

# Liquor (Pormpuraaw) and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 153

made under the

*Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*  
*Liquor Act 1992*

## General Outline

Short Title

*Liquor (Pormpuraaw) and Other Legislation Amendment Regulation 2022.*

## Authorising law

Sections 27, 38(3) and 71(1) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Sections 168B, 173G, 173H and 235 of the *Liquor Act 1992*.

## Policy objectives and the reasons for them

The objectives of the *Liquor (Pormpuraaw) and Other Legislation Amendment Regulation 2022* (Amendment Regulation) are to assist the Pormpuraaw Aboriginal Shire Council (Council) address the damaging effects to health and well-being and the local economy of sly grog and are in line with the staged re-introduction of alcohol into the community.

### *Increase alcohol carriage limit*

Since the introduction of a zero-alcohol carriage limit for personal use in the Pormpuraaw restricted area, the Council has specifically identified concerns with the trade of sly grog within the community. The Council's proposal to increase the alcohol carriage limit has the support of the Pormpuraaw community and follows a review of the current alcohol restrictions and the development of an updated Community Safety Plan (CSP).

Supporting discrete communities to co-design and implement alcohol management changes, including minor modifications to alcohol carriage limits, forms part of the Government's *Renewed Approach to Alcohol Management* (Renewed Approach).

Consequently, the Amendment Regulation increases the alcohol carriage limit prescribed for Pormpuraaw in Schedule 1H of the *Liquor Regulation 2002* (Liquor Regulation) to allow for the lawful possession of 4.5L of mid-strength alcohol (the equivalent of 12 x 375ml containers), being either beer or pre-mixed alcoholic drinks (or any combination of both), with an alcohol concentration of no more than 4% alcohol by volume (ABV). The alcohol carriage limit also applies per vehicle.

#### *Maintain ban on home brew and home brew equipment*

Under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act), possession and/or supply of home brew and home brew equipment is automatically prohibited in restricted areas under the *Liquor Act 1992* where there is a zero-carriage limit. The JLOM Act also enables prohibition in other restricted areas where these are prescribed in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation 2008* (JLOM Regulation).

A locally led review of the alcohol restrictions for Pormpuraaw recommended a greater than zero carriage limit and the retention of the prohibition on home brew and home brew equipment. The Amendment Regulation will maintain the prohibition on possession and/or supply of home brew and home brew equipment in the Pormpuraaw restricted area.

The Amendment regulation also makes minor amendment to the wording of an existing provision contained in Section 5A(2)(c) of the JLOM Regulation to remove the words, 'the Shire of' which are unnecessary.

## **Achievement of policy objectives**

#### *Increase alcohol carriage limit*

The policy objective of the Amendment Regulation is achieved by amending Schedule 1H of the Liquor Regulation to allow for the increased personal alcohol carriage limit of 4.5L of either low to mid-strength beer or pre-mixed alcoholic drinks (or any combination of both), with an alcohol concentration of no more than 4% ABV.

#### *Maintain ban on home brew and home brew equipment*

To achieve its policy objective, the Amendment Regulation prescribes Pormpuraaw as a community area in the JLOM Regulation to maintain the prohibition of the possession and/or supply of home brew and home brew equipment under section 38(3) of the JLOM Act.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the legislation which includes the regulation of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence.

In line with the decision of the High Court of Australia in *Maloney v the Queen* [2013], alcohol restrictions in place in Queensland are considered a 'special measure' under the *Racial*

*Discrimination Act 1975* (Cth) in that while they do impose constraints on human rights those targeted constraints are for the purpose of promoting safety for the broader community.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is largely consistent with the harm minimisation policy objectives of liquor legislation in other Australian states and territories. Similar legislation relating to restricted areas (also known as dry areas) exists in the Northern Territory and Western Australia under the *Liquor Act 2019* (NT) and the *Liquor Control Act 1988* (WA) respectively.

## **Alternative ways of achieving policy objectives**

### *Increase alcohol carriage limit*

Amending the carriage limit prescribed in the Liquor Regulation to allow limited types and volumes of liquor is the only way to effectively regulate and manage alcohol-related harm in Pormpuraaw.

