

# INDIGENOUS COMMUNITIES LIQUOR LICENCES BILL 2002

## EXPLANATORY NOTES

### Objectives of the Bill

The objective of the Bill is to prevent harm in Indigenous community areas caused by alcohol abuse and misuse and associated violence by:

- Establishing community liquor licence boards in community areas to manage alcohol canteens in a way that prevents harm caused by alcohol abuse and misuse and associated violence;
- Providing for the declaration, in consultation with community justice groups, of restricted areas for the purposes of minimising harm caused by alcohol abuse and misuse and associated violence and minimising alcohol related disturbances in a locality, by:
  - (a) prescribing limits on the quantity of liquor that a person can have in their possession; and
  - (b) placing conditions on licensed premises within the area.

### Reasons for the Bill

The Bill is part of the Government's response to the Cape York Justice Study report, which was submitted to Government by Justice Tony Fitzgerald in November 2001. The Bill is part of a package of reforms to address the prevalence of alcohol abuse and violence in Indigenous communities in Cape York and other parts of Queensland. It complements the *Community Services Legislation Amendment Bill 2002*.

In the Cape York Justice Study Report, Justice Fitzgerald recommended that Indigenous community councils should not be associated with the operation of canteens, as this role conflicted with the councils' responsibilities for the welfare of the community. In all twelve Aboriginal and Torres Strait Islander communities on the mainland with a canteen licence, this licence is held by the council. The Bill seeks to break the

nexus between the councils and the management of canteens by transferring canteen licences to newly established community liquor licence boards. The boards will be comprised principally of community members and will be required to manage the canteen in a way that prevents harm in community areas caused by alcohol abuse and misuse and associated violence. The boards will be required to implement certain recommendations about the operation of the canteen made by a community justice group established under the *Community Services Legislation Amendment Bill 2002*.

The Cape York Justice Study report highlighted the seriousness of the alcohol problem in Indigenous communities in clear and unequivocal terms:

*Alcohol abuse and associated violence are so prevalent and damaging that they threaten the communities' existence and obstruct their development.*

Justice Fitzgerald recommended immediate Government intervention and pointed out that unless the epidemic of alcohol abuse in Indigenous communities is addressed, reforms in social and economic development and education will not be sustainable. It was recommended that Government should first seek to work with and empower Indigenous communities to take action to address alcohol, but that if this community-based approach did not result in improvements within 3 years, the Government should consider prohibiting alcohol altogether.

The Bill makes a range of amendments to the *Liquor Act 1992* to provide the mechanisms to implement the necessary controls on alcohol in Indigenous communities. The key mechanisms in the Bill are the declaration of limits on carrying and possessing alcohol in restricted areas, and the ability to impose new licence conditions on licensed premises in and adjacent to Indigenous communities. The advice of community justice groups will be central in determining the particular controls that will be put in place. It is anticipated that Alcohol Management Plans developed by community justice groups in conjunction with members of their communities will be the primary source of guidance in implementing the alcohol controls.

### **Estimated Cost of Government Implementation**

The Government has allocated \$0.13 million for 2002/2003 to assist in the start up costs of community liquor licence boards. In the longer term,

the boards will be self-funded, meeting their expenses from the proceeds of the canteen enterprise.

Compliance activities in community areas are funded within existing Liquor Licensing Division budget allocations. Additional targeting will be funded to the extent of \$0.25m over 3 years, other implementation costs including the staff training will be absorbed within existing allocations. The Department of Aboriginal and Torres Strait Islander Policy will assist the Liquor Licensing Division with resources for the development and implementation of regulations.

## **Consistency with Fundamental Legislative Principles**

### Restriction on application for canteen licences

*Clause 32* restricts applicants for general licences for canteens in community areas to a community liquor licence board or another entity appointed under a regulation. General licences allow the sale of liquor for consumption on the premises and for takeaway purposes in unlimited quantities.

The effect of this restriction will mean that existing licences may only be transferred to one of these approved entities. Applications for a new general licence within the community area are similarly restricted. Whilst this may be considered to impinge on a person's rights and liberties, the primary objective of the legislation is to break the nexus between the sale of alcohol in a community and revenue return for council. In all community areas the council is the holder of the general licence for the canteen. A review of canteen operations is anticipated and where problems with the abuse and misuse of alcohol and associated violence are present, a community liquor licence board may be appointed under a regulation to take over the operation of the canteen. This restriction will ensure that council does not enter into arrangements for the operation of the canteen with an entity that does not have governor in council approval under a regulation.

There is no restriction regarding other licence types for example, for resort and tourist style developments as these licences do not have the right to sell liquor without the provision of other services and facilities and may not sell takeaway liquor.

