



**The State of Queensland acting through the Office of Liquor and  
Gaming Regulation –  
Application for revocation of A91385 and A91386 and the  
substitution of authorisation AA1000456  
Interim authorisation decision  
18 December 2019**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisations A91385 and A91386 and grant conditional interim authorisation in respect of the application for authorisation AA1000456 in substitution for the authorisations suspended.
2. The application was lodged by the State of Queensland acting through the Office of Liquor and Gaming Regulation (**OLGR**) on 5 November 2019. Interim authorisation was sought due to the imminent expiry of the current authorisations (A91385 and A91386).
3. Interim authorisation is granted to enable liquor accord bodies and Safe Night Precinct local board members to continue to be able to make a liquor accord agreement containing a price control or supply control provision that is set out in the OLGR's pro-forma liquor accord arrangement (**PLAA**). Interim authorisation is subject to the same conditions as current authorisations A91385 and A91386, outlined further below.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation**

5. The State of Queensland acting through the OLGR is applying on behalf of potential participants in the liquor accords. The OLGR seeks re-authorisation for 5 years for liquor accord bodies and Safe Night Precinct local board members<sup>1</sup> (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 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, 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 Part 1 (Responsible Service of Alcohol) of the PLAA, or is in narrower terms

(the **Conduct**).

---

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

6. Liquor accords are agreements signed by interested parties in a particular geographic area which contain strategies to reduce the harms caused by the abuse of alcohol. The potential parties to a liquor accord include licensed venues in that area and other significant community stakeholders (such as police, local council, government departments or other community organisations). The OLGR does not itself enter into liquor accord arrangements, but advises participants on developing and managing liquor accords, and registers certain accords.
7. The PLAA is a template agreement that local liquor accord bodies are encouraged to adopt. The PLAA may be adopted in full, or in part, by liquor accord bodies in Queensland. Participation in a liquor accord is voluntary.
8. Although the PLAA consists of three parts, the OLGR is only seeking re-authorisation for Section 1 (Responsible Service of Alcohol). This is because Section 1 contains pro-forma provisions restricting the price and supply terms on which licenced venues sell alcohol to consumers,<sup>2</sup> which, if businesses agreed to adopt as part of their own liquor accord agreement, could risk contravening the *Competition and Consumer Act 2010* (Cth) (the **Act**). These provisions are highlighted in the PLAA and include:
  - price controls requiring parties to ban drink cards, extreme discounts and discounts of limited duration, or to charge lower prices for smaller serves of full strength beverages or low or non-alcoholic beverages, and
  - supply controls requiring parties not to offer or advertise particular beverages, such as avoiding labelling, promotions or methods of consumption (like novelty containers) that encourage irresponsible drinking, and not advertising or promoting very high alcohol substances.

### **The authorisation process**

9. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

10. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the conduct while the ACCC is considering the substantive application.
11. The OLGR requested interim authorisation due to the imminent expiry of the current authorisations.

### **Consultation**

12. The ACCC invited submissions from a range of potentially interested parties including major relevant industry associations or peak bodies, state and federal government and relevant regulatory bodies, suppliers, and current liquor accord bodies and SNPs.<sup>3</sup>
13. Three submissions were received. Safe Night Broadbeach CBD Precinct Inc did not oppose the application; Safe Night Surfers Paradise CBD Precinct Inc supported the application; and 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. None of the bodies commented specifically on the request for interim authorisation.

---

<sup>2</sup> Part 2 of the PLAA contains provisions about safety and security, while Part 3 of the PLAA contains commitments to being good neighbours. Authorisation is not sought for liquor accord members to adopt these sections of the PLAA as doing so would be unlikely to raise concerns under the Act.

<sup>3</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

14. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/public-registers/authorisations](http://www.accc.gov.au/public-registers/authorisations).

### **Reasons for decision**

15. In granting interim authorisation, the ACCC considers that:

- Interim authorisation will maintain the status quo, as the ACCC authorised substantially the same conduct under authorisations A91385 and A91386 in 2014. That is, interim authorisation will continue to give liquor accord members the option to adopt price and/or supply control provisions contained in the PLAA in their own liquor accords and have those provisions protected by authorisation.

Should interim authorisation be granted but final re-authorisation ultimately refused, we do not anticipate that any steps taken under interim authorisation would prevent the market from returning to its previous state.

- The existing authorisations A91385 and A91386 are due to expire on 9 January 2020, and the ACCC will not have concluded its assessment of the substantive application for re-authorisation by that date.
- Should interim authorisation not be granted, no liquor accord members would be immediately affected, as none are currently relying on the protection of the existing authorisation to adopt price or supply controls from the PLAA. However, any liquor accord members that sought to implement certain provisions contained in Section 1 of the PLAA into their accord would risk breaching the Act.
- The conduct has been authorised on two previous occasions and both times the ACCC concluded that the likely benefit to the public would outweigh any likely public detriment, including from any lessening of competition that would be likely to result. Further, the interim authorisation will be subject to the conditions imposed in 2014 which are intended to ensure that controls will only be used where the public benefit of harm reduction is being achieved.

### **Reconsideration of interim authorisation**

16. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.