



New South Wales

Liquor Amendment (Periodic Licence Fees) Regulation 2014

under the
Liquor Act 2007

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Liquor Act 2007*.

TROY GRANT, MP
Minister for Hospitality, Gaming and Racing

Explanatory note

The object of this Regulation is to insert a new Part into the *Liquor Regulation 2008* to give effect to the scheme of periodic licence fees established by the *Liquor Act 2007* (as amended by the *Liquor Amendment Act 2014*).

The new Part:

- (a) provides that the periodic licence fee is to be the sum of the following elements:
 - (i) a base fee element,
 - (ii) a trading hours risk loading element,
 - (iii) a compliance history risk loading element,
 - (iv) a location risk loading element (which is payable only if a compliance history risk loading element is payable),
 - (v) a patron capacity loading element (which is also only payable if a compliance history risk loading element is payable), and
- (b) sets out how each of those elements is to be calculated, and
- (c) provides for the annual indexation of the base fee element of the periodic licence fee, and
- (d) provides that the periodic licence fee is to be assessed on 15 March in each year and is due for payment on 29 May in that year, and
- (e) provides for the payment of penalties for late payment of any periodic licence fee and fees for the reinstatement of a licence cancelled for late payment of any periodic licence fee, and
- (f) provides for the re-assessment of periodic licence fees in certain circumstances, and
- (g) provides for the waiver of fees in certain circumstances, and
- (h) includes transitional provisions that deal with the assessment and payment of periodic licence fees in the assessment year commencing on 15 March 2015, and
- (i) provides for the review of the new Part after 3 years of operation.

This Regulation also removes a reference to licensed premises that were inadvertently listed as being excepted premises.

This Regulation is made under the *Liquor Act 2007*, including sections 11 (1) (b) (Licence conditions—general provisions), 58A (Periodic licence fee), 58B (Suspension and cancellation for late payment of periodic licence fee), 58C (Application for reinstatement of cancelled licence) and 159 (the general regulation-making power).

Liquor Amendment (Periodic Licence Fees) Regulation 2014

under the

Liquor Act 2007

1 Name of Regulation

This Regulation is the *Liquor Amendment (Periodic Licence Fees) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Liquor Regulation 2008

[1] Part 2A

Insert after Part 2:

Part 2A Periodic licence fees

Note. The first assessment date for periodic licence fees is 15 March 2015.

5A Definitions

In this Part:

assessment date—see clause 5B (1).

assessment year means a period of 12 months commencing on 15 March.

base fee element—see clause 5D (1).

compliance history risk loading element—see clause 5E (1).

element of a periodic licence fee—see clause 5C.

former community liquor licence means a community liquor licence granted under the *Liquor Act 1982* that is taken to be a hotel licence by virtue of clause 12 of Schedule 1 to the *Liquor Act 2007*.

location risk loading element—see clause 5G (1).

patron capacity loading element—see clause 5H (1).

periodic licence fee means the periodic licence fee payable in respect of an assessment year for a licence (under section 58A of the Act).

trading hours risk loading element—see clause 5F (1).

5B Assessment date and due date for payment of periodic licence fees

- (1) The *assessment date* for a periodic licence fee is 15 March in each assessment year (with 15 March 2015 being the first assessment date).
- (2) The *due date* for the payment of a periodic licence fee is 29 May in each assessment year.
- (3) A licensee is not required to pay a periodic licence fee, or any element of a periodic licence fee, due on 29 May in any calendar year if the licence concerned was granted after 15 March in that year.

5C Periodic licence fees

The periodic licence fee for a licence is the sum of the following elements:

- (a) the base fee element (determined and adjusted under clause 5D),
- (b) the compliance history risk loading element (determined under clause 5E),
- (c) the trading hours risk loading element (determined under clause 5F),
- (d) the location risk loading element (determined under clause 5G), which is payable only if a compliance history risk loading element is payable,
- (e) the patron capacity loading element (determined under clause 5H), which is payable only if a compliance history risk loading element is payable.

