

South Australia

Aboriginal Lands Trust (Davenport Community Dry Zone) Amendment Regulations 2024

under the *Aboriginal Lands Trust Act 2013*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Aboriginal Lands Trust (Davenport Community Dry Zone) Amendment Regulations 2024*.

2—Commencement

These regulations come into operation on 15 November 2024.

Part 2—Amendment of *Aboriginal Lands Trust Regulations 2014*

3—Amendment of regulation 3—Interpretation

- (1) Regulation 3—after the definition of *alcoholic liquor* insert:

Davenport Community means the whole of the land contained in Certificate of Title Register Book Volume 6235 Folio 786 and Certificate of Title Register Book Volume 5854 Folio 168;

Davenport Community dry zone means the land comprising the Davenport Community, other than land comprising an excluded area;

entertainment area, of the Davenport Community Hall, means the area consisting of—

- (a) to the extent that the grounds of the hall are fenced—the area within the fence line; and
- (b) to the extent that the grounds of the hall are not fenced—any area located within 50 metres of any part of the hall,

including, to avoid doubt, the area in which the fire pit is situated;

excluded area—the following areas are excluded from the Davenport Community dry zone:

- (a) all residential property on the Davenport Community, other than any residential property that is abandoned or derelict;
- (b) the Wami Kata Old Folks Home and the fenced grounds on which the home is situated;
- (c) the Davenport Community Hall, and the entertainment area of the hall, during any period that the hall is being used for an organised event;

- (2) Regulation 3—after the definition of *regulated substance* insert:

residential property means premises (including any yard of the premises) that are the subject of a residential tenancy agreement that is in force;

- (3) Regulation 3—after its present contents (now to be designated as subregulation (1)) insert:

- (2) For the purposes of these regulations, a cask of alcoholic liquor will be taken to have been opened if the tap comprising part of the container is protruding through the external carton.

4—Insertion of Part 3A

After regulation 11 insert:

Part 3A—Control of alcoholic liquor on Davenport Community

Division 1—Acknowledgement of Davenport community and purpose of Part

11A—Acknowledgement of Davenport community and purpose of Part

- (1) This Part is a result of the initiative of the members of the Davenport community.
- (2) The main purpose of this Part is to support the Davenport community's vision of a safe, responsible and respectful community in which alcohol-related harm is reduced.

Division 2—Possession and consumption of liquor prohibited

11B—Prohibition of possession or consumption of alcoholic liquor in Davenport Community dry zone

- (1) A person must not, while in any part of the Davenport Community dry zone, possess or consume alcoholic liquor.

Note—

The penalties for an offence against this subregulation are set out in subregulation (3)(c).

- (2) However, subregulation (1) does not apply to the possession or consumption of alcoholic liquor in the following circumstances:
 - (a) the possession of alcoholic liquor by a person who is genuinely passing through the Davenport Community dry zone, or who is passing through the dry zone to enter or leave an excluded area within the dry zone, where—
 - (i) the alcoholic liquor is in the original container in which it was purchased; and
 - (ii) the container has not been opened;
 - (b) the possession of alcoholic liquor by a person who is genuinely supplying the alcoholic liquor to a person in the circumstances contemplated by regulation 11C(2)(a), where—
 - (i) the alcoholic liquor is in the original container in which it was purchased; and
 - (ii) the container has not been opened;

- (c) the possession of alcoholic liquor by a health professional (being alcoholic liquor genuinely used for medical purposes);
 - (d) the possession or consumption of alcoholic liquor by a person to whom the alcoholic liquor was lawfully sold, supplied or administered by a health professional for medical purposes.
- (3) The following provisions apply to the sentencing of a person for an offence against subregulation (1) (and, in such a case, the measures set out in this regulation will, for all purposes, be taken to amount to the sentencing of the person for the contravention):
- (a) the primary purpose of a sentence under this regulation is to effect the rehabilitation, and an improvement in the health and wellbeing, of the person without imposing additional financial burdens on the person or their family;
 - (b) a custodial sentence or monetary fine must not be imposed on the person;
 - (c) the sentences that may be imposed by the court under this regulation are as follows:
 - (i) the court may discharge the person without penalty;
 - (ii) the court may caution the person;
 - (iii) the court may make such of the following orders as the court considers appropriate:
 - (A) an order, made with the consent of the person, that the person undertake a specified drug or alcohol screening or assessment;
 - (B) an order imposing on the person community service to be undertaken within the Davenport Community;
 - (C) an order barring the person from remaining on, or re-entering, the Davenport Community during the period specified in the order;
 - (D) such other orders as the court considers appropriate, having regard to paragraph (a);
 - (d) the court may sentence the person without requiring the person to attend court in person.
- (4) Before sentencing a person for an offence against subregulation (1), the court may, if the court considers it appropriate to do so—
- (a) convene a sentencing conference; and
 - (b) take into consideration views expressed at the conference.

