

# EXPLANATORY MEMORANDUM

## *Liquor Legislation Amendment Bill 2015*

### OVERVIEW

The *Liquor Legislation Amendment Bill 2015* (the Bill) amends the *Liquor Control Act 1988* and makes a consequential amendment to the *Young Offenders Act 1994*.

The Bill:

- Provides an offence for a person to supply liquor to a juvenile without the consent of a juvenile's parent or guardian.
- Enables police officers to issue Alcohol Intervention Requirements to juveniles as an alternative to infringement notices for minor liquor related offences.
- Facilitates the Director of Liquor Licensing accepting applications without planning approval at the time of an application being lodged.
- Removes a technical anomaly to enable people to traverse unlicensed areas when moving between two licensed areas.
- Extends trading hours for hotel and nightclub licences on Sundays.
- Provides a number of amendments relating to the operations of producers.
- Addresses a range of minor and technical amendments.

The Bill is separated into three parts:

**Part 1** provides that the commencement of the Bill will come into operation the day after it receives Royal Assent and that the remaining parts will come into operation on a day fixed by proclamation in which different days may be fixed for different provisions.

**Part 2** amends the *Liquor Control Act 1988*, to implement those recommendations of the review committee's report of the *Liquor Control Act 1988* considered by the Government to be attracting considerable community interest. The Bill:

- facilitates the Director accepting applications without planning approval being provided at the time the application is lodged;
- allows beer producers to sell their product for consumption on the premises between 10:00am and 10:00pm with the exception of Good Friday, Christmas Day and ANZAC Day;
- allows producers to:
  - a) sell wine and beer produced under the producer's licence at another premises, including establishing a collective cellar door operation between two or more wine or beer producers, in the wine region or local government district (for beer producers) where their respective production facilities exist;
  - b) sell or supply liquor other than their own product ancillary to a meal or for comparative tastings; and
  - c) to accept orders at a place other than the licensed premises (for example an office) if the sale is made online or by telephone. The despatch of such an order must be made from the licensed premises;
- reduces from 9 litres to 4 litres the volume of packaged liquor a wholesaler can sell via a retail sale to a person for consumption off the licensed premises;
- formally recognises the Commissioner of Police, relevant local government authority, Executive Director Public Health and any other person/body as persons the licensing authority may consult with when determining to impose, vary or cancel a condition of a licence;

- allows for the Executive Director, Public Health to authorise a person to intervene on his or her behalf in proceedings before the licensing authority, provided the authorised person is a medical practitioner and is employed or engaged by the Department assisting the Minister in the administration of the *Health Act 1911*;
- provides that the Commissioner of Police is to lodge a notice of intervention no later than the last day on which objections should be lodged;
- extends the trading hours on Sundays for hotel and nightclub licences by two hours;
- specifies that training registers and incident registers are to be kept for four years and that authorised officers can take copies of records contained in those registers;
- removes the offence for a person to carry liquor between two licensed premises; that is, traversing an unlicensed area such as a footpath, where the licences are held by the same licensee;
- provides offence provisions for a person to supply liquor to a juvenile without the consent of the juvenile's parent or guardian;
- remove passports as a class of document that can be confiscated by an authorised officer if it is suspected of being forged, false or counterfeit;
- expands the offence provisions relating to restricted premises so that it will also be an offence to attempt to bring liquor onto a restricted premises;
- removes the offence for a prescribed person or class of persons regarding the non-display (or continued non-display) of a liquor restriction declaration notice;
- provides for the police to seize and dispose of opened or unopened containers of liquor from juveniles contravening the Act;
- makes a technical amendment to enable the police to arrest a person without the need to caution the person that they may be arrested; and
- introduces provisions to enable a police officer to issue to a juvenile an Alcohol Intervention Requirement (AIR) instead of issuing an infringement notice for minor liquor offences.

**Part 3** makes a consequential amendment to the *Young Offenders Act 1994*, to accommodate the introduction of the Alcohol Intervention Requirements.