Repealing Pormpuraaw's designation as a regulated restricted area would enable residents and visitors to be in possession of all types and quantities of liquor in Pormpuraaw. However, there would be no ability to restrict the volume or variety of liquor in an individual's possession. It is anticipated that unregulated access to liquor would result in significant adverse impacts to individual and community health and safety, amplifying the existing negative impacts resulting from the illicit consumption of sly grog in Pormpuraaw.

Allowing a restricted amount of mid-strength beer and pre-mixed alcoholic drinks will provide a safer alternative to unregulated access to liquor.

### *Maintain ban on home brew and home brew equipment*

The prohibition of home brew and home brew equipment supports supply reduction and harm reduction strategies and the removal of the ban in Pormpuraaw would be counterproductive to the introduction of a safe, regulated supply of liquor. Removal of the ban would legitimise unhealthy behaviours that are a cause of community concern for individual health and wellbeing identified in Pormpuraaw's CSP. Along with addressing sly grog, maintaining the ban on home brew and home brew equipment is part of a suite of strategies being led by the Council to implement a staged approach to the reintroduction of a regulated supply of alcohol to community while ensuring community safety and well-being.

## **Benefits and costs of implementation**

### *Increase alcohol carriage limit*

The Amendment Regulation recognises the Pormpuraaw community's progress in alcohol management. It allows Pormpuraaw residents and visitors to be in possession of regulated alcoholic beverages, enabling responsible liquor consumption while helping to curb demand

for illicit sly grog. It is expected this will result in greater health and social benefits for Pormpuraaw.

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

#### *Maintain ban on home brew and home brew equipment*

The anticipated benefits of maintaining the prohibition of home brew and home brew equipment are continuing community safety and well-being outcomes. There are no anticipated implementation costs.

## **Consistency with fundamental legislative principles**

The Amendment Regulation increases the prescribed personal carriage limit to enable possession of particular liquor products in certain quantities. Immediately prior to the implementation of the Amendment Regulation, the carriage limit was zero alcohol for personal use.

It is noted that limitations on alcohol possession in the Pormpuraaw restricted area still remain which may impact on the general rights and liberties of persons within the community. The potential impact is justified based on the broader purpose of promoting health and safety for the Pormpuraaw community. Accordingly, the Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

#### *Increase alcohol carriage limit*

Supporting discrete communities to co-design and implement alcohol management changes, including minor modifications to alcohol carriage limits, forms part of the Government's Renewed Approach. Minor amendments to carriage limits may be explored on an individual basis, pending community and Government agreement, and provided a CSP is in place.

On 21 January 2022, following extensive community consultation, the Council submitted an updated CSP. Consultation undertaken as part of a survey attached to the CSP demonstrated over 90 per cent of respondents supported changes to the current carriage limit. Only 4 respondents stated they did not wish for the alcohol carriage limit to change, while 11 respondents did not answer the question. The updated CSP includes strategies to mitigate risks and encourage behavioural change regarding alcohol consumption such as holding additional Domestic and Family Violence workshops and a campaign focusing on promoting healthy personal relationships to reduce violence. Additional strategies to coincide with the permanent re-introduction of alcohol into the community also include family and youth drug rehabilitation programs.

The Council formally requested the alcohol carriage limit be increased to allow up to 4.5L of beer or pre-mixed spirits with an alcohol concentration of up to and including 4% ABV. Key community stakeholders supported this request, namely the Pormpuraaw Community

Justice Group, Pormpur Paanthu Aboriginal Corporation (including the Men's Group and Women's Group), and co-ordinator of the Pormpuraaw Aged Care & Disability Services.

The Office of Best Practice Regulation (OBPR) reviewed the proposal and concluded the increase to the alcohol carriage limit will reduce the burden of regulation on the community and appears unlikely to result in significant adverse impacts. Accordingly, OBPR determined that no further regulatory impact analysis is required.

*Maintain ban on home brew and home brew equipment*

Consultation on maintaining the ban on home brew and home brew equipment has occurred with the Council and included discussion about the devastating impacts of home brew on the community's health and wellbeing and the need to maintain the ban on home brew.

Amendments to the JLOM Regulation to maintain the ban on home brew and home brew equipment are consequential to amendments to the Liquor Regulation to increase the alcohol carriage limit. As such, they fall under the exclusion category for agency-assessment of (a): regulatory proposals that make consequential amendments. The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships has conducted an agency-assessment and determined that advice from OBPR for regulatory impact analysis is not required.