



Queensland

Community Services and Other Legislation Amendment Act 2004

Act No. 38 of 2004



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Community Services and Other Legislation Amendment Act 2004

Act No. 38 of 2004

An Act to amend the *Community Services (Aborigines) Act 1984*, *Community Services (Torres Strait) Act 1984* and *Police Powers and Responsibilities Act 2000*

[Assented to 27 October 2004]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Community Services and Other Legislation Amendment Act 2004*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Community Services (Aborigines) Act 1984

3 Act amended in pt 2

This part amends the *Community Services (Aborigines) Act 1984*.

4 Amendment of s 4 (Definitions)

Section 4—

insert—

‘fermenter, for part 6, see section 95.

home-brew concentrate, for part 6, see section 95.

home-brew kit, for part 6, see section 95.

homemade alcohol, for part 6, see section 95.

prescribed community area, for part 6, see section 95.’.

5 Amendment of s 94 (Purpose of pt 6)

Section 94(2)—

omit, insert—

- ‘(2) The purpose is to be achieved by—
- (a) prohibiting in certain community areas the possession or supply of homemade alcohol and the possession of certain substances and things used to make homemade alcohol; and
 - (b) providing for the declaration of places in community areas in which the possession and consumption of all alcohol is prohibited.’.

6 Amendment of s 95 (Definitions for pt 6)

Section 95—

insert—

‘fermenter means a container that could be used for the purpose of fermentation.

home-brew concentrate means—

- (a) a substance, that includes malt and hops, ordinarily used for brewing beer; or
- (b) wort; or
- (c) grape concentrate ordinarily used for making wine.

home-brew kit means a kit that includes all the following—

- (a) a fermenter;
- (b) an airlock;
- (c) a thermometer.

homemade alcohol means alcohol made other than under a licence under—

- (a) the *Excise Act 1901* (Cwlth); or
- (b) the *Distillation Act 1901* (Cwlth).

prescribed community area means a community area prescribed under a regulation for section 112A.¹.

7 Amendment of s 100 (Suspension of declaration)

Section 100—

insert—

‘(9) The suspension does not affect the operation of section 112A.¹’.

8 Amendment of pt 6, div 3, hdg (Offences)

Part 6, division 3, heading, ‘**Offences**’—

omit, insert—

‘**Offences relating to community justice groups and dry places**’.

9 Amendment of pt 6, div 4, hdg (Appeals)

Part 6, division 4, heading, ‘**Appeals**’—

omit, insert—

‘**Appeals relating to dry places**’.

10 Renumbering of pt 6, div 5

Part 6, division 5—

renumber as part 6, division 6.

¹ Section 112A (Offences relating to homemade alcohol)

11 Insertion of new pt 6, div 5

After section 112—

insert—

‘Division 5 Provisions relating to homemade alcohol in certain community areas

‘112A Offences relating to homemade alcohol

‘A person must not, in a prescribed community area—

- (a) possess a home-brew kit; or
- (b) possess home-brew concentrate; or
- (c) possess homemade alcohol; or
- (d) supply homemade alcohol to someone else.

Maximum penalty—250 penalty units.

‘112B Relationship with restricted areas

- ‘(1) This section applies if a prescribed community area or part of a prescribed community area is, or is in, a restricted area under the *Liquor Act 1992* to which section 168B of that Act applies because of a declaration under section 173H of that Act (the *restricted area declaration*).
- ‘(2) Section 112A(c) applies to the whole of the prescribed community area despite the restricted area declaration.’.

12 Amendment of s 180 (Evidentiary aids)

- (1) Section 180(2), ‘Subsections (3) and (4) apply’—

omit, insert—

‘Subsection (3) applies’.

- (2) Section 180—

insert—

- ‘(3A) Subsection (5) applies to a proceeding for an offence against section 103(1) or 112A(b), (c), or (d)’.

- (3) Section 180(4), ‘fluid is’—
omit, insert—
‘fluid or other substance is, on its production, admissible as’.
- (4) Section 180—
insert—
- ‘(4A) A provision of this section does not limit another provision of the section or of this Act about evidence.’.
- (5) Section 180(5)—
insert—
‘**homemade alcohol** has the same meaning as in part 6.’.
- (6) Section 180(3A) to (5)—
renumber as section 180(4) to (7).

13 Insertion of new ss 180A and 180B

After section 180—

insert—

‘180A Evidence of home-brew concentrate by label

- ‘(1) This section applies if, in a proceeding for an offence against section 112A(b), it is relevant to prove that a substance in the possession of a person was home-brew concentrate.
- ‘(2) In the absence of proof to the contrary, the substance is proved to be home-brew concentrate if—
- (a) there is evidence that the container containing the substance had a label indicating the substance was home-brew concentrate; and
 - (b) a police officer gives evidence that the police officer believes the container contained home-brew concentrate; and
 - (c) the court considers the belief mentioned in paragraph (b) to be reasonably held.

