

Queensland



Regulatory Impact Statement for SL 2002 No. 212

Liquor Act 1992

LIQUOR REGULATION 2002

Title

Liquor Regulation

Background

Under section 54 of the *Statutory Instruments Act 1992*, subordinate legislation expires on the 1 September first occurring after the 10th anniversary of its making. Therefore, the *Liquor Regulation 1992* will expire on 1 September 2002.

The existing regulation has been reviewed in relation to its continuing relevance and in this regard, certain fees charged for activities or applications under the Liquor Act require further consideration.

Authorising law

Liquor Act 1992 – Section 235 provides a head of power for the making of a regulation for the payment of fees under the Act.

Policy objectives

Liquor is a drug, and therefore Government restricts who it may be sold or supplied to. In accordance with harm minimisation objectives, Government issues business licences under the Liquor Act to responsible operators, ensures that venues are appropriately located to service the community and do not cause any adverse amenity, health or social impacts on that community. The policy objective in levying fees is where possible, to recover the costs of government incurred in processing and considering applications under the Act. It is also recognised that if fees are too

excessive the amount may deter applications from being submitted and therefore unintentionally increase non-compliance and breaches of the legislation.

Legislative intent

The intended effect of the proposed regulation is to continue the fees currently charged for applications, subject to normal CPI indexing. The introduction of a new fee is proposed to lodge an appeal against a decision of the Chief Executive to the Liquor Appeals Tribunal.

Consistency with the authorising law

The Liquor Act provides for a business licensing regime for the sale of liquor. The Act anticipates, with the provision for a head of power for regulations relating to fees, that activities and applications under the legislation will require a fee to be paid by the entity proposing to commercially sell and promote liquor.

Consistency with other legislation

The proposed regulation does not conflict with any other legislation.

Fundamental legislative principles

The proposed regulation is consistent with fundamental legislative principles.

Cost analysis

The more significant fees attracting large application numbers are to be examined—

Activity	Current fee \$	Numbers 2000/2001
1. Licence applications	1 105.00	396
2. Transfers of licence	193.50	784
3. Change of nominee	193.50	860

Activity	Current fee \$	Numbers 2000/2001
4. General Purpose Permits	27.00	8035
5. Additionally, it is proposed to introduce a new fee to lodge an appeal to the Liquor Appeals Tribunal. The Tribunal hears and determines appeals under the Liquor Act against decisions made by the Chief Executive. There is no current charge for lodging an appeal. In the financial year 2000/2001, 47 appeals were lodged with the Tribunal. However, the annual average for appeals is 60.		

Stakeholders

Stakeholders affected by current application fees (Nos. 1 to 4 above) are—

- the government in regulating the industry to ensure that operators are suitable people and that the proposed business does not unduly affect surrounding residents, people doing business in the area, or the amenity of the locality;
- new entrants to the liquor industry applying for licences or acquiring existing licensed premises;
- community organisations or clubs seeking a permit to sell liquor at one-off events.

Stakeholders affected by the proposed fee to lodge an appeal (No. 5 above)—

- the government in providing an accessible and informal appeals mechanism outside the court system;
- members of the general public who object to the grant of a new licence, a variation of licence conditions or extended trading hours and wish to appeal the final decision;
- existing licensees or competitors objecting to new licences or variations to existing licences within their locality, who lodge an appeal against a decision;
- existing licensees wishing to vary their licence conditions, or trading hours, who lodge an appeal against the decision of the Chief Executive;

- applicants for new licences wishing to appeal a decision related to their licence application.

1. Licence applications

Currently, application fees for new licences under the *Liquor Act 1992* are separated into two categories—

- ‘full’ licences (eg. hotels, cabarets, special facilities, restaurants, clubs, theatres, vessels etc.) for which the fee is \$1 105; and
- limited licences (gift baskets, caterer) which have a fee of \$116.50.

These fees are for application only, payable on lodgement and are a one-off charge whether the application is granted or not.

Applications for general licences (hotels), on-premises (cabaret)* and special facility licences involve more intense consideration, given their potential to disturb local residents and lessen the amenity of a community area. Therefore in detailing costs, these venues have been separated from other types of ‘full’ licences such as restaurants, clubs, theatres etc. to provide a more transparent indication of costs involved in their processing. (*Note – an on-premises (cabaret) licence relates to a nightclub operation)

The limited licence is available for businesses where liquor is only a minor part of the overall operation and the hours of trading or the amount of liquor proposed for sale does not require a ‘full’ licence. The types of activities encompassed by a limited licence include, florists and gift basket businesses where a single bottle of liquor may be sold with a basket of other products for direct delivery; and mining canteens, operating for a few hours each day after a work shift.