5D Base fee element

- (1) The *base fee element* of a periodic licence fee for a licence is as follows:
 - (a) for a hotel licence (other than general bar licence or former community liquor licence)—\$500,
 - (b) for a general bar licence—\$250,
 - (c) for a club licence—\$500,
 - (d) for a small bar licence—\$200,
 - (e) for an on-premises licence—\$400,
 - (f) for a packaged liquor licence:
 - (i) where the licensee holds 3 or less such licences, or the licensee or a business owner has an interest in the business, or the profits of the business, carried on under packaged liquor licences at 3 or less premises—\$500, or
 - (ii) where the licensee holds more than 3, but not more than 9, such licences, or the licensee or a business owner has an interest in the business, or the profits of the business, carried on under packaged liquor licences at more than 3, but not more than 9, premises—\$1,000, or
 - (iii) where the licensee holds more than 9 such licences, or the licensee or a business owner has an interest in the business, or the profits of the business, carried on under packaged liquor licences at more than 9 premises—\$2,000,
 - (g) for a producer/wholesaler licence—\$500,
 - (h) for a multi-function limited licence—\$100,
 - (i) for a former community liquor licence —\$100.
- (2) The base fee element referred to in this clause (the *adjustable fee amount*) is to be adjusted for inflation as provided by this clause on 15 March each year, beginning on 15 March 2016.
- (3) The adjustable fee amount that is to apply for any assessment year commencing on 15 March is to be determined by multiplying the adjustable fee amount that applied for the previous assessment year by the annual increase in the Consumer Price Index during that previous assessment year.
- (4) The annual increase in the Consumer Price Index during an assessment year is to be calculated as B/A where:

A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the assessment year.

B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the assessment year.
- (5) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (6) Before the start of each assessment year, commencing on or after 15 March 2016, the Director-General is to publish notice of the amount of each adjustable fee amount for that assessment year (as adjusted under this clause) on the following websites:
 - (a) the NSW legislation website,
 - (b) the website of the Department of Trade and Investment, Regional Infrastructure and Services.

- (7) If the determination of an adjustable fee amount for an assessment year under this clause results in an amount that is not a whole number multiple of \$1, the amount calculated is to be rounded up to the nearest whole number multiple of \$1 and that amount as so rounded is the adjustable fee amount for that year.
- (8) In this clause:
Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.
Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

5E Compliance history risk loading element

- (1) The **compliance history risk loading element** of a periodic licence fee for a licence is:
- (a) \$3,000—if:
- (i) one relevant prescribed offence event has occurred that relates to a prescribed offence that was committed on or in relation to the premises to which the licence relates during the relevant compliance period, or
 - (ii) 1 strike that has been incurred in respect of the licence is in force on the relevant assessment date, or
- (b) \$6,000—if:
- (i) 2 relevant prescribed offence events have occurred that relate to prescribed offences that were committed on or in relation to the premises to which the licence relates during the relevant compliance period, or
 - (ii) the licence was, at any time during the relevant compliance period, listed in Table 2 at the end of clause 1 of Schedule 4 to the Act when that list was replaced in its entirety during the assessment year ending on the relevant assessment date, or
 - (iii) 2 strikes that have been incurred in respect of the licence are in force on the relevant assessment date, or
- (c) \$9,000—if:
- (i) 3 or more relevant prescribed offence events have occurred that relate to prescribed offences that were committed on or in relation to the premises to which the licence relates during the relevant compliance period, or
 - (ii) the licence was, at any time during the relevant compliance period, listed in Table 1 at the end of clause 1 of Schedule 4 to the Act when that list was replaced in its entirety during the assessment year ending on the relevant assessment date, or
 - (iii) 3 strikes that have been incurred in respect of the licence are in force on the relevant assessment date.
- (2) If none of the circumstances specified in subclause (1) exist in relation to a licence, no compliance history risk loading element is payable for the licence.
- (3) For the purposes of this clause, a **relevant prescribed offence event** occurs when:
- (a) a court convicts a person of a prescribed offence (whether or not it imposes any penalty), or
 - (b) an amount is paid under a penalty notice in respect of such an offence, or

