

Australian Capital Territory

Liquor (COVID-19 Emergency Response—Licence Fee Waiver and Reduction) Declaration 2021 (No 1)

Disallowable Instrument DI2021–54

made under the

Liquor Regulation 2010, s35 (Waiver and reduction of licence and permit fees—COVID-19 emergency response—Act, s 229 (2) (d))

EXPLANATORY STATEMENT

This instrument is the *Liquor (COVID-19 Emergency Response—Licence Fee Waiver and Reduction) Declaration 2021 (No 1)*. Notwithstanding this instrument’s notification date, it is taken to have commenced on 1 April 2021 and will expire on 31 March 2022.

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.

This instrument commences retrospectively pursuant to section 76 of the Legislation Act to ensure that an economic tapering measure declared by this instrument comes into effect from 1 April 2021, immediately after the cessation of a COVID-19 economic survival measure on 31 March 2021, set out in the *Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2021(No 1)* DI2021–23 (repealed). This instrument allows eligible liquor licences to receive a 50% fee reduction from 1 April 2021 despite its later notification date. This declaration gives effect to fee waivers and reduction for eligible liquor licensee in aid of their business recovery and is justifiably non-prejudicial in accordance with section 76 of the Legislation Act.

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.

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

Section 35 of the *Liquor Regulation 2010* (the Liquor Regulation) provides for the Commissioner to make a declaration waiving or reducing a fee for a licence or permit if the fee is payable during a COVID-19 emergency or in the 12 months following a COVID-19 emergency and the Commissioner considers the waiver or reduction is appropriate because of the financial impact of the emergency on the business carried on under the licence or permit.

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). This instrument should be read with section 35 of the Liquor Regulation, and the Fees Determination.

Waiver of fees

The table at schedule 1 of the instrument sets out that the fee for an application for any transfers from an on licence to a general licence, under section 25 of the *Liquor Act 2010*, is waived from 1 April 2021 until 30 June 2021. This fee is listed at item 500 in the Fees Determination.

The waivers were initially made under the *Liquor (Public Health Emergency—Licence Fee Waiver) Declaration 2020* [DI2020-45] (repealed) and the *Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2020* [DI2020-119] (repealed) in response to the *Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020* (the closure direction) [NI2020-181]. The closure direction, made 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 2010*;
- hotels, whether licensed or unlicensed, but not to the extent that they provide accommodation, takeaway meals or a meal delivery service, or a bottle shop;
- a casino;
- cinemas, nightclubs or entertainment venues of any kind;
- restaurants or cafes, other to than to the extent that they provide takeaway meals, or a meal delivery services.

The closure direction 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 (COVID-19).

Reduction of fees

The table at schedule 2 of the instrument sets out the annual liquor licence fees, in the Fees Determination, which are reduced by 50% by the Commissioner and the period during which the reduction is in effect. The 50% fee reduction applies to annual licensing fees listed at items 501 (1) to (4) of the Fees Determination and will be in place for 12 months, from 1 April 2021 until 31 March 2022. The 50% fee reduction will apply automatically to the annual licence

fee of the following liquor licences: nightclub licence, restaurant and café licence, bar licence, general licence, catering licence, special licence and club licence.

The fee reduction supports Canberra's economic recovery from the COVID-19 pandemic.