# LIQUOR LEGISLATION AMENDMENT BILL 2015

## CLAUSE NOTES

### Glossary of Abbreviations

|          |  |
|----------|--|
| Act      | Liquor Control Act 1988                |
| Bill     | Liquor Legislation Amendment Bill 2015 |
| Director | Director of Liquor Licensing           |

| Part 1 – Preliminary Matters             |  |
|--|--|
| <b>Clause 1</b>                          | Cites the <i>Liquor Legislation Amendment Act 2015</i> as the short title of the Act.  |
| <b>Clause 2</b>                          | Specifies that: <ul style="list-style-type: none"> <li>(i) Part 1 will come into operation on the day that the <i>Liquor Legislation Amendment Bill 2015</i> receives Royal Assent; and</li> <li>(ii) the remaining parts of the Act will come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.</li> </ul>   |
| Part 2 – Liquor Control Act 1988 Amended |  |
| <b>Clause 3</b>                          | Specifies that amendments in this Part amend the <i>Liquor Control Act 1988</i> .  |
| <b>Clause 4</b>                          | Inserts into section 3(1) of the Act definitions for: <ul style="list-style-type: none"> <li>- <b>cellar door permit</b> as a consequence of establishing a new category of an extended trading permit as specified in clause 9; and</li> <li>- <b>Executive Director, Public Health</b> as a consequence of amendments to sections 64 and 69.</li> </ul>  |
| <b>Clause 5</b>                          | <u>Subclause (1)</u> makes a consequential amendment to section 40(1) to support new sub-section 40(2A).<br><br><u>Subclause (2)</u> inserts new subsection 40(2A) to facilitate the Director accepting applications without planning approval being provided at the time the application is lodged. It also specifies that the Director cannot determine an application until planning approval has been provided by the applicant to the licensing authority, unless the licensing authority otherwise determines.   |
| <b>Clause 6</b>                          | <u>Subclause (1)</u> inserts new subsections: <ul style="list-style-type: none"> <li>(i) 55(1)(a)(iv) to enable beer producers to sell their product for consumption on the licensed premises; and</li> <li>(ii) 55(1)(c) to enable a producer to sell or supply liquor other than their own product provided it is ancillary to a meal or for comparative tastings.</li> </ul> <u>Subclause (2)</u> inserts new subsection 55(2A) authorising producers to accept orders for liquor produced by the licensee at a place other than the licensed premises (for example an office) if the sale is made online or by telephone. The despatch of such an order must be made from the licensed premises of the producer. |
| <b>Clause 7</b>                          | Amends section 58 to reduce from 9 litres to 4 litres, the amount of packaged liquor a wholesaler can sell via a retail sale to a person to consume off the licensed premises.   |
| <b>Clause 8</b>                          | <u>Subclause (1)</u> makes technical amendments to section 60 to facilitate the introduction of cellar door permits for producers as specified in clause 9.<br><br><u>Subclause (2)</u> amends section 60 by inserting a new subsection 60(4)(ia) that enables the licensing authority to issue an extended trading permit to a licensee of a producer’s licence to establish a cellar door operation as proposed in clause 9.   |
| <b>Clause 9</b>                          | This clause inserts a new section 61A to enable, through an extended trading permit, a wine producer within a wine region or a beer producer in a local government district, where their respective production facilities exist, to sell wine or beer produced under the producer’s licence at another premises including establishing a collective cellar door operation between two or more wine or beer producers.  |