‘(3) In this section—

home-brew concentrate has the same meaning as in part 6.

label, in relation to a container, includes any tag, statement in writing, representation or other descriptive matter on or attached to or used or displayed in connection with the container.

‘180B Evidence of homemade alcohol having regard to belief of police officer

‘(1) This section applies if, in a proceeding for an offence against section 112A (c) or (d), it is relevant to prove that a substance possessed or supplied by a person was homemade alcohol.

‘(2) In the absence of proof to the contrary, the substance is proved to be homemade alcohol if—

- (a) there is evidence by a police officer that the police officer believed the substance was homemade alcohol; and
- (b) the court considers the belief mentioned in paragraph (a) to be reasonably held by the police officer.

‘(3) For subsection (2)(a) it is sufficient for the police officer to believe—

- (a) that the substance was alcohol by having regard to the conditions in which it was found or its odour; and
- (b) that the alcohol was homemade by having regard to either or both of the following—
 - (i) its odour, or appearance, as compared to that of alcohol usually commercially available in Queensland;
 - (ii) if the alcohol was in a container, that the police officer considers that the container was not of a type in which alcohol was usually commercially available to the public in Queensland.

‘(4) For subsection (2)(b), a court may consider a belief formed as mentioned in subsection (3) to be reasonably held.

- ‘(5) Subsection (3) does not limit the matters that may form the basis for a police officer’s belief mentioned in subsection (2)(a) or the basis for a court to consider the police officer’s belief to be reasonably held.
- ‘(6) In this section—
homemade alcohol has the same meaning as in part 6.’.

Part 3 Amendment of Community Services (Torres Strait) Act 1984

14 Act amended in pt 3

This part amends the *Community Services (Torres Strait) Act 1984*.

15 Amendment of s 4 (Definitions)

Section 4—

insert—

‘*fermenter*, for part 6, see section 93.

home-brew concentrate, for part 6, see section 93.

home-brew kit, for part 6, see section 93.

homemade alcohol, for part 6, see section 93.

prescribed council area, for part 6, see section 93.’.

16 Amendment of s 92 (Purpose of pt 6)

Section 92(2)—

omit, insert—

- ‘(2) The purpose is to be achieved by—
- (a) prohibiting in certain council areas the possession or supply of homemade alcohol and the possession of certain substances and things used to make homemade alcohol; and
 - (b) providing for the declaration of places in council areas in which the possession and consumption of all alcohol is prohibited.’.

17 Amendment of s 93 (Definitions for pt 6)

Section 93—

insert—

‘fermenter means a container that could be used for the purpose of fermentation.

home-brew concentrate means—

- (a) a substance, that includes malt and hops, ordinarily used for brewing beer; or
- (b) wort; or
- (c) grape concentrate ordinarily used for making wine.

home-brew kit means a kit that includes all the following—

- (a) a fermenter;
- (b) an airlock;
- (c) a thermometer.

homemade alcohol means alcohol made other than under a licence under—

- (a) the *Excise Act 1901* (Cwlth); or
- (b) the *Distillation Act 1901* (Cwlth).

prescribed council area means a council area prescribed under a regulation for section 110A.’.

18 Amendment of s 98 (Suspension of declaration)

Section 98—

insert—

‘(9) The suspension does not affect the operation of section 110A.’².

19 Amendment of pt 6, div 3, hdg (Offences)

Part 6, division 3, heading, ‘**Offences**’—

omit, insert—

‘Offences relating to community justice groups and dry places’.

20 Amendment of pt 6, div 4, hdg (Appeals)

Part 6, division 4, heading, ‘**Appeals**’—

omit, insert—

‘Appeals relating to dry places’.

21 Renumbering of pt 6, div 5

Part 6, division 5—

renumber as part 6, division 6.

22 Insertion of new pt 6, div 5

After section 110—

insert—

‘Division 5 Provisions relating to homemade alcohol in certain council areas

² Section 110A (Offences relating to homemade alcohol)

‘110A Offences relating to homemade alcohol

‘A person must not, in a prescribed council area—

- (a) possess a home-brew kit; or
- (b) possess home-brew concentrate; or
- (c) possess homemade alcohol; or
- (d) supply homemade alcohol to someone else.

Maximum penalty—250 penalty units.

‘110B Relationship with restricted areas

- ‘(1) This section applies if a prescribed council area or part of a prescribed council area is, or is in, a restricted area under the *Liquor Act 1992* to which section 168B of that Act applies because of a declaration under section 173H of that Act (the *restricted area declaration*).
- ‘(2) Section 110A(c) applies to the whole of the prescribed council area despite the restricted area declaration.’.