- (c) a penalty notice enforcement order under the *Fines Act 1996* is made against the person in respect of such an offence.
- (4) However, if:
 - (a) the conviction is overturned on appeal, or
 - (b) the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or
 - (c) the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled,the relevant prescribed offence event derived from the conviction, payment or making of the order is taken not to have occurred and so much of the compliance history risk loading element as comprises the amount based on the relevant prescribed offence event is to be refunded by the Director-General to the licensee.
- (5) If more than one prescribed offence is committed in relation to a particular licence within a single 24-hour period, no more than one relevant prescribed offence event is, for the purposes of this clause, taken to have occurred in relation to that licence.
- (6) In this clause:

prescribed offence means:

 - (a) an offence under section 11 of the Act for breach of a licence condition, or
 - (b) a prescribed offence within the meaning of section 144B of the Act (other than the offence referred to in paragraph (b) of the definition of that term).

relevant compliance period, in relation to a periodic licence fee payable in respect of an assessment year, means the calendar year before the relevant assessment date for that year.

strike means a strike incurred in the circumstances specified in section 144D of the Act.

5F Trading hours risk loading element

- (1) The **trading hours risk loading element** of a periodic licence fee for a licence is as follows:
 - (a) if, on the relevant assessment date, the licensee is authorised to sell or supply liquor to patrons on the licensed premises on a regular basis between midnight and 1.30 am (but not after 1.30 am) on any day—\$2,500,
 - (b) if, on the relevant assessment date, the licensee is authorised to sell or supply liquor to patrons on the licensed premises on a regular basis between 1.30 am and 5 am on any day—\$5,000.
- (2) A trading hours risk loading element that applies to a producer/wholesaler licence endorsed with a drink on-premises authorisation is to be determined by reference to the period that the licensee is authorised to sell liquor by retail on the licensed premises, for consumption on the licensed premises, under the drink on-premises authorisation and not by reference to the period that the licensee is authorised to sell or supply liquor on the licensed premises on a regular basis under the producer/wholesaler licence.
- (3) An on-premises licence that relates to a vessel that is authorised under section 25 (9) (a) of the Act to sell liquor by retail to passengers on board the

vessel is taken for the purposes of this Part to authorise the licensee to sell or supply liquor on licensed premises on a regular basis between 1.30 am and 5 am on any day. The operation of this subclause is subject to any licence condition that restricts the times at which liquor may be sold or supplied.

- (4) In this clause, a reference to the sale or supply of liquor to patrons does not include a reference to the sale or supply of liquor to:
- (a) a resident of the licensed premises concerned or to a guest of such a resident while the guest is in the resident's company, or
 - (b) an employee of the licensee, or
 - (c) a person referred to in section 29 (3) of the Act.
- (5) A trading hours risk loading element is not payable in relation to the following licences:
- (a) a producer/wholesaler licence that is not endorsed with a drink on-premises authorisation,
 - (b) a small bar licence,
 - (c) an on-premises licence that relates only to one or more of the following:
 - (i) accommodation premises,
 - (ii) a catering service,
 - (iii) an airport,
 - (iv) a restaurant where the licence is not endorsed under section 24 (3) of the Act with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises,
 - (d) a multi-function limited licence,
 - (e) a former community liquor licence,
 - (f) a packaged liquor licence.

