



Queensland

# Liquor and Other Legislation Amendment Regulation (No. 1) 2009

## Explanatory Notes for SL 2009 No. 94

made under the

*Casino Control Act 1982*

*Charitable and Non-Profit Gaming Act 1999*

*Gaming Machine Act 1991*

*Interactive Gambling (Player Protection) Act 1998*

*Keno Act 1996*

*Liquor Act 1992*

*Lotteries Act 1997*

*Wagering Act 1998*

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## Short title

*Liquor and Other Legislation Amendment Regulation (No. 1) 2009*  
(the Amendment Regulation)

## Authorising Law

Section 27 of the *Casino Control Act 1982*

Section 186 of the *Charitable and Non-Profit Gaming Act 1999*

Section 366 of the *Gaming Machine Act 1991*

Section 263 of the *Interactive Gambling (Player Protection) Act 1998*

Section 243 of the *Keno Act 1996*

Section 235 of the *Liquor Act 1992*

Section 228 of the *Lotteries Act 1997*

Section 312 of the *Wagering Act 1998*

## **Objectives of the legislation**

The objective of the legislation is to make amendments to the compliance history and provision of meals criteria of the liquor licensing annual fee regime within the *Liquor Regulation 2002* (Regulation). Several other non-controversial amendments identified since the passing of recent amendments to the Regulation in December 2008 are required.

The legislation will also make minor administrative amendments to various gambling regulations to update the list of entities to which the Office of Liquor, Gaming and Racing (OLGR) may disclose confidential information.

## **Reasons for the subordinate legislation**

On 10 September 2008, the *Liquor and Other Acts Amendment Act 2008* was passed by Parliament. The Amendment Act implemented recommendations arising from the review of the *Liquor Act 1992* including a new annual liquor licence fee regime.

Amendments to the Regulation in December 2008 provided for the collection of the annual liquor licence base fee from 1 January 2009 and the circumstances in which fees for the risk criteria of extended trading hours and provision of meals were applicable to licensees.

Cabinet approval (Decision No. 8100) had been granted for the inclusion of the compliance history risk criterion but the compliance history was not provided for in the December 2008 Regulation amendments as this element of the annual fee does not become assessable until 1 July 2009. Initial implementation of the annual fees collection system has revealed the need for adjustments to the provision of meals risk criterion. As a harm minimisation tool, a requirement that all relevant licensed premises provide “prepared food” will replace the provision of meals risk criterion. The application of this requirement is restricted to annual licence fee calculations. In no way does the “provision of food” criterion alter the existing principal activity requirements under the Liquor Act.

Licenses are expected to continue to fully meet their obligations to carry out the principal activity of their business as stated on their licence.

Several other non-controversial amendments have also been identified since December 2008, including increasing the time period for a detached bottle shop to commence operating after approval to trade is granted from 60 to 90 days.

Minor administrative amendments to various gambling regulations are also required to update the list of entities to which the Office of Liquor, Gaming and Racing (OLGR) may disclose confidential information as some of these entities change names over time.

### **Consistency with authorising law**

The Amendment Regulation is consistent with the relevant authorising laws viz section 27 of the *Casino Control Act 1982*, section 186 of the *Charitable and Non-Profit Gaming Act 1999*, section 366 of the *Gaming Machine Act 1991*, section 263 of the *Interactive Gambling (Player Protection) Act 1998*, section 243 of the *Keno Act 1996*, section 235 of the *Liquor Act 1992*, section 228 of the *Lotteries Act 1997*, and section 312 of the *Wagering Act 1998*.

### **Estimated cost of government implementation**

Any expenditure associated with implementation of the regulation will be met through existing budget allocations.

### **Fundamental legislative principles**

An issue had been raised regarding whether the new section 36CA(3)(b)(ii) to be inserted into the *Liquor Regulation 2002* has sufficient regard to the rights and liberties of individuals due to the imposition of a \$20,000 fee for what is effectively the actions and decisions of another person (a patron) of whom the licensee has little to no control over.

However, for the \$20,000 payment to be triggered, a licensee would have to first be convicted of an unlawful supply offence and secondly for that offence to have contributed to the death of a

person or for a serious assault to occur. Imposition of the fee is consistent with the policy objective of minimising harm arising from the misuse of alcohol and is also consistent with the rationale for introducing a risk-based licence fee regime - ensuring that licensees appropriately contribute to the direct cost of industry regulation.

