

Liquor (Rapid Intoxication Drinks) Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 71

Made under the

Liquor Act 1992

General Outline

Short Title

Liquor (Rapid Intoxication Drinks) Amendment Regulation (No. 1) 2016

Authorising law

Sections 155AI, 155AG and 235 of the *Liquor Act 1992* (Liquor Act).

Policy objectives and the reasons for them

The policy objective of the *Liquor (Rapid Intoxication Drinks) Amendment Regulation (No. 1) 2016* (Amendment Regulation) is to amend the *Liquor Regulation 2002* (Liquor Regulation) to prescribe certain drinks as rapid intoxication drinks, and prescribe relevant exemptions, for the purpose of the statutory ban on the sale or supply of rapid intoxication drinks for the period between 12 midnight and 5am, arising from the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016* (Amendment Act).

On 4 March 2016, the Amendment Act received assent. Amendments commencing on assent inserted into the Liquor Act a new Part 6, Division 1B, which imposes a statutory ban on the sale or supply of rapid intoxication drinks in licensed premises during the late liquor trading period between 12 midnight and 5am (statutory ban) in Queensland. The statutory ban is supported by peer-reviewed evidence which indicates that reducing liquor service hours and restricting the service of drinks that are designed to be consumed rapidly, or which contain a high percentage of alcohol, during the high-risk late night period achieves significant reductions in alcohol-fuelled violence and related harms.

Under the regulation-making power provided in section 155AG of the Liquor Act, a drink that includes liquor is a rapid intoxication drink if: it is designed to be consumed rapidly; or it contains a high percentage of alcohol; *and* the type of drink is prescribed by regulation.

Section 155AI expressly prohibits the sale or service of rapid intoxication drinks during the restricted period, subject to a maximum penalty of 100 penalty units, unless the premises has been granted an exemption from the statutory ban in accordance with the provisions of sections 155AK. Section 155AH clarifies that the statutory ban does not apply to casinos and airports that are subject to a commercial special facility licence or premises to which an industrial canteen licence relates.

Achievement of policy objectives

The Amendment Regulation achieves the policy objective prescribing that a rapid intoxication drink is:

- a. a drink, served in a small glass or other small container that allows the drink to be consumed rapidly, if it is commonly known as a shot, shooter, bomb, blaster or test tube, a jelly shot, or another drink that is similar to these drinks;
- b. a drink prepared on the premises that contains more than 45ml of spirits or liqueur;
- c. a pre-mixed alcoholic drink in which the level of ethyl alcohol (ethanol) is greater than 5% by volume, or that contains more ethyl alcohol (ethanol) than 2 standard drinks, or to which both of these limits apply.

The Amendment Regulation references vessel size as an indicator that a drink is 'designed' to be consumed rapidly. In making 'small glass or other small container' an element of the definition of rapid consumption drink, it is intended that the Amendment Regulation will provide greater clarity around the specific element of a drink's design that brings it into the ambit of the statutory ban.

The provision is intended to capture not only drinks that are currently known to allow for rapid consumption, but also drinks that may be developed in the future that are similar in nature to a blaster, bomb, shooter, shot, test tube or jelly shot, in that they are designed to be consumed rapidly, but are sold or supplied under a different name.

The 45ml threshold for spirits or liqueur is intended to enable the service of a beverage containing a mixture of spirits or liqueurs and a non-alcoholic mixer (e.g. gin and tonic, rum and cola). It is also intended to allow for the service of high quality spirits or liqueurs which are generally consumed slowly without a mixer (e.g. cognac or single malt whisky), as these drinks are not generally associated with alcohol-fuelled violence. However, the 45ml threshold is not intended to enable the consumption of straight spirits or liqueur ordinarily served as a 'shot', 'shooter' or 'bomb'.

The restriction on pre-mixed alcoholic beverages is intended to accommodate industry preferences for a 2 standard drink limit, which certain stakeholders consider to be easily understood by patrons and staff, and other stakeholders' concerns that pre-mixed alcoholic beverages containing greater than 5% alcohol by volume (ABV) pose a risk to the community, particularly late at night, because of their high alcohol-content.

The definition of a standard drink is provided in the *Australia New Zealand Food Standards Code* (Food Standards Code). A standard drink is "the amount of a beverage which contains 10 grams of ethanol, measured at 20°C". A standard drink is calculated by multiplying the volume of the container in litres by the percentage alcohol by volume by 0.789 (which is the specific gravity of ethyl alcohol). For example, a 375ml beverage

containing 5% ABV is 1.5 standard drinks ($0.375 \times 5 \times 0.789 = 1.5$). The Food Standards Code also requires labelling of standard drinks *and* alcohol by volume if the ABV exceeds 0.5%.

