



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Determination

Application for revocation of A91385 & A91386 and the substitution of  
authorisation AA1000456

lodged by

the State of Queensland acting through the Office of Liquor and  
Gaming Regulation

in respect of provisions contained in Section 1 of a pro-forma liquor  
accord arrangement

Authorisation number: AA1000456

Date: 8 April 2020

Commissioners:

Keogh

Rickard

Court

Ridgeway

## Summary

The ACCC has decided to grant conditional re-authorisation to enable liquor accord members and Safe Night Precinct local board members in Queensland to make liquor accord agreements containing highlighted supply or price control provisions or other provisions that are set out in Section 1 of the pro-forma liquor accord arrangement.

This conduct has been previously authorised, on the same or similar terms, since 2010 and was most recently re-authorised for five years in 2014.

The conditions are substantially the same as in the previous authorisation and are designed to ensure transparent and independent oversight of decisions to implement the price and supply control provisions highlighted in the pro-forma liquor accord arrangement.

The ACCC has decided to grant conditional re-authorisation for five years, until 30 April 2025.

### 1. The application for authorisation revocation and substitution

- 1.1. On 5 November 2019, the State of Queensland acting through the Office of Liquor and Gaming Regulation (**OLGR**) lodged an application with the Australian Competition and Consumer Commission (**ACCC**) to revoke authorisations A91385 and A91386 and substitute authorisation AA1000456 for those revoked (referred to as **re-authorisation**).
- 1.2. The OLGR sought re-authorisation for five years to enable existing and future members of a liquor accord, and Safe Night Precinct (**SNP**) local board members,<sup>1</sup> to make and give effect to liquor accords containing highlighted supply or price control provisions or other provisions set out in Section 1 of the pro-forma liquor accord arrangement (**PLAA**) developed by the OLGR. This application for re-authorisation AA1000456 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. Liquor accords are agreements signed by interested parties in a particular geographical area that contain strategies to reduce the harms caused by the abuse of alcohol. The potential parties to a liquor accord include licensed premises in an area who sell alcohol for consumption on site, as well as other significant community stakeholders who are affected by the abuse of alcohol in that area (such as the police, the local council, government departments or other community organisations).
- 1.4. The ACCC can grant authorisation to provide businesses with legal protection for arrangements that may otherwise risk breaching the Act but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.5. The OLGR also requested interim authorisation be granted to enable the previous arrangements to continue while the ACCC considered the substantive application for re-authorisation.<sup>2</sup> On 18 December 2019, the ACCC granted interim authorisation under subsection 91(2) of the Act, which suspended the operation of the expiring

<sup>1</sup> As defined in section 173NC of the *Liquor Act 1992* (Qld) and prescribed under the *Liquor Regulation 2002* (Qld).

<sup>2</sup> See ACCC decision of 18 December 2019 available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/office-of-liquor-and-gaming-regulation>.

authorisations and granted interim authorisation in substitution. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until interim authorisation is revoked.

## The Applicant

- 1.6. The Applicant is the State of Queensland acting through the Office of Liquor and Gaming Regulation, which forms a part of the Department of Justice and Attorney-General in Queensland.
- 1.7. The OLGR applied for authorisation on behalf of liquor accord members in Queensland. The OLGR does not itself enter into liquor accord arrangements, but advises participants on developing and managing liquor accords. OLGR Liquor Compliance Officers regularly attend local liquor accord meetings, and any liquor accord seeking the protection of authorisation must be registered with the OLGR.

## The Conduct

- 1.8. The OLGR sought re-authorisation to enable existing and future members of a liquor accord and SNP local board members (collectively, **liquor accord members**) to:
  - make a liquor accord agreement containing a price or supply control provision, where that price or supply control provision is in the express terms set out in the PLAA, or is in narrower terms
  - give effect to a provision of a liquor accord agreement that is a price or supply control provision, where that price or supply control provision is in the express terms set out in the PLAA or is in narrower terms, but only if the liquor agreement is registered with the OLGR in accordance with the conditions of this authorisation, and
  - give effect to a provision of a liquor accord agreement (other than a price or supply control provision) that is in the express terms set out in Section 1 (Responsible Service of Alcohol) of the PLAA, or is in narrower terms

(the **Conduct**).

- 1.9. The OLGR submits that it has not identified a need to amend the content of the previous authorisations beyond extending protection to newly established SNP local board members. In 2014, 15 SNPs were established in Queensland under the *Liquor Act 1992 (Qld)* (**Liquor Act**) and *Liquor Regulation 2002 (Qld)*. The legislation provides for SNPs to each have a local board in place (with 13 of the 15 SNPs having done so), which, in relation to liquor accords, plays a largely similar role to a traditional liquor accord body. The OLGR submits that in the majority of cases where an SNP has been designated within a liquor accord area, the liquor accord members have chosen to dissolve the liquor accord.

## 2. Background

### Legislative framework

- 2.1. Any agreement between liquor accord members to adopt the provisions contained in Section 1 of the PLAA, particularly the highlighted price and supply controls, could risk contravening the Act. This is because in Queensland, unlike in other states and territories, liquor accord agreements are not exempt from the competition provisions of the Act. Most other state and territory governments have enacted legislation exempting

liquor accord agreements from the competition provisions of the Act.<sup>3</sup> Currently, the *Liquor Act 2007* (NSW),<sup>4</sup> *Liquor Act 2019* (NT),<sup>5</sup> *Liquor Control Reform Act 1998* (Vic),<sup>6</sup> *Liquor Control Act 1988* (WA)<sup>7</sup> and *Liquor Licensing Act 1997* (SA)<sup>8</sup> provide explicit exemptions from the Act for conduct relating to liquor accords developed in those jurisdictions.

