

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

Explanatory notes for SL 2021 No. 155

made under the

*Liquor Act 1992*

*Tourism Services Act 2003*

*Wine Industry Act 1994*

## General Outline

### Short title

Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021

### Authorising law

Sections 105, 202 and 235 of the *Liquor Act 1992*

Sections 22 and 100 of the *Tourism Services Act 2003*

Sections 53 and 62 of the *Wine Industry Act 1994*

### Policy objectives and the reasons for them

On 10 August 2021, the Government announced a \$47.75 million tourism and hospitality sector COVID-19 lockdown support package to assist businesses who continue to be impacted by COVID-19 travel restrictions and lockdowns.

As part of this package, the government will waive and/or refund:

- the 2021-22 annual licensing fees for businesses licensed under the *Liquor Act 1992* (Liquor Act) and *Wine Industry Act 1994* (Wine Industry Act) immediately before 1 July 2021;
- application fees under the Liquor Act for certain liquor licence related applications made between 1 July 2021 and 30 June 2022; and
- registration renewal fees for inbound tour operators under Queensland's *Tourism Services Act 2003* (Tourism Services Act), in respect of renewals falling due between 1 February 2021 and 30 June 2022.

The waiver of inbound tour operator registration renewals extends a previous waiver that applied to renewals falling due between 1 February 2020 and 31 January 2021.

The policy is also consistent with prior Government policy that waived 2020-21 liquor licensing fees, and fees associated with certain liquor licensing applications made between 1 February 2020 and 31 July 2020.

## **Achievement of policy objectives**

The *Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021* (Amendment Regulation) achieves the policy objective by amending the *Liquor Regulation 2002* (Liquor Regulation), *Wine Industry Regulation 2009* (Wine Industry Regulation) and the *Tourism Services Regulation 2003* (Tourism Services Regulation) to give legislative effect to the economic support package announced on 10 August 2021.

### Mechanism for licence and registration renewal fee waivers

Section 30B(1) of the *Statutory Instruments Act 1992* (Statutory Instruments Act) provides that, if a power is conferred under a law for a statutory instrument to prescribe a fee, the power also includes a power to exempt a person or matter from payment of the fee, or waive payment of the fee for any person or matter.

As each of the authorising acts include a power to prescribe fees, it is considered section 30B(1) of the Statutory Instruments Act provides suitable authority for the respective regulations to also exempt or waive payment of the prescribed fees.

### Liquor Regulation amendments

#### *Annual licence fees*

Section 202(1) of the Liquor Act provides that the annual fee payable by a liquor licensee is 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 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 a new section 36AA into the Liquor Regulation. The new section 36AA largely replicates an expired section 36AA that applied to the 2020-21 fee waiver.

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 nil for the 2021-22 licence period.

Under new subsection 36AA(3), licence fees for 2021-22 are taken to be paid on the date prescribed by section 36E(b) of the Liquor Regulation (31 July 2021).

As the fee for 2021-22 is nil, 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.

As the Amendment Regulation has been made after the due date for payment of 2021-22 licence fees, new subsection 36AA(6) provides for the refund of fees already paid.

Subsection 36AA(7) provides that the new section 36AA of the Liquor Regulation expires at the end of the 2021-22 licence period on 30 June 2022.

New subsection 36AA(8) defines a 'relevant licence' for the application of new section 36AA as a licence in force immediately before 1 July 2021.

Section 2 of the Amendment Regulation provides that the amendments will commence retrospectively on 1 July 2021. Retrospective commencement is intended to negate the automatic cancellation of licences for any non-payment of 2021-22 licence fees, and to validate refunds already provided by the Commissioner for Liquor and Gaming in accordance with announced Government policy.

### *Application fee waivers*

Under section 105 of the Liquor Act, applications to change liquor trading hours or vary an area of the licensed premises must be accompanied by the prescribed fee. Pursuant to section 36D of the Liquor Regulation, the fees are stated in Schedule 1.

The prescribed fees associated with applications to change liquor trading hours or alter the licensed premises (for example by rebuilding or changing the area of the licensed premises) are stated at items 2(g), 2(h), 2(k) and 3(a) under the Schedule.

The Amendment Regulation inserts section 37 to provide that, despite section 36D and the fees prescribed in schedule 1 of the Liquor Regulation, no application fee is payable for applications seeking to change liquor trading hours or alter the licensed premises, if the application is made between 1 July 2021 and 30 June 2022.

Section 37(3) provides that the commissioner must refund any fee paid by an applicant for a specified application.

These provisions will commence retrospectively on 1 July 2021 to validate administrative action already taken to implement the waiver and refund policy. Section 37 will expire on 31 December 2022 to allow for the finalisation of applications received within the waiver period, some of which will require an assessment of community impact.

