

# COVID-19 Emergency Response and Other Legislation Amendment (Postponement) Regulation 2021

Explanatory notes for SL 2021 No. 171

made under the

*COVID-19 Emergency Response and Other Legislation Amendment Act 2020*

## General Outline

### Short Title

*COVID-19 Emergency Response and Other Legislation Amendment (Postponement) Regulation 2021*

### Authorising law

Section 15DA of the *Acts Interpretation Act 1954*

Section 2 of the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*

### Policy objectives and the reasons for them

The *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (Amendment Act) was passed on 1 December 2020 and received assent on 4 December 2020.

As part of a range of measures, the Amendment Act amended section 75 of the *Liquor Act 1992* (Liquor Act) to provide an exemption from existing restrictions which prevent distillers with a producer/wholesaler licence from selling liquor to the public in amounts exceeding 2.5% of total sales (2.5% exemption). The 2.5% exemption enables artisan distiller producer/wholesaler licensees (those producing between 400 to 450,000 litres of spirits annually) to sell their own liquor products in unlimited amounts to the general public, predominantly through tasting rooms and onsite bars catering for visitors and tourists.

The 2.5% exemption was intended as a temporary measure to allow for the continuation of eased trading restrictions for artisan distillers and to provide equality between artisan distillers and craft brewers (not subject to the same restriction) until more comprehensive reforms to support the artisan liquor industry could be established. Consequently, section 45(2) of the Amendment Act provided for the future removal of the 2.5% exemption on a

date to be fixed by proclamation (omitting provision), to allow time for the implementation of more comprehensive reforms.

As the omitting provision is to commence by proclamation, section 45(2) of the Amendment Act is considered “postponed law” for the purpose of section 15DA of the *Acts Interpretation Act 1954* (Acts Interpretation Act).

Section 15DA(2) of the Acts Interpretation Act provides that if a postponed law has not been commenced within one year of the date on which an Act receives assent, the law will automatically commence the following day (being 5 December 2021).

Section 15DA(3) of the Acts Interpretation Act provides that a regulation may postpone the period before the automatic commencement of a postponed law to not more than two years from the date of assent, being 4 December 2022.

On 4 May 2021, a new artisan producer licence became available under the Liquor Act for Queensland’s artisan distillers (producing 400 to 450,000 litres of artisan spirits annually) and craft brewers (producing 2,500 to 5 million litres of craft beer annually). This new licence type allows artisan distillers to sell their own liquor to the public for takeaway in unlimited quantities. While most artisan distillers have transitioned to the new artisan producer licence, approximately 13 are still operating under the authority of a producer/wholesaler licence and would otherwise be subject to the 2.5% total sales restriction on the sale of their own liquor to the public.

The objective of the COVID-19 Emergency Response and Other Legislation Amendment (Postponement) Regulation 2021 (Postponement Regulation) is to allow sufficient time for the remaining artisan distiller producer/wholesaler licensees to transition to the new artisan producer licence without losing the benefits associated with the 2.5% exemption. The extended timeframe is considered necessary having regard to the impacts on business of the COVID-19 pandemic and will allow further time for affected licensees to consider their preferred business model in a post COVID-19 economic recovery environment.

## **Achievement of policy objectives**

To achieve the policy objectives, the Postponement Regulation will extend the period before automatic commencement of section 45(2) of the Amendment Act to the end of 4 December 2022, being the maximum period allowable under section 15DA(3) of the Acts Interpretation Act. Section 45(2) of the Amendment Act will automatically commence and omit the 2.5% exemption from the Liquor Act on 5 December 2022, unless earlier commenced by proclamation.

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

The Postponement Regulation is consistent with the policy objectives of the Amendment Act and the *Acts Interpretation Act 1954*.

## **Inconsistency with policy objectives of other legislation**

The Postponement Regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The benefit of the Postponement Regulation is that commencement of section 45(2) of the Amendment Act will be delayed, extending the 2.5% exemption for a further 12 months. This delay will support the economic recovery of the industry from the COVID-19 emergency and allow artisan distillers still operating under a producer/wholesaler licence additional time to transition to the new artisan producer licence before expiry of the 2.5% exemption on 5 December 2022.

There are no costs associated with the implementation of this Postponement Regulation.

## **Consistency with fundamental legislative principles**

The Postponement Regulation is consistent with fundamental legislative principles.

## **Consultation**

On 3 December 2020, the Commissioner for Liquor and Gaming (Commissioner) issued an industry-wide statement advising that the 2.5% exemption provided for artisan distillers operating under a producer/wholesaler licence will end once an artisan producer licence becomes available.

Industry stakeholders were engaged throughout the development of the artisan liquor reforms. Since passage and introduction of the new artisan producer licence in Queensland the Commissioner has actively engaged with industry to provide information and assistance on the new artisan producer framework and smoothly transition artisan distiller producer/wholesaler licensees to the new artisan producer licence.

The Australian Distillers Association was consulted on the proposed timing for the removal of the 2.5% exemption and raised no concerns with extending the exemption until the end of 4 December 2022.

The Office of Liquor and Gaming Regulation will undertake further targeted consultation with stakeholders through direct communication activities in December 2021, March 2022 and August 2022, to ensure all affected artisan distillers are given the opportunity and assisted to transition to the new artisan producer licence before the 2.5% exemption ends on 5 December 2022.

The Postponement Regulation was self-assessed by the Department of Justice and Attorney-General in accordance with the *Queensland Government Guide to Better Regulation* and determined to be excluded from regulatory impact assessment under exclusion category (g) on the basis that the regulation is of a machinery nature. Consultation with the Office of Best Practice Regulation is not required.