

# Liquor and Other Legislation Amendment Bill 2010

## Explanatory Notes

### General Outline

### Policy Objectives

The objectives of the Liquor and Other Legislation Amendment Bill 2010 (the Bill) are to:

- Amend the *Liquor Act 1992* (Liquor Act) to:
  - Increase community safety and improve public amenity by:
    - reducing alcohol-related violence through the creation of drink safe precincts, new civil (court based) banning powers for drink safe precincts and standard conditions applied to licences;
    - restricting the availability of the sale and supply of liquor by limiting trading hours for new bottle shops and other take-away outlets; and
    - extending the extended trading hours application moratorium as it applies to persons or licensees outside of the prescribed extended trading hours precincts, until December 2013; and
    - clarifying the meaning of ‘amenity’.
  - Improve transparency and efficiency with the decision-making process for liquor licence applications of significant community impact by requiring those decisions to be made by a Queensland Liquor and Gaming Commission (QLGC), to be created by renaming and expanding the role of the existing independent Queensland Gaming Commission (QGC).
  - Provide for weight to be afforded in the making of liquor licensing decisions to minimising harm, and the potential for harm, from alcohol abuse and misuse; minimising adverse impacts on the safety or health of members of the community;

and minimising adverse impacts on the amenity of the community from the sale, supply and availability of liquor. This is to be achieved by stating as the main purposes of the Act that the liquor industry and areas in the vicinity of licensed premises are to be regulated in a way compatible with these purposes.

- Amend the *Gaming Machine Act 1991* (Gaming Machine Act) to rename the QGC to the QLGC.
- Amend the *Penalties and Sentences Act 1992* (Penalties and Sentences Act) to increase community safety and to protect the public from alcohol-related violence by enabling a sentencing court to impose a banning order on an offender which may prohibit the offender from entering or remaining in stated licensed premises or areas within the vicinity of licensed premises; and
- Amend the *Bail Act 1980* (Bail Act) to specify that a ‘special condition’ of bail can include similar prohibitions upon a defendant and making it a mandatory requirement, when granting bail, to consider including a banning condition.
- Amend the *Adult Proof of Age Card Act 2008* to:
  - allow for a person who is 17 years and 11 months of age to apply for an Adult Proof of Age Card; and
  - clarify that, despite the applicant being permitted to apply for a card one month prior to their 18<sup>th</sup> birthday, the applicant is not entitled to be issued an Adult Proof of Age Card until they are at least 18 years of age.

## **Reasons for the Bill**

On 4 August 2009 the Legislative Assembly requested the Law Justice and Safety Committee conduct an inquiry and report on alcohol-related violence in Queensland, with a focus on community safety and preventative measures to reduce levels of alcohol-related violence, including its ramifications. The final report of the Committee’s inquiry into alcohol-related violence (the report) was tabled on 18 March 2010, with 68 recommendations to reduce the incidence and impacts, both social and economic, of alcohol-related violence in Queensland.

The Government’s response to the report was tabled in Parliament on 30 August 2010. The central policy principle of the Government response (the response) to the report is a commitment to the development of a

place-based management approach, with a primary focus on community safety. The response announced the piloting of drink safe precincts (DSPs) in key late night entertainment areas across the State to deliver practical local solutions to reduce alcohol-related violence. Increased police presence, more support services provided by community groups, better public transport information, and special safe zones will be features of the new DSPs. Other local issues such as crowding, queuing, traffic, and toilet amenities will also be addressed by local stakeholder committees (DSP committees).

The Government response stated that DSPs would be piloted in three locations from December 2010 – Fortitude Valley, Surfers Paradise and Townsville. The pilots will be for two years, with Cabinet Budget Review Committee approval of \$4.267 million in funding for the first year of the pilot.

DSP committees have been established in each DSP to draw together the combined resources of state and local government agencies, industry and community organisations to deliver practical local solutions to reduce alcohol-related violence. A management plan is being developed for each DSP and managed by the relevant DSP committee.

