

Liquor Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 54

Made under the

Liquor Act 1992

General Outline

Short Title

Liquor Amendment Regulation (No. 1) 2015

Authorising law

Sections 105, 142ZZA, 202 and 235 of the *Liquor Act 1992* (Liquor Act).

Policy objectives and the reasons for them

Since 2008, nightclubs have operated under the authority of a 'commercial other – subsidiary on-premises' licence (with the principal activity being entertainment). Lower risk restaurants and accommodation facilities also fall under the category of a commercial other – subsidiary on-premises licence (with the principal activity being the provision of meals or accommodation).

The *Safe Night Out Legislation Amendment Act 2014* (Amendment Act) was assented to on 5 September 2014. While most of the amendments have already commenced, the amendments relating to nightclubs and restaurants were legislated for commencement on 1 July 2015. Specifically, the amendments will:

- introduce a new licence type catering exclusively to nightclubs; and
- limit extended trading hours approvals for restaurants and cafés to be no later than 1am.

The intent of establishing a specific nightclub licence is to recognise that this type of venue represents greater risk of alcohol-related harm than other subsidiary on-premises licence types and therefore poses greater community impact and regulation costs to Government.

The reduction of extended trading hours for restaurants and cafes from 3am to 1am is to address concerns about restaurants and cafes trading as bars or entertainment venues (pseudo-nightclubs) under a late-trading subsidiary on-premises licence (meals), without the same safeguards required for operating an entertainment venue such as a nightclub.

In view of these changes to the liquor licensing framework commencing 1 July 2015, amendments to the *Liquor Regulation 2002* (Liquor Regulation) are necessary to enable the levy of an application and a base fee for nightclub licences, as well as a reduced extended trading hours risk criterion fee for a subsidiary on-premises licence (with the principal activity being the provision of meals) for the trading period between midnight and 1am. In addition, there are also several other references to subsidiary on-premises licences throughout the provisions that require amendment to reference the new nightclub licence.

It is the Government's policy to levy fees in order to recover costs incurred in relation to services provided. The current application and licence fee structure under the Liquor Act was approved in 2008 following a Regulatory Impact Statement and Draft Public Benefit Test finalised during that same year. The annual liquor licence fee system, introduced following this process, adopts a risk-based approach designed to ensure licensees contribute fairly and appropriately, on a risk-based scale, to the on-going costs of monitoring and regulating the liquor industry in Queensland. The fees for nightclub licences and the reduced risk criterion fee for subsidiary on-premises licence (with the principal activity being the provision of meals) are consistent with this risk-based framework for liquor licensing fees.

In accordance with the Government's fees and charges indexation policy, all fees under the Liquor Regulation are indexed annually on 1 July. Therefore, as the nightclub and risk criterion fees are modelled on existing fees under the current licence framework, they will next be subject to indexation on 1 July 2015 and on each 1 July thereafter. Accordingly, the fees prescribed in the *Liquor Amendment Regulation (No. 1) 2015* (Amendment Regulation) are the figures stated in the Explanatory Notes, plus the applicable indexation rate of 3.5% at 1 July 2015.

Achievement of policy objectives

As the liquor licensing fee framework does not currently provide for levying fees in relation to the new nightclub licence and the risk criterion fee for extended trading hours approvals to 1am, amending the Liquor Regulation is the only method of achieving the policy objectives.

The new nightclub licence and wind-back of trading hours for restaurants will commence on 1 July 2015 with, or without, the fees prescribed in the Regulation. Failure to prescribe the fees will result in Government bearing the costs associated with processing and determining nightclub applications, as well as monitoring and compliance for the 2015/16 licence fee period. This would reduce the effectiveness of the licensing fee framework, as nightclubs would be the only licence type not subject to application or base fees, despite being considered high risk. Failure to prescribe fees would also result in restaurant and

café licensees paying the same risk criterion fee, regardless of whether their extended trading hours approval ends at 1am or 3am.

Nightclub licence application fee

Prescribing the application fee for a nightclub licence as \$1,211 (plus indexation at 1 July 2015) is considered appropriate as it is consistent with the Government's *Principles for Fees and Charges* guideline, and is calculated based on full cost recovery. It is expected the resources required to process, assess and consider an application for a nightclub licence will be the same as that already required for the processing of commercial other – subsidiary on-premises licence (entertainment). In terms of application fees, this maintains the status quo for nightclub venues.

Base fees for nightclub licences

It is considered appropriate to prescribe the base rate for a nightclub licence as \$3,273 (plus indexation at 1 July 2015) because it is consistent with a risk-based approach and provides for the recovery of monitoring and compliance costs associated with high risk premises. The base fee for a nightclub operating under a subsidiary on-premises licence (entertainment) is currently \$605.30, which is equivalent to low risk venues such as restaurants and accommodation facilities. In comparison, the current base fee for a commercial hotel is significantly higher, at \$3,273. Given the broader scope and authority of a commercial hotel licence, the base fee under the Liquor Regulation was previously set considerably higher for commercial hotels than for nightclubs to which a subsidiary on-premises licence (entertainment) applies. However over time, the base fee applying to nightclubs under a subsidiary on-premises licence (entertainment) has proven to be inadequate, as these venues pose a significantly higher risk of alcohol related harm and attract much higher monitoring and compliance costs than venues such as restaurants. These nightclubs are now recognised as generally posing an equivalent, or sometimes higher, risk of alcohol-related harm than commercial hotels.

Accordingly, setting a base fee for the new nightclub licence identical to that prescribed for a commercial hotel, namely \$3,273 (plus indexation), on the basis that these establishments (nightclubs) share a similar risk profile than hotels is considered reasonable and appropriate.