|                  |  |
|------------------|--|
|                  | <p>Proposed subsection 61A(1) sets out the definition of terms used in section 61A.</p> <p>Proposed subsection 61A(2) stipulates the criteria for the licensing authority to consider when assessing an application for an extended trading permit to conduct a cellar door operation away from the licensed premises.</p> <p>Proposed subsections 61A(3) and (4) specify that a producer can only hold one cellar door permit per region/district in which their production facilities exist.</p> <p>Proposed subsection 61A(5) specifies that a cellar door permit may be issued to two or more producers provided there is a management agreement in place between the producers regarding the management of the premises.</p> <p>Proposed subsection 61A(6) provides for regulations to prescribe conditions applicable to a cellar door permit, unless otherwise specified on the licence.</p>  |
| <b>Clause 10</b> | <p><u>Subclause (1)</u> inserts a new subsection 64(1C) to assist the licensing authority in its determination to impose, vary or cancel a condition of a licence, by specifying that it may consult with the Commissioner of Police, relevant local government authority, Executive Director Public Health and any other person/body that may provide information relevant to the decision.</p> <p><u>Subclause (2)</u> makes a technical amendment to remove superfluous wording.</p>  |
| <b>Clause 11</b> | <p><u>Subclause (1)</u> makes a technical amendment to subsection 69(8a) to reflect the full title of the <i>Executive Director, Public Health</i>.</p> <p><u>Subclause (2)</u> deletes the definition of <i>Executive Director</i> in subsection 69(8b) as a consequence of a new definition provided in section 3(1) as proposed in clause 4.</p> <p><u>Subsection (3)</u> inserts a new subsection 69(3A) to allow the Executive Director, Public Health to authorise in writing a person to intervene, on his or her behalf, in proceedings before the licensing authority. Authorisation by the Executive Director Public Health is limited to a person who is:</p> <ol style="list-style-type: none"> <li>a) a medical practitioner registered under the <i>Health Practitioner Regulation National Law (WA) Act 2010</i>; and</li> <li>b) employed or engaged in the Department assisting the Minister in the administration of the <i>Health Act 1911</i>.</li> </ol> <p><u>Subsection (4)</u> amends subsection 69(12) in a manner that requires the Commissioner of Police to lodge a notice of intervention no later than the last day on which objections should be lodged, unless with the leave of the Director.</p> |
| <b>Clause 12</b> | <p><u>Subclause (1)</u> amends section 98 to extend the trading hours on Sundays for hotel licences by two additional hours.</p> <p><u>Subclause (2)</u> makes a consequential amendment to delete section 98(1)(c) which is redundant.</p>  |
| <b>Clause 13</b> | <p><u>Subclause (1)</u> makes an amendment to section 98A(1)(a) as a consequence of subclause (2).</p> <p><u>Subclause (2)</u> makes a consequential amendment to delete section 98A(1)(b) which is redundant.</p> <p><u>Subclause (3)</u> amends section 98A(1)(b) to extend the trading hours on Sundays for nightclub licences by two additional hours.</p> <p><u>Subclause (4)</u> makes a consequential amendment to section 98A(2)(a) to treat Christmas eve that falls on a Sunday consistent with the permitted hours of trading for any other Sunday.</p>   |

|                  |   |
|------------------|---|
| <b>Clause 14</b> | <p><u>Subclause (1)</u> makes minor technical amendments to section 98G to support the changes made by clause 6 in relation to beer producers selling their product for consumption on the licensed premises.</p> <p><u>Subclause (2)</u> inserts a new subsection 98G(2) to specify that beer producers can only sell their product for consumption on the licensed premises between 10:00am and 10:00pm on any day other than Good Friday, Christmas Day or Anzac Day.</p>  |
| <b>Clause 15</b> | <p>This clause inserts a new section 103AA relating to the maintenance of a register for recording details of training in the responsible service of liquor training as required under section 103A.</p> <p>Proposed subsection 103AA(1) stipulates that a licensee is to maintain a register recording details prescribed under section 103A(1)(b) in relation to the training course and persons employed in the sale or supply of liquor.</p> <p>Proposed subsection 103AA(2) stipulates that records contained in a register must be maintained for a period of 4 years or for the period that the person is employed/engaged by the licensee.</p> <p>Proposed subsection 103AA(3) specifies that the licensee can maintain the register electronically or in a manner the licensee considers appropriate.</p> <p>Proposed subsection 103AA(4) provides the powers necessary for an authorised officer to inspect and copy records from the register.</p> |
| <b>Clause 16</b> | <p>Makes a consequential amendment to subsection 103A(1)(b) as result of inserting new section 103AA as proposed in clause 15.</p>  |
| <b>Clause 17</b> | <p>Amends section 110 by inserting new subclause 110(4AA) to stipulate that it is not an offence for a person to carry liquor between two licensed premises; that is, traversing an unlicensed area such as a footpath or public thoroughfare, where the licences are held by the same licensee.</p>  |
| <b>Clause 18</b> | <p><u>Subclause (1)</u> deletes subclause 116(1) and inserts a redrafted 116(1), to clarify the required documentation a licensee must maintain on the licensed premises.</p> <p><u>Subclause (2)</u> inserts new subsection 116(2A) to require the licensee of a cellar door extended trading permit to maintain, on the premises approved for the purposes of a cellar door operation, the plans defining the approved area.</p> <p><u>Subclause (3)</u> makes a consequential amendment to subsection 116(5) relating to the display of a notice for a cellar door permit.</p> <p><u>Subclause (4)</u> inserts new subsection 116(5) to enable other matters to be prescribed in relation to documents that may be required to be displayed or produced in relation to a cellar door permit issued under subsection 60(4)(ia).</p>   |
| <b>Clause 19</b> | <p><u>Subclause (1)</u> inserts new subclauses 116A(3A) and (3B) to stipulate that the licensee must maintain records contained in an incident register for a period of 4 years and that the licensee can maintain the register electronically or in a manner the licensee considers appropriate.</p> <p><u>Subclause (2)</u> deletes subclause 116A(3) and inserts a redrafted 116A(3) to specify that an authorised officer may inspect and copy records from the incident register, consistent with proposed subsection 103AA(3) under clause 15.</p>  |
| <b>Clause 20</b> | <p>This clause inserts new section 122A to create offences for the supply of liquor to juveniles on unlicensed premises without the consent of a parent or guardian.</p> <p>Proposed subsection 122A(1) specifies that the definition of drunk under subsections 3A(1)(b) and (c) applies for the purposes of section 122A.</p> <p>Proposed section 122A(2) stipulates that it is an offence for a person to supply liquor to a juvenile on unlicensed premises without the consent of a parent or guardian. The penalty is \$10,000.</p>   |