The Bill contains an amendment to the Liquor Act to provide authority for a regulation to prescribe DSPs. In addition, in order to allow for the DSP pilots to commence in December 2010, the Bill also contains amendments to the *Liquor Regulation 2002* prescribing the DSPs.

### Banning Powers

Recommendation 16 of the Committee's report was that government give police and the courts power to ban those committing alcohol-related offences from specified areas.

The Government's response supported the recommendation and stated that legislation would be developed to provide new powers to ban people from specified areas where banning is justified because of the person's behaviour.

The Bill contains an amendment to the Liquor Act to introduce court based civil banning orders, applicable in relation to certain conduct that occurs within a DSP.

In addition, the Bill amends the Penalties and Sentences Act to create banning orders as a new sentencing option and the Bail Act to specify that a 'special condition' of bail can include a banning order condition and also

making it a mandatory requirement, when granting bail, to consider including a banning condition in certain circumstances.

*Prescribed standard conditions*

The Bill contains an amendment to the Liquor Act to allow standard licence conditions to be prescribed that may apply to certain licence types, licences generally or on licences within DSPs (for example, a standard condition could require licensees in a particular DSP to adopt a particular safety initiative). This will allow for a more efficient method of regulating licensees, with conditions being able to be applied in a standard manner rather than individually applied to each licence.

*Queensland Liquor and Gaming Commission*

The Bill contains amendments to the Liquor Act and Gaming Machine Act to expand the responsibility of the Queensland Gaming Commission (QGC) to consider liquor applications of significant community impact such as for new commercial hotel licences, nightclubs and applications for extended trading hours. This will build on the significant expertise and success the QGC has had in ensuring an appropriate balance in the provision of gambling services. In addition, it will facilitate the full integration and streamlining of liquor and gaming licensing processes and will eliminate duplication, thus reducing the regulatory burden on industry.

This is part of the Government's broader regulatory simplification objective, to give time and money back to business and the community to invest in pursuits that promote productivity, foster innovation and increase competitiveness.

The QGC is proposed to be re-named the Queensland Liquor and Gaming Commission (QLGC). The amendments related to the QLGC will commence by proclamation to ensure there is sufficient time to develop relevant administrative processes to support the changing role of the QGC.

The Bill also provides the QLGC with the power to delegate its decision making authority. It is intended this will allow the QLGC to delegate decisions of minimal impact or risk to allow the QLGC to focus on higher risk applications and to ensure the timeliness of decision making. For example, the QLGC may wish to delegate temporary, one-off applications to extend the licensed area, increase trading hours or vary the conditions of licence to allow amplified music for a special event or function, for example on Australia Day or New Years Eve. The QLGC will specify

which decisions of minimal impact or risk will be delegated to the chief executive in an Instrument of Delegation made by the QLGC.

The Bill also contains an amendment to the purposes of the Liquor Act to provide a main purpose that the liquor industry, and areas in the vicinity of licensed premises, is regulated in a way to minimise harm and the potential for harm from alcohol abuse and misuse and associated violence, adverse impacts on the safety or health of members of the public and adverse impacts on the amenity of the community. This is designed to strengthen the ability of the QLGC (for liquor applications of significant community impact) and the chief executive (for all other liquor applications), in assessing the merits of an application, to afford weight to these matters in making the decision.

To ensure QLGC decisions fully take into account the concerns of the whole community, the Bill provides for an amendment which will allow the Minister responsible for liquor industry regulation to make a direct objection to a liquor application of significant community impact. Amendments will require the QLGC to have regard to any Ministerial objection made in considering whether to grant an application of significant community impact, in addition to considering the main purposes of the Liquor Act and any of the other existing criteria prescribed in the Liquor Act.

The Minister will also be permitted to request that the Queensland Civil and Administrative Tribunal (QCAT) review a decision of the QLGC if the Minister has made an objection to the application in question.

