

# Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 82

made under the

*Liquor Act 1992*

## General Outline

### Short title

*Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020*

### Authorising law

Sections 173G, 173H, 202 and 235 of the *Liquor Act 1992*

### Policy objectives and the reasons for them

The objective of this Amendment Regulation is to temporarily increase alcohol carriage limits and support the temporary sale of takeaway liquor in the Kowanyama and Pormpuraaw restricted areas during the declared COVID-19 health emergency.

#### *Kowanyama and Pormpuraaw restricted areas*

Section 173G of the *Liquor Act 1992* (Liquor Act) provides that a regulation may declare an area to be a restricted area. Section 173H of the Liquor Act further provides that a regulation may declare a restricted area as an area in which a person is prohibited from possessing more than the quantity of a type of liquor prescribed in the *Liquor Regulation 2002* (Liquor Regulation) for the restricted area. This is also known as a 'carriage limit'.

The Kowanyama Aboriginal community is a restricted area prescribed under Schedule 1G of the Liquor Regulation. The Pormpuraaw Aboriginal community is a restricted area prescribed under Schedule 1H of the Liquor Regulation.

Both restricted areas currently have a zero alcohol carriage limit (although Pormpuraaw's carriage limit allows for four litres of wine if used for sacramental purposes for a religious entity).

The Kowanyama Sport & Recreation Association Incorporated (Kowanyama Club) and Pormpuraaw United Brothers Sports Club Incorporated (Pormpuraaw Club) are

both currently authorised to sell liquor in the restricted area from their respective premises, each known as ‘the Canteen’, for consumption on the premises, under the authority of a restricted liquor permit (RLP). RLPs do not authorise takeaway liquor sales.

On 29 January 2020, in response to the global novel coronavirus (COVID-19) pandemic, a public health emergency was declared in Queensland under section 319 of the *Public Health Act 2005*.

As a result of strict limitations on on-premises consumption under the public health directions made since 23 March 2020 by the Queensland Chief Health Officer, both the Kowanyama and Pormpuraaw Canteens have been closed and the communities have essentially become ‘dry’ communities, with no access to alcohol.

A Federal *Biosecurity Determination* has been implemented under the *Biosecurity Act 2015* (Cth) to restrict people from entering (and re-entering) specified remote Aboriginal and Torres Strait Islander communities, including Kowanyama and Pormpuraaw, in order to protect these communities from the spread of COVID-19. Persons other than an essential services worker (i.e. food, emergency and police services, health care workers) must comply with strict isolation conditions prior to entering or re-entering a designated remote area, with penalties applying for failure to do so.

The Kowanyama Aboriginal Shire Council (Kowanyama Council) and Pormpuraaw Aboriginal Shire Council (Pormpuraaw Council) have raised concerns that community members may attempt to leave the community to access alcohol from more populous surrounding areas, placing them at greater risk of contracting COVID-19. Should these persons try to return to their community without complying with the requisite isolation protocols, this could lead to a spread of COVID-19 throughout the community.

People who live in remote communities are at a greater risk from COVID-19 due to factors such as higher rates of other health issues. Aboriginal and Torres Strait Islander people over 50 years of age have been specifically identified as being at a greater risk of serious illness from COVID-19. An outbreak of COVID-19 in either Kowanyama or Pormpuraaw could potentially result in a very high mortality rate.

#### *Proposal to address COVID-19 risk*

To address the above concerns, the Kowanyama Council put forward a proposal for the Kowanyama Club to be able to sell takeaway liquor from their Canteen. Takeaway sales would be subject to a limit of a six pack of mid-strength alcohol (beer or pre-mixed drinks, with an alcohol concentration of less than 4 per cent alcohol by volume) per person, per day, available on Wednesday to Saturday, during specified hours.

The Pormpuraaw Council also put forward a similar proposal for the Pormpuraaw Club to be able to sell takeaway liquor from their Canteen. Takeaway sales would be subject to a limit of a six pack of mid-strength alcohol (beer or pre-mixed drinks, with an alcohol concentration of less than 4 per cent alcohol by volume) per person, per day, available on Monday, Wednesday, Friday and Saturday, during specified hours.

The Minister for Fire and Emergency Services and Minister for Aboriginal and Torres Strait Islander Partnerships, in consultation with the Premier and Minister for Trade and the Ministerial Champion for each area, has recommended the Attorney-General progress the proposals from the Kowanyama and Pormpuraaw Councils. Accordingly, the amendments to the Liquor Regulation outlined below give effect to each Council's proposal.