|                  |   |
|------------------|---|
|                  | <p>Proposed subsection 122A(3) stipulates that where a person has obtained consent from a parent or guardian to supply liquor to a juvenile on unlicensed premises, it is an offence to supply liquor to the juvenile:</p> <ul style="list-style-type: none"> <li>a) if at the time of providing consent, the parent or guardian is drunk; or</li> <li>b) if the person is drunk; or</li> <li>c) if the juvenile is drunk; or</li> <li>d) if the person is unable to supervise the consumption of the liquor by the juvenile; or</li> <li>e) in circumstances prescribed in the regulations.</li> </ul> <p>The penalty is \$10,000.</p>   |
| <b>Clause 21</b> | Amends subsection 126(2a) to remove passports as a class of document that can be confiscated by an authorised officer if suspected of being forged, false or counterfeit. The confiscation of passports is provided for under the Commonwealth's <i>Australian Passports Act 2005</i> and the <i>Foreign Passports (Law and Enforcement and Security) Act 2005</i> .  |
| <b>Clause 22</b> | Amends subsection 152O(1) to include an offence for attempting to bring liquor onto a liquor restricted premises and attempting to cause liquor to be brought onto a liquor restricted premises.  |
| <b>Clause 23</b> | Amends section 152S by inserting new subsection 152S(3A) to specify that offence provisions under subsections (1) and (2) regarding the display (or continued display) of a liquor restriction declaration notice do not apply to a prescribed person or class of person.   |
| <b>Clause 24</b> | <p><u>Subclause (1)</u> inserts new subsection 155(9A) to provide the police with the necessary powers to seize from juveniles, when in contravention of the Act, any opened or unopened container of liquor.</p> <p><u>Subclause (2)</u> makes a consequential amendment to subsection 155(9) to enable the police to dispose of any liquor seized under proposed subsection 155(9A).</p>  |
| <b>Clause 25</b> | <p><u>Subclause (1)</u> makes a minor technical amendment to subsection 160(1) by replacing the word "<i>demand</i>" with "<i>require</i>" for consistency in terminology with subsection 160(3).</p> <p><u>Subclause (2)</u> makes a technical amendment to subsection 160(3) to enable police to arrest a person without the need to caution the person that they may be arrested.</p>  |
| <b>Clause 26</b> | <p>This clause inserts new Part 7A to introduce provisions enabling a police officer to issue an Alcohol Intervention Requirement (AIR) to a juvenile instead of issuing an infringement notice for minor liquor offences.</p> <p>Division 1 sets out the preliminary provisions relating to Part 7A.</p> <p>Proposed section 172B sets out the definition of terms used in Part 7A.</p> <p>Proposed section 172C stipulates that nothing prevents a young person from being dealt with under the <i>Young Offenders Act 1994</i> in regard to minor liquor offences.</p> <p>Proposed section 172D stipulates that the Commissioner of Police may appoint persons or a class of persons to be an AI authorised person for the purposes of the withdrawal of an AIR under proposed section 172I or extending the period of time under proposed section 172L a person may have to complete an alcohol intervention session.</p> <p>Division 2 sets out the provisions relating to alcohol intervention requirements.</p> <p>Proposed subsection 172E(1) stipulates that unless an offender has previously been convicted of, or given an AIR in respect of 2 or more minor liquor offences, that a police officer may give an AIR to an alleged offender.</p> |

Proposed subsection 172(2) specifies that where a police officer suspects that an alleged offender has committed more than one minor liquor related offence arising from the one incident, they may issue a single AIR for some or all of the offences.