Applications for limited licences are subject to the same procedural activities as any other new licence application. However, they are generally less contentious and therefore less demanding in terms of processing times. For example, in many cases advertising to call for public objections is waived as a result of the remote location of the facility, or the way liquor is proposed to be sold.

The labour costs to process and consider each of these groups of new licence applications are detailed below. Labour costs do not include – consumables; telephone calls; faxes; payments for criminal history checks conducted by the Queensland Police Service; title searches; company searches; objection conferences; postage to notify objectors of conferences and decisions. (In cases where several hundred objectors are involved,

postage costs alone may be over \$1 000). Actual costs may vary between applications and may only be estimated. Therefore, approximate ranges have been provided.

New licence applications	Current fee \$	Appl. Numbers 2001	Average labour costs \$	Estimated actual costs \$
hotel, cabaret, special facility licences	1 105	65	4797	5 047–7 432
other business types eg. Restaurant	1 105	286	1268	1 518–2 238
limited licences	116.50	45	514.20	764 –800

Options

(a) No application fees for new licences

Under this option, fees would not be charged and the Government would absorb all costs of processing new business licence applications for commercial outlets. The annual cost to government in relation to new licence applications would be approximately \$697 600 (labour only).

Impact on Stakeholders	
Applicant—	Application costs will be subsidised by the government and the community, but disproportionately across the liquor industry with applicants for hotel, nightclub and special facility licences obtaining the more substantial subsidy due to the higher cost of processing their applications.
Community—	Application costs will continue to increase each year, increasing the amount the community subsidises these business activities. The benefit for the community is that applications will be properly vetted in terms of operator and location. However, this would occur regardless of the amount of the fee.
Government—	Application costs will continue to increase each year, increasing the amount the government subsidises these business activities at the expense of other programs and initiatives. Government benefits from the appropriate vetting of applications as in the longer term this reduces compliance costs.

(b) Continue with the current fee level – status quo

Under this option, applications fees for new licences would remain at their current level. Government would continue to absorb the costs of processing new business licence applications for commercial outlets. The annual cost to government would be approximately \$309 750 (labour only).

Impact on Stakeholders	
Applicant—	Application costs will be subsidised by the government and the community, but disproportionately across the liquor industry with applicants for hotel, nightclub and special facility licences obtaining the more substantial subsidy due to the higher cost of processing their applications.
Community—	Application costs will continue to increase each year, increasing the amount the community subsidises these business activities. The benefit for the community is that applications will be properly vetted in terms of operator and location. However, this would occur regardless of the amount of the fee.
Government—	Application costs will continue to increase each year, increasing the amount the government subsidises these business activities at the expense of other programs and initiatives. Government benefits from the appropriate vetting of applications, as in the longer term it may reduce compliance costs.

2. & 3. Transfers of licence and changes of nominees

A transfer of licence is required upon the sale of a business to a new operator. The prospective operator whether an individual or company is examined in terms of their suitability to hold a licence. This is to ensure that liquor is sold by a suitable person with a knowledge of the relevant laws and harm minimisation strategies that do not adversely affect the surrounding community or any vulnerable groups within the community. A change of nominee is a change of manager and this person is similarly checked in terms of their suitability to hold a licence.

The labour costs to process and consider these applications are detailed below. Labour costs do not include – consumables; telephones; faxes; payments for criminal history checks by the Queensland Police Service;

title searches and company searches. Actual costs may vary between applications and may only be estimated. Therefore, approximate ranges have been provided, adding a further \$60–\$85 per application.

Applications	Current fee \$	Appln. Numbers 2001	Average labour costs \$	Estimated actual costs \$
Transfer of licence	193.50	784	164.30	224–250
Change of nominee	193.50	860	164.30	224–250

Options

- (a) No application fees for transfer or a change of nominee

Under this option, fees would not be charged and the government would absorb all costs of determining the suitability of new licensees and nominees to hold a licence. The annual cost to government for these activities would be approximately \$270 109 in labour costs only. Other processing activities and costs would add an estimated \$98 640 making a total of approximately \$368 749.