### Wine Industry Regulation amendments

Section 53 of the Wine Industry Act provides the annual fee payable 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 \$637.90.

The Amendment Regulation inserts a new section 18A into the Liquor Regulation. The new section 18A largely replicates an expired section 18A that applied to the 2020-21 fee waiver.

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 is taken to be nil for the 2021-22 licence period.

Under new subsection 18A(3), annual fees for 2021-22 are taken to be paid on 31 July 2021.

As the Amendment Regulation has been made after the due date for payment of the 2021-22 annual fees, new subsection 18A(4) provides for the refund of fees already paid.

Pursuant to subsection 18A(5), section 18A of the Wine Industry Regulation expires at the end of the 2021-22 licence period on 30 June 2022.

New subsection 18A(6) defines a 'relevant licence' for the application of new section 18A as a licence in force immediately before 1 July 2021.

As with the waiver of liquor licence fees, section 2 of the Amendment Regulation provides for the waiver of wine licence fees to commence retrospectively on 1 July 2021, for the same reasons applicable to the Liquor Regulation amendments as above.

### Tourism Services Regulation amendments

The *Tourism Services Act 2003* establishes a registration system for inbound tour operators intending to sell Queensland tourism packages to overseas purchasers. They may apply to renew their registration and a registration renewal fee applies. The Tourism Services Act allows inbound tour operators to renew their registration for a term of either one or three years, at their discretion.

Renewal fees are prescribed under section 3 and schedule 1 of the Tourism Services Regulation.

The Amendment Regulation inserts a new section 3C and 3D into the Tourism Services Regulation, which again largely replicate the provisions that dealt with the 2020-21 fee waiver.

New section 3C provides for the waiver of registration renewal fees in respect of registrations that expire between 1 February 2021 and 30 June 2022. Section 3D implements the waiver by providing that the registration renewal fee for a one-year term is nil. The fee for a 3-year term is equivalent to two-thirds of the regular three-year fee (the relevant fee is dependent upon whether the renewal was due before or after the 1 July 2021 CPI fee increase), thus waiving the equivalent of the one-year registration renewal fee.

Section 2 of the Amendment Regulation retrospectively commences the new provisions from 1 February 2021. As some renewal fees will already have been paid and new section 3D(2)&(3) provides for the refund of these fees.

Both new sections expire on 31 July 2022 to allow for the finalisation of applications received during the waiver period. The additional month beyond the waiver period also allows the waiver to be applied to applicants whose registrations expire on or shortly before 30 June 2022, but who are late in lodging their renewal applications.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the Liquor Act, the Wine Industry Act and the Tourism Services 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 businesses licensed/registered under the Liquor Act, Wine Industry Act and Tourism Services Act by removing the requirement to pay various fees relevant to the respective industry. The benefit is provided in recognition of the impacts of COVID-19 and public health responses on relevant businesses.

The cost to Government is approximately \$21.5 million in foregone or refunded liquor and wine licence fees and approximately \$41,420 in refunded and foregone inbound tour operator registration renewal fees. The overall cost to Government from exempting various licence application fees is estimated at approximately \$200,000.

## **Consistency with fundamental legislative principles**

### *Sufficient regard to the institution of Parliament*

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

However, as primary legislation provides that relevant fees may be prescribed in the respective regulations, the Amendment Regulation is not considered to be ultra vires, particularly with regard to section 30B of the Statutory Instruments Act as above.

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 lockdowns.

### *Retrospective operation*

The amendments to the respective regulations commence retrospectively. This may potentially breach section 4(3)(g) of the Legislative Standards Act, which requires that legislative changes must not adversely affect an individual's rights and liberties, or impose obligations, retrospectively. However, the waiver of certain liquor fees and inbound tour operator registration renewal fees supports the relevant licensees and operators by reducing the economic impact resulting from the COVID-19 pandemic and is in the interest of and to the benefit of any affected individual. Retrospective commencement is necessary to ensure the continuation of some licences and registrations and to legislatively validate the administrative waiver and refund of fees that occurred, in accordance with Government policy, prior to the date of commencement.

As the respective amendments will not operate to the disadvantage of any person, other than the State, they are considered to be consistent with fundamental legislative principles.

## **Consultation**

Consultation was not undertaken with affected licensees or inbound tour operators about the proposal to extend the waiver period for the affected businesses. However, as the measure benefits these businesses, objections to the fee waivers are not anticipated.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was consulted and confirmed that no further regulatory impact assessment is required as it is unlikely the amendments will result in significant adverse impacts beyond the financial impacts on the State.