

Liquor Amendment Regulation 2021 (No 1)

Subordinate law SL2021-7

made under the

Liquor Act 2010

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 2020 (No 2) [DI2020-236] (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 explanatory statement relates to the Liquor Amendment Regulation 2021 (No 1) (the Amendment Regulation). It has been prepared to assist the reader of the Amendment Regulation and does not form part of the Amendment Regulation. This explanatory statement must be read in conjunction with the Amendment Regulation. It is not, and not intended to be, a comprehensive description of the Amendment Regulation.

RETROSPECTIVE COMMENCEMENT

Section 76 of the *Legislation Act 2001* (the Legislation Act) provides that non-prejudicial provisions may commence retrospectively. Section 76 (4) of the Legislation Act notes that a provision is “prejudicial” if it operates adverse to the rights of individuals or if it imposes liabilities on individuals. Section 76 (4) further provides that retrospectivity that is prejudicial to the Territory or to a territory authority or instrumentality is permitted.

The Amendment Regulation is taken to have commenced on 1 April 2021 notwithstanding its notification date. This legislative instrument commences retrospectively on 1 April 2021 pursuant to section 76 of the Legislation Act to give effect to the Commissioner for Fair Trading’s declaration (also due to

commence retrospectively from 1 April 2021) in relation to a 50% fee reduction of annual licence fees for certain liquor licence holders.

The declaration by the Commissioner of Fair Trading will provide fee waivers and fee reductions for eligible liquor licensees in aid of their business recovery and is justifiably non-prejudicial in accordance with section 76 of the Legislation Act. It is a measure that is beneficial in nature to licensees.

PURPOSE OF THE REGULATION

The Amendment Regulation makes a minor amendment to section 35 of the Liquor Regulation 2010 (the Regulation). The amendment allows the Commissioner for Fair Trading to make declarations to reduce a fee payable in relation to a licence or permit, in addition to a complete fee waiver. Section 35 of the Regulation confers this ability to the Commissioner for Fair Trading under the circumstances prescribed.

Section 35 of the Regulation was first inserted by the Liquor Amendment Regulation 2020 (No 1) in April 2020 to mitigate the impacts of the Novel Coronavirus 2019 (COVID-19) on businesses in the Australian Capital Territory (ACT). The insertion of section 35 of the Regulation as a COVID-19 response measure enabled the Commissioner to make declarations to waive liquor licensing fees otherwise payable, for example, the Liquor (COVID-19 Emergency Response – Licence Fee Waiver) Declaration 2021 (No 1) [DI2021-23].

To support the ACT's economic recovery as COVID-19 public health restrictions start to ease, the Amendment Regulation will now also provide the Commissioner the ability to reduce fees if:

- a) The fee is payable during a COVID-19 emergency; or
- b) The 12 months following a COVID-19 emergency; and
- c) The Commissioner considers the fee reduction is appropriate because of the financial impact of the COVID-19 emergency on the business carried on under the licence or permit.

The Amendment Regulation will commence on the day after its notification on the Legislation Register.

HUMAN RIGHTS COMPATIBILITY

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

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the Amendment Regulation may be cited as the Liquor Amendment Regulation 2021 (No 1).

Clause 2 Commencement

This clause provides that the Amendment Regulation is taken to have commenced on 1 April 2021. This provision is non-prejudicial, and the Amendment Regulation commences retrospectively pursuant to section 76 of the Legislation Act.

Clause 3 Legislation amended

This clause provides that the Amendment Regulation amends the Liquor Regulation 2010.

Clause 4 Section 35 heading

This clause substitutes the heading to clarify that section 35 now provides the Commissioner the ability to waive and reduce licence and permit fees.

Clause 5 Section 35 (1)

This clause inserts the words “or reducing” and has the effect of allowing the Commissioner to make declarations to reduce liquor licensing or permit fees otherwise payable during a COVID-19 emergency or the 12 months following a COVID-19 emergency.

Clause 6 Section 35 (1) (b)

This clause inserts the words “or reduction”. It has the effect of ensuring that a declaration in relation to the reduction of liquor licensing or permit fees is only permissible during the relevant time period if the Commissioner considers that the reduction is appropriate on the basis of the financial impact of the COVID-19 emergency on businesses carried on under the affected licence or permit.

Clause 7 Section 35 (2)

This clause substitutes section 35 (2) to prescribe new declaration conditions made by the Commissioner in relation to any fee reduction.

In relation to a fee reduction, the declaration must state the fee that is reduced, the reduced fee payable (or how the reduced fee is to be worked out), the period during which the reduction operates and any condition on the reduction.

The conditions in relation to fee waivers are unchanged from the Liquor Amendment Regulation 2020 (No 1). The declaration must state the fee that is waived, the period during which the waiver operates, and any condition on the waiver.