Extended trading hours risk criterion fee for restaurants and cafés trading until 1am

The extended trading hours risk criterion fee for a subsidiary on-premises licence (with the principal activity being the provision of meals), such as restaurants and cafés, with extended trading hours approval to trade until 1am will be \$2,273 (plus indexation at 1 July 2015) during weekends only, or \$3,030 (plus indexation at 1 July 2015) otherwise. The fee has been calculated as one third of the existing risk criterion fee to trade between 12 midnight and 3am (\$6,820 for weekends only and \$9090 otherwise). This approach fairly reflects that the extended trading hours approval will be for a period that is one third of the duration of other extended trading hours approvals granted from midnight to 3am and reflect the reduced period relating to compliance and monitoring costs. The fee is consistent with principles of fairness, risk-based fees and cost recovery.

Consequential amendments

Currently nightclub venues with a subsidiary on-premises licence (entertainment) can make various applications under the Liquor Act, for example to cater away for functions, and are also required to comply with various regulations including the provision of drinking water. A number of references in the Liquor Regulation to subsidiary on-premises licences will also be amended to reference nightclub licences to retain the status quo.

The policy objectives are achieved by:

- amending section 27A of the Liquor Regulation to insert a reference to a nightclub licence;
- amending section 36A of the Liquor Regulation to prescribe that for a nightclub licence, the base fee is \$3388;
- amending section 36B of the Liquor Regulation to prescribe that if a licensee holds a subsidiary on-premises licence (meals) for the licensed premises and the approved extended trading hours for the premises are between 12a.m. and 1a.m., the fee for the risk criterion - extended or authorised trading hours will be \$2353 during weekends only, or otherwise \$3136;
- amending Schedule 1, item 1 of the Liquor Regulation to prescribe that the application fee for a nightclub licence is \$1253; and
- amending Schedule 1, item 5(n) of the Liquor Regulation to include a reference to a nightclub licence.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Liquor Act, particularly as it provides revenue for the State to enable the attainment of the Act's main purposes and for other purposes of government (section 3(g) of the Liquor Act).

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The fees are intended to offset costs to Government of administering and enforcing regulatory compliance of the liquor industry, consistent with fees for all other licence types. Without the prescribing of the fees by 1 July 2015, the Government will lose revenue to offset these costs. As the fees are based on full-cost recovery, it is not expected there will be any significant costs associated with the implementation of the Amendment Regulation.

Nightclub licence application fee

As the nightclub licence application fee has been calculated based on full-cost recovery, the prescription of an application fee ensures the cost of progressing, assessing and consideration of an application is borne by applicants. The prescription of a nightclub licence application fee also ensures all applicants are levied in a consistent and fair manner.

Base fees for nightclub licences

The annual liquor licence fee system prescribed in the Liquor Regulation adopts a risk-based approach designed to ensure licensees contribute fairly and appropriately, on a risk-based scale, to the on-going costs of monitoring and regulating the liquor industry in Queensland. The introduction of a base fee for nightclub licences ensures that nightclubs contribute to the costs of regulating these high-risk venues.

The higher annual base licence fee for a nightclub licence, when compared to the current base fee applying to a nightclub under a subsidiary on-premises licence (entertainment), is expected to generate some additional revenue. However, these funds will offset some of the costs associated with the Office of Liquor and Gaming Regulation undertaking covert and overt compliance monitoring programs, including late night and weekend activities. The previous licence fee applied to nightclub venues has proven over time to be inappropriately low, given the costs associated with regulating these high risk premises.

Extended trading hours risk criterion fee for restaurants and cafés trading until 1am

The extended trading hours risk criterion fee for a subsidiary on-premises licence (with the principal activity being the provision of meals) recognises that this type of premises, can only trade under an extended trading hours approval until 1am. The risk criterion fee for restaurants and cafes fairly reflects that the extended trading hours approval will be for a period that is one third of the duration of other extended trading hours approvals from midnight to 3am.

Without the changes to the risk criterion fee for extended trading hours approvals between midnight and 1am, restaurants and cafes that wish to trade for this period will be subject to the same fees for licensed premises approved to trade between midnight and 3am. This is an unfair cost on impacted licensees, given their inability to be approved to trade beyond 1am.

Although the reduced risk criterion fee for restaurants and cafés will result in a small loss of Government revenue, there will be a corresponding reduction in compliance costs due to the reduced extended trading hours.

Consequential amendments

Consequential amendments are needed to reference the new nightclub licence to maintain the status quo for these venues.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles as it does not affect the rights and liberties of individuals and does not erode the institution of Parliament.

Consultation

Extensive community consultation was undertaken in developing the Safe Night Out Strategy. The Amendment Act, which implements the legislative elements of the Strategy, was subject to the Parliamentary processes, and has been publicly available on the Office of the Queensland Parliamentary Counsel website since its enactment in September 2014.

The Office of Liquor and Gaming Regulation has also communicated the changes to the community, as part of the implementation of the Amendment Act. In particular, impacted licensees were advised of anticipated fee amendments as a result of the Amendment Act.

Some licensees that will automatically transition from the subsidiary on-premises licence (entertainment) to the new nightclub licence indicated they do not support the increased annual base fee from \$605.30 to \$3,273 (application fee levels will not change). However, the legislative changes result from evidence that existing subsidiary on-premises licences (entertainment), which are essentially nightclubs, are a high risk licence type requiring a high level of compliance and monitoring and therefore the current base fee level is inappropriate and unfair compared to the base fee level of other high risk licence types, such as commercial hotels.

Annual liquor licence fees were reintroduced in 2008 following a Regulatory Impact Statement and Draft Public Benefit Test and are designed, adopting a risk-based approach, to ensure licensees contribute appropriately to the on-going costs of their administration and regulation. As the fees are calculated on full-cost recovery and modelled on existing fee structures, further community consultation on the fees has not been undertaken.