Proposed subsection 172E(3) stipulates that an AIR must be given as soon as practical or within 60 days of the offence being committed.

Proposed subsection 172F(1) specifies that an AIR is to be a notice in a form prescribed by regulations containing the description of the offence; and informing the offender that they can elect to be prosecuted or complete an alcohol intervention session (AIS) within 28 days including how they can arrange to complete an AIS.

Proposed subsection 172F(2) provides that an offender only needs to complete a single AIS irrespective of the number of offences the AIR relates to.

Proposed subsection 172G(1) stipulates the circumstances when an AIR cannot be issued by a police officer to an alleged offender. This includes if the offender has been convicted of, or issued with an AIR in respect of 2 or more minor liquor related offences before the new offence was committed, and that two or more of the offences arose out of separate incidents.

Proposed subsection 172G(2) stipulates that the police officer is to ensure that a copy of the AIR issued to an offender is also provided to a responsible adult as soon as practicable unless the address of a reasonable adult cannot be ascertained or it would be inappropriate to provide a copy, for example where the responsible adult is intoxicated or affected by another substance and therefore the AIR could not be explained.

Proposed subsection 172G(3) stipulates that only a single AIS is required to be completed if an offender is issued with 2 AIRs before the completion of the AIS.

Proposed subsection 172H(1) provides a definition for the term of ***young person at risk*** for use in section 172H.

Proposed subsection 172H(2) provides for a police officer to refer a young person at risk to a juvenile justice team in preference to charging the person under the Act.

Proposed subsections 172I(1) and (2) allow for an AI authorised person to withdraw an AIR by sending the alleged offender a notice. However, an AIR cannot be withdrawn if the offender has completed an AIS in relation to the AIR.

Proposed subsection 172I(3) stipulates that a withdrawn AIR is considered not to have been issued for the purposes of section 172G(1).

Division 3 sets out the provisions relating to alcohol intervention sessions.

Proposed subsection 172J(1) specifies that an AIS is to inform offenders about:

- a) the adverse health and social consequences of alcohol use;
- b) the laws relating to the possession of alcohol; and
- c) effective strategies to address alcohol using behaviour.

Proposed subsection 172J(2) specifies that the Chief Executive Officer of the Health Department may approve, cancel or amend the content of an AIS; approve, cancel or amend AIS treatment providers and condition such approvals.

Proposed subsection 172J(3) specifies that for the purposes of section 172J that the delegation powers under section 9 of the *Health Legislation Administration Act 1984* apply.

|  |  |
|--|--|
|  | <p>Proposed subsection 172K(1) specifies that once an offender has completed an AIS in relation to a minor liquor offence that the person cannot be charged for the same offence, no different as if the person had been convicted in a court for the alleged offence.</p> <p>Proposed subsection 172K(2) stipulates that the completion of an AIS is not to be regarded as an admission in relation to civil or criminal proceedings.</p> <p>Proposed subsections 172L(1) and (2) provide for an AI authorised person to extend the period of 28 days that an offender must complete an AIS irrespective of whether the initial 28 days has elapsed.</p> <p>Proposed subsections 172M(1) and (2) provides for an AIS treatment provider to give a person who has completed an AIS a certificate of completion setting out the name and address of the person, the date of completion, and details of the AIR relevant to the AIS.</p> |
| <b>Part 3 – Young Offenders Act 1994 Amended</b> |  |
| <b>Clause 27</b>                                 | Specifies that amendments in this Part amend the <i>Young Offenders Act 1994</i> .   |
| <b>Clause 28</b>                                 | Makes a consequential amendment to the definition of <b><i>infringement notice</i></b> under subsection 25(3) to also include an alcohol intervention requirement issued by a police officer to a juvenile under Part 7A of the <i>Liquor Control Act 1988</i> .   |