#### *Extension of the extended trading hours moratorium*

The Bill contains an amendment to extend the current extended trading hours application moratorium until 31 December 2013. The moratorium is currently due to end at midnight 15 December 2010, after being extended by three months from 15 September 2010 by the Minister for Tourism and Fair Trading by gazette notice (notice published on 3 September 2010). The extension until December 2013 will keep the moratorium in place until after the piloting and associated evaluation of the DSPs. Evidence from the evaluation of DSP pilots could then inform Government policy regarding harm minimisation strategies, which may include, if necessary, consideration of changes to trading hours.

*Prescribe new trading hours for bottle-shops and other take-away outlets*

Recommendation 42 of the Committee's report states that maximum hours for detached bottle shops should be 10am to 9pm. The Government response supports this recommendation in principle, with trading hours applicable to new applications relating to bottle shops and other take-away liquor outlets to be between 10am and 10pm and with the ability for licensees to apply for extended trading hours approval between 9am and 10am, and between 10pm and midnight, if there is a demonstrated community need.

The Bill therefore amends the Liquor Act so that ordinary trading hours applicable to new applications relating to liquor sold as take-away from bottle shops and other take-away liquor outlets is 10am until 10pm. Licensees will be able apply to the QLGC to sell take-away liquor from 9am until 10am or from 10pm until 12 midnight, though they will need to demonstrate a community need for the application to be approved.

In order to minimise the impact on industry and consistent with the stated Government response to recommendation 42 of the inquiry, the new restricted trading hours of 10am until 10pm will apply only to new applications or when a licence is transferred to another person.

*Definition of amenity in the Liquor Act*

Recommendation 30 of the Committee's report recommended that a definition of 'amenity' be prescribed in the Liquor Act. This will provide further clarity in decision making by the QLGC or chief executive. Consequently, the Bill inserts a definition for the term 'amenity' to mean, for a community or locality, the pleasantness, atmosphere, ambience and character, as well as the comfort or enjoyment derived by persons who live or work in or visit the community or locality.

*Adult Proof of Age Card*

Currently, a Card 18+ is issued over the counter when a person applies in the approved form, pays the appropriate fee and meets minimum evidence of identity requirements.

The Queensland Government is introducing a more reliable, secure and durable Adult Proof of Age Card (via the *Adult Proof of Age Card Act 2008*) to replace the existing Card 18+. Similar to a Card 18+, only a person who is at least 18 years of age may be issued with an Adult Proof of Age Card. In contrast to a Card 18+, an Adult Proof of Age Card will not

be issued over the counter, but will be mailed from a secure central location.

There may be a period of up to 14 days between the time a person applies for an Adult Proof of Age Card and receives the card. This means that a card will not be available immediately on the day of application.

The Bill amends the *Adult Proof of Age Card Act 2008* to allow a person who is at least 17 years and 11 months to apply for an Adult Proof of Age Card. At the same time the Bill also clarifies that, despite the applicant being permitted to apply for a card one month prior to their 18<sup>th</sup> birthday, the applicant is not entitled to be issued a card until they are at least 18 years of age.

## **Achievement of the Objectives**

The objectives of the Bill will be achieved as per the following:

### *Liquor Act, Gaming Machine Act, Penalties and Sentences Act and Bail Act*

- A safer community through reduced alcohol-related violence as a result of:
  - The prescribing of DSPs. The three pilot areas are located in three of the busiest entertainment areas within the State, with thousands of people frequenting these areas for entertainment and social purposes, particularly on weekends. The prescribing of DSPs facilitates DSP committees involving government, industry and community stakeholders and the development of DSP management plans. These management plans will be designed to provide coordinated strategies to address local issues such as crowding, queuing, traffic and toilet amenities, similar to strategies used in the management of major events (such as sporting events and concerts at Brisbane's Suncorp Stadium).
  - New banning powers. The civil banning powers under the Liquor Act will prohibit an adult from entering or remaining in stated licensed premises or areas surrounding stated licensed premises within a DSP. The prohibition will be for a period of no longer than 12 months and will be based on the person's violent conduct to persons or property. The criminal justice system will also be utilised to make banning orders a sentencing option for certain offenders. This order will prohibit certain offenders in the same manner as under civil banning orders but the prohibition is

not limited to DSPs. Further, the Bail Act will be amended to require a bail granting authority to consider the imposition of banning conditions in certain circumstances.