Although the Amendment Regulation has regard to both the number of standard drinks and the percentage of ABV contained in pre-mixed alcoholic beverages, it is intended to capture any pre-mixed alcoholic beverage containing greater than 5% ABV, even if the beverage contains less than 2 standard drinks. This is to prevent pre-mixed drinks being served in small volume containers, such as 100ml or 200ml, which might have less than 2 standard drinks but contain ABV percentages higher than 5%. For example, a pre-mixed beverage containing 10% ABV, but only containing 1.6 standard drinks when packaged in a 200ml can or bottle. As the high alcohol-content combined with low volume of liquid may encourage rapid consumption, it is necessary that these types of drinks are captured under the statutory ban.

It is noted that many cocktails contain spirits or liqueur in excess of 45ml (for example, 2 nips, or 60ml). Accordingly, in recognition that most commonly available cocktails are not generally designed for rapid consumption, or consumed in a manner that poses a significant risk of alcohol-fuelled violence, the Amendment Regulation expressly provides for certain cocktails to be excluded from having to comply with the 45ml threshold for spirits or liqueur in a drink. Any alcoholic drink, commonly known as a cocktail, which contains a mixture of spirits, liqueurs or other ingredients, and is not designed to be consumed rapidly, is exempt from the ban on rapid intoxication drinks during the restricted period, provided:

- a. the drink is listed on a document (cocktail menu) prepared by the licensee and displayed on the premises, listing the cocktails that may be sold on the premises; and
- b. the price of the cocktail is listed on the cocktail menu; and
- c. the drink is not sold for less than the amount specified on the cocktail menu during the restricted period; and
- d. the drink is not designed for rapid consumption (e.g. cocktail shooters would not be exempt).

Consistency with policy objectives of authorising law

The Amendment Regulation balances the Liquor Act's objectives to minimise alcohol-related harm to the community and provide flexible, practical regulation for industry. The Amendment Regulation brings drinks that are considered to pose a risk of harm into the ambit of the statutory ban, whilst avoiding unnecessary regulatory burden in relation to certain drinks, such as cocktails and high end spirits or liqueurs, that are not considered to pose a significant risk of alcohol-fuelled violence.

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

There are no costs associated with implementation of the Amendment Regulation.

Research indicates that restrictions on post-midnight service of drinks that contain a high percentage of alcohol, or encourage rapid consumption, are an effective measure for reducing alcohol-fuelled violence. The introduction of a similar ban on rapid intoxication drinks in Newcastle, Kings Cross and the Sydney CBD Entertainment Precinct, as part of a package of measures to reduce alcohol supply late at night, have resulted in significant reductions in alcohol-related assault.

The statutory ban will only affect venues authorised to trade beyond midnight, which is approximately 10% of the total number of licensed premises in Queensland. It is not anticipated that licensees will experience significant financial hardship. Beer, wine and cider are not subject to restrictions under the Amendment Regulation. Beverages containing up to 45ml spirits or liqueur, pre-mixed spirits containing no more than 2 standard drinks with an upper limit of 5% ABV and cocktails on a cocktail menu can still be served during the restricted period. Accordingly, it is considered that speciality bars serving cocktails or higher quality spirits as the primary business activity will not be unfairly disadvantaged by the statutory ban.

Consistency with fundamental legislative principles

The Amendment Regulation has due regard to fundamental legislative principles (FLP). It is possible that the statutory ban could breach the right for ordinary activities or business not to be unduly restricted. However, the statutory ban only applies in the high-risk period after midnight and is limited in scope to capture only certain drinks that are considered to pose a risk of alcohol-related harm because they encourage rapid consumption or have a high percentage of alcohol. Accordingly, the potential breach is justified on the basis that it is in the public interest to reduce harm associated with these types of alcoholic beverages and is consistent with the objectives of the Liquor Act to minimise harm.

Consultation

Extensive consultation with community and industry stakeholders has been undertaken in relation to the statutory ban. Stakeholder Round Tables were held during the development of the *Tackling Alcohol-Fuelled Violence Policy*. The public was able to make submissions during the Legal Affairs and Community Safety Committee's consideration of the Tackling Alcohol-Fuelled Violence Legislation Amendment Bill 2015.

A Round Table was held on 6 April 2016 to seek stakeholder views in relation to types of drinks that should be banned after midnight; possible exemptions from the ban; possible limits on the alcohol content of pre-mixed alcoholic beverages served after midnight; and inter-jurisdictional models for regulating drink service during late trading hours.

Most industry stakeholders were supportive of an approach banning rapid consumption drinks such as shooters, jelly shots, and test tubes. Certain industry stakeholders endorsed an approach that limited spirits or liqueur per serving to 45ml, like the South Australian model, and provided a cocktail exemption, like the New South Wales model.

Certain representatives from the medical sector and community groups raised concerns that post-midnight service of drinks containing more than 50% of alcoholic content, drinks containing more than 30ml of spirits or liqueur or pre-packaged drinks containing more than 5% alcohol by volume could result in increased risk of alcohol-related harm.

The Department of the Premier and Cabinet (DPC) and Queensland Treasury (QT) were consulted and raised no objections to the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) was consulted and has advised that the amendments do not require further analysis or assessment under the Regulatory Impact Statement (RIS) guidelines.