Impact on Stakeholders	
Applicant—	Application costs for business licensing will be subsidised by the government and community.
Community—	Application costs will continue to increase each year, increasing the amount the community subsidises these business applications at the expense of other programs and initiatives. The community benefits in terms of the appropriate scrutiny of business operators, ensuring that the potential for irresponsible trading is minimised. However, this would occur regardless of the amount of the fee charged.
Government—	Application costs will continue to increase each year, increasing the amount the government subsidises these business applications at the expense of other programs and initiatives. However, appropriate vetting of business operators may in the longer term reduce compliance costs for government in terms of irresponsible trading.

(b) Continue with the current fee level – status quo

Under this option, government would continue to subsidise the costs of processing applications to scrutinise the suitability of new business operators and their managers. The annual cost to government would be approximately \$50 635 which includes labour and other processing costs.

Impact on Stakeholders	
Applicant—	Application costs for business licensing will continued to be subsidised by the government and community.
Community—	Application costs will continue to increase each year, increasing the amount the government and the community subsidises these business applications. The community benefits in terms of the appropriate scrutiny of business operators, ensuring that the potential for irresponsible trading is minimised. However, this would occur regardless of the amount of the fee charged.
Government—	Application costs will continue to increase each year, increasing the amount the government and the community subsidises these business applications. However, appropriate vetting of business operators may in the longer term reduce compliance costs for government in terms of irresponsible trading.

4. General Purpose Permits

A general purpose permit is an approval to sell liquor at a one-off event or activity, for example a school fete, football match, or bachelor and spinster ball. These permits may only be obtained by non-proprietary organisations or for community benefit. The penalty for not obtaining a permit and selling liquor without a licence is a fine of up to \$37 500 for a first offence.

The labour costs to process and consider these applications are detailed below. Labour costs do not include – consumables; telephones; faxes; payments to Queensland Government Agents Program (QGAP) for permit issuing in rural areas, liaison with Police and Local Government where appropriate. Actual costs may vary between applications and may only be

estimated. Therefore, approximate ranges have been provided, adding a further \$15–\$26 per application.

Application	Current fee \$	Appln. Numbers 2001	Average labour costs \$	Estimated actual costs \$
General Purpose Permit	27	8 035	33.40	48–60

Options

(a) No application fees for general purpose permits

Under this option fees would not be charged for non-proprietary clubs or non-profit associations wishing to sell liquor for a one-off occasion to raise funds. All processing costs would be absorbed by government with an approximate annual cost of \$268 369 in labour costs and approximately \$120 525 in miscellaneous costs making a total of around \$388 894.

Impact on Stakeholders	
Applicant association or group—	<p>Application costs will be subsidised by the government and community. Not charging a fee may decrease the number of applications made as the public could perceive the process as one of notification rather than one seeking approval for hours, location and event management practices. Failing to recognise the importance of obtaining an approval, may expose applicants to a significant fine under the Act for selling liquor with approval. There is also the potential for exposure to civil litigation resulting from patron injury to if the event management is not subject to review or comment by the department or the Queensland Police Service.</p> <p>Through the vetting process the potential disturbance to the surrounding community is examined together with proposed event management and serving practices to ensure responsible conduct.</p>

Impact on Stakeholders	
Community—	Application costs will continue to increase each year, increasing the amount the community subsidises these events which are held ostensibly for the benefit of the community. The community does benefit from the appropriate vetting of applications to minimise irresponsible trading practices and local disturbances.
Government—	Application costs will continue to increase each year, increasing the amount the government subsidises these events which are held ostensibly for the benefit of the community. Government benefits from the appropriate vetting of applications in terms of reducing the costs of responding to community complaints regarding poor patron behaviour and noise.

(b) Continue with the current fee level – status quo

Under this option Government will continue to absorb the additional costs of processing permit applications for non-commercial bodies for fundraising activities.

Impact on Stakeholders	
Applicant association or group—	Application costs will be subsidised by the Government. However, the association will make a contribution of approximately 56% toward the cost recovery of fees.

Impact on Stakeholders	
Community—	Application costs will continue to increase each year, increasing the amount the community subsidises these events which are held ostensibly for the benefit of the community. The community does benefit from the appropriate vetting of applications to minimise irresponsible trading practices and local disturbances.
Government—	Costs associated with the applications will continue to increase each year, increasing the amount the government subsidises these events. However, government benefits from the appropriate vetting of applications in terms of reducing the costs of responding to community complaints regarding poor patron behaviour and noise.

5. Liquor Appeals – fee for lodging an appeal

An appeal may be lodged to the Liquor Appeals Tribunal by an aggrieved person who was a party to a decision of the Chief Executive under the Liquor Act. There is currently no charge to lodge an appeal.