- 2.2. The OLGR submits that authorisation of the PLAA supports the purpose of the Liquor Act, which includes minimising harm caused by alcohol abuse and misuse. While the Liquor Act does not provide guidance regarding the expected contents of liquor accord agreements, the Liquor Act acknowledges that liquor accords may be entered into for the purposes of:
- promoting responsible practices in relation to the sale and supply of liquor at licensed premises situated in the locality, and
  - minimising harm caused by alcohol abuse and misuse and associated violence in the locality, and
  - minimising alcohol-related disturbances, or public disorder, in the locality.<sup>9</sup>
- 2.3. While the Queensland legal framework imposes requirements and prohibitions on individual premises in their own right, unlike a liquor accord, these do not encourage collective or coordinated conduct, which is important for the overall success of liquor accords. A majority of the approximately 20 strategies in Section 1 of the PLAA, including some of the supply control provisions, appear to replicate, to some extent, requirements in the Liquor Act and Liquor Regulation. None of the price control provisions appear to directly replicate any applicable laws.

## The PLAA

- 2.4. The PLAA is a template document developed by the OLGR. While liquor accord members in Queensland are encouraged to adopt it in full or in part, participation in any such accord is voluntary.
- 2.5. Although the PLAA consists of three sections, the OLGR only sought re-authorisation for liquor accord members to adopt Section 1 (Responsible Service of Alcohol), which is detailed further below. Section 2 contains provisions to improve safety and security, and Section 3 contains 'good neighbour' commitments. Authorisation was not sought for liquor accord members to adopt these sections of the PLAA as only Section 1 is likely to raise concerns under the Act.
- 2.6. Section 1 of the PLAA contains provisions dealing with:
- unduly intoxicated patrons
  - underage drinking
  - activities that encourage excessive drinking

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<sup>3</sup> Commonwealth, state and territory legislation may authorise conduct that would normally contravene the Act. Subsection 51(1) of the Act provides an exception from Part IV of the Act where the conduct is specifically authorised by those other Acts.

<sup>4</sup> *Liquor Act 2007* (NSW) subsection 134(2).

<sup>5</sup> *Liquor Act 2019* (NT) subsection 134(2).

<sup>6</sup> *Liquor Control Reform Act 1998* (Vic) section 146C.

<sup>7</sup> *Liquor Control Act 1988* (WA) subsection 174B(2).

<sup>8</sup> *Liquor Licensing Act 1997* (SA) section 128G.

<sup>9</sup> *Liquor Act 1992* (Qld) section 224.

- beverages that may encourage rapid or excessive alcohol consumption, and
  - the promotion of non-alcohol or low-alcohol beverages and of food.
- 2.7. The specific provisions of Section 1 of the PLAA that have the greatest potential to raise competition concerns under the Act are highlighted in the text of the PLAA and are as follows:
1. price controls such as:
    - banning practices and promotions that may encourage rapid or excessive consumption of liquor, for example:
      - 'drink cards' that provide multiple free drinks
      - extreme discounts or discounts of limited duration
      - any other promotions or gimmicks that encourage rapid intoxication
    - ensuring smaller serves of drinks (e.g. half nips) are available at differential (lower) prices
    - offering and promoting low-alcohol beer at differential (lower) prices compared to full strength
    - offering and promoting a range of non-alcoholic drinks at differential (lower) prices, and
  2. supply controls such as:
    - avoiding labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state
    - avoiding offering drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication (such as offering drinks in novelty containers or conducting drinking games), and
    - not advertising or allowing promotions of very high alcoholic substances such as overproof rum and high-alcohol carbonated drinks.

## Liquor accords in Queensland

- 2.8. There are currently 70 active liquor accords in Queensland, which aim to address alcohol-related issues by implementing harm minimisation initiatives in local areas. These liquor accords involve liquor licensees voluntarily collaborating with police, local businesses, community groups, government agencies and other interested stakeholders to develop appropriate policies and measures for their area.
- 2.9. The OLGR submits that none of these accords currently adopt the highlighted price or supply control provisions in the PLAA, which would, absent authorisation, raise particular concerns under the Act. It is unknown how many of these liquor accords only adopt those provisions in Section 1 which are not price controls or supply controls, because liquor accords such as those do not need to be registered with the OLGR.
- 2.10. Under the 2010 authorisations, two liquor accord bodies (the Townsville Liquor Accord and Whitsunday Liquor Accord) advised the OLGR that they were seeking to utilise the PLAA to trial setting minimum drink prices on certain products. Both liquor accord bodies ceased these trials and did not continue with implementing price or supply controls. The OLGR has advised that it did not receive any requests to register and operate liquor accords under the 2014 authorisations.

- 2.11. In light of the above, the OLGR sought re-authorisation to ensure that any liquor accord bodies or SNP local boards who may seek to implement provisions in Section 1, particularly the highlighted price or supply control provisions, in their agreements, have the option to do so in the future.

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including relevant industry associations and peak bodies, state and federal government and relevant regulatory bodies, suppliers and current liquor accords and SNPs.<sup>10</sup> Public submissions by the OLGR and interested parties are on the [Public Register](#) for this matter.
- 3.3. Prior to the draft determination, the ACCC received three submissions from interested parties in relation to the application. Safe Night Broadbeach CBD Precinct Inc. did not oppose the application; the Mount Isa Liquor Accord was supportive of accords with late night zones having every available tool at their disposal to combat the issues they suffer; and Safe Night Surfers Paradise CBD Precinct Inc. supported the renewal of authorisation.
- 3.4. On 27 February 2020, the ACCC issued a draft determination proposing to grant conditional re-authorisation for five years. Following the draft determination, the ACCC did not receive any submissions from interested parties and no pre-decision conference was requested.