#### *Ability to grant a community liquor permit to the Clubs*

As the RLPs for the Kowanyama Club and Pormpuraaw Club do not allow for the sale of liquor for consumption away from the Canteen premises, the Clubs require a different authority in order to sell takeaway liquor. The Clubs are both eligible for a community liquor permit (CLP), which may contain conditions to authorise takeaway liquor sales.

CLPs are not usually granted for broad, continuous circumstances, such as the current pandemic. However, section 235(2)(f) of the Liquor Act provides the Governor in Council with the power to make a regulation with respect to the circumstances in which the Commissioner may grant a CLP. Accordingly, the Amendment Regulation utilises this head of power to clarify the circumstances for which the Commissioner for Liquor and Gaming (Commissioner) may grant a CLP to the Kowanyama and Pormpuraaw Clubs.

#### *Fee exemption in respect of a CLP for the Clubs*

Under section 202(3) of the Liquor Act, fees payable for a permit are prescribed by regulation. Under schedule 1, item 3(b) of the Liquor Regulation, the prescribed fee for applications for a CLP is \$71.65 for each day of the event or occasion.

Section 30B(1) of the *Statutory Instruments Act 1992* provides that a power conferred by a law for a statutory instrument to prescribe a fee includes a power to exempt any person or matter from payment of the fee.

The Kowanyama and Pormpuraaw Clubs both currently operate under an RLP for which they have already paid the required fees. Accordingly, the Amendment Regulation ensures both the Kowanyama Club and Pormpuraaw Club are exempt from having to pay the relevant application fees for their CLP.

#### *Temporary increase to Kowanyama and Pormpuraaw alcohol carriage limits*

As the alcohol carriage limit for the Kowanyama and Pormpuraaw restricted areas is zero, takeaway alcohol purchased at the Kowanyama Canteen or the Pormpuraaw Canteen could not be taken to residents' homes without an increased carriage limit. Accordingly, the Amendment Regulation prescribes a temporary carriage limit for both of the restricted areas in line with the proposal put forward by the Kowanyama and Pormpuraaw Councils. Upon expiry of the amendment, the carriage limit for Kowanyama and Pormpuraaw reverts back to zero.

## Achievement of policy objectives

The Amendment Regulation achieves the policy objective by prescribing the following:

- the prevention of, or limitation on, the sale of liquor for on-premises consumption at the Kowanyama and Pormpuraaw Canteens due to a public health direction is a circumstance for which the Commissioner may grant a CLP to the Kowanyama and Pormpuraaw Clubs;
- the Kowanyama and Pormpuraaw Clubs are exempt from having to pay the prescribed application fees associated with the CLP granted in the stated circumstances; and
- despite the stated prescribed quantity in item 2 of Schedule 1G and item 2 of Schedule 1H of the Liquor Regulation, a temporary prescribed quantity applies, being 2.25 litres of liquor, in which the concentration of alcohol (i.e. alcohol by volume) is less than 4%.

Each of these amendments will expire on 31 December 2020.

## Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Liquor Act, which includes, under section 3(a), the regulation of the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; minimising adverse effects on the health or safety of members of the public; and minimising adverse effects on the amenity of the community. Section 173F of the Liquor Act details similar purposes for declaring alcohol restricted areas.

Having regard to potential harm, the increases to the alcohol carriage limits for Kowanyama and Pormpuraaw under the Amendment Regulation are less than the amounts currently able to be consumed at the respective Canteens during normal operation.

These amendments are temporary and will expire on 31 December 2020, which is consistent with the *COVID-19 Emergency Response Act 2020*.

## Inconsistency with policy objectives of other legislation

In 2013, the High Court of Australia determined that alcohol restrictions were a 'special measure' under the *Racial Discrimination Act 1975* (Cth) as they impose constraints on individual liberties in favour of promoting safety for the broader community (*Maloney v the Queen* [2013] HCA 28).

## Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives feasibly under the existing policy and legislative framework in respect of alcohol restricted areas, while maintaining the harm minimisation objectives of the Liquor Act.

## **Benefits and costs of implementation**

The Amendment Regulation will benefit the Kowanyama and Pormpuraaw communities, as it will address the risks raised by the relevant Councils regarding community exposure to COVID-19 and the potential social impacts arising from the lack of access to alcohol.

Any expenditure associated with the implementation of the Amendment Regulation will be met through existing budget allocations.

## **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles and have sufficient regard for the rights and liberties of individuals and the authority of Parliament.

## **Consultation**

The Community Justice Groups and the Local Disaster Management Groups for Kowanyama and Pormpuraaw are supportive of the proposal.

The Office of Best Practice Regulation (OBPR) was consulted on the proposal. OBPR has advised the proposal is excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation*.