

# Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 42

made under the

*Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*  
*Liquor Act 1992*

## General Outline

Short Title

*Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022.*

## 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

The objectives of the *Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022* (Amendment Regulation) are to assist the Kowanyama Aboriginal Shire Council (Council) address the damaging effects to health and well-being and the local economy of sly grog and are in line with the staged re-introduction of alcohol into the community.

### *Increase alcohol carriage limit*

Since the introduction of a zero-alcohol carriage limit in the Kowanyama restricted area, the Council has specifically identified concerns with the trade of sly grog within the community, in particular the illicit sale and consumption of 5L cask wine products. The Council's proposal to increase the alcohol carriage limit has the support of the Kowanyama community and follows a review of the current alcohol restrictions and the development of an updated 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 prescribed for Kowanyama in Schedule 1G of the *Liquor Regulation 2002* (Liquor Regulation) to allow for the lawful possession of 4.5L of mid-strength alcohol (12 x 375 containers), 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). The alcohol carriage limit also applies per vehicle.

#### *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 Kowanyama 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 the Kowanyama restricted area.

## **Achievement of policy objectives**

#### *Increase alcohol carriage limit*

The policy objective of the Amendment Regulation is achieved by amending Schedule 1G of the Liquor Regulation to allow for the increased alcohol carriage limit of 4.5L of low to mid-strength beer and 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).

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

To achieve its policy objective, the Amendment Regulation prescribes Kowanyama Shire and relevant surrounds as community areas 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**

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

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.

## **Inconsistency with policy objectives of other legislation**

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) respectively.

## **Alternative ways of achieving policy objectives**

### *Increase alcohol carriage limit*

Amending the carriage limit prescribed in the Liquor Regulation to allow limited types and volumes of liquor is the only way to effectively regulate and manage alcohol-related harm in Kowanyama.

Repealing Kowanyama's designation as a regulated restricted area would enable residents and visitors to be in possession of all types and quantities of liquor in Kowanyama. However, 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 illicit consumption of sly grog in Kowanyama.

Allowing a restricted amount of mid-strength beer and pre-mixed alcoholic drinks, and limited volumes of wine, will provide a safer alternative to 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 Kowanyama would be counterproductive to the introduction of a safe, regulated supply of liquor. Removal of the ban would legitimise the unhealthy behaviours that are the cause of community concern for individual health and wellbeing identified in Kowanyama's CSP. Along with addressing sly grog, maintaining the ban on home brew and home brew equipment is part of a suite of strategies being led by Council to encourage consumption of small quantities of regulated liquor as a safer option.

## **Benefits and costs of implementation**

### *Increase alcohol carriage limit*

The Amendment Regulation recognises the Kowanyama community's progress in alcohol management. It allows Kowanyama 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 Kowanyama.

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 2 June 2021, following extensive community consultation, the Council submitted an updated CSP. Consultation undertaken on the CSP demonstrated broad community support for drinking at a local licensed premises and a carriage limit allowing takeaway alcohol (74.87 per cent of respondents). 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.

The Council formally requested the alcohol carriage limit be increased, to allow up to 4.5L of low to mid-strength liquor (of less than 4% ABV), in addition to 2L of wine (other than fortified wine). Key community stakeholders supported this requested, namely: the Kowanyama Community Justice Group, Kowanyama Men's Group and Kowanyama Women's Group.

Following further consultation, Council agreed to a minor modification to limit the permissible liquor within the proposed 4.5L limit to beer or pre-mixed alcoholic drinks only (or any combination of both).

The Office of Best Practice Regulation (OBPR) reviewed the proposal and concluded that it is unlikely to result in significant adverse impacts and 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 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. The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships has conducted an agency-assessment and determined that advice from OBPR for regulatory impact analysis is not required.