It is considered that the restriction is justified to contend with community specific problems.

### No compensation for transfer of licence

*Clause 35* provides that the State is not liable to pay compensation to any entity as a result of the transfer of a licence. The main parties affected by the transfer of the licence will be the Councils who currently hold the licences. However, the provision is justified on the basis that the Bill also provides that the profits of the canteen enterprise will continue to be paid to the Council (clause 9).

### Criminal history check for board members

*Clause 12* provides for a criminal history check to be conducted where a regulation requires this to occur for deciding a person's suitability for membership of a community liquor licence board. Given the nature of the responsibilities of the boards, it may be necessary to exclude persons with a particular criminal record. The provisions for disclosure include safeguards to prohibit the use of the information for any other purpose and to ensure that the information is destroyed as soon as practicable after it is no longer needed for its purpose.

### Establishment of boards by regulation

*Clauses 5 and 10* provide for the establishment of community liquor licence boards and provision for their membership to occur by regulation. While these are substantive matters, it is not possible to provide for the establishment of the boards and their membership in the Act itself as there will need to be a process of consultation and negotiation with a community before a board can be established. Any regulation is, of course, subject to disallowance by Parliament.

### Transitional regulation-making power

*Clause 34* provides a regulation-making power for implementing the transfer of a canteen licence from a Council to a community liquor licence board. This power is necessary to deal with a range of practical issues relating to the transfer of a canteen, such as existing liabilities of the Council in relation to the canteen, existing contracts of the Council and the entitlements of employees. The provision for implementation regulations is justified on the basis that such regulations may be necessary to provide for an equitable resolution to transitional issues such as those listed.

### Vary licence conditions imposed for a restricted area

The *Liquor Act 1992* currently provides a process for the chief executive for liquor to vary the conditions of a liquor licence. For a restricted area,

the amendment Bill will allow the chief executive to vary conditions for all or some of the licences for the restricted area in the same way to achieve harm minimisation objectives. The Act includes a process for the chief executive to notify a licensee of a proposed variation and the licensee has 14 days to provide an objection in writing.

If the chief executive decides to vary a licence in a restricted area, there are no appeal rights to the Liquor Appeals Tribunal for the licensee. It is considered that the final variation of conditions will result from extensive community consultation with all relevant stakeholders including licensees in relation to problems arising from the abuse and misuse of alcohol and associated violence. These powers are considered essential for the chief executive to respond holistically to minimise harm to members of the community.

The licensee does have recourse to make application under the Act to amend or revoke a condition of the licence. A decision of the chief executive in this regard will continue to be subject to review by the appeals tribunal.

### Compensation

A variation by the chief executive of a licence or permit in restricted area does not raise any obligation for the payment of compensation for changes to business activities. The *Liquor Act 1992* requires licensees and permit holders to behave responsibly in the sale, supply and promotion of liquor. Any action taken by the chief executive to vary conditions in a restricted area is for the purpose of minimising harm from the abuse and misuse of liquor and associated violence. Therefore it may be argued that the licensee or permittee should have voluntarily altered trading practices to comply with the requirements of the Act.

### Seizure and forfeiture of property

*Clauses 71 and 75* of the Bill relate to the confiscation of liquor or other property which has been used in committing an offence relating to the possession of more than the prescribed amount of liquor for a restricted area or possessing or consuming liquor in a place declared dry by a community justice group. Examples, other than liquor of the type of property that may be seized include a person's vehicle. It is considered that these powers are appropriate to ensure that liquor is not being exposed for sale by people sly-grogging in restricted areas. Provisions are included requiring receipts to be issued for seized property and for investigators to

have regard to any representations made that the property may be needed for the purposes of a lawful business.

It may be considered an inappropriate delegation of administrative power to allow an investigator to determine to forfeit, dispose or destroy liquor which has been seized in a proceeding which has not been completed. However, this power is limited to liquor with a value less than \$50. If the alleged offender chooses to pursue the matter, a court may order recompense. The provisions recognise the impracticality of keeping and storing evidence of a perishable nature and of relatively minor value in remote areas. The power also extends to the chief executive for property of unspecified value. However, the property's owner is protected by a requirement for the chief executive to provide a notice of intent to forfeit the property or an appropriate advertisement or notice at a Council office. The property owner may also apply to the magistrates court for the return of the property. It is considered that sufficient safeguards are included to justify the extent of the powers.