### 4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The OLGR has sought re-authorisation for conduct that would or might breach a cartel provision within the meaning of Division 1 of Part IV of the Act, and may substantially lessen competition within the meaning of section 45 of the Act.
- 4.3. Consistent with subsections 90(7) and 90(8) of the Act,<sup>11</sup> the ACCC must not grant authorisation unless satisfied in all the circumstances that the Conduct would result, or be likely to result, in a benefit to the public that would outweigh any detriment to the public that would result, or be likely to result, from the Conduct (**authorisation test**).

#### Relevant areas of competition

- 4.4. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.5. The OLGR submits that the relevant area of competition is 'the supply and service of alcohol to members of the public (18 years and over) within a "destination drinking venue" which may extend to premises that supply entertainment and/or the service of

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<sup>10</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/office-of-liquor-and-gaming-regulation>.

<sup>11</sup> See subsection 91C(7).

meals.’ The OLGR states that these premises do not compete in the same market as retailers who sell alcohol for consumption off site.

- 4.6. The OLGR also submits that because the PLAA is intended for use throughout Queensland, many different geographical areas are involved. Some liquor accords cover regional areas, such that consumers may need to travel long distances to find a licensed premises outside an accord’s coverage (such as the Mt Isa Liquor Accord). Other accords are in urban areas where licensed premises not covered by an accord are more readily accessible (such as the Valley Liquor Accord in the Brisbane area).
- 4.7. During the ACCC’s assessment of the 2010 and 2014 applications for authorisation, the ACCC considered the relevant area of competition affected by the conduct to be the market for the supply and service of alcohol to members of the public (18 years and over) in drinking premises within local areas in Queensland. The ACCC has not received any submissions or information to suggest that this assessment should be altered.

## Future with and without the Conduct

- 4.8. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.9. The ACCC considers that in the absence of the Conduct, liquor accord members will have fewer measures available when deciding which terms to adopt in order to most effectively target problematic alcohol-related behaviour in their area.
- 4.10. The ACCC considers that the Conduct would allow licensed premises to collaboratively determine higher standards for the responsible service of alcohol. The ACCC recognises that with and without the Conduct, licensed premises in Queensland operate under various legislated obligations regarding the supply of alcoholic products. While absent authorisation it would be open to licensed premises to unilaterally impose such restrictions on the price and supply of alcohol, they would be less likely to do so without the agreement of competing licensed premises due to the likelihood that some of their customers could switch to those premises that do not impose equivalent price or supply restrictions.

## Public benefits

- 4.11. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (**Tribunal**), which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>12</sup>

- 4.12. Broadly, the OLGR submits that the Conduct is an effective and sustainable approach to minimising alcohol misuse and alcohol-related issues in local areas, which not only cost the Queensland Government significantly each year but affect businesses and communities through crime, violence, road accidents and loss of productivity, including a significant burden on the health system.

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<sup>12</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

- 4.13. In particular, the OLGR submits that the Conduct can deliver the following public benefits:
- reduced anti-social behaviour in and around licensed premises
  - enhanced community health and well-being, including safety and security
  - reduced road trauma directly related to alcohol abuse
  - enhanced community engagement in various controls and strategies that affect their community, and
  - improved local amenity.
- 4.14. The ACCC accepts that the rapid and/or excessive consumption of alcohol has the potential to cause significant harm in the community. The social and economic costs of alcohol abuse include increased violence and other crimes against persons and property, road accidents, increased reliance on hospital, other community health and policing resources and reduced amenity for other patrons at licensed premises.
- 4.15. The ACCC considers that any initiative that reduces crime, violence and the use of healthcare and law enforcement resources is likely to result in some public benefit. This includes allowing licensed premises in a local area to work together with local stakeholders and the support of the OLGR to adopt appropriate price and supply strategies aimed at minimising alcohol-related harms. The relevant consideration for the ACCC is the extent to which the provisions in Section 1 of the PLAA contribute to the realisation of a public benefit.
- 4.16. Measures such as avoiding labelling, promotions and methods of serving drinks that encourage rapid and excessive drinking could be expected to lower consumption and the pace at which alcohol is consumed. In the absence of the ability to directly target those who abuse alcohol, strategies that lower the overall level of consumption appear to be an imprecise but ultimately effective way of reducing alcohol-related harms.
- 4.17. The ACCC notes that, as overall alcohol consumption in a given population rises or falls, so do the incidence and gravity of related harms. Consumption of alcohol can be influenced through measures including the price and terms of supply or availability of alcoholic beverages. A rise in the price of alcohol results in falling consumption of alcohol (although moderate drinkers are more price responsive than heavy drinkers) with a consequential reduction in alcohol-related harms.
- 4.18. There are no active liquor accords in Queensland containing the highlighted price or supply controls to provide current evidence of the effectiveness of these measures in minimising alcohol-related harms. As noted, the Townsville Liquor Accord and Whitsunday Liquor Accord did, for a period under the 2010 authorisations, adopt price and supply controls of the PLAA to trial setting minimum drink prices on certain products.
- 4.19. The Townsville Liquor Accord commenced its six-month trial in July 2012. The OLGR submits that the Townsville Liquor Accord decided to cease implementing price and supply controls because the complaints data used to monitor and measure the effects of the controls and the resulting OLGR investigation proved inconclusive. The OLGR also submits, however, that positive testimonial evidence regarding the trials was received from numerous stakeholders and industry members including police, Townsville Street Chaplains, local Council health and safety representatives, the street security provider and participating venue managers.
- 4.20. The ACCC considers that while such anecdotal evidence from objective stakeholders suggests that the accord had some success in contributing to a reduction in alcohol-



related harm in the Townsville area, the inconclusive data and the decision to cease implementing the controls makes it difficult to quantify the impact of such initiatives (especially where initiatives are implemented simultaneously with other measures and within a changing broader social and police enforcement environment).

