

Liquor (Mornington) and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 33

made under the

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

Liquor Act 1992

General Outline

Short Title

Liquor (Mornington) and Other Legislation Amendment Act 2021.

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

Policy objectives and the reasons for them

Increase alcohol carriage limit

The objective of the *Liquor (Mornington) and Other Legislation Amendment Regulation 2022 (Amendment Regulation)* is to assist the Mornington Shire Council address the damaging effects of illicit home brew consumption on their community.

Transitioning from a zero-carriage limit community to allowing regulated access to low and mid-strength beer and pre-mixed spirits for home consumption is intended to help curb extensive alcohol-related issues arising from the prevalence of home brew on Mornington Island. The Mornington Shire Council's proposal to increase the alcohol carriage limit has the support of the Mornington Island community and follows a review of the Island's Alcohol Management Plan and development of a 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 for Morningson Shire to allow for the lawful possession of up to 4.5L of beer or pre-mixed spirits (the equivalent of 12 x 375mL containers), with an alcohol concentration of up to and including 4% alcohol by volume, as prescribed in Schedule 11 of the *Liquor Regulation 2002* (Liquor Regulation).

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* (Liquor Act) 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).

The review of the alcohol restrictions for Morningson Shire 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 Morningson Shire.

Achievement of policy objectives

Increase alcohol carriage limit

The policy objective of the Amendment Regulation is achieved by amending Schedule 11 of the Liquor Regulation to remove the zero-alcohol limitation and allow for the increased alcohol carriage limit of 4.5L of low to mid-strength beer or pre-mixed spirits (or any combination of both) to provide an alternative to illicit home brew consumption causing significant harm in the community.

Maintain ban on home brew and home brew equipment

To achieve its policy objective, the Amendment Regulation prescribes Morningson Shire as a community area in the JLOM Regulation to maintain its 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

Increase alcohol carriage limit

The Amendment Regulation is consistent with the policy objectives of the Liquor Act, which include the regulation of the sale and supply of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence.

Maintain ban on home brew and home brew equipment

The Amendment Regulation is consistent with the policy objectives of the JLOM Act, that is, to prevent harm in community areas caused by alcohol abuse and misuse and associated violence.

Inconsistency with policy objectives of other legislation

Increase alcohol carriage limit

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 1978* (NT) and the *Liquor Control Act 1988* (WA).

In 2013, the High Court of Australia determined that Queensland alcohol restrictions 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).

Maintain ban on home brew and home brew equipment

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.

Alternative ways of achieving policy objectives

Increase alcohol carriage limit

Amending the carriage limit prescribed in the Liquor Regulation to allow a limited type and volume of liquor is the only way to effectively regulate and manage alcohol-related harm in the Mornington Shire.

Repealing Mornington Shire's designation as a regulated restricted area would enable residents and visitors to be in possession of all types and quantities of liquor in the Mornington Shire. There would be no ability to restrict the volume or variety of liquor in an individual's possession. 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 consumption of illicit high alcohol content home brew prevalent on Mornington Island.

Allowing a restricted amount of low and mid-strength liquor is intended to provide a safer alternative to illicit home brew or 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 strategies, and the removal of the ban in Mornington Shire would be counterproductive to the introduction of a regulated supply of liquor. Removing the ban would legitimise the unhealthy behaviours that are the cause of community concern for individual health and wellbeing, that prompted calls for a changed carriage limit. The Mornington Shire community, through its CSP, identified a change of carriage limit as a strategy to dissuade people from making and drinking home brew and to encourage them to instead consume regulated liquor as a safer option. General consumption of under fermented or 'green'

home brew and high alcohol content home brew has had significant impacts, not only on individual health and wellbeing, but also the broader community with social disfunction, violence and grief.

Benefits and costs of implementation

Increase alcohol carriage limit

The Amendment Regulation recognises the Mornington Island community's progress in alcohol management. It allows Mornington Shire residents and visitors to be in possession of regulated alcoholic beverages, enabling responsible liquor consumption while helping to curb demand for illegal high alcohol content home brew. It is expected this will result in greater health and social benefits for Mornington Shire community members.

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

There are no anticipated implementation costs associated with the amendment to the JLOM Regulation.

Consistency with fundamental legislative principles

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 31 March 2021, following extensive community consultation, the Mornington Shire Council submitted a newly developed CSP. Broad community support for introducing limited takeaway alcohol and legal drinking areas formed part of the Mornington Island CSP. The CSP also includes strong measures to support harm minimisation and community safety alongside easing alcohol restrictions such as: a community night patrol; an education campaign highlighting the harm of home brew, alcohol, petrol sniffing, and illicit drug use; a family-based drug and alcohol rehabilitation program on the Island; increased youth activities; and domestic and family violence prevention strategies.

Subsequently, Mornington Shire Council formally requested the alcohol carriage limit be increased, from zero, to allow up to 11.25L of low to mid-strength beer and pre-mixed spirits (equivalent to 30 x 375mL containers). Key community stakeholders supported the Council's request, namely: Mission Australia, Gununamanda Store and Junkuri Laka (the Community Justice Group).

In October 2021, following further consultation, the Mornington Shire Council supported an initial alcohol carriage limit of 4.5L with potential increases to the alcohol carriage limit to be considered upon successful implementation of the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) reviewed the proposal and concluded that it will not increase the regulatory burden on business or the community. 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 Mornington Shire 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 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. DSDSATSIP has conducted a self-assessment and determined that advice from OBPR for regulatory impact analysis is not required.