Proposed amendments to the *Police Powers and Responsibilities Act 2000* will enable police officers to seize and dispose of an opened container of liquor that the officer reasonably suspects relates to an offence against a specified liquor provision. The officer is able to seize and empty the liquor container. These actions are limited to public drunkenness, drinking in a public place and having in possession more than the prescribed quantity of liquor in a public place. The exercise of this power is considered appropriate to prevent the offence continuing or being repeated. The alleged offender has the safeguard, if choosing to contest the matter, to request the court consider ordering restitution. Additionally as the fines for these offences are significant the disposal of an opened container may be considered an appropriate action for a minor offence. The provisions also recognise the impracticality of keeping and storing evidence of a perishable nature and of relatively minor value in remote areas.

#### Person in charge of vehicle liable for offence

*Clause 64* of the Bill creates an offence for a person to have in their possession in a public place in a restricted area, more than the prescribed quantity of liquor. This offence will also capture persons travelling in vehicles in public places to ensure that sly-grogging does not undermine area restrictions determined in consultation with the community justice group. The operator of the vehicle will be presumed to be the person in possession of the excess liquor regardless of the number of other people in the vehicle unless the operator proves that he or she neither knew nor had reason to suspect that liquor was in the vehicle. In these circumstances the

person to whom the vehicle is registered may be pursued in relation to the offence. Without reversing the onus of proof, it is likely that there would be significant difficulties in enforcing the provision. It would be difficult to prove the operator's knowledge of the liquor in the vehicle. In practice, the operator will be the only party who could establish whether he or she knew the liquor was in the vehicle. The reversal of the onus of proof to aid enforcement of the provision is considered justifiable given the harm that additional supplies of liquor may bring to a community in a restricted area.

#### Failure to erect, display or maintain a notice about a restricted area

As soon as practicable after declaring a prescribed amount of liquor for carriage in a public place in a restricted area the chief executive for liquor must erect a sign about the declaration on public roads entering the area. Failure of the chief executive to erect, display or maintain these signs does not affect a person's liability for an offence. In a court proceeding the chief executive is able to provide a notice stating details regarding the placement of the sign. It may be considered that these provisions are not consistent with the principles of natural justice. However, in addition to the signs, the chief executive will also undertake a broader communication strategy to ensure that residents of the area and travellers will be aware of the restrictions and the availability of permits to carry more than the prescribed amount of liquor for a reasonable purpose. The provisions are considered necessary to ensure that people involved in sly-grogging do not deliberately remove signs to avoid an offence.

#### Power for police to stop vehicles

Current powers for police to stop vehicles include for enforcing a transport Act and conducting random breath testing. The Bill proposes to extent these powers to include for the purposes of monitoring or enforcing sly-grogging offences, carriage of more than the prescribed amount of liquor for a restricted area and possession of liquor in a place declared dry by a community justice group. Whilst it may be considered that these provisions do not have regard to the rights and liberties of the public, there is sufficient justification for the power which is limited to the enforcement of specified offences. Experience has shown that roadblocks are an ineffective intervention in decreasing or detecting sly-grogging activities. Their location is quickly communicated and location easily circumvented by persons sly-grogging. Despite numerous roadblock activities targeted at sly-grogging over the past 2 years few have resulted in successful detection and overall reduction in the illegal trafficking of liquor. The new powers will be limited to State police, along with Aboriginal police where they are

authorised by the Police Officer in Charge. The powers are not enforceable by investigators appointed under the *Liquor Act 1992*.

## **Consultation**

The legislative proposals forming part of the Government's response to the Cape York Justice Study were the result of extensive consultations involving more than 700 people in remote Indigenous communities in late 2001 and early 2002.

The document setting out the legislative proposals, *Meeting Challenges, Making Choices*, was widely distributed to Indigenous communities following its release in April 2002.

Workshops with representatives of Community Justice Groups were convened in Cairns on April 2002 and June 2002 to discuss the legislative proposals.

In July 2002, a summary of the Bill was provided to all Aboriginal and Island Councils (including Aurukun and Mornington Shire Councils), the Aboriginal Coordinating Council, the Island Coordinating Council, the Torres Strait Regional Authority and the Aboriginal and Torres Strait Islander Commission.

In July 2002, a synopsis of the Bill was outlined and discussed at the Northern Zone meeting of the Queensland Hotels Association.

## **NOTES ON CLAUSES**

### **PART 1—PRELIMINARY**

*Clause 1* provides the short title of the Act.

*Clause 2* provides for commencement of certain provisions. Provisions in the Bill which are dependent on the repeal of Part 6 of the *Local Government (Aboriginal Lands) Act 1978* by the *Community Services Legislation Amendment Bill 2002* will not commence until the relevant section of the latter Bill commence.