- 4.21. In relation to the Whitsunday Liquor Accord, which commenced its six-month trial of price controls in 2011, the OLGR submits that an assessment failed to provide the necessary data to support its continuation, and that feedback from industry members indicated that there had been no change in the area. The OLGR recommended that as the identified harm had not reduced, the accord could not meet the conditions required to receive continued ACCC protection. The OLGR recognised that the price controls alone were insufficient to bring about the required change in patron behaviour and that members' efforts should instead be focused on improving the poor responsible serving practices in some premises.
- 4.22. The ACCC considers that the cessation of these two price and supply control provision trials demonstrates that the conditions previously imposed by the ACCC are operating effectively to ensure that these controls will only be used where the public benefit of harm reduction is being achieved. That is, liquor accords proposing to adopt the highlighted price or supply controls will only be registered (and receive the protection of authorisation) if the OLGR is satisfied those controls are appropriate for, and proportionate to, reducing an identified harm.
- 4.23. The ACCC notes that Section 1 of the PLAA also includes non-price and supply control provisions. These provisions contain strategies that seek to limit the service of alcohol to unduly intoxicated or underage patrons, avoid servings of non-standard measures of alcohol or the stockpiling of drinks, and ensure snack foods and water are available.
- 4.24. Such measures could, similarly to price and supply controls, be expected to lower consumption and the pace of consumption. The ACCC therefore considers that the non-price and supply control provisions in Section 1 are likely to result in some public benefit by promoting the responsible service of alcohol, and have minimal potential to result in harm to competition or consumers

### ACCC conclusion on public benefit

- 4.25. The ACCC considers that the Conduct, in conjunction with the conditions imposed in relation to the OLGR taking a greater oversight role in the implementation of accord agreements in Queensland, is likely to result in significant public benefit. The ACCC is satisfied that this is likely to provide an appropriate mechanism and sufficient flexibility for local areas to address alcohol-related harms, encourage more responsible consumption of alcohol, and is likely to contribute to a reduction in alcohol-related harms.

### Public detriments

- 4.26. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal, which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>13</sup>

- 4.27. The OLGR notes that the Conduct has the potential to:

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<sup>13</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

- increase prices for consumers and limit consumer choice by, for example, placing limitations on the availability of discounts, non-standard drink containers and drinking games
- decrease the methods by which liquor accord members can compete within their accord area, by allowing licensed premises to agree on certain practices, and
- directly impact producers and distributors of alcoholic beverages by targeting high-strength alcohol via the supply controls and shifting broader consumption trends to the detriment of some producers and suppliers.

4.28. The ACCC has considered the following potential public detriments:

- reduced choice and increased prices for consumers
- lessening of competition between licensed premises, and
- negative impacts on producers and distributors of alcoholic beverages due to the targeting of high-strength alcohol in the supply controls.

### Reduced choice and increased prices for consumers

4.29. Agreements between competing licensed premises to limit the range of alcoholic products available may reduce consumer choice (for example, where members agree not to offer drinks in novelty containers or conduct drinking games) and distort the level of competition that would otherwise exist. Similarly, agreements between competing licensed premises that influence pricing decisions may result in higher overall prices (for example, where liquor accord members agree not to offer extreme discounts) and a general loss of consumer welfare.

4.30. The OLGR submits that these costs would be borne by all consumers of participating premises, including those who consume alcohol responsibly. While price and supply controls are aimed at moderating the behaviour of the small subset of customers who generate harm for themselves and the wider community, the cost of moderating this behaviour through these measures would be borne by all patrons of premises that are parties to the agreement.

4.31. However, re-authorisation is subject to substantially the same conditions imposed by the ACCC in 2014, which ensures that the highlighted price and supply controls in any given liquor accord will only be protected by authorisation if the OLGR is satisfied that they are appropriate for, and proportionate to, reducing an identified harm.

4.32. The ACCC notes that there is also a degree of overlap between the provisions in the PLAA and the legislative requirements already imposed on licensed premises in Queensland, which means that individual premises are already subject to legal obligations that, to an extent, are likely to limit consumer choice and increase prices. For example, licensed premises are already prohibited from supplying 'rapid intoxication drinks', such as jelly shots,<sup>14</sup> at certain times,<sup>15</sup> or from engaging in unacceptable practices or promotions, such as practices or promotions that encourage the irresponsible consumption of liquor.<sup>16</sup>

### Lessening of competition between licensed premises

4.33. The OLGR submits that the highlighted price and supply controls would decrease the methods by which liquor accord members are able to compete within their accord

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<sup>14</sup> See Liquor Regulation 2002 (Qld) subsection 41B(1).

<sup>15</sup> Liquor Act section 155AI.

<sup>16</sup> Liquor Act section 142ZZ.

area, regardless of the geographical market. The OLGR notes that licensed premises may complain that their inability to discount may be detrimental to their business when other licensees are providing such discounts outside of the liquor accord geographical area, and that promoting lower strength beer and half nips at lower prices may harm a licensed premise's ability to charge whatever price they choose for such products.

- 4.34. The ACCC considers that, in relation to price controls specifically, to the extent that customers are unable or unwilling to switch from these premises to others that are not implementing price controls or consume less while attending premises that are, the effect of such price controls could also be to increase the profits of participating premises. Where there are few non-participating licensed premises nearby, this may incentivise premises to agree to such measures regardless of whether the measures address any alcohol-related harm.

### Targeting of high-strength alcoholic beverages

- 4.35. The OLGR submits that the highlighted price and supply controls may directly impact producers and distributors of high-strength alcoholic beverages by targeting their products in favour of lower-strength beverages. The PLAA includes strategies to not advertise or promote very high-alcohol substances, and to offer and promote low-alcohol beer at lower prices compared to full-strength beer. This could result in a shift in liquor consumption trends to the detriment of those producers or distributors.
- 4.36. The ACCC considers that public detriment in the form of direct impacts on producers and distributors of high-strength alcoholic beverage is unlikely. The ACCC notes that the PLAA does not specifically 'target' high-strength alcoholic drinks or any particular kind of alcoholic beverage. Rather, it is a template designed to allow liquor accords to be developed at a local level with flexibility regarding the price or supply measures required for any particular area, depending on the factors identified as contributing to the harm in that area.

