

Liquor Amendment Regulation 2020 (No 3)

Subordinate law SL2020–37

EXPLANATORY STATEMENT

This explanatory statement relates to the *Liquor Amendment Regulation 2020 (No 3)* as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation.

This explanatory statement must be read in conjunction with the regulation. It is not, and not intended to be, a comprehensive description of the regulation. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

PURPOSE OF THE REGULATION

The purpose of the Liquor Amendment Regulation 2020 (No 3) is to make Veterans Park a permanent alcohol-free place.

BACKGROUND

The *Liquor Act 2010* (the Act)—

- regulates the sale, supply, promotion and consumption of liquor to minimise the harm associated with the consumption of liquor;
- facilitates the responsible development of the liquor and hospitality industries; and
- supports liquor consumers to take responsibility for their consumption of liquor and their behaviour, if it is affected by the consumption of liquor.

Section 198(1) of the Act provides for a regulation to prescribe a place where liquor must not be consumed. Section 31 of the *Liquor Regulation 2010* (the Liquor Regulation) takes its authority from section 198 (1) of the Act and prescribes a number of permanent alcohol-free places in the ACT, where it is an offence for liquor to be consumed or possessed in open containers for the purpose of consumption.

Veterans Park

Veterans Park is a public park in the city centre, at the intersection of Northbourne Avenue, Bunda Street and Mort Street. It is home to the Korean and South East Asia Memorial, the Special Air Service Regiment (SASR) Memorial Rose Garden, and the

sculpture by Matthew Harding – ‘*Longitude*’, which represents the impact of active duty on service personnel and their families. The park is a solemn and sacred place for many in our community.

The Korea and South East Asia Memorial was unveiled on 19 October 1981 by Sir Zelman Cowen, AK, GCMG, GCVO, PC, QC, then Governor-General of Australia. This memorial commemorates the contribution of Australian servicemen and women in four campaigns:

- the Korean War (1950 – 1953);
- the Malayan Emergency (1948 – 1960);
- the confrontation in Malaysia and Borneo (1962 – 1966); and
- the Vietnam War (1962 – 1973).

The Memorial consists of a circular pool with fountain and a plaque commemorating those who died.

The Special Air Service regiment (SASR) Memorial Rose Garden was unveiled on ANZAC Day 1998 by then Governor-General of Australia, Sir William Deane AC, KBE, QC. This memorial is a living tribute to members of the SASR who have given their lives in the service of their country. It consists of a stone and concrete wall topped with a granite plinth and a rose garden behind. A Leonard Cheshire rose has been planted for each name on the regiment’s roll of honour.

The sculpture, ‘*Longitude*’, was commissioned by the ACT Government in 2012, to represent the emotional separation that service personnel and their families experience during periods of active duty. The sculpture was fabricated by Australian artist Matthew Harding, from granite sourced from Harcourt, Victoria.

A significant streetscape upgrade for Veterans Park was completed in March 2013 as part of the ACT Government’s Canberra City Refurbishment Program. The SASR Memorial Stone of Remembrance was replaced as part of this upgrade and was rededicated on 17 November 2012.

The consumption of liquor at Veterans Park has consequences for the appearance and dignity of the park and its memorials. Concerns have been raised about the impact of people consuming alcohol at Veterans Park, including concerns about people drinking while sitting on memorials, displaying other anti-social behaviour, and empty beer containers being left in the park. This is of concern to both the veterans’ community and the broader ACT community.

While a part of Veterans Park already falls within the radius of an existing permanent alcohol-free area because it is partially within 50 metres of a bus interchange and shops, it is appropriate that the entirety of the park is alcohol-free.

OVERVIEW OF THE REGULATION

This regulation amends the *Liquor Regulation 2010* to prescribe Veterans Park as a permanent alcohol-free place.

The regulation aims to ensure that Veterans Park is maintained as a place for respectful contemplation of the service and sacrifice of veterans and their families. Prescribing the park as a permanent alcohol-free place reflects its significance to the veterans' community and the broader ACT community. It will support maintaining the character, condition and appearance of the park as a place for reflection.

The amendments in this regulation will commence on the day after its notification day.

CONSISTENCY WITH HUMAN RIGHTS

This regulation does not create any new offences. However, by prescribing Veterans Park as a permanent alcohol-free place, this regulation creates a new location at which identified behaviour may be captured by two existing offence provisions in the Act—

- a person commits an offence if the person consumes liquor at a permanent alcohol-free place (s 199);
- a person commits an offence if the person possesses an open container of liquor at a permanent alcohol-free place and intends to consume it at the place (s 200).

These are minor summary offences, for which a maximum penalty of 5 penalty units may be imposed. An Infringement Notice (IN) may be issued for an offence under s 199.

The application of the offences to Veterans Park is necessary to maintain the appearance and condition of the park, protecting its character and dignity.

Rights engaged

The existing offences at ss 199 and 200 of the Act engage rights in criminal proceedings, which are protected under s 22 of the *Human Rights Act* (HRA). The amendment also engages the right to non-discrimination and equality under s 8 (3) of the HRA.

Rights limited

The offence at section 199 limits the right to be presumed innocent until proved guilty according to law, under s 22 (1) of the HRA.

The offence at s 200 of the Act (possession with intention to consume) is not a strict liability offence. It engages but does not limit rights in criminal proceedings.