*Clause 3* sets out the purpose of the Act. The purpose of the Act is to prevent harm in community areas caused by alcohol abuse and misuse and associated violence. A number of clauses are linked back to this purpose to give guidance as to how they are to be carried out.

*Clause 4* refers to the dictionary in the schedule.

## **PART 2—COMMUNITY LIQUOR LICENCE BOARDS**

*Clause 5* provides for the establishment of community liquor licence boards for a community area by regulation. The use of a regulation enables the establishment of boards in communities with canteens to be staged over time. The clause implies that there will be only one community liquor licence board for a community area.

*Clause 6* provides that community liquor licence boards will have the usual legal status of an incorporated body. The name of a board will be taken from the name of the community. A board does not represent the State, so it cannot enter into contractual arrangements which bind the State.

*Clause 7* sets out the functions and powers of a board. The functions of a board are to manage the canteen in the community area and carry out functions given to it under an Act. It must carry out these functions in a way that achieves the purpose of the Act, to prevent harm in the community area caused by alcohol abuse and misuse and associated violence. It has all powers necessary to perform its functions, plus powers conferred by an Act.

*Clause 8* provides that the board must implement certain recommendations of the community justice group for the community area about the operation of the canteen. These recommendations are restricted to those about the responsible practices relating to the service, supply or promotion of liquor. The intention is that the community justice group, which will be established under the *Community Services Legislation Amendment Act 2000*, will develop an alcohol management plan for the community which will include recommendations about matters such as the days and hours of opening, type of alcohol sold, restrictions on sale of takeaway liquor, and operational issues such as the service of food with liquor.

The clause provides a process for resolving the situation where the board does not agree with the recommendation because it would not be in the best interests of the community or the board. For example, a board may decide not to implement a recommendation if it would put the board in breach of its obligations under the Act. In situations where there is disagreement about a recommendation, the board or the community justice group can refer the matter for the decision of the chief executive for liquor, who shall have regard to the parties' reasons and make a final decision to be implemented by the board.

*Clause 9* provides for the payment of all the profits of the canteen enterprise to the council for the community area. The board pays 75% of its net quarterly profits to the Council within 28 days of the end of each quarter. This ensures that Councils receive some profits on an instalment basis to assist meeting their cashflow requirements. After the board's financial statements are audited by the Auditor General, the board pays the remaining profits based on the amount of annual net profits stated in its annual financial statements. However, if the Auditor-General's audit report states another amount for the annual net profits, then the board must use that amount to calculate the remaining profits to be paid.

*Clause 10* provides for a regulation to set out the number of members, the appointment of a chairperson, the eligibility of members and the terms and duration of appointment. Members of an Indigenous council are specifically excluded from membership of boards. This is necessary to achieve the policy intention of the Bill to break the nexus between councils and the management of canteens.

*Clause 11* provides that a member of a community liquor licence board may receive remuneration and allowances at a level decided by the Governor in Council.

*Clause 12* enables a criminal history check to be carried out if a regulation requires this for deciding a person's suitability to be a member. For example, a regulation may exclude persons with a particular criminal record (such as offences of fraud or corruption) from membership of a board. The provision provides safeguards as to the use of the information.

*Clause 13* provides for a board to conduct its business including meetings, in the way it considers appropriate.

*Clause 14* provides that a board must meet at least every 3 months. This is considered a minimum for the board to properly carry out its responsibilities for management of the canteen enterprise. The chairperson may call a meeting at any time, but must call a meeting if requested in

writing by the community justice group or a quorum of the board. It is anticipated that requests for meetings might be made in circumstances where there is an urgent issue regarding the operation of the canteen that members of the board wish to discuss or the community justice group wishes to make a recommendation about. Provision is made for notice of meetings.

*Clause 15* provides for a quorum, to ensure decisions are only made at meetings where a majority of members are present.

*Clause 16* provides that the chairperson presides at meetings, and where the chairperson is absent, another member is chosen to preside.

*Clause 17* provides for the conduct of meetings. Normal voting rules for boards are provided for. The conduct of meetings using technology such as teleconferencing is also permitted. Decisions may be made outside of board meetings if there is appropriate notice and written agreement of a majority of members. This enables the use of a “flying minute” to make decisions. These provisions are appropriate because boards will exist mostly in remote communities and meetings will be difficult where a member is absent from, or does not live in, the community area.

*Clause 18* provides for minutes of meetings to be kept along with a written record of resolutions made outside of meetings (for example, by “flying minute”).

*Clause 19* provides for the disclosure by a member of a conflict of interest in an issue before the board. The member is barred from being present or taking part in a decision about the issue, unless the board otherwise decides. The provision is necessary to ensure accountable decision-making.

