which authorises licensees to sell or give away their wines 'as a sample for consumption' on the premises.

The Act does not currently apply any limitation or qualification on the actual quantity of wine that may constitute a 'sample'.

Concerns have been raised that a licensee under the Act is entitled to sell full glasses of wine, under the pretext of offering them as samples, at a satellite cellar door outlet.

As satellite cellar door outlets can also be authorised to sell wines other than just 'licensee's wine', the concern is that a venue located in a major metropolitan area would have the potential to become a general 'wine bar', rather than primarily supporting the Queensland wine industry.

It has been suggested that a limit could be introduced into the Act to ensure a sample of wine is only a sample and not a full glass.

Questions

7B Do you consider it would be beneficial to include a definition of what the term 'as a sample for consumption' can involve in relation to wines being sold or given away as a sample by licensees.

Please record your preferred option and provide reasons for each answer on the feedback form at Appendix 1.

Appendix 1:

Feedback form

Review of the *Wine Industry Act 1994* Please forward comments by **Monday 13 February 2006**

The consultation paper addresses a range of issues and provides a number of options for each (eg. 1A, 1B or 1C). As you read through the paper, use this feedback form to record your preferred option. Further comments can be recorded in the space provided under each question or on separate sheets if required.

Submissions are required in writing no later than **Monday 13 February 2006**.

These pages of the feedback form can be detached and may be forwarded to:

Wine Industry Act Consultation Paper
Wine Industry Development Division
Department of Tourism, Fair Trading and Wine Industry Development

Mail: GPO Box 1141, Brisbane QLD 4001
Fax: 07 3235 4046

Or alternatively, email electronic copies to wine.strategy@dtftwid.qld.gov.au

NOTE: A copy of this feedback form is also available at www.dtftwid.qld.gov.au/wine

Questions (tick preferred option)	
2.1	Wine merchants
2.1.1	Wine permits
1A	Should the granting of a wine permit under the Act remain unchanged?
	Yes
	No

1B	Should wine merchants be entitled to apply for a wine permit to authorise the sale of wine at off-site promotional events?
	Yes
	No

Questions (tick preferred option)		
1C	If so, should only wine actually produced by the wine merchant be permitted for sale under the permit?	Yes No
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2.1.2 Queensland or regional wine centres		
1D	Should the current criteria for obtaining a wine merchant licence remain unchanged in the Act?	Yes No
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1E	Should a business such as a 'Queensland or regional wine centre' be eligible for a wine merchant licence?	Yes No
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1F	If 1E is supported, should such centres be required to sell a minimum amount of regional or Queensland wine?	Yes No
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Questions (tick preferred option)		
1G	Alternatively, should applications for businesses such as a 'Queensland or regional wine centre' be considered for a 'special facility' licence under the Liquor Act?	Yes No
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2.1.3 Definition		
1H	Should the wine merchant definition remain unchanged under the Act?	Yes No
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1I	Should wine merchants be required to use a majority of Queensland fruit, or wine originating from a Queensland wine producer, in sourcing their product?	Yes No
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1J	For the purpose of 1I above, do you consider that the term 'majority' should mean at least 85%?	Yes No
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Questions (tick preferred option)		
2.1.4 Permitted business trading names		
1K	Should restrictions under the Act which prevent the use of trading terms such as vineyard, winery and cellar door by wine merchants be abolished?	Yes No
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2.2 Licensing procedures		
2.2.1 Conversion from a wine merchant to wine producer		
2A	Should the wine merchant licensing provisions in the Act remain unchanged?	Yes No
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2B	Should a provision be introduced to enable the transfer of a wine merchant licence into the wine producer category using a simplified process?	Yes No
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2.2.2 Category of licence to be granted		
2C	Should the existing wine producer eligibility criteria of operating a vineyard or a winery remain unchanged in the Act?	Yes No
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Questions (tick preferred option)		
2D	Should the Act be amended to allow a wine producer to be categorised as either a wine producer or wine merchant for a period of time in certain circumstances?	Yes No
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2E	If so, how do you consider that such an entitlement should be managed, monitored and assessed?	
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2.3 Satellite cellar doors		
2.3.1 'Stand alone' satellite cellar doors		
2.3.2 Food service/tourism promotional component		
2.3.3 Sale of 'licensee wine' only at satellite cellar door outlets		
3A	Should the satellite cellar door provisions in the Act remain unchanged?	Yes No
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3B	Should the Act be amended to require satellite cellar doors to be situated in 'stand alone' venues?	Yes No
<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>		

Questions (tick preferred option)		
3C	Should satellite cellar doors demonstrate that the sale of wine at the proposed outlet has a food service and/or tourism promotional component?	Yes No
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3D	Should sales from satellite cellar door outlets be confined to licensee's wine only?	Yes No
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3E	Should sales from satellite cellar door outlets be confined to Queensland wines only?	Yes No
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2.3.4 Permissible number of satellite cellar doors		
3F	Should the Act remain unchanged with no limit to the number of satellite cellar doors that a wine producer may operate?	Yes No
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Questions (tick preferred option)		
3G	Do you consider that a limit should be introduced. For example – a maximum of three in line with hotel licensees?	Yes No
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2.3.5 Definition		
3H	Do you consider that the Act should specifically define 'satellite cellar door'?	Yes No
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2.4 Cellar door restaurants		
2.4.1 Sale of beer		
4A	Do you consider that venues operating cellar door restaurants should be able to obtain a 'limited licence' under the Liquor Act to allow the sale of beer to diners and guests attending the cellar door restaurant?	Yes No
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2.5 Fruit wine		
2.5.1 Sugarcane wine		
5A	Should the definition of 'wine' be extended to include other products such as sugarcane?	Yes No
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Questions (tick preferred option)		
2.6 Penalties		
2.6.1 Licence and permit compliance		
6A	Should the maximum penalty for a breach of conditions of a licence or permit remain unchanged?	Yes No
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6B	Should the maximum fine for breach of a licence condition be reduced from 350 penalty units (maximum fine \$26,250) to 40 penalty units (maximum fine \$3,000), in line with the <i>Liquor Act 1992</i> ?	Yes No
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2.7 Definitions		
2.7.1 Winemaking		
7A	Do you consider the insertion of an industry definition of the processes involved in winemaking from 'fresh fruit' or 'must' (including fermentation) to the production of finished wine should be provided in the Act?	Yes No
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2.7.2 Sample		
7B	Do you consider it would be beneficial to include a definition of what the term 'as a sample for consumption' can involve in relation to wines being sold or given away as a sample by licensees.	Yes No
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