- Restricting the availability of the sale of liquor by limiting trading hours applying to new applications relating to bottle shops and other take-away liquor outlets. Late night public violence can be caused by people who have consumed alcohol before leaving the house. Restricting trading hours for new applications relating to bottle shops and other take-away outlets will limit the accessibility of liquor for off-premises consumption.
- Restricting the availability of the supply of liquor by extending the extended trading hours application moratorium outside of the extended trading hour precincts, as prescribed under the *Liquor Regulation 2002*, until December 2013. This will give time for the DSP pilots to be implemented and evaluated for their effectiveness so as to inform future Government policy.
- Increased clarity in the Liquor Act through the defining of ‘amenity’ to further aid licence decision making.
- Reducing and simplifying the regulatory burden through:
  - Enhancing decision making in regard to licence related decisions of significant community impact; and
  - Increased transparency and efficiency in the liquor licence decision-making process for applications of significant community impact through the creation of the QLGC. The new QLGC will be formed out of the existing QGC. Following the 2008 liquor reforms, some liquor applications as prescribed (such as an application for a commercial hotel licence or extended trading hours approval) are required to be accompanied by a community impact statement. The QGC has several years of experience in dealing with gaming applications that require community impact statements, which has ensured an appropriate balance in the provision of gambling services. Accordingly, an expansion of the QGC to become the QLGC can build on the significant expertise and success to date of the QGC, so that a similar balanced outcome in regard to significant liquor matters can be assured. A combined QLGC will also further facilitate the full integration of liquor and gaming licensing processes,

consistent with the Government's broader regulatory simplification objective.

### Adult Proof of Age Card Act

The objective of providing proof of age for all persons who have reached their 18<sup>th</sup> birthday will be achieved by providing that a person can make an application for an Adult Proof of Age Card when they are at least 17 years and 11 months. However, there will be a restriction that the chief executive is not to issue the card to the person until their 18th birthday.

### **Alternatives to the Bill**

A possible alternative could be not to prescribe DSPs in legislation, but rather declare them administratively. However, given the high level of commitment required from stakeholders as part of DSP committees and financial support by the state government to policing and non-government organisation activities within pilot DSPs, it is important that DSPs be as clearly defined as possible. Prescribing them in a regulation provides for a clear and publicly available demarcation of DSP boundaries.

In addition, the prescribing of DSPs is necessary in order to allow for the application of civil banning orders under the Liquor Act. As the initial conduct leading to an application for a civil banning order needs to occur in a DSP and the civil banning order itself prohibits doing certain things within a DSP, it is important for reasons of certainty that DSPs are clearly demarcated in legislation. Further, a civil banning order represents a significant infringement on the freedom of an individual adult to do certain things. This infringement is justified on the need to protect the public and ensure their safety. However, such orders should be confined to areas identified as requiring them, that is the DSPs.

As the QGC is a statutory body, any expansion of its role necessitates legislative amendments.

'Amenity' has not been defined in the Liquor Act previously. However, the Parliamentary Law, Justice and Safety Committee specifically recommended the defining of the term in legislation and this was committed to in the Government response to the Committee's report.

Any additional restriction on bottle shop and other take-away outlet trading hours can only be achieved through legislative amendment.

## **Estimated Cost for Government Implementation**

The State Government will provide funding for the first 12 months of the pilot DSPs (December 2010 to December 2011) comprising:

- \$3.141M to the Queensland Police Service to fund additional overtime police resources; and
- \$1.126M to Department of Communities to fund non-government organisations' (NGO) operations.

The Department of Employment, Economic Development and Innovation (DEEDI) will develop options for funding models to fund costs of policing and NGO operations within DSPs beyond the first year. Consultation will be undertaken with other government agencies, industry and community groups through DSP committees during 2010-11. Development of models will also be informed by the results of the interim evaluation of the DSP pilots proposed for mid 2011.