## Results of Consultation

### (a) Community

A Regulatory Impact Statement (RIS) and Draft Public Benefit Test (DPBT) for the *Liquor Act 1992* and *Liquor Regulation 2002* was released for public consultation on 14 February 2008. Over 8,400 submissions to the RIS/DPBT were received by the closing date of 13 March 2008.

There was majority industry support for the Government's preferred policy positions except the introduction of annual licence fees and changes to trading hours.

### (b) Government

All relevant Government agencies have been consulted. Office of Parliamentary Counsel has drafted the Amendment Regulation.

## NOTES ON PROVISIONS

*Section 1* provides for the short title of the regulation.

*Section 2* provides for section 6 to 8 to commence on 1 July 2009.

*Section 3* provides for the amendment of the *Liquor Regulation 2002*.

*Sections 4 and 5* amend sections 8 and 9 respectively to increase the time period for a detached bottle shop to commence operating after approval to trade is granted from 60 days to 90 days.

*Section 6* inserts new section number 36CA into the relevant section numbers listed at 36(1)b.

*Section 7* replaces the provision of meals risk criterion in section 36C with prepared food not available risk criterion and inserts a new

section 36CA Risk criterion – compliance history. A new subsection (1) is inserted into section 36C to provide that this risk criterion applies to licensees if on any day business is conducted on the licensed premises after 7 pm and prepared food is not available to patrons during all hours of trading other than the last two hours of trading at the premises. A definition of “prepared food” is also inserted through this section to provide a clear understanding of how this risk criterion will be applied and that snacks, where there is no preparation undertaken by the licensee such as confectionery, potato crisps and fruit and nuts, are not considered to be prepared food. This risk criterion will not be applicable to licensees, where the principal activity of their licence is the provision of meals prepared, and served to be eaten, on the licensed premises, as they are required to comply with their principal activity at all times the licensed premises is open.

New section 36CA provides for a new risk criterion of compliance history and clarifies the circumstances in which a compliance history fee is payable in addition to the base annual liquor licence fee. Compliance history fees are unlike other elements of the annual liquor licence fee loadings as they are applied on the basis of past compliance with the Liquor Act rather than anticipated business practices for the coming year. Compliance history fees are applied as a result of certain infringement notices, disciplinary action or prosecution incurred by a licensee, or when a licensee is convicted of an offence against the Act which contributes to the death of a person or contributes to a serious violent offence on or near licensed premises.

*Section 8* amends section 38A to specify an additional element to be included in the risk-assessed management plan for a licensed premises or premises to which a restricted liquor permit relates. New subsection 38A(k) requires holders of commercial other licences to specify the principal activity of the business conducted under the licence when submitting a risk-assessed management plan.

*Section 9* provides for the amendment of the *Casino Control Regulation 1999*.

*Section 10* amends Schedule 1 of the *Casino Control Regulation 1999* by updating the names of entities to which OLGR may disclose confidential information.

*Section 11* provides for the amendment of the *Charitable and Non-Profit Gaming Regulation 1999*.

*Section 12* amends Schedule 1 of the *Charitable and Non-Profit Gaming Regulation 1999* by updating the names of entities to which OLGR may disclose confidential information.

*Section 13* provides for the amendment of the *Gaming Machine Regulation 2002*.

*Section 14* inserts a new subsection into section 57 to include the provision of accommodation in the definition of a tourism facility.

*Section 15* amends Schedule 1 of the *Gaming Machine Regulation 2002* by updating the names of entities to which OLGR may disclose confidential information.

*Section 16* provides for the amendment of the *Interactive Gambling (Player Protection) Regulation 1998*.

*Section 17* amends Schedule 1 of the *Interactive Gambling (Player Protection) Regulation 1998* by updating the names of entities to which OLGR may disclose confidential information.

*Section 18* provides for the amendment of the *Keno Regulation 2007*.

*Section 19* amends Schedule 1 of the *Keno Regulation 2007* by updating the names of entities to which OLGR may disclose confidential information.

*Section 20* provides for the amendment of the *Lotteries Regulation 2007*.

*Section 21* amends Schedule 1 of the *Lotteries Regulation 2007* by updating the names of entities to which OLGR may disclose confidential information.

*Section 22* provides for the amendment of the *Wagering Regulation 1999*.

*Section 23* amends Schedule 1 of the *Wagering Regulation 1999* by updating the names of entities to which OLGR may disclose confidential information.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Employment, Economic Development and Innovation.

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