*Clause 20* provides for the Governor in Council to appoint an administrator if the Minister is satisfied on reasonable grounds of one of a number of circumstances spelled out. These circumstances relate to the board acting unlawfully or corruptly, official misconduct, financial mismanagement or an inability to perform its functions. The administrator holds office at the direction of the Minister.

*Clause 21* provides that the members go out of office when an administrator is appointed.

*Clause 22* gives the administrator the functions and powers of the board, unless limited by a regulation.

*Clause 23* provides for the administrator to report as requested to the Minister and at the end of the administration.

*Clause 24* provides for the Governor in Council to direct the board to pay the costs and expenses of the administration, such as the salary of the administrator.

*Clause 25* enables the board to delegate its powers to a member or an employee of the board, without affecting the board's obligations as a licensee under the *Liquor Act 1992*. As licensee, the board may also be prosecuted for offences together with employees unless the board is able to provide a defence to the charge, for example that sufficient procedures were in place and training had been provided for the employee to be aware of his/her obligations.

*Clause 26* protects members of the board from civil liability and provides for indemnity by the State for acts or omissions that were honest and without negligence.

*Clause 27* requires monthly reporting by the boards (unless another period is prescribed by regulation) to the chief executive in the approved form. The board must report on its income and expenditure. In practice, the board might also be required to report on other matters such as its purchases and sales of liquor. This will assist to evaluate the performance of the boards and to measure alcohol consumption in a community.

*Clause 28* provides for the application of other Acts to the boards. The boards are subject to the financial accountability and reporting regime under the *Financial Administration and Audit Act 1977*. They are also subject to the limitations on borrowing and investing under the *Statutory Bodies Financial Arrangements Act 1982*. The *Crime and Misconduct Act 2001* applies.

*Clause 29* provides for a board's seal.

*Clause 30* provides for judicial notice of certain matters, which aids legal proceedings.

*Clause 31* provides for documents to be sufficiently made if signed by the chairperson or a person authorised by the board. This provides certainty for parties dealing with the board and aids legal proceedings.

### **PART 3—PROVISIONS ABOUT GENERAL LICENCES FOR CANTEENS**

*Clause 32* prevents a person or entity other than a community liquor licence board or an entity prescribed under regulation from applying for a general licence in a community area. This is necessary to achieve the policy intent of breaking the nexus between councils and the operation of general licences (canteen licences). Without the restriction, the effect of the transfer of the existing canteen licence to the community liquor licence board could be circumvented by the council applying for a new general licence.

*Clause 33* enables a canteen licence to be transferred from the current licensee (in all current cases, the council) to the community liquor licence board. Before recommending this to the Governor in Council, the Minister must first consult with the residents of the area about the proposed transfer and be satisfied that it is necessary to achieve the purpose of the Act (that is, to prevent harm in the community caused by alcohol abuse and misuse and associated violence). By requiring the reissue of the canteen licence to the board, the transfer of the licence is linked into the normal transfer processes of the *Liquor Act 1992*.

*Clause 34* enables a regulation to be made about a range of matters for the purposes of implementing the transfer of the canteen licence to a board. The provision is necessary to cater for a wide range of practical issues that may arise out of the transfer of a canteen licence. Examples might include dealing with the employment contracts of staff of the canteen, providing for existing stock of the canteen to be purchased from the council by the board, and dealing with a council's existing liability in respect of a business loan taken for the canteen enterprise.

*Clause 35* provides that the State is not liable to pay compensation to any entity as a result of the transfer of the licence and any associated implementation regulation. The provision is justified on the basis that clause 9 provides that the profits of the canteen enterprise will continue to be paid to the council.

*Clause 36* prevents a board from applying for a transfer of the canteen licence to another entity, unless approved by the Governor in Council under a regulation. The Minister can only recommend that the Governor in Council approve the transfer if satisfied that the community liquor licence board is no longer necessary to achieve the purpose of the Act (to prevent harm caused by alcohol abuse and misuse and associated violence). The

restriction on the transfer is necessary to achieve the policy intent that canteens should be managed by community liquor licence boards (in a way that prevents harm), and that the canteen should only be transferred to another entity if the management by the board is no longer necessary to prevent harm.

## **PART 4—OFFENCES AND LEGAL PROCEEDINGS**

*Clause 37* creates an offence to obstruct or improperly influence a member of a board in performing the member's functions under the Act. This is necessary to protect members of boards from reprisals in making decisions about the operation of the canteen, decisions that will affect the availability of alcohol to community members.