The creation of the QLGC will initially be funded through current budget allocations. Any additional future cost impacts will be examined by DEEDI, however it is possible that some future additional costs may be offset by improved streamlining of licensing processes for liquor and gaming.

The implementation of all other amendments is not likely to have any additional cost beyond current budget allocations.

## **Consistency with Fundamental Legislative Principles**

The proposed model for banning orders could be considered to be inconsistent with the fundamental legislative principle (FLP) of having sufficient regard to rights and liberties of individuals (Section 4(3) of the *Legislative Standards Act 1992*) as it proposes to remove the right of a person to enter a public place if the person has been issued with a banning order from a court. As it is proposed that a civil banning order may be issued to a person who has not been convicted of an offence, it could be claimed that such a banning order breaches fundamental civil liberties in a democratic society.

However, this must be balanced against the public policy objective of regulation compatible with minimising harm and the potential from harm, as well as minimising adverse effects on safety of members of the public. The FLP inconsistency is also partially mitigated as the civil and criminal court-based schemes contain the inherent safeguards associated with a

judicial process, for example, consistency with natural justice principles, a right of hearing and an appropriate avenue of appeal.

The proposed Bill may also impact on those individuals conducting businesses involving liquor as it proposes to both extend the moratorium on extended trading hours applications and to further restrict trading hours for bottle shops. This will affect existing statutory rights to make an application and have it decided, and existing rights to carry on business selling liquor.

However, the sale of liquor is highly regulated on the grounds of public interest and the proposed new restrictions are only minor changes to the regulatory environment. The moratorium has been in place since September 2009, so the extension maintains the current regime already imposed by Parliament. The amendments to restrict bottle shop and other take-away outlets trading hours are in response to a recommendation by the Parliamentary Law, Justice and Safety Committee's report into alcohol-related violence (which recommended that maximum hours for detached bottle shops should be 9am to 10pm). The amendments will also not impact on the current actual hours of existing bottle shops and other take-away outlets, but rather will only affect new applications relating to take-away liquor (applications can be made for take-away trading hours outside the new ordinary hours of 10am to 10pm, provided a community need can be demonstrated).

The new section 58A of the Liquor Act (that is intended to provide for standard licence conditions to be prescribed in a regulation) may be considered inconsistent with fundamental legislative principles as it could be argued that such an amendment does not provide statutory rights of appeal.

However, prescribed standard conditions are intended to apply to certain licence types, licences generally or on licences within DSPs (for example, a standard condition could require licensees in a particular DSP to adopt a particular safety initiative). In this regard, the amendment allows for a more efficient method of regulating licensees, with particular conditions that are relevant to multiple licences being able to be applied in a standard manner rather than individually applied to each licence. The power of the remains and is appealable to QCAT.

## **Consultation**

After the tabling of the Parliamentary Law, Justice and Safety Committee's final report into alcohol related violence, the Government undertook significant consultation with industry and the broader community to inform its response. The Government response to the Parliamentary Committee's report forms the basis of the amendments in this Bill, other than the amendments which relate to the establishment of the QLCG (which aligns with the Government's regulatory simplification objective) and the amendments that relate to the *Adult Proof of Age Card Act 2008*.

Meetings were held with industry and community stakeholders to obtain feedback on the final report recommendations. Meeting participants were invited to make written submissions to government. A number of responses were received. A stakeholder survey was also undertaken, with responses being received up until 11 June 2010.

In addition, an online survey received approximately 16,000 responses from community members, with a particularly high response from young Queenslanders. To further engage young Queenslanders, a youth forum was held on 23 June 2010 to seek their opinions and perspectives regarding the final report recommendations.

Consultation with DSP committees and key stakeholders within the DSPs has informed the development of the DSP boundaries. Ongoing consultation will be undertaken with stakeholders during the pilots through the DSP committees.

## **Notes on Provisions**

### **Part 1                      Preliminary**

Clause 1 states the short title of the Act.