### ACCC conclusion on public detriment

- 4.37. The ACCC considers that the Conduct is likely to result in public detriments in the form of:
- reduced choice and increased prices for consumers due to agreed limitations on discounts, promotions and the method in which alcoholic beverages may be supplied and consumed, and
  - lessening of competition between licensed premises due to the inability to set competitive prices or compete through certain supply practices or promotions.

### Conditions

- 4.38. To ensure the realisation of the public benefits identified by the ACCC and to minimise any associated public detriment, the ACCC has decided to grant re-authorisation subject to a number of conditions (see section 6 below). These conditions are intended to ensure transparent and independent oversight of decisions to implement highlighted price and supply controls by establishing criteria which must be met before such controls can be implemented.
- 4.39. Specifically, the conditions provide that the highlighted price and supply controls must be appropriate for reducing an identified harm and be proportionate to the harm sought to be addressed. Ultimately the OLGR, rather than liquor accord members, will decide whether these criteria are met and therefore, whether any given proposed price or supply controls are included in individual accord agreements.

## Balance of public benefit and detriment

4.40. For the reasons outlined in this determination, and subject to the conditions, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that the public benefit would outweigh any public detriment likely to result from the Conduct.

## Length of authorisation

4.41. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>17</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.42. In this instance, the OLGR sought re-authorisation for five years. The OLGR submits that this period is considered suitable given the nature of liquor accord arrangements and their significant public benefits.

4.43. The ACCC considers that authorisation for five years is appropriate. No submissions have been received in relation to the length of authorisation. The ACCC also notes that the same or similar arrangements were previously authorised for three years in 2010, and for five years in 2014. The ACCC has not received any evidence to suggest that the requested five-year period would be inappropriate.

## 5. Determination

### The application

5.1. On 5 November 2019, the OLGR lodged an application to revoke authorisations A91385 and A91386 and substitute authorisation AA1000456 for those revoked. This application for re-authorisation AA1000456 was made under subsection 91C(1) of the Act.

5.2. The OLGR sought re-authorisation for current and future liquor accord members to adopt Section 1 of the PLAA.

### The authorisation test

5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.

5.4. For the reasons outlined in this determination, and subject to the conditions below, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.

5.5. Accordingly, the ACCC has decided to grant conditional re-authorisation until 30 April 2025.

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<sup>17</sup> Subsection 91(1).

## Conduct which the ACCC authorises

- 5.6. The ACCC has decided to revoke authorisations A91385 and A91386 and grant conditional authorisation AA1000456 in substitution for five years to enable:
- Liquor accord members to make liquor accord agreements containing price or supply control provisions, where those provisions are in the express terms set out in the PLAA, or in narrower terms.
  - Liquor accord members to give effect to provisions of liquor accord agreements that are price or supply control provisions in the express terms set out in the PLAA or in narrower terms, but only if the liquor accord agreement is registered with the OLGR in accordance with the conditions of this authorisation.
  - Liquor accord members to give effect to provisions of liquor accord agreements (other than a price or supply control provision) that are in the express terms set out in Part 1 (Responsible Service of Alcohol) of the PLAA, or in narrower terms.
- 5.7. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.8. The re-authorisation is in respect of the PLAA as it stands at the time re-authorisation is granted (which is set out in **Attachment A**). Any provisions that are not in the express terms of, or in narrower terms than, the PLAA would not be covered by the re-authorisation.
- 5.9. The re-authorisation in the above terms extends to future liquor accord members who become signatories to a liquor accord agreement authorised under this re-authorisation. Under subsection 88(2) of the Act, any authorisation granted by the ACCC is automatically extended to cover any person named in the authorisation as being a party or proposed party to the notified conduct.
- 5.10. The ACCC has decided to grant conditional re-authorisation AA1000456 until 30 April 2025.

## Conduct which the ACCC does not authorise

- 5.11. The re-authorisation does not extend to permit liquor accord members to engage in the following conduct:
- except as otherwise stated in paragraph 5.6—making and giving effect to provisions of liquor accord agreements that are not in either the express terms (including associated definitions) set out in Section 1 (Responsible Service of Alcohol) of the PLAA, or in narrower terms. For example, the re-authorisation does not extend to making and giving effect to provisions of liquor accord agreements that specify the actual prices (at or above any minimum prices) to be charged by liquor accord members for alcoholic products
  - giving effect to liquor accord agreements that incorporate price and supply control provisions that are not registered with the OLGR
  - giving effect to price or supply control provisions at premises that are not licensed to sell alcohol for on-site consumption, or
  - agreements between liquor accord members to ban problematic individuals from their premises.<sup>18</sup>

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<sup>18</sup> While the ACCC is aware that the Townsville Accord previously included such an agreement, the PLAA does not, and the OLGR previously confirmed that it is not seeking authorisation for accords to adopt agreements of this type.

## 6. Conditions

6.1. Authorisation is granted subject to the following conditions.

***The OLGR must maintain on its website a registration process and notify newly established Liquor Accord Bodies and Safe Night Precinct local boards of the registration process***

- C1. Within one week of the Commencement Date of this Authorisation, the Applicant must:
- a. ensure it has an established process for registering Liquor Accords, which complies with conditions 2 to 5, and ensure the details of that registration process remain available on its website;
  - b. provide written notification to any Newly Established Liquor Accord Body, enclosing a copy of the PLAA and advising the Newly Established Liquor Accord Body that:
    - i. all Price or Supply Control Provisions in any Liquor Accord are not authorised under this Authorisation unless:
      - (a) the relevant provision of the Liquor Accord is in the same express terms as the relevant requirement of the PLAA, or is in narrower terms; and
      - (b) registration of the Liquor Accord has been obtained in accordance with the process set out in conditions 2 and 3; and
    - ii. other practices not expressly included in the PLAA are not authorised under this Authorisation.