*Clause 38* provides that offences against the Act are summary, and imposes limitation periods for enforcement.

*Clause 39* provides for an evidentiary matter regarding a complainant's knowledge, which may be relevant to the limitation periods under clause 37.

## **PART 5—MISCELLANEOUS**

*Clause 40* enables the chief executive to approve forms for use under the Act.

*Clause 41* provides the power for the Governor in Council to make regulations under the Act, plus regulations for fees payable and offences for breach of a regulation of not more than 20 penalty units.

## **PART 6—AMENDMENT OF LIQUOR ACT 1992**

*Clause 42* states that the *Liquor Act 1992* is amended.

*Clause 43* extends the objects of the *Liquor Act 1992* to include minimising harm from alcohol abuse and misuse and associated violence in particular areas experiencing problems resulting from the sale and supply of liquor.

*Clause 44* amends section 4 (definitions) by inserting new definitions including:

“Aboriginal police officer”—this definition is linked to provisions allowing aboriginal police officers appointed for a community area to exercise powers under the *Liquor Act 1992* for the enforcement of certain liquor provisions within the community area.

“approved form”—means a form approved by the chief executive for applications under the Act.

“community justice group”—established under the *Community Services (Aborigines) Act 1984* or *Community Services (Torres Strait) Act 1984* has been defined for consultation purposes relating to restricted areas.

“have in possession”—is defined for offence provisions relating to the possession of liquor in restricted areas.

“Island police officer”—this definition is linked to provisions allowing Island police officers appointed for a council area to exercise powers under the *Liquor Act 1992* for the enforcement of certain liquor provisions within the council area.

“prescribed provision”—refers to offences for the possession or consumption of liquor in or on a dry place declared by a community justice group for a community area.

“prescribed quantity”—is the maximum amount of liquor permitted to be carried or possessed by a person in a public place in a restricted area. The quantity of liquor may be declared in a regulation.

“public place”—this definition relates to a restricted area and includes a vehicle, boat or aircraft.

“restricted area”—is an area declared under a regulation to be a restricted area and will facilitate the prescription of a quantity of liquor for a public place and the imposition of conditions on a licence or permit if required.

*Clause 45* will amend the definition of “Aboriginal police officer” as a consequence of amendments to the *Local Government (Aboriginal Lands) Act 1978*.

*Clause 46* clarifies that the jurisdiction of the Liquor Appeals Tribunal is limited to those matters in section 21 of the Act unless another provision in the *Liquor Act* or another Act specifically states the Tribunal may hear and determine an appeal on the matter.

*Clause 47* clarifies that an appeal may not be lodged by a licensee or permittee located in a restricted area who has licence or permit conditions varied by the chief executive to minimise harm from the sale and supply of liquor.

*Clause 48* confirms that a power of the chief executive may not be delegated to a person employed by a council for a community area. Additionally, a permit for a restricted area may only be issued by an officer of the department.

*Clause 49* creates a new permit, a restricted area permit.

*Clause 50* limits the grant of a general purpose permit to a non-proprietary club or to another entity if all the proceeds from the sale of liquor will be used for the benefit of the community. If the applicant association is an unincorporated club a permit must be held by a person for and on behalf of the unincorporated club.

*Clause 51* inserts a new division for restricted area permits. The authority of the permit is prescribed allowing the possession of more than the prescribed amount of liquor in a public place in a restricted area. The permit may state the day/s and time/s and the purpose for which the additional liquor is allowed.

*Clause 52* clarifies that the provisions of part 5 of the Act are to be used where appropriate for applications under the Act. Applications are to be in a form approved by the chief executive.

*Clause 53* extends the circumstances under which the chief executive may impose conditions on licences or permits, either at the time of grant or a later time to minimise harm or as a response to alcohol related disturbances or public disorder.

*Clause 54* extends the way the chief executive may vary a licence on the chief executive's own initiative. Additionally, in a restricted area the chief executive may seek to vary all the licences in the same way to minimise harm or respond to alcohol related disturbances or public disorder. This section also clarifies that trading prior to 10 am requires an application for an extension of hour, not a variation of licence.

*Clause 55* inserts a new section stating that compensation is not payable if the chief executive varies a licence.



*Clause 56* inserts a new subsection allowing the chief executive by written notice to request an applicant for a licence or permit to address public interest issues in an application.

*Clause 57* inserts a new section allowing the chief executive to ask local government, council police or a relevant community justice group for comments on an application relating to a restricted area. The chief executive must have regard to the comment in deciding the application but is not bound to making a decision consistent with the comments.

