

Liquor (Mornington) Amendment Regulation 2023

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, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Liquor (Mornington) Amendment Regulation 2023* (Amendment Regulation) made under the *Liquor Act 1992* (Liquor 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 11.25L 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 (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* 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 2002*.

Since 16 April 2022, the Mornington Shire and surrounding foreshores (Mornington Shire) has had a prescribed alcohol carriage limit under Schedule 1I of the *Liquor Regulation 2002* of 4.5L (the equivalent of 12 x 375ml cans) of permissible alcohol, being any combination of beer or pre-mixed spirits with an alcohol concentration of up to and including 4% ABV. The Mornington Shire previously had a zero-alcohol carriage limit implemented in 2003.

The current alcohol carriage limit of 4.5L of permissible alcohol was introduced to provide residents of the Mornington Shire with a lawful and convenient alternative to the dangerous production and consumption of illicit home brew, which was identified as adversely impacting community health and safety.

Since the introduction of a regulated supply of alcohol, the Mornington Shire have observed positive health and safety outcomes for the community, including a downward trend in alcohol-related hospital presentations and a reduction in the number of people consuming illicit home brew.

On 27 October 2022, the Mornington Shire Council (Council) wrote to the then Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships with a request to increase the alcohol carriage limit to 11.25L (the equivalent of 30 x 375ml cans) of permissible alcohol, being any combination of beer or pre-mixed spirits with an alcohol concentration of up to and including 4% ABV. The increase to the alcohol carriage limit requested by the Council was informed by community consultation and is reflected in the revised Community Safety Plan for Mornington Shire, which proposes an alcohol carriage limit of 11.25L of permissible alcohol. The Council's proposal also has the support of the Mornington Shire community.

Increasing the alcohol carriage limit to 11.25L of permissible alcohol seeks to build on the positive health and safety outcomes of the current alcohol carriage limit by providing residents with a lawful and convenient alternative to the dangerous production and consumption of illicit home brew.

To support this proposal, the Amendment Regulation amends Schedule 1I of the *Liquor Regulation 2002* to allow for a person to be in possession of up to 11.25L 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% ABV, in the Mornington Shire restricted area.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, it is considered any human rights engaged by the amendments to the *Liquor Regulation 2002*, in relation to alcohol restrictions, are reasonable and justifiable.

Prescribing permissible quantities and types of liquor product for individual possession in the Mornington Shire restricted area engages the right to recognition and equality before the law under section 15(3) of the HR 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 the Mornington Shire restricted area. 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 dangerous production and consumption of illicit home brew in the Mornington Shire.

In 2013, the High Court of Australia determined that alcohol restrictions contained in the Liquor Act and in the *Liquor Regulation 2002* 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 Mornington Shire's progress in alcohol management. It allows residents of the Mornington Shire and visitors to be in possession of regulated alcoholic beverages, enabling responsible liquor consumption while helping to curb the impacts associated with the dangerous production and consumption of illicit home brew.

The increase to the alcohol carriage limit requested by the Council was informed by community consultation and is reflected in the revised Community Safety Plan (CSP) for Mornington Shire, which proposes an alcohol carriage limit of 11.25L of permissible alcohol. The Council's proposal also has the support of the Mornington Shire community and key community stakeholders.

Increasing the alcohol carriage limit is a lessening of restrictions and increases individual liberty. On balance, it is considered increasing the alcohol 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.

Conclusion

I consider that the *Liquor (Mornington) Amendment Regulation 2023* is compatible with the HR Act because it engages human rights, specifically section 15(3), only to the extent that is reasonable and demonstrably justifiable under section 13 of the Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice and
Minister for the Prevention of Domestic and Family Violence

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