### ***Registration for Liquor Accords***

- C2. To apply for a Liquor Accord to be registered, a Liquor Accord Body must provide the Applicant with:
- a. a copy of the executed or proposed Liquor Accord, the Price or Supply Control Provisions of which must be in the same express terms as the PLAA, or in narrower terms;
  - b. a list of all Liquor Accord Members who are currently signatories to the Liquor Accord, and / or a list of all currently proposed signatories to the Liquor Accord (as relevant);
  - c. for each Price or Supply Control Provision contained in the Liquor Accord a description of the Identified Harms that the Price or Supply Control seeks to address; and
  - d. any other information requested by the Applicant that the Applicant considers relevant.
- C3. The Applicant must not register a Liquor Accord that it receives in accordance with condition 2 unless:
- a. the Liquor Accord Body has provided the Applicant with all of the information required by condition 2; and
  - b. after reviewing the information provided by the Liquor Accord Body, the Applicant is satisfied that the inclusion of each Price or Supply Control in the Liquor Accord is appropriate for reducing, and is proportionate to, the Identified Harms sought to be addressed by that Price or Supply Control. In making this assessment, the

Applicant may make any enquiries and have regard to any information it considers appropriate, such as information and/or statistics from the Police, Ambulance Officers or other relevant stakeholders in the local area in which the Liquor Accord is to operate.

***Applicant may withdraw registration of a Liquor Accord***

- C4. If, at any time after registering a Liquor Accord, the Applicant is no longer satisfied that a Price or Supply Control in the Liquor Accord is appropriate for reducing, and is proportionate to, the Identified Harms sought to be addressed by that Price or Supply Control, or for any other reason, the Applicant may decide to withdraw registration of that Liquor Accord.
- C5. The Applicant must provide written notification of any decision to withdraw registration (including the date on which the withdrawal will take effect) to the relevant Liquor Accord Body. The withdrawal will take effect on the date specified in the written notification, but only if at least four weeks have elapsed since the written notification was provided to the relevant Liquor Accord Body. Prior to the withdrawal taking effect, the Applicant may decide to revoke the withdrawal at any time, unless it is not satisfied of the criteria in condition 3 b. above.

***Applicant to report to the ACCC***

- C6. By [date of the final determination] each year from the Commencement Date of this Authorisation until the expiry of this Authorisation, the Applicant must provide the ACCC with a report that includes:
  - a. a statement as to whether the Applicant has complied with the Conditions for registration set out in conditions 1 to 5 above;
  - b. in respect of each application for registration of a Liquor Accord received within the previous 12 month period details of the application including a copy of the executed Liquor Accord, a list of all Liquor Accord Members and details of the Applicant's decision about whether to register the Liquor Accord; and
  - c. details of any decisions made under conditions 4 or 5 above.

***Applicant to comply with direction from ACCC***

- C7. The ACCC may, at any time during the term of this Authorisation, direct in writing the Applicant or a member of a Registered Liquor Accord to, and the Applicant or relevant Liquor Accord Members must, furnish or produce information, documents or materials to the ACCC relating to the conduct the subject of this Authorisation in the time and in the form requested by the ACCC.
- C8. Nothing in this condition requires the provision of information, documents or materials in respect of which the Applicant has a claim of legal professional privilege.
- C9. The power of the ACCC in this condition may be exercised by an employee of the ACCC.

***Definitions***

- C10. In these conditions:

**Applicant** means the State of Queensland acting through the Office of Liquor and Gaming Regulation or its successor.

**Commencement Date** of this Authorisation means the date of this Authorisation plus 22 days [In the final determination the reference to dates of authorisation plus

22 days would be replaced with an actual date, being the date authorisation comes into effect].

**Identified Harms** means any damage or harm related to alcohol abuse, alcohol misuse or excessive consumption of alcohol in and around premises participating in a liquor accord but borne by the broader community surrounding those premises.

**Liquor Accord** means a written agreement between licensed premises, local government, police and/or other local stakeholders made for the purpose of helping curb alcohol-related harms, and which contains at least one provision which is a Price or Supply Control Provision.

**Liquor Accord Body** means the incorporated body or person responsible for new and/or established Liquor Accords, and includes Safe Night Precinct local boards and Liquor Accord Members where appropriate.

**Liquor Accord Members** means the signatories of a Liquor Accord.

**Newly Established Liquor Accord Body** means any Liquor Accord Body established on or after 9 January 2015.

**PLAA** means the pro-forma liquor accord set out at **Attachment A** to this Authorisation.

**Price or Supply Control Provision** means a highlighted provision (including associated definitions) set out in **Attachment A** to this Authorisation.

## 7. Date authorisation comes into effect

- 7.1. This determination is made on 8 April 2020. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 30 April 2020.



## Attachment A

# Amended pro-forma liquor accord arrangement

### Important information for liquor accord participants

Liquor accord bodies are encouraged to tailor liquor accord arrangements to suit circumstances unique to licensees and your local community or precinct. You are not compelled to implement all or any of the accord strategies contained in this document.

#### Implementing any highlighted strategies or provisions?

The 'Responsible service of alcohol' section of this pro-forma liquor accord arrangement have received conditional authorisation from the Australian Competition and Consumer Commission (ACCC).

