

# Liquor (Pormpuraaw) 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 (Pormpuraaw) 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 for personal use in the Pormpuraaw restricted area from zero to allow for 4.5L (equivalent to 12 x 375ml containers) of mid-strength alcohol, 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).

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 Pormpuraaw restricted area is provided for under Schedule 1H of the Liquor Regulation.

On 21 January 2022, the Pormpuraaw Aboriginal Shire Council (the Council) submitted an amended Community Safety Plan (CSP) to Government and requested a permanent increase to the alcohol carriage limit. On 8 February 2022, the Council clarified support for a carriage limit of:

- 4.5L of beer or pre-mixed drinks; and
- restricting alcohol concentration to no more than 4 per cent ABV.

The Council identified concerns around sly grog 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 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 includes family and youth drug rehabilitation programs.

To support this proposal, the Amendment Regulation amends Schedule 1H 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 no more than 4% ABV, in the Pormpuraaw restricted area.

#### *Ban on home brew and home brew equipment*

The Amendment Regulation maintains the ban on home brew and home brew equipment in Pormpuraaw. 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 Regulation 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 Pormpuraaw as prescribed community areas for the purpose of section 38(3) of the JLOM Act.

A minor amendment is also proposed to section 5A(2)(c) of the JLOM Regulation to remove the words, “the Shire or” which are unnecessary.

## **Human Rights Issues**

### *Increase alcohol carriage limit*

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.

Prescribing permissible quantities and types of liquor product for individual possession in the Pormpuraaw restricted area engages the right to recognition and equality before the law (section 15(3) of the Human Rights Act) as the restrictions do not apply to persons located outside of the restricted area.

It is considered that the imposition of an alcohol carriage limit is the only way to effectively regulate and manage alcohol-related harm in Pormpuraaw. It is anticipated 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.

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.

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.

Amendments to the carriage limit formed part of the Pormpuraaw CSP which was co-designed by the community and the Queensland Government. The Council engaged with key community stakeholders including the Community Justice Group and Pormpur Paanthu Aboriginal Corporation (which includes the local Men's and Women's Groups) and other local service providers during the CSP development. To ensure harm-minimisation and community safety objectives of the CSP are met, relevant government agencies will collaboratively monitor and address any issues relating to the implementation of the new carriage limit arrangements.

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 certain low to mid-strength alcohol products in defined quantities is regulated 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 Human Rights Act.

#### *Ban on home brew and home brew equipment*

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, any human rights engaged in relation to these purposes are considered to be reasonable and justifiable.

## **Conclusion**

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

**SHANNON FENTIMAN MP**  
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