

# Liquor Amendment Regulation (No. 2) 2013

Explanatory notes for SL 2013 No. 277

made under the

*Liquor Act 1992*

## General Outline

### Short title

*Liquor Amendment Regulation (No. 2) 2013*

### Authorising law

Sections 202 and 235 of the *Liquor Act 1992*

### Policy objectives and the reasons for them

The policy objective of the *Liquor Amendment Regulation (No. 2) 2013* (Amendment Regulation) is to amend the *Liquor Regulation 2002* (Liquor Regulation) to remove the ‘prepared food not available’ risk criterion from the calculation of annual liquor licence fees.

Section 202 of the *Liquor Act 1992* (Liquor Act) provides that the licence fee payable for a licence for a licence period is to be assessed in the way prescribed under a regulation. Section 235 of the Liquor Act provides for a general regulation-making power that allows the Governor in Council to make regulations in relation to a range of matters, including fees. Under section 36 of the Regulation, annual liquor licence fees payable by a licensee are the total of the relevant base fee and the fee for each applicable risk criterion, which include: extended trading hours, prepared food not available and compliance history.

The risk criterion relating to prepared food not available applies to a licence (other than a community other licence) if, on any day business is conducted on the licensed premises after 7pm, prepared food is not available to patrons at least until the last two hours of trading. Prepared food is defined as a meal or other food usually needing preparation before it can be eaten, but not including snacks, liquor or other beverages. Examples of prepared food include burgers, hot chips and sandwiches.

The ‘prepared food not available’ risk criterion was introduced as part of the annual fee self-assessment to encourage venues to provide prepared food to patrons to slow down the absorption of alcohol into the blood stream. It was thought that patrons could become intoxicated more easily if no prepared food was made available. However, this risk currently exists as licensees can pay the fee and not provide food. Furthermore, there may be instances where some licensees claim they provide prepared food when they in fact do not in order to avoid the additional loading.

The Red tape reduction expert panel considers the provision of food is arguably a harm minimisation measure rather than an indicator of the risk a venue poses to the community. In this regard, it is considered more appropriate for the measure to be included in a voluntary liquor code of practice as a responsible service of alcohol practice.

As a result, section 36C of the Regulation is no longer required.

## **Achievement of policy objectives**

The policy objective is achieved by omitting section 36C from the Liquor Regulation and making a minor amendment to section 36 to remove the reference to section 36C.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objectives of the Liquor Act.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The purpose of the Amendment Regulation is to reduce regulatory burden for licensees by reducing unnecessary business and compliance costs.

The removal of the 'prepared food not available' risk criterion fee is expected to result in a loss of Government revenue of up to \$500,000 per annum. However, it is anticipated this revenue loss will be partially offset by a small reduction in compliance cost incurred by the department, as inspectors will no longer need to ensure that those licensees not complying with the obligation to provide prepared food have paid the fee.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The transitional provision may create two very minor fundamental legislative principles issues, firstly in that it operates retrospectively. However, this is justifiable as it operates to the benefit of individuals who will not be required to pay the additional risk criterion fee.

The other potential issue relates to preventing the refunding of fees paid prior to 14 October 2013, which could be considered a general interference with the rights and liberties of individuals with respect to differential treatment of licence holders. However, this is not considered an issue as the policy to remove the fee has been implemented as soon as practical following its approval, so as to maximise the benefits to licensees. Further, licensees who paid their fees prior to 14 October 2013, did so in accordance with the Government policy that was in place at the time.

Overall, the transitional provision (early application of the amendment from 14 October 2013) advantages the greater majority of licensees and delivers earlier red tape reduction benefits, which was the intent of the amendment.

The early application of the amendment regulation benefits the greatest number of licensees by delivering immediate red tape reduction benefits. For new licensees this means reduced costs and less regulatory burden. For existing licensees, the removal of the risk criterion fee removes the obligation to provide prepared food, and therefore, the earlier commencement will also benefit those who comply with the obligation to provide prepared food.

## Consultation

The red tape reduction expert panel, comprising representatives from industry, government and community, considered the proposal and endorsed the amendment.

The Office of Best Practice Regulation (OBPR) was consulted in relation to Regulatory Impact Statement (RIS) requirements. OBPR advised that a RIS would not be required as the proposal is not likely to attract significant adverse impacts.

The Department of the Premier and Cabinet and Queensland Treasury and Trade were also consulted on the proposal as part of a broader package of red tape reduction initiatives and did not raise any specific concerns in relation to the proposal.

## Notes on provisions

### Short Title

Clause 1 states that this regulation may be cited as the *Liquor Amendment Regulation (No. 2) 2013*.

### Regulation amended

Clause 2 states that the regulation amends the *Liquor Regulation 2002*.

### Amendment of s 36 (Licence fees)

Clause 3 amends section 36(1)(b) by omitting the reference to section 36.

### Omission of section 36C (Risk criterion—prepared food not available)

Clause 4 omits section 36C.

### Amendment of pt 11 heading

Clause 5 makes a minor amendment to the Part 11 heading to include a reference to the *Liquor Regulation 2002*.

### Insertion of new pt 13

Clause 6 inserts a new Part 13, Transitional provisions for *Liquor Amendment Regulation (No. 2) 2013*. The new section 61 provides that the former section 36C does not apply to licences granted after 14 October 2013. Under subsection (1), the former section 36C does not apply to a person who paid a licence fee on or after 14 October 2014 and who was required to pay an

amount for the risk criterion under the former section 36C. Under subsection (2), the former section 36C does not apply and is taken to never have applied to the person. Subsection (3) provides that the commissioner must refund an amount paid by a licensee under former section 36C. Subsection (4) prevents the commissioner from refunding fees paid by licensees under former section 36C on or before 13 October 2013.