

Australian Capital Territory

# Liquor Amendment Regulation 2020 (No 2)

Subordinate law SL2020–19

made under the

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

## EXPLANATORY STATEMENT

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

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 2020 (No 2) (the amendment regulation). It has been prepared in order to assist the reader of the amendment regulation. It does not form part of the amendment regulation and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the amendment regulation. It is not, and is not meant to be, a comprehensive description of the amendment regulation.

## OUTLINE

The *Liquor Act 2010* commenced on 6 September 2010. The *Liquor Act 2010* regulates the sale, supply, promotion and consumption of liquor in a way that minimises harm associated with the consumption of liquor, and in a way that takes into account the safety of the community. The *Liquor Act 2010* replaced the *Liquor Act 1975*.

The *Liquor Regulation 2010*, made under the *Liquor Act 2010*, Section 229 commenced on 20 October 2010.

This amendment regulation amends the *Liquor Regulation 2010* to make provision in relation to the circumstances in which the Commissioner for Fair Trading (the commissioner) may waive or reduce fees.

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

- (i) a COVID-19 emergency; or
- (ii) in the 12 months following a COVID-19 emergency;

and where—

- (a) the commissioner considers the waiver is appropriate because of the financial impact of the COVID-19 emergency 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 (COVID-19).

In order to slow the spread of COVID-19, 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 fee waivers to assist in mitigating those impacts.

This amendment regulation also introduces statutory rules with respect to first year micro-producer off licensees to remove barriers to entry for eligible applicants.

#### **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 or reduce licence and permit fees, a regulatory impact statement has not been prepared.

## NOTES ON CLAUSES

### **Section 1**      **Name of regulation**

This section names the regulation as the *Liquor Amendment Regulation 2020 (No 2)*.

### **Section 2**      **Commencement**

This section explains that the regulation will commence on 22 May 2020.

### **Section 3**      **Legislation amended**

This section explains that the *Liquor Amendment Regulation 2020 (No 2)* amends the *Liquor Regulation 2010*.

### **Section 4**      **Section 35 heading**

The new heading to section 35 substitutes *COVID-19 emergency response* for the previous reference to a public health emergency. This is a minor technical amendment to maintain consistency in references to the public health emergency declaration issued in response to COVID-19.

### **Section 5**      **Section 35 (1) (a)**

Section 35 (1) (a) substitutes *COVID-19 emergency* for the previous, broader description of *emergency declaration*.

### **Section 6**      **Section 35 (1) (b)**

This section substitutes the reference to a *COVID-19 emergency* for the previous reference to an *emergency declaration*.

### **Section 7**      **New section 35 (6) and (7)**

This section provides a definition of COVID-19 emergency. ***COVID-19 emergency*** means—

- (a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or
- (b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

New subsection (7) provides an expiration clause. Section 35 expires at the end of a 12-month period during which no COVID-19 emergency has been in force.

## **Section 8      Schedule 1, section 1.19 (3)**

Section 8 removes the definition of gross price. The amendment regulation inserts this definition into the Dictionary.

## **Section 9      Schedule 1, new section 1.19A**

Section 9 inserts a definition of three new terms in the *Liquor Regulation 2010*—*first year micro-producer off licence*, *first year micro-producer off licensee* and *reporting period*.

The meaning of *first year micro-producer off licence* is set out in 1.19(2), with the term *first year micro-producer off licensee* having a corresponding meaning.

Section 1.19A creates an obligation on a first-year micro-producer off licensee, being a person who has been issued an off licence and who:

- (a) has not previously held an off licence; and
- (b) conducts a business on the licensed premises in which the only liquor sold is liquor produced on the premises; and
- (c) has given the Commissioner of Fair Trading a statement in writing that the estimated gross price paid or payable for sales of liquor to be produced by the business for the reporting period does not exceed \$100 000,

to provide a written sales report to the Commissioner at the end of the reporting period, that is 12 months from when the licence was issued. The report will tell the Commissioner the gross price paid, or payable for sales in the reporting period of liquor produced on the licensed premises.

This amendment regulation inserts a requirement for first year micro-producer off licensees to provide information on their sales.

## **Section 10      Dictionary, new definition of gross price**

This clause moves the definition of gross price, formerly contained in section 1.19(3), into the Dictionary.