

Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020

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, Yvette D'Ath MP, Attorney-General and Minister for Justice and Leader of the House, provide this human rights certificate with respect to the Liquor (Fee Relief) and Other Legislation Amendment Regulation 2020 (Amendment Regulation) made under the *Liquor Act 1992* (Liquor Act) and the *Wine Industry Act 1994* (Wine Industry 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 29 January 2020, in response to the global novel coronavirus (COVID-19) pandemic, a public health emergency was declared in Queensland under section 319 of the *Public Health Act 2005* (Public Health Act).

On 23 March 2020, by public health direction made under section 362B of the Public Health Act, the Chief Health Officer ordered all non-essential businesses, including hotels, bars, clubs and restaurants, to close, with exceptions for sales of takeaway food and beverages.

On 24 March 2020, the Palaszczuk Government announced a \$4 billion economic relief package to support health, jobs, households and businesses affected by the COVID-19 pandemic. As part of this package, businesses operating under a Queensland liquor licence will have their liquor licence fees for the 2020-21 financial year waived.

The purpose of the Amendment Regulation is to implement the Government's announcement in relation to liquor licence fees, by waiving annual licence fees for all relevant licensees that would otherwise be payable for the 2020-21 licence period via the amendments outlined below.

The amendments introduced by the Amendment Regulation are intended to support licensees whose businesses have been affected by the COVID-19 related closures during the 2019-20 licence period. As such, only licences in force immediately before 1 July 2020 will constitute 'relevant licences' and be subject to the fee waiver.

Liquor Regulation 2002 amendments

Under the authority of section 202 of the Liquor Act, the licence fee payable for a licence for a licence period is to be assessed in the way prescribed under a regulation. Pursuant to section 36 of the *Liquor Regulation 2002* (Liquor Regulation), the licence fee for a licence period is the base licence fee for the licence mentioned in section 36A, plus the fee calculated under section 36B or 36CA for each risk criterion applying to the licence, such as for an extended trading hours approval.

The Amendment Regulation inserts new section 36AA into the Liquor Regulation to provide that, in relation to licences in effect immediately prior to 1 July 2020, the fees for all licence types specified in sections 36A, 36B and 36CA will be \$0 for the 2020-21 licence period.

Licence fees will be taken to be paid on the date prescribed by section 36E(b) of the Liquor Regulation, being 31 July 2020.

As the fee for 2020-21 is \$0, the Amendment Regulation also exempts relevant licensees from self-assessing their 2020-21 fees and providing the Commissioner for Liquor and Gaming with a notice of assessment, as required under sections 36F and 36G of the Liquor Regulation.

The Amendment Regulation commences on 1 July 2020 to align with the beginning of the 2020-21 licence period. As the waiver of licence fees is a temporary measure to financially assist businesses affected by COVID-19-related closures, section 36AA of the Liquor Regulation will expire on 30 June 2021.

Wine Industry Regulation 2009 amendments

Under the authority of section 53 of the Wine Industry Act, the annual fee 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 2009* (Wine Industry Regulation), the prescribed annual fee amount for both licence types is \$616.10.

The Amendment Regulation inserts new subsection 18A into the Wine Industry Regulation to provide that, in relation to licences in effect immediately prior to 1 July 2020, the annual fee for a wine producer licence or a wine merchant licence will be \$0 for the 2020-21 financial year.

As for licensees under the Liquor Act, fees will be taken to be paid on 31 July 2020.

Section 18A of the Wine Regulation will also expire on 30 June 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 fee waiver will only apply to licences in force immediately before 1 July 2020, and not licences issued after this date.

With regards to property rights, the economic relief the Amendment Regulation enacts is a positive measure to financially support licensees so their businesses can survive during the economic downturn, recognising that the financial viability of many of these businesses has been impacted by the significant restrictions on their usual operations imposed by the government due to COVID-19. In addition, continuing to charge a fee for a licence that is now unlawful to use, or of limited use because of government restrictions, may be considered unreasonable and unjustifiable. For this reason, the Amendment Regulation may be considered to protect and promote the property rights of the individuals who are named on the liquor licences, their dependants, and their employees.

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 fee waiver is only provided for liquor licensees whose businesses have been directly and negatively impacted by the declaration of the COVID-19 public health emergency during the 2019-20 licence period. Accordingly, only these affected licensees who have been unable to make full use of the authorities under their licence due to the COVID-19 closures will have their licence fees waived.

Limiting the right to recognition and equality before the law to support the continued financial viability of affected Queensland tourist, liquor and hospitality businesses is considered to be 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 licensees forced to cease or limit trading due to the COVID-19 pandemic closures, by waiving the obligation on those licensees to pay 2020-21 licence fees.

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

As licence 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 licensees holding a licence granted after 30 June 2020 will not be eligible for a waiver of their 2020-21 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 licensees that have experienced direct financial hardship as a result of COVID-19 related premises closures.

(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.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House

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