Prescribing Veterans Park as a permanent alcohol-free place may also engage and limit the right to non-discrimination and equality, to the extent that the offence provisions may particularly affect people who are homeless or vulnerable and who frequent such public spaces.

Nature of the right and the limitation (s28 (a) and (c) HRA)

The existing offence at section 199 of the Act applies strict liability and a presumption as to an element of the offence (that a liquid in a container identified as liquor is liquor), to prohibit the consumption of liquor at a prescribed place. The regulation applies this offence to Veterans Park.

The presumption at s 199 may be rebutted. The defence of honest and reasonable mistake will be available (s 36 *Criminal Code 2002*). Other defences may also be available.

Because of its location, Veterans Park is a place frequented by many different people in the community, including families, commuters coming to or from the interchange, and workers in the many surrounding office buildings. People experiencing, or at risk of, homelessness, also visit Veterans Park. Prescribing Veterans Park as a permanent alcohol-free place may potentially impact vulnerable people who visit Veterans Park. ACT police officers are able to exercise discretion in relation to whether an IN is issued, taking into account factors including the vulnerability of a person contravening a law. This reduces the risk that vulnerable people who visit Veterans Park might be disproportionately captured by the existing offences in the Act.

Legitimate purpose (s28 (b) HRA)

The regulation aims to protect the character and dignity of Veterans Park and its memorials by prohibiting behaviour that is inappropriate at that place and that increases the risk that the memorials may be damaged or the park's appearance may be compromised. The symbolic importance and physical vulnerability of its memorials requires the proportionate mitigation of risk. The regulation will achieve this purpose.

General community safety considerations also inform decisions about prescribed alcohol-free places. These considerations also apply to this regulation. It is important that the consumption of alcohol, and any related anti-social behaviours, be deterred at Veterans Park in a way that is consistent with the objects and measures of the Act.

Rational connection between the limitation and the purpose (s28 (d) HRA)

The consumption of alcohol and behaviour of people affected by intoxication at Veterans Park is not in keeping with its role as a place of respectful contemplation honouring service personnel. The application of the offence provision at s 199 to prohibit the consumption of liquor at Veterans Park will support protecting the park's character and reduce the risk that its memorials will be damaged or defaced or the surrounding area be littered with empty alcohol containers.

Proportionality (s28 (e) HRA)

Veterans Park was established to recognise and honour the service and sacrifice of veterans and their families. The ACT community, which has contributed to its establishment, is entitled to expect that the park will be maintained in a manner consistent with that purpose, including through any appropriate limits on activities that would compromise the park's character. The park is always open to the public and its memorials are therefore vulnerable to the consequences of alcohol-related anti-social behaviour, including littering and vandalism. Prescribing Veterans Park as a permanent alcohol-free place is the least restrictive way to protect against this.

Neither the presumption nor the application of strict liability in the offence at s 199 extinguishes a person's right to be presumed innocent until proved guilty of this offence.

The availability of an IN provides an alternative to prosecution and an expedient and cost-effective enforcement mechanism for minor offences. These features have received support in the Australian Law Reform Commission Report No 95: *Principled Regulation*.

Police have the discretion to decide whether to issue an IN. This availability of this discretion protects against the offence having a discriminatory impact on vulnerable and disadvantaged people in our community.

Paying an IN penalty is not a plea of guilt or an acceptance of guilt. If a person declines to pay an IN, the police must decide whether to proceed with prosecution or withdraw the allegation.

If the offence were prosecuted, the prosecution has the legal burden of proving every physical element of s 199 beyond reasonable doubt. The prosecution also has the legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof on the defendant (s 56 *Criminal Code 2002*). The continued operation of the legal burden with respect to the physical elements of s 199 ensures the right at s 22 (1) is upheld.

The maximum penalty that may be imposed under section 199 is proportionate to its objective and mitigated by the availability of the infringement notice penalty. The application of this offence to Veterans Park reflects a proportionate approach which will protect the memorials and the character of the park without infringing protected rights.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement where a subordinate law is likely to impose appreciable costs on the community, or a part of the community.

Since this regulation is not likely to impose appreciable costs on the community, or a part of the community, a regulatory impact statement has not been prepared.

CLAUSE NOTES

Clause 1 Name of Regulation

Clause 1 is a formal provision setting out the name of the Regulation as the *Liquor Amendment Regulation 2020 (No 3)*.

Clause 2 Commencement

Clause 2 provides that the Regulation will commence on the day after its notification day.

Clause 3 Legislation amended

Clause 3 provides that this Regulation amends the *Liquor Regulation 2010*.

Clause 4 New section 31 (1) (c)

Clause 4 inserts a new section 31 (1) (c) into the *Liquor Regulation 2010* to refer to the park known as Veterans Park comprised in block 25 of section 26 in the division of City, Canberra Central district and the area between that block and Northbourne Avenue, Mort Street and Bunda Street, City.

Section 31 of the Regulation takes its authority from s 198 (1) of the Act and prescribes permanent alcohol-free places in the ACT, where liquor must not be consumed or possessed in open containers for the purpose of consumption.

The insertion of new section 31 (1) (c) prescribes Veterans Park as a permanent alcohol-free place under section 198 (1) of the *Liquor Act 2010*.