5G Location risk loading element

- (1) The *location risk loading element* of a periodic licence fee for a licence (which is payable only if a compliance history risk loading element is payable) is \$2,000, if the licensed premises are, on the relevant assessment date, within:
- (a) the Kings Cross precinct, or
 - (b) a prescribed precinct, or
 - (c) an area to which a relevant local liquor accord applies.
- (2) A location risk loading element is not payable in relation to the following licences:
- (a) a producer/wholesaler licence that is not endorsed with a drink on-premises authorisation that relates to premises within the Kings Cross precinct or a prescribed precinct,
 - (b) a multi-function limited licence,
 - (c) a former community liquor licence.
- (3) In this clause:
- prescribed precinct* has the same meaning as in section 116C of the Act.
- relevant local liquor accord* means a local liquor accord that requires any licensee who is a party to the accord to pay a periodic licence fee that includes a location risk loading element.

5H Patron capacity loading element

- (1) The *patron capacity loading element* of a periodic licence fee for a licence (which is payable only if a compliance history risk loading element is payable) is as follows:
 - (a) if, on the relevant assessment date, the patron capacity of the licensed premises is not more than 60 patrons—\$1,000,
 - (b) if, on the relevant assessment date, the patron capacity of the licensed premises is more than 60, but not more than 120, patrons—\$3,000,
 - (c) if, on the relevant assessment date, the patron capacity of the licensed premises is more than 120, but not more than 300, patrons—\$5,000,
 - (d) if, on the relevant assessment date, the patron capacity of the licensed premises is more than 300 patrons—\$8,000.
- (2) A patron capacity loading element that applies to a producer/wholesaler licence endorsed with a drink on-premises authorisation is to be determined by reference to that part of the licensed premises that is the subject of the drink on-premises authorisation and not by reference to the licensed premises under the producer/wholesaler licence.
- (3) A patron capacity loading element is not payable in relation to the following licences:
 - (a) a producer/wholesaler licence that is not endorsed with a drink on-premises authorisation,
 - (b) an on-premises licence that relates only to accommodation premises or a catering service (or both),
 - (c) a packaged liquor licence,
 - (d) a multi-function limited licence,
 - (e) a former community liquor licence.
- (4) It is a condition of each licence (other than a packaged liquor licence, a multi-function limited licence or a former community liquor licence) that the licensee must give the Director-General notice in writing of any change in the patron capacity of the licensed premises that occurs after the provision of any biennial return under clause 30, with that notice being required to be given within 7 days of the change.
- (5) In this clause, *patron capacity*, in relation to licensed premises, means:
 - (a) if the patron capacity is established by a licence condition—that patron capacity, or
 - (b) if the patron capacity is not established by a licence condition:
 - (i) the patron capacity that the licensee has notified to the Director-General in the most recent biennial return provided by the licensee under clause 30 before the relevant assessment date, or
 - (ii) if the Director-General is not satisfied that the patron capacity so notified is accurate—the patron capacity determined by the Director-General, or
 - (iii) if no return has been provided by the licensee under clause 30, or if any such return provided did not include information about patron capacity—the patron capacity determined by the Director-General.

- (6) In determining the *patron capacity* of licensed premises, any part of the premises that has been set aside exclusively for the purposes of accommodation of residents is taken not to be part of the licensed premises.

5I Notice of periodic licence fee payable

- (1) The Director-General is, as soon as is practicable after the assessment date for a periodic licence fee, but not less than 14 days before the due date for payment of the fee, to send a notice to the licensee liable to pay the fee.
- (2) The notice is to include:
- (a) the total amount of the periodic licence fee payable, and
 - (b) the amount of each element of that fee that makes up that total amount, and
 - (c) the due date for payment of the fee.
- (3) A failure by the Director-General to comply with this clause does not affect a licensee's liability to pay a periodic licence fee, late payment fee or application for reinstatement fee.

5J Late payment fee

- (1) For the purposes of section 58C (3) (b) (ii) of the Act, a late payment fee of the following amount is payable if the periodic licence fee payable for a licence has not been paid before the expiration of 28 days after the due date for payment:
- (a) for a multi-function limited licence or a former community liquor licence—\$50,
 - (b) for any other type of licence—\$100.
- (2) The Director-General may waive or refund all or part of a late payment fee payable under this clause in any circumstances that the Director-General considers appropriate.
- (3) It is a condition of a licence that any late payment fee payable for the licence that has not been waived must be paid before the expiration of 28 days after the due date for payment of the periodic licence fee.