*Clause 58* amends this section by clarifying those persons who may attend a conference of concerned persons. The amendment also requires the chief executive to have regard to comments received in relation to applications in restricted areas. Subsection (7) is deleted which will allow the Liquor Appeals Tribunal to review issues discussed at the conference.

*Clause 59* amends a reference as a consequence of re-numbering.

*Clause 60* inserts a new section allowing the chief executive to vary permit conditions in a restricted area to make the conditions consistent with licences for the area.

*Clause 61* inserts a new section to clarify that compensation is not payable if a permit is varied.

*Clause 62* inserts offence provisions relating to the service, supply and promotion of liquor. These provisions were previously in the Liquor Regulation and require licensees, nominees and permittees to behave responsibly in the conduct of the business.

*Clause 63* inserts examples for this section relating to the increase and decrease of the area of licensed premises to illustrate its application.

*Clause 64* inserts a new offence provision relating to restricted areas declared under a regulation. A person must not have in their possession in a public place more than the maximum amount of liquor for the area unless otherwise approved under a restricted area permit. The maximum amount of liquor may be prescribed under a regulation. A person engaged in a lawful business to carry liquor between licensed premises or premises to which a permit relates is not affected by this section. However, this section will prohibit the delivery of more than the maximum amount of liquor by a delivery person to a member of the public, for example for home delivery.

If more than the prescribed amount of liquor is carried in a vehicle, boat or aircraft it is considered to be in the possession of the operator regardless of whether the liquor is the property of other people in the vehicle. To avoid the offence, the operator must prove that he/she did not know or have

reason to suspect that the liquor was in the vehicle. The person to whom the vehicle is registered may be subject to the offence in this instance.

*Clause 65* clarifies that the power to declare a public place as a “wet” area for drinking under the *Liquor Act* does not extend to a council for a community area

*Clause 66* inserts a new Part 6A for provisions relating to restricted areas. This part allows an urgent response to problems to minimise harm from the consumption or availability of alcohol, alcohol related disturbances and public disorder. If the Minister is satisfied that the declaration of a restricted area under the regulation is necessary a regulation may be recommended to the Governor in Council. The area may or may not include a community area or part of a community area. If a restricted area is declared a further regulation may declare a maximum amount of liquor that a person may have in their possession within the restricted area without a restricted area permit. It is an offence to have in possession more than the prescribed amount of liquor. The Minister is required to consult the community justice group for the community area if a community area may be affected by the limit.

If a limit on liquor is set in the regulation for a restricted area, the chief executive must signpost where public roads enter the area, place a notice in a local newspaper and advise in writing the local government, the assistant commissioner for the locality and the community justice group for the area. The signpost must identify the restricted area, be easily visible and state the prescribed amount of liquor it is an offence to have in possession in a public place without a restricted area permit. That a person did not see the sign does not affect their liability to be prosecuted for the offence.

*Clause 67* inserts a new section providing powers for Aboriginal or Island police officers as investigators under Part 7 of the Act for the enforcement of sections 168B, 169 and 171 if the community for which they hold appointment forms part of a restricted area.

*Clause 68* inserts a new subsection which states that an investigator may enter and exercise his/her powers in a public place within a community area that has been declared a dry place by the community justice group.

*Clause 69* extends investigators powers by allowing them to measure or test anything in a place they have legally entered and take a sample for analysis to determine whether a thing is liquor. It also clarifies that a court may order the payment of compensation to a person for any loss resulting from an unreasonable exercise of powers.

*Clause 70* amends a reference as a consequence of re-numbering.

*Clause 71* inserts a new subsection which extends the power for investigators to seize property other than liquor, for example a vehicle in relation to specified offences to prevent its concealment, loss or destruction or the continuation or repetition of the offence. The specific offences are having in possession more than the prescribed quantity of liquor for a public place in a restricted area; possessing, consuming or liquor in a dry place. Before seizing the property, the investigator must have regard to whether the property has been used to contravene the Act on previous occasions; representations about the use of the property for a lawful business; any other matter relevant to whether the contravention will continue or be repeated if the property is not seized.

*Clause 72* inserts a new section relating to seized property. The property may be moved to another place or left where it was seized, but access to it is restricted. An offence is created for a person tampering with property to which access is restricted. The investigator, by written notice or oral instruction later confirmed in writing, may require the person in control of the property to move it to a stated reasonable place and remain in control of it for a stated reasonable time. An offence is created for not complying. A further necessary reasonable requirement may be made.

*Clause 73* amends the applicability of division 2. Police officers who are investigators must use the PPRA for provisions relating to seizure of property. However, property which is passed from the police to the chief executive for liquor under an administrative arrangement will be subject to this division. Sections 187F and 187G may be used by police.

