

Liquor (Mornington) and Other Legislation Amendment Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Liquor (Mornington) and Other Legislation Amendment Regulation 2022* (Amendment Regulation) made under the *Liquor Act 1992* (Liquor Act) and the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation increases the alcohol carriage limit in the Mornington Shire restricted area to allow for up to 4.5L of liquor, limited to either beer or pre-mixed spirits (or any combination of both), with an alcohol concentration of up to and including 4% alcohol by volume.

Under sections 173G and 173H of the Liquor Act, a regulation may declare a restricted area and prohibit a person from possessing more than the quantity of liquor prescribed in the *Liquor Regulation 2002* (Liquor Regulation) for the area. The community area of the Council of the Shire of Mornington, and associated foreshores, is a restricted area under Schedule 1I of the Liquor Regulation. Since 2003, a zero-alcohol carriage limit applied to Mornington Shire.

The Mornington Shire Council (the Council) identified that since the move to total alcohol prohibition on Mornington Island in 2009 when a previous commercial hotel licence was cancelled, Mornington Shire has experienced increasing levels of production and consumption of illicit home brewed liquor with very high alcohol content. Significant adverse impacts on the health of individuals and the safety and public amenity of the broader community is attributed to home brew consumption. This continues despite the banning of home brewing equipment and ingredients under Part 5 of the JLOM Act.

On 31 March 2021, following extensive community consultation, the Council submitted a newly developed Community Safety Plan which, among other things, outlined Council's intention to seek an increased alcohol carriage limit and submit a liquor licence application to lawfully sell alcohol from permanent licensed premises on Mornington Island. Subsequently, the Council contacted the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) to formally request an increased alcohol carriage limit.

The Council proposes that the introduction of a legal alcohol carriage limit of low to mid-strength liquor will allow a safe, regulated supply of alcohol, which is expected to help steer the Morningson Island community away from illicit high alcohol content home brew.

To support this proposal, the Amendment Regulation amends Schedule 1I of the Liquor Regulation to allow for a person to be in possession of up to 4.5L of liquor, limited to either beer or pre-mixed spirits (or any combination of both), with an alcohol concentration of up to and including 4% alcohol by volume, in the Morningson Shire restricted area.

The Amendment Regulation maintains the ban on home brew and home brew equipment in Morningson Shire. Possession or supply of home brew and home brew equipment is prohibited under section 38(3) of the JLOM Act for ‘prescribed community areas’.

The purpose of Part 5 of the JLOM Act is to ‘prevent harm in community areas caused by alcohol abuse and misuse and associated violence’. The Amendment Regulations supports the achievement of this purpose as it amends section 5A of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation 2008* (JLOM Regulation) to include ‘Morningson Shire’ as a prescribed community area for the purpose of section 38(3) of the JLOM Act.

Human Rights Issues

In my opinion, it is considered any human rights engaged by the amendments in relation to alcohol restrictions are reasonable and justifiable.

In 2013, the High Court of Australia determined that alcohol restrictions contained in the Liquor Act and in the Liquor Regulation 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). A ‘special measure’ should impose the “least restrictive” measure to achieve the desired result and should be regularly monitored. Increasing the alcohol carriage limit is a lessening of restrictions and increases individual liberty. On balance, it is considered increasing the carriage limit to provide for individual possession of low to mid-strength alcohol in defined quantities is regulating only to the extent required to promote community safety and, based on the High Court precedent, is reasonable and justifiable with regards to the rights engaged under section 15(3) of the HR Act.

The following human rights are engaged by the Amendment Regulation, as it relates to amending the JLOM Regulation:

- equal protection of the law without discrimination (section 15(3) of the HR Act); and
- right to property (section 24 of the HR Act).

Continuing the ban on home brew and home brew equipment may potentially limit the right to equal protection under the law without discrimination as it applies to a community that has a predominant population of Aboriginal peoples. Accordingly, Aboriginal peoples are more likely to be affected by the ban.

Home brew and home brew equipment may also be considered a form of property that the general community is entitled to possess. Therefore, the banning of such items may potentially engage property rights.

The provisions in the JLOM Act regarding home brew constitute 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). Accordingly, it is considered any human rights engaged in relation to these purposes to be reasonable and justifiable.

Conclusion

I consider that the *Liquor (Mornington) and Other Legislation Amendment Regulation 2022* is compatible with the HR Act because it engages human rights only to the extent that is reasonable and demonstrably justifiable under section 13 of the Act.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice,
Minister for Women and
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