5K Application for reinstatement fees

- (1) For the purposes of section 58C (3) (b) (iii) of the Act, an application fee must accompany an application for the reinstatement of a licence cancelled under section 58B (3) of the Act.
- (2) The amount of that fee is to be the sum of:
- (a) the base fee element of the unpaid periodic licence fee concerned, and
 - (b) the trading hours risk loading element payable in relation to the unpaid licence fee concerned, and
 - (c) any compliance history risk loading element, location risk loading element or patron capacity loading element payable in relation to the unpaid licence fee concerned.
- (3) The Director-General may waive or refund all or part of the fee that is required to accompany an application under section 58C (3) (b) (iii) of the Act for a reinstatement of a cancelled licence in any circumstances that the Director-General considers appropriate.

5L Re-assessment of periodic licence fee

- (1) The Director-General may re-assess a periodic licence fee at the request of the licensee or on the Director-General's own initiative. Any such request must be made no later than 56 days after 29 May (that is, no later than the date on which the licence would otherwise be cancelled for late payment under section 58B of the Act).
- (2) If the Director-General is satisfied that an error was made in the initial assessment of the periodic licence fee (including an initial assessment based on an incorrect knowledge of the relevant circumstances), the Director-General may re-assess the periodic licence fee and send a further notice to the licensee concerned.
- (3) The further notice is to include the following:
 - (a) a statement as to the amount of re-assessed periodic licence fee,
 - (b) if the licensee has not paid the initially assessed periodic licence fee—the due date for the payment of the re-assessed periodic licence fee (being a date no later than 56 days after 29 May),
 - (c) if the licensee has paid the initially assessed periodic licence fee and the amount of the re-assessed fee is greater than the amount of the initially assessed fee—the due date for the payment of the difference in amounts (being a date no later than 56 days after 29 May).
- (4) If the licensee has paid the initially assessed periodic licence fee and the amount of the re-assessed periodic licence fee is less than the amount of the initially assessed fee, the Director-General is to refund the difference to the licensee.

5M Waiver of elements of periodic licence fee

- (1) A person who holds a licence may apply to the Director-General for the waiver of any or all elements of the periodic licence fee payable in respect of the licence.
- (2) On receiving such an application, the Director-General may:
 - (a) waive any or all elements of the periodic licence fee payable in respect of the licence held by the applicant, or
 - (b) refuse to waive any element.

5N Transitional provisions: phasing-in of periodic licence fees

- (1) Despite clause 5C, for the assessment year commencing on 15 March 2015:
 - (a) only the base fee element and trading hours risk loading element of a periodic licence fee are payable, and
 - (b) any compliance history risk loading element, location risk loading element or patron capacity loading element is not payable.
- (2) A compliance history risk loading element of a periodic licence fee is first payable for the assessment year commencing on 15 March 2016. In assessing that element, events that occur in the 2015 calendar year may be taken into account. That element is due on 29 May 2016.

50 Review of amendment relating to periodic licence fees

- (1) The Minister is to review the amendment made to this Regulation by Schedule 1 [1] to the *Liquor Amendment (Periodic Licence Fees) Regulation 2014*, to determine whether the policy objectives of that amendment remain valid and whether the terms of that amendment remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the end of the period of 3 years following the date of commencement of the *Liquor Amendment (Periodic Licence Fees) Regulation 2014* and the Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

[2] Clause 30 Licensees required to provide biennial return

Insert after clause 30 (2):

- (2A) On and from the commencement of the *Liquor Amendment (Periodic Licence Fees) Regulation 2014*, the biennial return must include the patron capacity of the licensed premises, unless the Director-General otherwise directs.

[3] Schedule 1C Excepted premises—Sydney CBD Entertainment precinct

Omit the matter relating to the Heritage Belgian Beer Cafe.