

Liquor (COVID-19 Emergency Response — Permit Fee Waiver) Declaration 2021 (No 2)

Disallowable Instrument DI2021-189

made under the

Liquor Regulation 2010, s35 (Waiver 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 - Permit Fee Waiver) Declaration 2021 (No 2)*. Notwithstanding this instrument’s notification date, it is taken to have commenced on 1 July 2021 and will expire on 31 August 2021.

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 in light of the *Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 2)* [NI2021-402] and *Public Health (COVID-19 Affected Areas) Emergency Direction 2021 (No 10)* [NI2021-424], introduced in response to the public health situation in NSW.

The public health face masks direction was declared in the ACT on 30 June 2021 and introduced face mask requirements to limit the spread of coronavirus disease 2019 (COVID-19) until its revocation at 11:59pm on 9 July 2021. The public health affected areas direction was introduced at 11:59pm on 9 July 2021 and declared areas of NSW (the Greater Sydney, Blue Mountains, Central Coast, Wollongong and Shellharbour) as COVID-19 affected areas. The restrictions will require any person who has been in any of the COVID-19 affected areas to quarantine upon entry to ACT for 14 days.

The retrospective commencement seeks to provide economic support to licensees selling liquor for consumption on premises and liquor permit-holders with disrupted events. Economic support is provided through the waiver of application fees which allow on licensees to receive a commercial permit to sell liquor for takeaway consumption and commercial and non-

commercial permit-holders to amend their permits to reschedule event dates. This declaration gives effect to fee waivers for eligible liquor licensees and permit-holders in aid of their businesses 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. Fees determined by the Minister for each licence or permit category are listed in the *Liquor (Fees) Determination 2021* [DI2021-144] (the Fees Determination).

This instrument should be read with section 35 of the *Liquor Regulation 2010* (the Liquor Regulation), and the Fees Determination.

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 may waive or reduce fees.

Section 35 of 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.

The table at Schedule 1 of the instrument sets out that:

- the fee for an application for a commercial permit is waived from 1 July 2021 until 31 August 2021 for liquor licensees with an on licence (bar licence, nightclub licence and restaurant and café licence). This fee is listed at item 507 (1) in the Fees Determination; and
- the fee for an application to amend a permit is waived from 1 July 2021 until 31 August 2021 for commercial and non-commercial permit holders. This fee is listed at item 508 in the Fees Determination.