

Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020

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, Attorney-General and Minister for Justice and Leader for the House provide this human rights certificate with respect to the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* made under the *Liquor Act 1992*.

In my opinion, the Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Kowanyama and Pormpuraaw restricted areas

The Kowanyama Aboriginal community is a restricted area prescribed under Schedule 1G of the *Liquor Regulation 2002* (Liquor Regulation). The Pormpuraaw Aboriginal community is a restricted area prescribed under Schedule 1H of the Liquor Regulation.

Both restricted areas have a zero alcohol carriage limit (i.e. persons are prohibited from having alcohol in their possession in the area), although it is noted Pormpuraaw's carriage limit allows for four litres of wine if used for sacramental purposes for a religious entity.

The Kowanyama Sport & Recreation Association Incorporated (Kowanyama Club) and Pormpuraaw United Brothers Sports Club Incorporated (Pormpuraaw Club) are currently authorised to sell liquor in their respective restricted areas from the relevant club premises, each known as 'the Canteen', for consumption on the premises, under the authority of a restricted liquor permit (RLP). RLPs do not authorise takeaway alcohol sales.

On 29 January 2020, in response to the global novel coronavirus (COVID-19) pandemic, a public health emergency was declared in Queensland under section 319 of the *Public Health Act 2005*.

On 23 March 2020, the Chief Health Officer ordered all non-essential businesses, including hotels, bars and clubs, to close, with exceptions for sales of takeaway food and beverages. As a result of this and in conjunction with the limitations of their RLPs, Kowanyama and Pormpuraaw have become 'dry' communities, with no access to alcohol.

A Federal *Biosecurity Determination* has been implemented under the *Biosecurity Act 2015* (Cth) to restrict people from entering (and re-entering) specified remote Aboriginal and Torres Strait Islander communities, including Kowanyama and Pormpuraaw, in order to protect these communities from the spread of COVID-19. Persons other than an essential services worker (i.e. food, emergency and police services, health care workers) must comply with strict

isolation conditions prior to entering or re-entering a designated remote area, with penalties applying for failure to do so.

The Kowanyama Aboriginal Shire Council (Kowanyama Council) and Pormpuraaw Aboriginal Shire Council (Pormpuraaw Council) have raised concerns that members of the community may leave the area to obtain alcohol from more populous surrounding areas, placing them at greater risk of contracting COVID-19. Should they return to their community without complying with the requisite isolation protocols, this could lead to a spread of the COVID-19 throughout the community.

The Remote Communities Pandemic Sub Plan for Kowanyama indicates that, of the approximately 1,300 residents, 500 are aged 50 and above with complex high-risk health issues. There are 300 high-risk residents aged between 0 and 50 years of age. Similarly, the Remote Communities Pandemic Sub Plan for Pormpuraaw indicates the community has a variable population of 700-800 people, with 162 residents aged 54 and above experiencing complex, high-risk health issues. There are 551 high-risk residents aged between 0 and 53 years of age. An outbreak of COVID-19 in either of these communities could potentially result in a very high mortality rate.

Proposal to address COVID-19 risk

To address the above concerns, the Kowanyama Council put forward a proposal for the Kowanyama Club to be able to sell takeaway liquor from the Canteen. Takeaway sales would be subject to a limit of a six pack of mid-strength alcohol (beer or pre-mixed drinks, with an alcohol concentration of less than 4 per cent alcohol by volume) per person, per day, available on Wednesday to Saturday, during specified hours.

The Pormpuraaw Council put forward a similar proposal for the Pormpuraaw Club to be able to sell takeaway liquor from the Canteen. Takeaway sales would be subject to a limit of a six pack of mid-strength alcohol (beer or pre-mixed drinks, with an alcohol concentration of less than 4 per cent alcohol by volume) per person, per day, available on Monday, Wednesday, Friday and Saturday, during specified hours.

On 14 April 2020, the Government put in place overarching principles that apply to all communities with alcohol management plans in light of the COVID-19 response, including that restricted areas with a zero carriage limit and an RLP may have the carriage limit increased to allow the sale of takeaway liquor. All changes to alcohol management arrangements to be progressed by the Attorney-General have been recommended by the Minister for Fire and Emergency Services and Minister for Aboriginal and Torres Strait Islander Partnerships, in consultation with the Premier and Minister for Trade and Ministerial Champions for each area.

