

Liquor Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 84

made under the

Liquor Act 1992

General Outline

Short Title

Liquor Amendment Regulation (No. 1) 2016

Authorising law

Sections 9, 85, 86, 105(1)(d), 155AJ, 202 and 235 of the *Liquor Act 1992*

Policy objectives and the reasons for them

It is the Government's policy to levy fees in order to recover costs incurred in relation to services provided. The *Liquor Regulation 2002* (Liquor Regulation) prescribes fees for, various matters, including extended or authorised trading hours approval risk criterion fees for the sale and supply of liquor during specified periods outside of ordinary liquor trading hours and application fees for the permanent variation of a licence under section 111 of the *Liquor Act 1992* (Liquor Act). These fees are calculated on a cost-recovery basis designed to ensure licensees contribute fairly and appropriately to the on-going costs of monitoring and regulating the liquor industry in Queensland.

The *Tackling Alcohol-Fuelled Violence Amendment Act 2016* (Amendment Act), in part, amends the *Liquor Act 1992* (Liquor Act) to:

- stop the service of alcohol at 2am State-wide, with no lockout;
- allow licensees in approved safe night precincts to serve liquor until 3am, with a 1am lockout (a seven month transitional period will apply); and
- ban on the sale or supply of rapid intoxication drinks after 12 midnight except in cases where the Commissioner exempts venues that specialise in the sale of premium spirits not intended to be consumed rapidly, such as 'whisky bars'.

The majority of these new provisions will come into effect on 1 July 2016, with the lockout due to commence on 1 February 2017.

These changes will not apply to casinos, airports and industrial canteens.

Under the current fee framework, licensees prohibited from serving liquor beyond 2am, and licensees, other than for restaurants and cafes, that cease liquor service at 1am, would be required to pay the same risk criterion fee as licensees with approval to sell or supply liquor to 3am (\$7,310 for weekend trading only; or otherwise \$9,740 as indexed on 1 July 2016).

The objective of the *Liquor Amendment Regulation (No. 1) 2016* (Amendment Regulation) is to amend the Liquor Regulation to reflect the new liquor service hours regime by:

- extending the existing extended or authorised trading hours approval risk criterion fee for the period between 12 midnight to 1am for restaurants and cafes, to all relevant licence types;
- prescribing a new reduced extended or authorised trading hours approval risk criterion fee for the period between 12 midnight to 2am; and
- prescribing a new application fee for applications for exemption (exemption application) from the statutory ban on the sale or supply of prescribed rapid intoxication drinks between 12 midnight and 5am (restricted period).

The reduced risk criterion fees for liquor service during the periods of 12 midnight to 1am and 12 midnight to 2am and the exemption application fee are consistent with the current licensing fee framework.

The Amendment Regulation also renumbers the section to cater for the prescription of the new risk criterion fees and clarifies the wording of the existing 12 midnight to 3am risk criterion fee for extended or authorised trading hours approvals for consistency. The Amendment Regulation also clarifies that the risk criterion fees applied for all liquor trading periods between 12 midnight and 3am will not to be applied cumulatively.

Risk criterion fees

Section 85 of the Liquor Act authorises applications for extended trading hours to sell or supply liquor post-midnight. Section 36B(2) of the Liquor Regulation prescribes risk criterion fees that apply to extended or authorised liquor trading hours approvals granted for the periods 7am to 9am, 9am to 10am, 12 midnight to 1am (restaurants and cafes only), 12 midnight to 3am and 3am to 5am.

The Amendment Regulation amends the Liquor Regulation to reflect the new liquor service hours regime by expanding the 12 midnight to 1am risk criterion fee to apply to all relevant licence types, and inserting a new fee, from 1 July 2016, for the period between 12 midnight to 2am (\$4871.00 for weekend trading only; or otherwise \$6,490.00).

Exemption application fee

Section 105(1)(d) of the Liquor Act requires that an application for any purpose under the Act must be accompanied by the fee prescribed by regulation for an application of the kind. Schedule 1 of the Liquor Regulation prescribes a specific fee amount for applications in relation to provisions in the Liquor Act.