You will receive the benefit of authorisation for giving effect to some or all of the **highlighted strategies/provisions** in the Responsible Service of Alcohol section, provided you first register your liquor accord arrangement with the Office of Liquor and Gaming Regulation (OLGR). The OLGR will register your liquor accord arrangement if it considers that the highlighted strategies/provisions you wish to implement are appropriate for reducing, and are proportionate to, the alcohol- related harms in your local community.

If your liquor accord body gives effect to, or take steps to implement, any of the highlighted strategies/provisions without first registering the liquor accord arrangement with the OLGR, members of the accord may be liable for breach of the *Competition and Consumer Act 2010* (Cth).

#### Not implementing any highlighted strategies or provisions?

If your liquor accord body does not propose to implement any of the highlighted strategies or provisions, you should delete all highlighted provisions before you sign and commence implementing the liquor accord arrangement. In this situation your liquor accord arrangement does not need to be registered with the OLGR.

Individual accord members can still decide independently of each other to adopt the highlighted strategies or provisions provided they have not reached an agreement with other accord members to adopt these provisions.

#### Future variations to your liquor accord arrangement

If your local liquor accord body wishes to implement any of the highlighted strategies that are not already included in your liquor accord arrangement (whether your liquor accord arrangement is already registered or not), you must develop a new liquor accord arrangement and register it with the OLGR.

#### Strategies that depart from the pro-forma liquor accord arrangement

If your local liquor accord body wishes to vary the contents of this pro-forma liquor accord arrangement, or to otherwise depart from its contents, you are advised to seek legal advice on the implications of trade practices laws and other legal requirements before adopting the amendments. Even if your liquor accord is

registered with the OLGR, you will not receive the benefit of authorisation for any provisions of your liquor accord arrangement that are not in the same express terms as the highlighted strategies or provisions, unless those provisions are in narrower terms than the highlighted strategies or provisions.

For example, and in accordance with the scope of the ACCC's authorisation, liquor accord members are not permitted to agree on the actual price (at or above the minimum price) to be charged by liquor accord members for alcoholic beverages.

# PRO-FORMA LIQUOR ACCORD ARRANGEMENT

Stakeholders of the [insert name of local liquor accord body] endorse and will seek to uphold the strategies as listed below in our local area as a way of:

- promoting responsible practices in relation to the sale and supply of liquor at licensed premises
- minimising harm from the misuse of alcohol
- minimising alcohol-related disturbances, or public disorder, in the locality.

## DEFINITIONS

The following definitions apply to this accord:

**Extreme discounts** means half price drinks, 2-for-1 drinks or supplying drinks at prices that are below an agreed minimum price. This accord does not however, prohibit or restrict licensees from discounting drinks generally.

**Discounts of limited duration** include happy hours with a duration of less than an hour or promotions that set a short timeframe (e.g. 15 minutes) in which liquor is discounted. This accord does not however, prohibit or restrict licensees from discounting or promoting happy hours generally.

**Drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication** include drinks that are offered in objects or items that are non-standard glasses certified by Weights and Measures (eg. test tubes and water pistols), and alcoholic drinks commonly known as “shots” or “shooters”. It also includes drinking games involving the consumption of liquor in a short period of time which can lead to rapid and/or excessive consumption of liquor (eg. skolling games and laybacks).

**Promotions that encourage rapid intoxication** include advertising, in a way that is visible or audible to persons outside particular premises:

- (a) the availability of free liquor or multiple quantities of liquor at those premises (such as “2-for-1 drinks” promotions)
- (b) the sale price of liquor at those premises
- (c) the promotion of the availability of liquor for consumption at those premises at a price less than that normally charged for the liquor (such as ‘happy hour’, ‘all you can drink’, and ‘toss the boss’ promotions).

**Very high alcohol substances** – This term is intended to capture drinks that contain any more than 2 standard drinks per serve.

Accord stakeholders are encouraged to refer to the *Liquor Act 1992*, *Liquor Regulation 2002* and the Code of Practice for the Responsible Service, Supply and Promotion of Liquor for further guidance.

## STRATEGIES

### 1. Responsible service of alcohol

#### No unduly intoxicated patrons

- Refuse to serve alcohol to, or allow entry of, persons who are unduly intoxicated.
- Encourage patrons to drink responsibly, and let them know they will be asked to leave if they become unduly intoxicated, disorderly, violent or quarrelsome.
- Promptly and politely ask patrons to leave when they are showing signs of being unduly intoxicated.
- Offer to call unduly intoxicated patrons a taxi and/or provide water while they wait in a safe environment.

#### No underage drinking

- Actively monitor all patrons to ensure they are not underage by checking proper proof of age identification (ID) at the door.
- Prominently display signage about restrictions on minors.
- Apply the following standards when checking ID:
  - The ID is removed from a wallet/purse or cardholder and held by the staff member conducting the check
  - The ID is checked to ensure it is current and is an approved form of identification - photographic driver's licence; or a proof of age card issued by a Government Department or approved entity (e.g. 18+ card, Keypass); or an Australian or foreign passport
  - The date of birth is checked to establish the age of the patron
  - The date of birth is checked for any tampering
  - The photo is checked to ensure it is the person presenting the ID
  - The photo is checked to ensure it has not been substituted or tampered with
  - The ID is checked overall for any bumps or raised areas which may indicate the identification has been tampered with.
- If staff believe that a document being presented is false, defaced or in the possession of a person who is not the owner of the ID and who is falsely claiming to be 18 years of age, the document will be confiscated and forwarded to the Office of Liquor and Gaming Regulation.

#### Discourage activities that encourage excessive drinking

- Ban practices and promotions that may encourage rapid or excessive consumption of liquor, for example:
  - 'drink cards' that provide multiple of free drinks
  - extreme discounts or discounts of limited duration
  - any other promotions or gimmicks that encourage rapid intoxication.
- Provide snack food during 'happy hours' where practical.
- Avoid serving drinks that offer alcohol in non-standard measures.
- Ensure smaller serves of drinks (eg half nips) are available at differential (lower) prices.

