

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 297

Issued by the Authority of the Attorney-General

Commonwealth Places (Application of Laws) Act 1970

Commonwealth Places (Application of Laws) Amendment Regulations (No. 1)

Section 22 of the *Commonwealth Places (Application of Laws) Act 1970* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 4(6) of the Act permits the Governor-General to make regulations that exclude or modify the provisions of a State law in its application to Commonwealth places located in the State.

The *Commonwealth Places (Application of Laws) Regulations 1998* (the Principal Regulations) set out various matters necessary to give effect to the Act.

Vicary's Winery is situated on Commonwealth land within New South Wales. It is subject to the laws of New South Wales by virtue of subsection 4(1) of the Act, which provides that State laws apply to Commonwealth places within a State. As such, it is subject to the *Liquor Act 1982* (NSW) (the Liquor Act). Section 122 of the Liquor Act provides that it is an offence where a person sells, advertises or delivers liquor without authority. Section 18 of the Liquor Act provides that the New South Wales Licensing Court may issue a licence to sell liquor.

The doctrine of the separation of powers, which is inherent in Chapter III of the Constitution, restricts the Commonwealth Parliament's legislative powers so that it cannot vest a non-judicial function on a judicial body. This principle also prevents the Commonwealth from adopting a State law that vests a non-judicial function in a judicial body.

The New South Wales Licensing Court is a judicial body that performs the non-judicial function of issuing licences. As such, the doctrine of the separation of powers prevents the Commonwealth from adopting the provisions that allow for the issue of licences under the Liquor Act. As a result, Vicary's Winery is subject to the offence provisions of the Liquor Act, but is not able to obtain a licence under the Liquor Act.

To overcome this anomalous situation, subregulation 3(1) of the Principal Regulations provides that the Liquor Act does not apply to a place that:

- (a) is subject to a lease that authorises the sale of liquor; and
- (b) is acquired by the Commonwealth for the construction of a civil airport; and
- (c) is not subject to an airport lease under the *Airports Act 1996* or the *Airports (Transitional) Act 1996*.

The effect of subregulation 3(1) of the Principal Regulations is that the Liquor Act does not apply to Vicary's Winery. Instead, the winery's dealings with liquor are regulated by various provisions in its lease with the Commonwealth.

The purpose of the Regulations is to remove subregulation 3(2) of the Principal Regulations, which provides that regulation 3 will cease to have effect on 31 December 2005.

The Regulations allow Vicary's Winery to continue to operate until a legislative solution is found or a decision is made about the future of the site. The New South Wales Government has prepared a consultation draft of the Liquor Bill and Liquor Court Bill, which propose changes to the judicial and administrative structures involved in liquor licensing in New South Wales. It is considered that, should the proposed laws be enacted, they may address the legal concerns which have required the making of a regulation preventing the Liquor Act from applying in certain Commonwealth places.

However, it is not clear if and when those laws will be enacted and the relevant Commonwealth places are currently subject to leases of five years with an option of a further five years, which makes the removal of the sunset clause, subject to the provisions of the *Legislative Instruments Act 2003*, desirable.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on registration.

Consultation was unnecessary for this legislative instrument as this instrument is of a minor or machinery nature and does not substantially alter existing arrangements. It has no direct or substantial indirect effect on business.