- (5) The following persons are entitled to attend a sentencing conference convened under this regulation:
- (a) the defendant and, if the defendant is a child, the defendant's parent or guardian;
 - (b) the defendant's legal representative (if any);
 - (c) a person regarded by the defendant, and accepted within the Davenport Community, as an Aboriginal Elder, or as a Respected Person within the Davenport Community;
 - (d) a representative of the Davenport Community;
 - (e) a representative of an approved screening organisation who has previously screened the defendant under Division 5;
 - (f) a representative of a program provider who has provided, or is to provide, drug or alcohol services to the defendant;
 - (g) the prosecutor,
- and the court may invite such other persons as the court considers appropriate to attend the conference.
- (6) The court may determine the procedures of a sentencing conference.
- (7) A person who, without reasonable excuse, refuses or fails to comply with an order of a court under subregulation (3)(c)(iii) is guilty of a contempt of the court.
- (8) In this regulation—
- approved screening organisation* has the same meaning as in Division 5.

Division 3—Sale or supply of alcoholic liquor prohibited

11C—Prohibition of sale or supply of alcoholic liquor in Davenport Community dry zone

- (1) A person must not, while in any part of the Davenport Community dry zone, sell or supply alcoholic liquor to another person.

Note—

The maximum penalty for an offence against this regulation is \$2 000 or imprisonment for 6 months—see section 49(3) of the Act.

- (2) However, subregulation (1) does not apply to—
- (a) the supply of alcoholic liquor to a person who is 18 years of age or more in the Davenport Community dry zone where—
 - (i) the person is, by reason of age, illness or other infirmity, unable to obtain alcoholic liquor in person; and
 - (ii) the supply occurs at the request of the person; and

- (iii) the person supplying the alcoholic liquor does not make a profit in relation to doing so; or
- (b) the sale or supply of alcoholic liquor by a health professional (being alcoholic liquor genuinely used for medical purposes).

Division 4—Confiscation of alcoholic liquor

11D—Confiscation of alcoholic liquor

If a police officer reasonably suspects that a contravention of this Part has occurred, the officer may confiscate any alcoholic liquor to which the suspected contravention relates.

Division 5—Referrals of certain persons misusing alcohol for screening

11E—Interpretation

In this Division—

approved screening organisation means a person or body declared by a Davenport Community Alcohol Screening MOU to be an approved screening organisation for the purposes of this Division (being a person or body who delivers health and wellbeing services or programs wholly or partly funded by the State or the Commonwealth);

Davenport Community Alcohol Screening MOU, in respect of a particular approved screening organisation, means a memorandum of understanding between SA Police and the approved screening organisation relating to referrals for screening under this Division, as in force from time to time.

11F—Police officer may refer person to approved screening organisation for screening

- (1) If a police officer reasonably suspects that—
 - (a) a person has committed an offence against regulation 11B; and
 - (b) the person may be at risk due to the misuse of alcoholic liquor,

the police officer may refer the person to an approved screening organisation for screening in accordance with this regulation.

- (2) A police officer refers a person to an approved screening organisation for screening by giving the person a written notice (a ***referral notice***) in accordance with the Davenport Community Alcohol Screening MOU in respect of the approved screening organisation.

- (3) A copy of the referral notice must be forwarded to the approved screening organisation to which the person is referred (including, without limiting this regulation, by email or other electronic means).

11G—Interaction with Division 2

A referral of a person to an approved screening organisation under regulation 11F relating to an alleged offence against regulation 11B operates as a stay of proceedings (if any) for the alleged offence.

11H—Confidentiality

A person who is, or has been, engaged in duties related to the operation or administration of this Division must not disclose personal information relating to a person referred for screening under this Division obtained in the course of those duties, unless the disclosure is made—

- (a) for the purposes of the administration, operation or enforcement of this Division; or
- (b) as authorised or required by any Act or law; or
- (c) with the consent of the person to whom the information relates.

Maximum penalty: \$1 250.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 4 July 2024
No 64 of 2024