

Liquor (Kowanyama) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 262

made under the

Liquor Act 1992

Statutory Instruments Act 1992

General Outline

Short title

Liquor (Kowanyama) Amendment Regulation 2020

Authorising law

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

Section 30B of the *Statutory Instruments Act 1992*

Policy objectives and the reasons for them

The objective of this Amendment Regulation is to extend the temporarily increased alcohol carriage limit and continue to facilitate the temporary sale of limited takeaway liquor in the Kowanyama restricted area until 30 June 2021.

Kowanyama restricted area

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. Kowanyama ordinarily has a zero-alcohol carriage limit. The Kowanyama Sport & Recreation Association Incorporated (Kowanyama Club) is authorised to sell liquor in the restricted area from their premises, for consumption on the premises, under the authority of a restricted liquor permit. A restricted liquor permit does not authorise takeaway liquor sales.

Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020

On 5 June 2020, the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* commenced. It amended Schedule 1G of the Liquor Regulation to establish a temporary alcohol carriage limit in the Kowanyama community of 2.25 litres of liquor (the equivalent of 6 x 375ml cans), with an alcohol concentration of less than 4% alcohol by volume.

In conjunction with this change, to allow the Kowanyama Club to sell takeaway liquor, the Commissioner for Liquor and Gaming granted a community liquor permit to the Club, which will operate until 31 December 2020.

The *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* also inserted Part 10 (Provisions for COVID-19 emergency) into the Liquor Regulation which, among other things, waives the fee for the Kowanyama Club's community liquor permit (\$72.95 for each day of an event or occasion) for the duration of its operation.

These changes were made following closures and restrictions imposed in Kowanyama in response to the COVID-19 public health emergency.

The amendments introduced by the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* will expire on 31 December 2020. On 1 January 2021, the Kowanyama carriage limit will automatically return to zero, and fees will become payable for any further operation of a community liquor permit for the Kowanyama Club.

Extending carriage limits in Kowanyama beyond 31 December 2020

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DATSIP) has advised ongoing renovations at the Kowanyama Club will prevent on-premises consumption of alcohol due to safety reasons. The renovations were initially scheduled to occur between 1 October 2020 and 21 December 2020. However, a backlog of building materials and shortage of qualified staff has resulted in delays, and an extension on the refurbishment work has been granted until 8 March 2021. As the upcoming wet season may result in further delays, the Kowanyama Club has requested that a further extension be granted until 30 June 2021.

The Kowanyama Aboriginal Shire Council has raised concerns with DATSIP that, should the alcohol carriage limit return to zero with no alcohol consumption allowed at the Kowanyama Club, this would likely cause violence and the influx of 'sly grog' back into the community.

It is therefore considered appropriate to extend the temporary higher carriage limit and waive the fees for a community liquor permit granted to the Kowanyama Club until the proposed date for the completion of renovations at the Club of 30 June 2021.

Achievement of policy objectives

The Amendment Regulation achieves the policy objective by:

- amending Item 2, Schedule 1G of the Liquor Regulation to provide that a temporary prescribed quantity applies in the Kowanyama alcohol restricted area, being 2.25 litres of liquor, in which the concentration of alcohol (i.e. alcohol by volume) is less than 4%; and
- inserting a new section 37 into the Liquor Regulation to ensure that the Kowanyama Club is exempt from having to pay the prescribed application fees associated with a community liquor permit.

The provisions inserted by the Amendment Regulation will commence on 1 January 2021. They will expire on 30 June 2021. Accordingly, the alcohol carriage limit in the Kowanyama restricted area will return to zero on 1 July 2021.

It is noted that, while the carriage limit in Kowanyama will return to zero on 1 January 2021 by virtue of the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020*, the temporary higher carriage limit in Kowanyama will be immediately re-instated by the Amendment Regulation. The effect will be an uninterrupted continuation of this carriage limit in Kowanyama until 30 June 2021.

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 temporary alcohol carriage limit for Kowanyama under the Amendment Regulation is less than the amounts able to be consumed at the Kowanyama Club during normal operation.

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 community as it will address the risk raised by the Kowanyama Aboriginal Shire Council regarding the potential social impacts arising from a 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 Kowanyama Community Justice Group and the Kowanyama Men's Group have been consulted on the proposal and expressed strong support for extending the existing carriage limit and takeaway liquor arrangements in the community. While the Kowanyama Women's Group is currently not operational, the Community Justice Group includes a number of the Women's Group members.

The Office of Best Practice Regulation (OBPR) previously assessed the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* as being excluded from further regulatory impact assessment. The Amendment Regulation effectively extends these previous arrangements in Kowanyama, with wide support from the community. In addition, no social or economic impacts have been identified since the amendments commenced in June 2020. Accordingly, OBPR has not been consulted about the Amendment Regulation, as it is considered their existing assessment is still relevant.