

# Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (Human Rights Act), I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021* (Amendment Regulation) made under the *Liquor Act 1992* (Liquor Act), the *Wine Industry Act 1994* (Wine Industry Act) and the *Tourism Services Act 2003* (Tourism Services Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

On 10 August 2021, the Premier and Minister for Trade, announced (jointly with two other Ministers) a \$47.75 million COVID-19 support package to assist the tourism and hospitality industry in dealing with the continuing impacts of COVID-19, including the August 2021 lockdowns.

As part of the support package:

- annual licensing fees for 2021-22 will be waived or refunded for businesses that were licensed under the Liquor Act or Wine Industry Act as at 30 June 2021;
- licensing application fees for changes to liquor trading hours and variations to licensed premises will be waived or refunded for applications made between 1 July 2021 and 30 June 2022; and
- registration renewal fees for inbound tour operators will be waived or refunded in respect of renewals falling due between 1 February 2021 and 30 June 2022.

The purpose of the Amendment Regulation is to implement the Government's recent industry support package via the amendments outlined below.

### Hospitality amendments

Under the authority of section 202(1) of the Liquor Act, licence fees for all licence types available under the Act are 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 type mentioned in section 36A, plus the fee calculated under section 36B or 36CA for each risk criterion applying to the licence.

The Amendment Regulation inserts new provisions into the Liquor Regulation to provide that all licensing fees required under sections 36A, 36B and 36CA of the Liquor Regulation will be nil for the 2021-22 licence period and fees already paid will be refunded.

Section 105 of the Liquor Act provides that applications made under the Liquor Act must be accompanied by the associated fee as prescribed by regulation. Pursuant to section 36D of the Liquor Regulation, these fees are stated in Schedule 1. The prescribed fees associated with applications to change liquor trading hours or vary an area of the licensed premises are stated at items 2(g), 2(h), 2(k) and 3(a) under Schedule 1.

The Amendment Regulation inserts new provisions into the Liquor Regulation to provide that, despite section 36D, no application fee is payable for the specified applications made between 1 July 2021 and 30 June 2022 to change liquor trading hours or vary an area of the licensed premises. Application fees already paid during this period will be refunded.

Under the authority of section 53 of the Wine Industry Act, the annual fee for both wine producer and wine merchant licences is the amount prescribed by a regulation. Pursuant to section 18 and Schedule 1 of the Wine Industry Regulation, the prescribed annual fee amount for both a wine merchant licence and a wine producer licence is \$637.90.

The Amendment Regulation inserts new provisions into the Wine Industry Regulation to provide that the licence fee will be nil for the 2021-22 licence period and fees already paid will be refunded.

The proposed amendments to the Liquor Regulation and the Wine Industry Regulation largely replicate the provisions that facilitated the earlier licensing and application fee waivers. It is intended the new provisions relating to the licensing fee waivers will expire on 30 June 2022 and those relating to the application fee waivers will expire on 31 December 2022.

It is estimated businesses operating under Queensland liquor licences will be relieved from paying approximately \$23 million in licence fees for the relevant period. Approximately \$21.5 million in fees has already been collected (which must be refunded) and \$1.5 million will be waived. The estimated cost to Government for waiving the liquor related application fees is \$200,000.

### Tourism Amendments

Inbound tour operators are registered under section 12 of the Tourism Services Act to sell Queensland tourism packages to overseas purchasers. Registration must be renewed, and a registration renewal fee applies.

The Amendment Regulation will insert new provisions into the Tourism Services Regulation to waive fees on registration renewals due between 1 February and 30 June 2022.

The waiver extends a previously announced (and implemented) waiver of registration renewal fees that applied to renewals due between 1 February 2020 and 31 January 2021.

## **Human Rights Issues**

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

I consider the following human rights to be relevant to the Amendment Regulation:

- recognition and equality before the law (section 15 of the Human Rights Act); and

- property rights (section 24 of the Human Rights Act).

In relation to the right of recognition and equality before the law, the Amendment Regulation potentially limits this right, as the respective fee waivers will only apply to eligible licensees. For example, only:

- businesses licensed under the Liquor Act or Wine Industry Act as at 30 June 2021; or
- applicants applying to extend liquor trading hours or vary an area of a licensed premises between 1 July 2021 and 30 June 2022; or
- inbound tour operators whose registration is due between 1 February 2021 and 30 June 2022;

will benefit from the waivers (or refunds).

New applicants to the liquor and wine industry, who are licensed after 30 June 2021, will still be required to pay licensing fees, as the fee waivers are a temporary measure intended to support businesses directly impacted by the recent COVID-19 lockdowns and on-going travel restrictions. In this regard, the intent of the waiver is to provide assistance to licensees who in the past may not have received the full benefit of their licence due to the impacts of COVID-19 or related public health responses such as the August 2021 lockdown.

With regards to property rights, the Amendment Regulation will enact a positive measure to support licensees and the financial viability of their businesses. In addition, continuing to charge a fee for a licence, which is of limited use because of government restrictions may be considered unreasonable and unjustifiable.

It is considered the Amendment Regulation is compatible with the Human Rights Act. It promotes the property rights of individual licensees and businesses and, although it potentially limits, restricts or interferes with the right to recognition and equality before the law, the purpose of the limitation is considered to be reasonable and justified.

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

The following analysis relates to the potential limitation on the right to recognition and equality before the law under section 15 of the Human Rights Act.

(a) the nature of the right

The protection of the right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being human, rather than because of a particular characteristic or membership of a particular group. The right places an obligation on public entities to treat people equally and not apply the law in a discriminatory or arbitrary way.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that financial support in the form of a licence/application/renewal fee waiver is only provided for licensees/inbound tour operators whose businesses have been directly and negatively impacted by recent COVID-19 lockdowns. Accordingly, only these affected businesses who have been unable to make full use of their licences or operator registration due to the COVID-19 closures will have their fees waived.

Limiting the right to recognition and equality before the law to support the continued financial viability of affected Queensland tourist and hospitality businesses is consistent with the values of a free and democratic society.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves the purpose of providing financial support to relevant businesses forced to cease or limit trading due to recent COVID-19 lockdowns, by waiving the obligation on those businesses to pay licence fees for the 2021-22 financial year, pay application fees for certain applications made between 1 July 2021 and 30 June 2022, or inbound tour operator registration renewal fees up to 30 June 2022.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

As licence, application and registration renewal fees are prescribed by regulation, it is considered that there is no other less restrictive or reasonably available way to achieve this purpose.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The nature of the limitation on the right to recognition and equality before the law is that businesses holding a relevant licence granted after 30 June 2021 will not be eligible for a waiver of their 2021-22 licence fees. The limitation, as provided for in the Amendment Regulation, is considered fair, necessary and appropriately defined for the purpose of ensuring the financial assistance only supports those businesses that have experienced direct financial hardship as a result of COVID-19 lockdowns.

- (f) any other relevant factors

No other relevant factors have been identified.

## Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because although it potentially limits, restricts or interferes with a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**SHANNON FENTIMAN MP**  
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and Minister for Justice  
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