

# Liquor (Kowanyama) 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* (Human Rights Act), 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 (Kowanyama) 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. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

### *Increase alcohol carriage limit*

The Amendment Regulation increases the alcohol carriage limit in the Kowanyama restricted area from zero to allow for 4.5L of mid-strength alcohol, being either beer or pre-mixed alcoholic drinks (or any combination of both), with an alcohol concentration of less than 4% alcohol by volume (ABV), and 2L of wine (other than fortified wine).

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 Kowanyama restricted area is provided for under Schedule 1G of the Liquor Regulation. Except for a 12-month period in 2020-21 wherein a temporary carriage limit of 2.25L of low to mid-strength liquor was in place, a zero-alcohol carriage limit has applied to Kowanyama since 2003.

On 2 June 2021, the Kowanyama Aboriginal Shire Council (Council), following community and stakeholder consultation, submitted an updated Community Safety Plan (CSP) and a formal request to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) in support of a permanently increasing amend the carriage limit.

The Council identified concerns around sly grog, being predominately the illicit sale and consumption of 5L cask wine products, having detrimental impacts on community health and well-being, and the local economy. Council proposes increasing the carriage limit to allow residents to legally drink alcohol in their own homes. The CSP includes strategies to mitigate risks and encourage behavioural change to help normalise alcohol consumption in the community. Strategies include holding additional ‘domestic and family violence Strategy’ and ‘Ending Family Violence’ workshops, and a campaign to increase community understanding of the harm caused by alcohol and drugs.

Alongside the introduction of regulated responsible access to liquor, the CSP identifies strategies to promote community safety and harm minimisation including point of sale and education strategies.

To support this proposal, the Amendment Regulation amends Schedule 1G 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 alcoholic drinks (or any combination of both), with an alcohol concentration of less than 4% ABV and 2L of wine (other than fortified wine), in the Kowanyama restricted area.

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

The Amendment Regulation maintains the ban on home brew and home brew equipment in Kowanyama. 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 Kowanyama Shire and relevant surrounds as prescribed community areas 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 to the Liquor Regulation, 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 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 and certain types of wine in defined quantities is regulated only to 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 Human Rights 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 predominate 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 (Kowanyama) and Other Legislation Amendment Regulation 2022* is compatible with the Human Rights Act because they engage human rights only to the extent that is reasonable and demonstrably justifiable under section 13 of the Act.

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