*Clause 74* amends this section by up-dating the cross referencing.

*Clause 75* inserts new sections dealing with seized property. An investigator who has seized liquor in contravention of specified provisions may decide to forfeit and destroy or dispose of liquor if its value is less than \$50 and the investigator is satisfied it is necessary to retain the liquor to prevent a further offence being committed. The investigator must tell the person from whom the liquor was seized if practicable and reasonable to comply that the property is forfeited and no compensation is recoverable. For all property seized under specified provisions, the chief executive may order forfeiture if satisfied that the forfeiture is necessary to prevent the property being used in the commission of another offence. The chief executive must give notice of the prospective forfeiture to the person from whom the property was seized and the owner of the property immediately before its seizure. If the owner is not known a newspaper advertisement or notice in a council office for the area (for property seized in a community

area) may be given. The person has 14 days to make an application to a magistrate for an order for the return of the property.

*Clause 76* amends this section by allowing for other expenses to be deducted from the proceeds of forfeited property. These expenses may include transportation or the cost of the operation itself.

*Clause 77* deletes provisions relating to applications for community areas. Applications will be subject to the existing Part 5 processes for all licences and permits. Transitional provisions will apply to applications in progress.

*Clause 78* inserts a new subsection to clarify that an authority issued under this section may be varied under Part 5 of the Act and that a reference to a licensee in that part may be taken as a reference to the holder of an authority. The authority will expire on 30 September 2003 or before that date if a licence is granted for the premises.

*Clause 79* amends this section to allow the chief executive to consider the cancellation or suspension of an authority to sell liquor in a community area upon complaints received from any person or group of persons, in addition to the council.

*Clause 80* inserts a new section 198A to expire Part 8 on 30 September 2003. The holder of an authority to sell liquor must seek a licence prior to this date if trading is to continue.

*Clause 81* amends a reference to Part 8 and inserts a new penalty provision for a breach of a condition of a licence, permit or authorisation in a restricted area.

*Clause 82* updates a cross reference.

*Clause 83* inserts new evidentiary provisions relating to the chief executive's signature and statements relating to restricted areas and restricted area permits.

*Clause 84* inserts a new head of power for making regulations relating to the circumstances in which and purposes for which a restricted area permit may be granted. It also clarifies an existing head of power in relation to the holders of particular licences and permits.

*Clause 85* inserts a transitional provision for applications for new licences and permits which are in progress at the time of the commencement of these amendments. The applications will continue to be dealt with under the liquor regulations. Applications for variations or transfers of licence will be considered under Part 5 of the Act.

## **PART 7—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000**

*Clause 86* states that the *Police Powers and Responsibilities Act 2000* is amended.

*Clause 87* inserts a new heading for section 44 stating that the section applies to the prevention of offences, generally.

*Clause 88* inserts a new section 44A for the prevention of offences relating to liquor. If a police officer has a reasonable suspicion that a specified liquor offence has been committed or is about to be committed and that an opened container of liquor relates to the offence, the liquor may be seized to prevent the offence from continuing or being repeated. The liquor seized is forfeited without any further proceedings. This section relates to a person being drunk in a public place; the consumption of liquor in a public place; having in possession more than the prescribed amount of liquor for a restricted area and the possession or consumption of liquor in a dry place in a community area. An opened container includes containers such as wine casks which may be closed at the material time.

*Clause 89* will amend the definition of “liquor provision” as a consequence of amendments to the *Local Government (Aboriginal Lands) Act 1978*.

*Clause 90* amends this section to include stopping aircraft for monitoring or enforcing a liquor provision. The police officer may enter and carry out stated activities if the officer reasonably suspects this may be effective for monitoring or enforcing a specified liquor provision. This section relates to a person being drunk in a public place; the consumption of liquor in a public place; having in possession more than the prescribed amount of liquor for a restricted area; the possession or consumption of liquor in a dry place in a community area and the sale or exposure of liquor for sale without a licence.

*Clause 91* will amend the definition of “liquor provision” as a consequence of amendments to the *Local Government (Aboriginal Lands) Act 1978*.

*Clause 92* extends this section to include an aircraft and boats.

*Clause 93* extends this section to include an aircraft and boats.

*Clause 94* extends this section to include an aircraft and boats.

*Clause 95* includes an example of a police officer seeking the assistance of investigator under the *Liquor Act 1992* for the purposes of stopping vehicles for the monitoring or enforcement of a liquor provision.

*Clause 96* clarifies that this division does not apply to an administrative forfeiture the process and safeguards for which are detailed in division 6.