Clause 2 states that the following provisions of the Bill commence on a day to be fixed by proclamation – clauses 20 (to the extent that it defines commission and decision of significant community impact), 22, 23, 24, 25,

27(2), 27(3), 27(4), 28, 30, 34(4) (to the extent that it inserts section 116(6) into the *Liquor Act 1992*), 37, 38(3), 39, 42, 43, 44, 45, 46, 48 (to the extent that it inserts sections 299 to 304 into the *Liquor Act*), and clause 57 to the extent that it amends (via schedule) the *Public Service Act 2008*. Part 4 (Amendment of Gaming Machine Act 1999) will also commence on a date fixed by proclamation. These clauses provide for the establishment and operation of the Queensland Liquor and Gaming Commission (QLGC). Commencement by proclamation will allow time to develop relevant administrative processes to support the changing role of the QGC. Remaining clauses of the Bill will commence on assent.

## **Part 2                      Amendment of Adult Proof of Age Card Act 2008**

Clause 3 states that this part amends the *Adult Proof of Age Card Act 2008*.

Clause 4 amends section 7 of the *Adult Proof of Age Card Act*. The amendment provides that the right under the section is a right of an eligible person to ‘apply’ for an *Adult Proof of Age Card*, and not to be ‘issued’ a card. The issue of the card is addressed in section 12 of the Act. The amendment also provides that the minimum age to apply for a card is 17 years and 11 months.

Clause 5 omits the words ‘the issue of’ from section 8 of the *Adult Proof of Age Card Act* to clarify that the section deals with a person applying for a card and not being issued with a card.

Clause 6 inserts a new subsection (2) into section 12 of the *Adult Proof of Age Card Act*. The new section 12(2) provides that if an applicant is under 18 years, the chief executive must not issue an *Adult Proof of Age Card* until the applicant is at least 18 years of age.

## **Part 3                      Amendment of Bail Act 1980**

Clause 7 provides that Part 3 amends the *Bail Act 1980*.

Clause 8 amends and renumbers section 11 (Conditions of release on bail).

New subsection (2AA) highlights to the bail granting authority that a special condition of bail may prohibit a person from: entering or remaining in stated licensed premises or a stated class of licensed premises; or entering or remaining, during stated hours, within a certain distance from or location in relation to, the stated licensed premises or class of licensed premises; or attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.

Further, new subsection (2AB) provides that a bail granting authority must consider the imposition of such a special condition if the alleged offence, to which the bail relates, involved violence (including threatened or attempted use of) to person or property and, having regard to the evidence available to the bail granting authority, the court or police officer is satisfied that the alleged offence was committed in licensed premises or in a public place in the vicinity of licensed premises.

Clause 9 amends section 20 (Undertaking as to bail) to omit the reference to section 11(2), (3) or (4) and insert a reference to section 11(2), (3), (6) and (9) in sections 20(3)(b)(i) and 3A(b)(i).

Clause 10 amends section 29 (Offence to breach conditions of bail), 29A (Procedure in respect of defendants apprehended under s21(7) of the Police Powers and Responsibilities Act 2000) and 30 (Apprehension on variation or revocation of bail) to omit the reference to section 11(4) and insert a reference to section 11(9) in sections 29(2)(c), 29A(3) and 30(6).

Clause 11 inserts new section 34F to provide that the Commissioner of the Queensland Police Service may give information about a special condition of bail imposed under section 11 to the licensee of any licensed premises, or class of licensed premises, stated in the special condition; or the holder of a license to sell liquor at an event stated in the special condition.

Clause 12 inserts a new section 41, which is a transitional provision for the *Liquor and Other Legislation Amendment Act 2010*. It provides that the amendment to section 11 (3) and (4), as inserted by that Act, applies in relation to the release of a person on bail for an offence only if proceedings for the offence were started after the commencement of this section. It is irrelevant whether the act or omission constituting the offence happened before or after the commencement of this section.

## **Part 4                      Amendment of Gaming Machine Act 1991**

Clause 13 states that Part 4 amends the *Gaming Machine Act 1991*.

