

Liquor Amendment Regulation 2020 (No 1)

Subordinate law SL2020–15

made under the

Liquor Act 2010, s 229 (Regulation-making power)

EXPLANATORY STATEMENT

The *Liquor Act 2010* (the Act) regulates the supply of liquor in the ACT.

Fees for liquor licences and permits are determined by the Minister under section 227 of the Act. Fees determined by the Minister for each licence or permit category are listed in the *Liquor (Fees) Determination 2019* [DI2019-159] (the Fees Determination).

Section 229 of the Act provides that the Executive may make regulations for the Act. Section 229 (2) (d) of the Act provides that a regulation may make provision in relation to the circumstances in which the Commissioner for Fair Trading (the commissioner) may waive or reduce fees.

This amendment regulation provides that the commissioner may waive a fee payable in relation to a licence or permit if—

- (a) an emergency declaration under the *Public Health Act 1997*, section 119 (Emergency declarations):
 - (i) is in force; or
 - (ii) was in force at any time during the preceding 12 months; and
- (b) the commissioner considers the waiver is appropriate because of the financial impact of the emergency declaration on the business carried on under the licence or permit.

The *Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020* [NI2020-181] (the closure direction) on 23 March 2020 directed the closure of:

- Businesses that supply liquor for consumption ON the premises but not including any part of those businesses that sell liquor for consumption OFF the premises as defined by the Liquor Act;
- hotels, whether licensed or unlicensed, but not to the extent that they provide accommodation, takeaway meals or a meal delivery service, or a bottleshop;
- a casino;

- cinemas, nightclubs or entertainment venues of any kind;
- restaurants or cafes, other than to the extent that they provide takeaway meals or a meal delivery services.

The direction followed and was made in relation to the *Public Health (Emergency) Declaration 2020* (No 1) [NI2020-153], to prohibit the operation of non-essential business and undertakings to limit the spread of Novel Coronavirus 2019 (2019-nCoV).

In order to slow the spread of 2019-nCoV, clubs and other licensed premises will not be able to open and provide their normal services to the community. While this is necessary from a public health perspective, it will have a financial impact on the club industry and other licensed businesses.

This amendment regulation supports the ability of the Government to implement a fee waiver to assist in mitigating those impacts.

HUMAN RIGHTS IMPLICATIONS

The Regulation does not engage any human rights set out in the *Human Rights Act 2004*.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement where a subordinate law is likely to impose appreciable costs on the community, or a part of the community.

Since this Regulation provides a mechanism for the commissioner to waive licence and permit fees, a regulatory impact statement has not been prepared.

NOTES ON CLAUSES

Clause 1 Name of regulation

Clause 1 is a formal provision setting out the name of the Regulation as the *Liquor Amendment Regulation 2020* (No 1).

Clause 2 Commencement

Clause 2 provides the commencement date for the Regulation. The Regulation is taken to have commenced on 25 March 2020.

The retrospective commencement of this Regulation is non-prejudicial and is necessary to mitigate the adverse financial impacts of the closure direction on businesses carried on under the licence or permit.

Clause 3 Legislation amended

Clause 3 provides that this regulation amends the *Liquor Regulation 2010*.

Clause 4 New section 35

Clause 4 inserts new section 35—Waiver of licence and permit fees—public health emergency—Act, s 229 (2) (d) to provide the circumstances in which the commissioner may make a declaration waiving a fee payable in relation to a licence or permit.

Section 35 (1) requires that *either*:

- (a) an emergency declaration under the *Public Health Act 1997* (emergency declaration) is in force; *or*
- (b) an emergency declaration was in force at any time during the preceding 12 months; *and*
- (c) the commissioner considers the waiver is appropriate because of the financial impact of the emergency declaration the business carried on under the licence or permit.

Section 35 (2) lists the 3 things that must be stated in a declaration:

- (a) the fee that is waived; and
- (b) the period during which the waiver operates; and
- (c) any condition on the waiver.

Section 35 (3) clarifies that a declaration made under section 35 will have effect despite any determination in force under the Act, section 227 (Determination of fees).

Section 35 (4) provides that a declaration expires 1 year after the day it commences or, if an earlier date is stated in the declaration, the earlier day.

Section 35 (5) provides that a declaration is a disallowable instrument.