When the present Liquor Act commenced in 1992, it was decided that a fee would not be prescribed for the lodgement of an appeal, with the objective of keeping the proceedings as informal and flexible as possible. However, as a result of increasing legal argument and representation, the conduct and paperwork associated with an appeal has become more complex and voluminous. This evolution has also meant the careful preparation of appeals books of relevant documentation for all parties to the appeal, the service of summons to witnesses and the conduct of directions hearings to exchange and review documentation to narrow the issues for appeal.

As a result of the escalating costs of the provision of these services, it is proposed that a two-tier fee structure is introduced providing for lodgement fees for the general public and other licence holders or commercial objectors.

The labour costs associated in accepting, registering and undertaking preliminary work on an appeal prior to the directions hearing are approximately \$173. This does not include, consumables; telephones;

faxes; photocopying expenses for appeals book; postage and notification to other objectors. Actual costs may vary between appeals and may only be estimated. Therefore, approximate ranges have been provided, adding anywhere between \$35 and \$600 per appeal before the appeal hearing has commenced.

Applications	Current fee \$	Average annual appeals	Average labour costs \$	Estimated actual costs \$	Proposed fee \$
Lodging an appeal	NIL	60	173.28	208–775	
– member of the public					50
– applicant, licensee or commercial interest					200

Options

(a) No lodgement fee – status quo

Under this option Government will continue to absorb all costs of lodging and hearing appeals. Experience has revealed that the following scenarios are not uncommon:

- appeals are lodged but later withdrawn when the appellant is in receipt of copies of all the relevant documentation considered by the Chief Executive in making the decision;
- members of the public allow the appeal to continue, but do not appear on the appointed day resulting in costs for appearances and legal representation;
- in cases where commercial competitors appeal, it can become a ‘fishing’ exercise to determine whether there is any loophole to continue the appeal. As appeals are free this is more attractive than lodging an application under the Freedom of Information Act.

When an appeal is lodged, all other parties to the decision are to be notified of the appeal. This may include numerous objectors and for some applications several hundred objectors who are initially notified

of the appeal and then notified again when the appeal is finalised or withdrawn.

Impact on Stakeholders	
Appellants/ Applicants—	The cost of an appeal affecting a business operator and a local area will continue to be subsidised by the Government and the whole community.
Community—	Generally, individual community members are more poorly resourced than business operators to fight an appeal in relation to business licensing. However, the costs of the hearing are currently borne by the entire community whether an appeal is vexatious or not.
Government—	The preceding costs do not include member hearing fees which amount to \$1 505 per day plus a fee of either \$369 or \$515 for the preparation of a written decision depending upon whether it is drafted by a member or the Tribunal Chair. The Government has continued to absorb all administrative costs of lodging and hearing appeals. In summary, to hear and determine the usual 60 appeals per year, the LAT costs approximately \$150 000 — an average of \$2 500 per appeal.

(b) Charge a fee for lodging an appeal

Under this option the cost of the preliminary administration of an appeal to the Liquor Appeals Tribunal is shared between government and the appellant. However, in determining a fee, the cost for a

member of the public who has objected to the original application should not be so high as to discourage an appeal.

Impact on Stakeholders	
Appellants/ Applicants—	The cost to appeal is more reflective of the labour costs involved. While the limited resources of individual community members is acknowledged and respected, a contribution toward the cost is made. Vexatious or frivolous appeals may be reduced, saving the time and legal costs.
Community—	Some cost sharing would reduce the financial burden of the appeals process to the community. A nominal fee would encourage members of the public to consider more fully whether they wish to proceed with an appeal, rather than acting upon emotion.
Government—	The cost of appeals is shared to some extent. Vexatious or frivolous appeals may be reduced resulting in cost savings.

How to respond to this Regulatory Impact Statement

Send a written submission to—

Industry Development Unit
Liquor Licensing Division
GPO Box 1141
BRISBANE QLD 4001

or

Fax (07) 3224 7334

The closing date for submission is Monday 1 July 2002.

If your submission contains information that you do not wish to be disclosed to others, please mark it 'Confidential'. Respondents wishing to make confidential submissions should be aware of the *Freedom of Information Act 1992*. Under the Freedom of Information Act, the Department must, on application, grant access to documents in its possession unless an exemption provision applies. For example, if a submission contains information about a person's affairs (his or her experiences relevant to a matter covered by this Regulatory Impact

Statement), and it is in the public interest to protect that person's privacy, the 'personal' information in that submission will not be accessible under the Freedom of Information Act.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Tourism, Racing and Fair Trading.