

## Liquor licensing update

### Changes to Producer's Licences

November, 09

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Wine producers in South Australia will soon be able to take advantage of expanded trading rights for the Producer's Licence category of liquor licence.

This Alert discusses the changes to Producer's Licences that will occur when amendments to the *Liquor Licensing Act 1997*, currently being considered by Parliament, take effect.

The *Liquor Licensing (Producers, Responsible Service and Other Matters) Amendment Bill 2009* was introduced to State Parliament on 9 September 2009. The Bill has passed the Legislative Council, and is shortly to be debated in the House of Assembly. The changes, if passed, are likely to be effective from some time early in the coming year.

The rights to sell liquor provided by a Producer's Licence will be expanded in a number of significant ways.

#### **Broader rights of sale in "dining areas"**

Currently, a Producer's Licence can include a designated "dining area". In that area, the licensee's "own product" liquor can be supplied for consumption "on premises", as long as it is with (or "ancillary to") a meal.

For many "cellar door" businesses, this "dining area" authority has been of limited use. In most cases, for a café or restaurant-style addition to a business to be viable, the operator must be able to offer a full range of liquor with meals (including spirits and beer, for example), and not be limited solely to the licensee's "own product".

Until now, licensees wanting to offer dining with a full range of liquor as part of their "cellar door", have needed a Restaurant Licence in addition to the Producer's Licence (or, in some cases, have chosen to go through the often convoluted process of seeking a Special Circumstances Licence).

The proposed amendments include a significant change - the "dining area" rights for a Producer's Licence will be broadened to allow *any* liquor to be sold in the dining area, with a meal.

This Alert provides general information only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

## **Liquor licensing update**

### **Changes to Producer's Licences**

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---

Businesses currently operating a Restaurant Licence and a Producer's Licence "side by side", will now be able to consolidate both activities under the Producer's Licence (and reduce administrative burdens and operational restrictions).

It will now be easier for licensees to add a café or restaurant component to their existing "cellar door" operation, without having to obtain an additional liquor licence.

#### **Multiple outlets for the same licence**

The changes to the Act will allow one Producer's Licence to apply to two locations, if one of those locations is the licensee's "production premises" (that is, premises occupied and used by the licensee for the production of liquor).

This will provide an opportunity for a traditional "cellar door" at the licensee's winery, together with a separate "retail" outlet at another location (subject to approval of the licensing authority), all under the single Producer's Licence.

#### **"Collective" cellar doors**

The changes introduce new provisions which allow groups of licensees to share the same premises for their respective Producer's Licences.

This will be a significant exception to the standard position under the Act, which is that two licences may not occupy the same physical space.

This change will be of particular interest to small producers, where the scale of their business or the product range is too small to sustain a stand-alone "cellar door" outlet. The cost of operating a "collective" outlet can be shared, and each licensee can still retain ownership and control of their own production processes and wine product.

The "collective cellar door" provisions will also help address a difficulty encountered by a number of wine businesses, where different wines within the range (or different vintages of particular lines) have been produced by different entities or individuals within the business.

## **Liquor licensing update**

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---

There can be difficulties in selling these different lines from the one outlet and under the one licence, if the various products do not all qualify as the "own product" of a single licensee entity (for example, if the various producing entities are not all "related bodies corporate", notwithstanding that they might have a commercial relationship or have common personnel).

A practical solution in such cases will be for each of the different producing entities to hold their own Producer's Licence, and for all of these licences to apply to the same "cellar door" premises.

Licensees should be aware, of course, that if they are part of a collective outlet, they will each be liable for compliance with licence conditions, and for any breaches of the Act which occur at the collective premises, whichever individual or entity may have in fact caused or allowed the breach.

There are a number of other risk and compliance issues which parties should consider and address, before entering any arrangement in which they share premises and, effectively, a business operation. As always, parties should seek professional assistance to address the various issues "up front", and ensure that the relationship between the licensees sharing the collective outlet is appropriately structured and recorded from the outset.

#### **Producer's Licence can allow certain "off site" sales**

Licensees who have their own "production premises" will be able to seek an addition to their Producer's Licence, allowing sales at an additional site.

This might include, for example, an authority to sell at a regional farmers' market. Obtaining such an endorsement will be of benefit to licensees who regularly participate in such "off site" events, and who otherwise would need to apply for a "Limited Licence" on each occasion.

#### **Offering samples of other products**

The changes will allow licensees to offer samples of liquor which is not their "own product", for the purposes of comparative tastings.

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### **Changes to Producer's Licences**

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---

While various Ministers' speeches in Parliament and press-releases hail this as an expansion of the existing right to offer samples, in our view the current law already allows such samples to be provided under a Producer's Licence.

In any event, the proposed amendments will eliminate any doubt on the issue.

#### **Flexibility in "own product" in hardship cases**

The amendments will allow "special circumstances" applications to be made by licensees for approval to sell wine which does not comply with the usual "own product" requirements.

This approval will be available only under limited conditions and where the licensee can show that circumstances beyond their control warrant it – for example, where there may be hardship due to the loss of a crop, or damage or destruction due to mishap in the winemaking process.

#### **Some Special Circumstances Licences will need to be converted**

Some wineries and "cellar doors" operate under Special Circumstances Licences, which include conditions allowing the licensee to sell its "own product".

Holders of these Special Circumstances Licence licences will have two years to either convert those licences to Producer's Licences, or convince the licensing authority that a Producer's Licence would not be adequate, and that the licence should remain as a Special Circumstances Licence.

#### **What next?**

The amending legislation is likely to be passed in the coming weeks. A "commencement date" for the changes will then be known.

## **Liquor licensing update**

### **Changes to Producer's Licences**

November, 09

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Those businesses currently operating pursuant to a Producer's Licence (or involved in the production of liquor, and considering licensing options) should take this opportunity to review their structures and licensing needs, in order to identify how best to take advantage of the imminent changes, and be ready to make any necessary applications as soon as the amendments come into effect.

#### **Contacts:**

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