#### Not promote or sell alcoholic beverages that may encourage rapid or excessive consumption of liquor

- Avoid labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state.
- Avoid offering drinks that, by their method of consumption, encourages irresponsible drinking habits and are likely to result in rapid intoxication.

- Not advertise or allow promotions of very high alcohol substances such as overproof rum and high alcohol carbonated drinks.
- Not allow stockpiling of drinks.

#### Promote non- or low-alcohol beverages and food

- Offer and promote low alcohol beer at differential (lower) prices compared to full strength.
- Offer and promote a range of non alcoholic drinks at differential (lower) prices.
- Ensure bottled water is available free or for purchase at reasonable prices.
- Provide and promote reasonably priced snacks and food throughout operating hours.

## **2. Improve safety and security**

Provide and maintain a safe environment in and around the licensed premises, for example:

#### Maintain proper standards of behaviour

- Have a phone available for the use of patrons in a location where patrons using the phone can be heard above noise within the premises.
- Display phone numbers for taxis, police, ambulance and fire brigade adjacent to the phone.
- Have the name of the duty manager prominently displayed at each bar in the premises.
- Do not promote activities that might encourage harassment by patrons of the staff or other patrons.
- Clearly display a list of acceptable and unacceptable behaviour on premises (house policy), such as the non acceptance of excessive consumption of alcohol or any illicit drug use.
- Assign staff to actively monitor patrons and at regular intervals move through premises to assess any potential problems (monitoring should also include toilets).
- Actively liaise with police and other licensed premises when disorderly patrons have been ejected or are moving through the area.
- Ensure internal and external security procedures are well maintained and functioning effectively.
- Encourage phased and an orderly exit of patrons from premises when closing.

#### Maintain safety and security

- Conduct regular risk assessments of premises and surrounding environments.
- Ensure entrances and exits of premises are well lit and that immediate surrounds are safe and allow good visibility.
- Implement appropriate surveillance systems, such as closed circuit television systems, on premises.
- Ensure staff, including security staff are clearly identifiable (for example, distinctive t-shirts, uniforms, name tags etc.).
- Serve drinks in containers which minimize potential harm to customers.
- Fully cooperate with the police and other accord members on ways to improve public safety.
- Prevent criminal activity and disorderly conduct from occurring on premises.
- Notify the police immediately if something illegal or suspicious does occur.
- Door/security or reception personnel will, in addition to restricting entry by minors or unduly intoxicated persons to the premises:

- wear clear ID at all times
- not harass or intimidate passers-by or potential customers
- refuse re-entry to the premises to those who have caused a disturbance
- immediately contact police and other premises to inform them of potential 'problem' patrons in the vicinity
- check for the unlawful removal of alcohol from premises
- assist patrons in accessing safe transportation out of the area
- uphold any statutory requirements relating to security personnel and enter details of any safety incidents in the Premises Incident Register.

Maintain records of incidents and have appropriate communication with the police and other authorities

- Maintain a register of all safety and security incidents noting the time, date and nature of the incident in and around the premises and the response by staff and management (the 'incident register').
- Notify the police and other relevant authorities of any special events likely to significantly increase the number of people in the area. This should happen well in advance of the event.
- Train all staff to know help procedures and emergency numbers and when and how to fill out the incident register.
- Encourage all staff members to undertake first aid courses and, where possible, ensure one staff member with a first aid certificate is rostered on to each shift.
- Establish open communication with security at other venues via venue to venue radio and or a telephone contact listing.
- Ensure close liaison and open communication with the Office of Liquor and Gaming Regulation.

**3. Commitment to being good neighbours**

Improve the local amenity

- Assist patrons in accessing safe transportation out of the area (for example, door staff should volunteer information about access to a railway station, late night bus services and taxi ranks and encourage patrons to use these quickly and quietly when departing).
- Minimise noise generating from the premises.
- Educate patrons, including through signage, about the need to respect the local amenity and to arrive and depart the area in a quiet and orderly manner.
- Prevent the unlawful removal of liquor (other than packaged where permitted) from licensed premises.
- Ensure staff, specifically door and security staff are briefed on local environmental issues, including potential traffic, noise or security problems.
- Ensure police are informed of regular closing hours and any variations such as for special events or new activities.
- Respond to legitimate complaints and resident concerns and take all reasonable steps to ensure premises are functioning as a 'good neighbour'.

Patron responsibility

- Post signage that clearly explain licensee and patron responsibilities regarding the responsible service of alcohol (for example 'No More it's the Law' signage).
- Ensure staff are trained appropriately to advise patrons when they will no longer be served alcohol and will be asked to leave the premises.

#### Staff at licensed premises (including outsourced staff eg. security)

- Ensure all employees and applicable security staff have completed a Queensland approved Responsible Service of Alcohol course.
- Maintain a register of staff that have completed a Queensland approved Responsible Service of Alcohol course.
- Provide regular updates to new staff and training on the accord and related responsible service of alcohol and harm minimisation policies and practices.
- Ensure strict reference checks are conducted on all staff, including outsourced security staff, in the context of recruitment practices.
- Ensure all staff are familiar with the incident register and are aware of how to use it when required.
- Ensure staff have access to relevant literature on the accord, Queensland liquor laws and regulations.

#### Actively monitor and promote the accord

- Provide an ongoing commitment to the accord and to the continued proper management and conduct of the licensed premises.
- Notify the police, or other relevant authorities where appropriate, of any event or practice detected that may impact on the accord or any other licensing law or regulation.
- Establish and maintain effective complaints procedures.
- Promote educational and information items in the community to discourage the irresponsible service and consumption of alcohol.