Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 83

made under the

Liquor Act 1992
Wine Industry Act 1994

General Outline

Short title

Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020

Authorising law

Sections 202 and 235 of the *Liquor Act 1992*
Sections 53 and 62 of the *Wine Industry Act 1994*

Policy objectives and the reasons for them

On 29 January 2020, in response to the global novel coronavirus (COVID-19) pandemic, a public health emergency was declared in Queensland under section 319 of the *Public Health Act 2005* (Qld) (Public Health Act).

On 23 March 2020, by public health direction made under section 362B of the Public Health Act, the Chief Health Officer ordered all non-essential businesses to close, including hotels, bars, clubs and restaurants, with exceptions for sales of takeaway food and beverages.

On 24 March 2020, the Government announced a $4 billion economic relief package to support health, jobs, households and businesses affected by the COVID-19 pandemic. As part of this package, businesses operating under a Queensland liquor licence that was in effect immediately before 1 July 2020 are to have their liquor licence fees for the 2020-21 licence period waived. It is intended this will reduce the financial burden on licensees directly impacted by COVID-19 related restrictions in place during the 2019-20 licence period, which in turn will increase the viability of affected businesses and assist them to resume normal trading once the relevant public health directives have been lifted.

Achievement of policy objectives

The Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020 (Amendment Regulation) achieves the policy objective of waiving 2020-21 liquor licence fees for existing licensees by inserting new section 36AA into the *Liquor Regulation 2002* (Liquor Regulation) and new section 18A into the *Wine Industry Regulation 2009* (Wine Industry Regulation).

Liquor Regulation amendments

Under the authority of section 202 of the *Liquor Act 1992* (Liquor Act), licence fees for all licence types are to be assessed in the way prescribed under a regulation. Pursuant to section 36 of the Liquor Regulation, the licence fee for a licence period is the base licence fee for the licence mentioned in section 36A, plus the fee calculated under section 36B or 36CA for each risk criterion applying to the licence.

New subsections 36AA(1) and (2) of the Liquor Regulation provide that the fees for all relevant licences specified in sections 36A, 36B and 36CA of the Liquor Regulation are taken to be $0 for the 2020-21 financial year.

New subsection 36AA(7) defines a ‘relevant licence’ for the application of new section 36AA as a licence in force immediately before 1 July 2020. This provision ensures the fee waiver is targeted towards licensees operating during the 2019-20 licence period, when regular trading was disrupted by the public health response to COVID-19.

Under new subsection 36AA(3), licence fees for 2020-21 will be taken to be paid on the date prescribed by section 36E(b) of the Liquor Regulation, being 31 July 2020.

As the fee for 2020-21 will be $0, new subsections 36AA(4) and (5) exempt existing licensees from having to self-assess their licence fee and provide a completed self-assessment form to the Commissioner for Liquor and Gaming, as required by sections 36F and 36G of the Liquor Regulation.

The waiver of licence fees is a temporary measure in response to the COVID-19 public health emergency, and accordingly, subsection 36AA(6) provides that new section 36AA of the Liquor Regulation will expire on 30 June 2021.

Wine Industry Regulation amendments

Under the authority of section 53 of the *Wine Industry Act 1994* (Wine Industry Act), the annual fee for a wine producer licence and a wine merchant licence is an amount prescribed by regulation. Pursuant to section 18 and schedule 1, item 3 of the Wine Industry Regulation, the prescribed annual fee amount for both licence types is $616.10.

New subsections 18A(1) and (2) of the Wine Industry Regulation provide that the annual fee for a relevant licence specified in schedule 1, item 3 of the Wine Industry Regulation will be reduced to $0 for the 2020-21 financial year.

New subsection 18A(5) defines a ‘relevant licence’ for the application of new section 18A as a licence in force immediately before 1 July 2020. This provision ensures the fee waiver is targeted towards licensees operating during the 2019-20 licence period, when regular trading was disrupted by the public health response to COVID-19.

Under new subsection 18A(3), annual fees for 2020-21 will be taken to be paid on 31 July 2020.

Pursuant to subsection 18A(4), new section 18A of the Wine Industry Regulation will also expire on 30 June 2021.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Liquor Act and the Wine Industry 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 Amendment Regulation provides a benefit to relevant liquor licensees by removing the requirement to pay annual liquor licence fees for the 2020-21 licence period.

Based on annual licence fee revenue for the 2019-20 financial year, the estimated cost to Government of implementation is approximately $22.4 million.

Consistency with fundamental legislative principles

Waiving liquor licence fees by amendment to the Liquor Regulation and Wine Industry Regulation may potentially breach section 4(5)(c) of the *Legislative Standards Act 1992,* which requires that subordinate legislation show sufficient regard to the institution of Parliament by containing only matters which are appropriate for subordinate legislation.

However, as licence fees are prescribed in the Liquor Regulation under the authority of section 202 of the Liquor Act, and in the Wine Industry Regulation under the authority of section 53 of the Wine Industry Act, the Amendment Regulation is not considered to be ultra vires.

It is also considered any potential breach is justified on the grounds of public interest, due to the necessity to provide financial relief to businesses experiencing significantly reduced trading and closures related to the COVID-19 public health emergency. This is in line with the purpose of the Liquor Act outlined in section 3(b), to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries having regard to, amongst other things, the economic implication of change. This approach also aligns with the objects of the Wine Industry Act in section 3(1)(a)-(c), in relation to the development and growth of the Queensland wine industry.

Consultation

In order to ensure fee relief could be provided for the 2020-21 licence period commencing on 1 July 2020, consultation was not undertaken with affected liquor licensees about the proposal. However, as the measure benefits licensees, objections to the waiver of licence fees are not anticipated.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted in relation to the proposal. OBPR applied an OBPR-assessable exclusion from undertaking further regulatory impact analysis (category (k) – Regulatory proposal designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts), as the proposed amendments appear to be proportionate to liquor licensees' reduced ability to trade as part of the COVID-19 emergency response.