23 Amendment of s 190 (Evidentiary aids)

- (1) Section 190(2), ‘Subsections (3) and (4) apply’—
omit, insert—
‘Subsection (3) applies’.
- (2) Section 190—
insert—
- ‘(3A) Subsection (5) applies to a proceeding for an offence against section 101(1) or 110A(b), (c), or (d)’.
- (3) Section 190(4), ‘fluid is’—
omit, insert—
‘fluid or other substance is, on its production, admissible as’.
- (4) Section 190—
insert—

‘(4A) A provision of this section does not limit another provision of the section or of this Act about evidence.’.

(5) Section 190(5)—

insert—

‘**homemade alcohol** has the same meaning as in part 6.’.

(6) Section 190(3A) to (5)—

renumber as section 190(4) to (7).

24 Insertion of new ss 190A and 190B

After section 190—

insert—

‘190A Evidence of home-brew concentrate by label

‘(1) This section applies if, in a proceeding for an offence against section 110A(b), it is relevant to prove that a substance in the possession of a person was home-brew concentrate.

‘(2) In the absence of proof to the contrary, the substance is proved to be home-brew concentrate if—

(a) there is evidence that the container containing the substance had a label indicating the substance was home-brew concentrate; and

(b) a police officer gives evidence that the police officer believes the container contained home-brew concentrate; and

(c) the court considers the belief mentioned in paragraph (b) to be reasonably held.

‘(3) In this section—

home-brew concentrate has the same meaning as in part 6.

label, in relation to a container, includes any tag, statement in writing, representation or other descriptive matter on or attached to or used or displayed in connection with the container.

‘190B Evidence of homemade alcohol having regard to belief of police officer

- ‘(1) This section applies if, in a proceeding for an offence against section 110A(c) or (d), it is relevant to prove that a substance possessed or supplied by a person was homemade alcohol.
- ‘(2) In the absence of proof to the contrary, the substance is proved to be homemade alcohol if—
- (a) there is evidence by a police officer that the police officer believed the substance was homemade alcohol; and
 - (b) the court considers the belief mentioned in paragraph (a) to be reasonably held by the police officer.
- ‘(3) For subsection (2)(a) it is sufficient for the police officer to believe—
- (a) that the substance was alcohol by having regard to the conditions in which it was found or its odour; and
 - (b) that the alcohol was homemade by having regard to either or both of the following—
 - (i) its odour, or appearance, as compared to that of alcohol usually commercially available in Queensland;
 - (ii) if the alcohol was in a container, that the police officer considers that the container was not of a type in which alcohol was usually commercially available to the public in Queensland.
- ‘(4) For subsection (2)(b), a court may consider a belief formed as mentioned in subsection (3) to be reasonably held.
- ‘(5) Subsection (3) does not limit the matters that may form the basis for a police officer’s belief mentioned in subsection (2)(a) or the basis for a court to consider the police officer’s belief to be reasonably held.
- ‘(6) In this section—
- homemade alcohol* has the same meaning as in part 6.’

Part 4 **Amendment of Police Powers and Responsibilities Act 2000**

25 **Act amended in pt 4**

This part amends the *Police Powers and Responsibilities Act 2000*.

26 **Amendment of s 44A (Prevention of particular offences relating to liquor)**

Section 44A(1)(a)(ii) and (iii)—

omit, insert—

‘(ii) *Community Services (Aborigines) Act 1984*, section 103 or 112A(c) or (d);³

(iii) *Community Services (Torres Strait) Act 1984*, section 101 or 110A(c) or (d);⁴ and’.

27 **Amendment of s 51 (Stopping vehicles for prescribed purposes)**

Section 51(6), definition *liquor provision*, paragraphs (b) and (c)—

omit, insert—

3 *Community Services (Aborigines) Act 1984*, section 103 (Possession or consumption of alcohol in or on dry place) or 112A (Offences relating to homemade alcohol)

4 *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place) or 110A (Offences relating to homemade alcohol)

(b) *Community Services (Aborigines) Act 1984*,
section 103 or 112A;⁵

(c) *Community Services (Torres Strait) Act 1984*,
section 101 or 110A.⁶.

28 Amendment of sch 1 (Acts not affected by this Act)

Schedule 1—

insert—

‘Community Services (Aborigines) Act 1984

Community Services (Torres Strait) Act 1984’.

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5 *Community Services (Aborigines) Act 1984*, section 103 (Possession or consumption of alcohol in or on dry place) or 112A (Offences relating to homemade alcohol)

6 *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place) or 110A (Offences relating to homemade alcohol)