Section 155AJ of the Liquor Act authorises licensees to apply for an exemption from the statutory ban on the sale or supply of rapid intoxication drinks during the restricted period. If the Commissioner is satisfied that the primary business activity of the premises (or part of the premises) to which the application relates is the service of premium spirits, and the application meets other requirements for exemption provided in section 155AK of the Liquor Act, an exemption notice must be issued and a number of conditions relating to the

exemption must be imposed on the licence. Decisions made in relation to the exemption application are reviewable under section 21 of the Liquor Act.

The costs associated with processing and determining an application would be similar to the costs associated with a permanent variation of licence for other purposes under the Liquor Act. To enable cost-recovery in relation to applications for exemption from the statutory ban, the Amendment Regulation amends Schedule 1 to insert a new application fee of \$195.10 as indexed on 1 July 2016, which is equivalent to the existing application fee to permanently vary a licence.

In accordance with the Government's fees and charges indexation policy, which requires that all fees under the Liquor Regulation are indexed annually on 1 July, the fees prescribed in the Amendment Regulation include the applicable indexation of 3.5% as at 1 July 2016, and will be subject to the applicable indexation on each 1 July thereafter.

Achievement of policy objectives

The Amendment Regulation achieves the objectives by:

- amending the current provisions of subsection 36B(2)(ba) to enable all relevant licence types to pay a reduced extended or authorised trading hours approval risk criterion fee for the period of 12midnight to 1am, not just holders of a subsidiary on-premises licence (meals). The fee, as indexed on 1 July 2016, is \$2,435 for weekend trading only; or otherwise \$3,246;
- prescribing a new risk criterion fee for 12 midnight to 2am of \$4,871 for weekend trading only; or otherwise \$6,490; and
- prescribing an application fee of \$195.10 for an application for an exemption from the ban on rapid intoxication drinks after midnight.

The reduced risk criterion fees reflect the current risk-based framework for calculating compliance and monitoring costs for premises granted approval for extended liquor trade applicable to the new reduced liquor service hours regime, in particular 12 midnight to 2am trade or 12 midnight to 1am trade.

The reduced risk criterion fee for extended or authorised trading hours approval from 12 midnight to 1am is one-third of the cost of the existing 12 midnight to 3am risk-based fee, while the risk criterion fee for approval to trade liquor from 12midnight to 2am is two-thirds of the cost of the existing 12 midnight to 3am risk-based fee.

The exemption application fee amount is equivalent to the current application fee for a permanent variation of licence as it is expected the resources required to process, assess and determine an exemption application will be similar to what is required for processing a permanent variation of a licence.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives 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

Creating a three-tiered system of risk criterion fees within the 12 midnight to 3am bracket, removes a disincentive for licensees to cease liquor service earlier at night, if they wish to close. This aligns with the Government's objective to promote a diverse night life that does not revolve solely around liquor, particularly when licensees are able to remain open beyond the hours of liquor service to provide other services, such as food, non-alcoholic beverages and entertainment.

It is anticipated that the reduced risk criterion fees will result in a loss of Government revenue. However, this is expected over time to be offset by reductions in compliance and monitoring cost resulting from reductions to liquor service hours state-wide.

Without the new reduced risk criterion fees for extended trading hours approvals to sell or supply liquor between 12 midnight and 1am, or 12 midnight and 2am, an inequitable regulatory environment would ensue in which licensees approved to serve liquor until 1am (except restaurants and cafes), 2am or 3am would be required to pay the risk criterion fee that has been calculated to cover monitoring and compliance costs for the whole 12 midnight to 3am period. Creating these new risk criterion fees for approved extended and authorised trading hour approvals ensures an equitable regulatory environment, whereby premises prevented from serving liquor beyond 2am under the new liquor services regime, will pay a reduced fee equivalent to their reduced liquor service hours.

The exemption application fee will ensure that not only are costs associated with processing and determining applications borne by licensees, but also that costs are applied in a consistent manner across all applicants.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The reduced liquor service hours and exemption from the ban on rapid intoxication drinks to which the proposed fees relate were part of the *Tackling Alcohol-Fuelled Violence Policy* and, in that context, were subject to extensive community and industry consultation. Also, as the fees are calculated on a cost recovery basis and modelled on existing fee structures, further community consultation on the specific fee amounts has not been undertaken.

The Office of Best practice Regulation was consulted and advised no further analysis and assessment is required under the Regulatory Impact Statement system.

The Department of the Premier and Cabinet and Queensland Treasury were consulted and did not raise any issues.