The RLPs held by the Kowanyama Club and Pormpuraaw Club do not allow for the sale of liquor for consumption away from the respective Canteen premises. However, the Clubs are eligible for a community liquor permit (CLP), which may contain conditions to authorise takeaway liquor sales.

CLPs are not usually granted for broad, continuous circumstances, such as the current pandemic. Accordingly, to temporarily facilitate access to takeaway liquor in the Kowanyama and Pormpuraaw restricted areas, amendments introduced by the Amendment Regulation:

- prescribe the prevention of, or limitation on, the sale of liquor for on-premises consumption at the Kowanyama and Pormpuraaw Canteens due to a public health direction as a circumstance for which the Commissioner for Liquor and Gaming may grant a CLP to the Kowanyama Club and Pormpuraaw Clubs;
- exempt the Kowanyama Club and Pormpuraaw Club from having to pay the application fees associated with the CLP granted in the stated circumstances, as prescribed under schedule 1, item 3(b) of the Liquor Regulation, on the basis the CLP will replace the existing RLP for which application fees have already been paid; and
- temporarily change the alcohol carriage limit for the Kowanyama restricted area prescribed under Schedule 1G and the Pormpuraaw restricted area prescribed under Schedule 1H of the Liquor Regulation, from zero to 2.25 litres of liquor with an alcohol concentration of less than 4% ABV (noting that, at the expiry of the temporary carriage limit the carriage limit will revert back to zero).

The amendments will expire on 31 December 2020.

Human Rights Issues

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

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Amendment Regulation are the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*).

Aboriginal and Torres Strait Islander peoples are recognised as having a rich and diverse culture. There are many hundreds of distinct Aboriginal and Torres Strait Islander groups in Australia, each with geographical boundaries and an intimate association with those areas. Many of these groups have their own languages, customs, laws and cultural practices.

The nature of the right explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander person who is free to practise their culture. These persons must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

Due to business closures resulting from the COVID-19 public health direction and arrangements under the *Biosecurity Act 2015* (Cth) regarding movement of people from community to community, residents in the Kowanyama and Pormpuraaw restricted areas currently have no access to alcohol. There are concerns that Kowanyama and Pormpuraaw residents may therefore seek to leave to access alcohol from premises located in more populous areas, thereby placing them at greater risk of contracting COVID-19 and spreading the virus to the community upon their return (should isolation protocols not be complied with).

People who live in remote communities are at a greater risk from COVID-19 due to factors such as higher rates of other health issues. Aboriginal and Torres Strait Islander people over 50 years of age have been specifically identified as being at a greater risk of serious illness from

COVID-19. An outbreak of COVID-19 in Kowanyama or Pormpuraaw could potentially result in a very high mortality rate.

Accordingly, the Amendment Regulation will amend the Liquor Regulation to temporarily facilitate takeaway liquor access for residents in the Kowanyama and Pormpuraaw restricted areas, both via changes in respect of the Club and Canteen for each community, and changes to alcohol carriage limits. The purpose of these changes is to discourage movement of persons from the Kowanyama and Pormpuraaw restricted areas to other areas, thereby mitigating the risk of COVID-19 spreading to these vulnerable communities.

It is considered that the cultural rights of Aboriginal and Torres Strait Islander persons may be indirectly engaged by the provisions of the Amendment Regulation. Measures that are intended to discourage travel between areas may be seen to have some impact on enjoyment of identity and cultural heritage, and maintenance of kinship ties.

However, while this right is arguably engaged, it is considered the provisions will not limit the cultural rights of Aboriginal and Torres Strait Islander people. The measures will not prevent persons from exercising their distinct cultural rights within their communities. Further, the amendments will mitigate the risk of the spread of COVID-19 to these vulnerable communities, which in turn will support the health and wellbeing of Aboriginal and Torres Strait Islander persons and their right to enjoy and develop their identity and cultural heritage.

Conclusion

I consider that the *Liquor (Kowanyama and Pormpuraaw) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because, while it raises a human rights issue, it does not limit human rights.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House