Clause 14 amends section 15 (Establishment of commission) so that the Queensland Gaming Commission (QGC) is changed to become the Queensland Liquor and Gaming Commission (QLGC).

Clause 15 inserts a new transitional provision so that any document reference to the QGC is taken to be a reference to the QLGC.

Clause 16 amends Schedule 2 (Dictionary) so that the definition of 'commission' under the *Gaming Machine Act 1991* is the Queensland Liquor and Gaming Commission continued in existence under section 15.

## **Part 5                      Amendment of Liquor Act 1992**

Clause 17 states that Part 5 amends the *Liquor Act 1992*.

Clause 18 amends section 3. The section heading, 'Act's objects', is amended to 'Main purposes of Act'. The clause retitles the *objectives* of the Liquor Act to the *main purposes* of the Liquor Act. This is consistent with sections 14A and 14B of the *Acts Interpretation Act 1954*, which provides that in interpreting a provision of an Act, the interpretation that will best achieve the 'purpose' of the Act is to be preferred to any other interpretation.

The clause amends the first main purpose of the Liquor Act (section 3(a)) to provide that a main purpose of the Liquor Act is to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with minimising:

- harm, and the potential for harm, from alcohol abuse and misuse and associated violence;
- adverse effects on the safety or health of members of the public; and
- adverse effects on the amenity of the community.

The amendment establishes the priority matters the QLGC (for applications of significant community impact) and chief executive (for all other relevant applications) is to have regard to in the making of liquor licensing decisions.

Clause 19 amends section 3A (Principle underlying this Act for facilitating and regulating the liquor industry). Subsection (4) is amended to provide that this section applies subject to the main purpose of the Liquor Act (as specified in section 3(a)).

Clause 20 amends section 4 (Definitions) to provide definitions for ‘amenity’, ‘authorised person’, ‘civil banning order’, ‘commission’, ‘decision of significant community impact’, ‘drink safe precinct’, ‘interim civil banning order’, ‘respondent’, and ‘take-away liquor’. The new definitions increase the clarity and effectiveness of the sections that make reference to these definitions.

Clause 21 amends section 9 (Ordinary trading hours) by inserting a new paragraph (d) in section 9(1A) so that ordinary trading hours of 10am until 12 midnight no longer apply to the sale of take-away liquor. In order that the provision captures bottle shops and other take-away liquor outlets, the new paragraph relates to the three licence types (commercial hotel licence, community club licence and commercial special facility licence) that can operate bottle shops or take-away liquor outlets and specifies liquor sold on-premises for consumption off-premises. In addition, the clause inserts a new subsection (1C) that makes ordinary trading hours for the sale of take-away liquor to be 10am until 10pm.

The clause also amends section 9(12) so that different ordinary trading hours can be designated for different parts of the licensed premises (for commercial hotel licences, community club licences and commercial special facility licences) to allow for different liquor trading hours to be applied for the bottle shop to the trading hours for other parts of the licensed premises (such as the bar or restaurant).

Clause 22 amends section 21 (Jurisdiction and powers of tribunal) inserting a new subsection (1A) which allows the tribunal (which is the Queensland Civil and Administrative Tribunal) to review decisions of the QLGC under the Liquor Act. The clause also amends subsection (2) so that in the exercise of its jurisdiction, the tribunal has the powers and discretions of the chief executive *or the commission* (the QLGC) in respect of matters under review. The clause also omits the term ‘appeal’ and inserts ‘review’ for consistency with other sections of the Liquor Act. The clause

renumbers the subsections so that the aforementioned section 21(1A) will be section 21(2) and the aforementioned section 21(2) will be section 21(3).

Clause 23 amends section 30 (Who may apply for review of decisions) to define objection to include an objection made by the Minister under section 119A.

Clause 24 amends sections 30 (Who may apply for review of decisions), 31 (Failure to notify about decision), 33 (Tribunal to decide review on evidence before the chief executive) and 34 (Tribunal may give leave for review to be decided on new evidence in particular circumstances) by inserting *or the commission* (the QLGC) after the chief executive. The insertion of this phrase ensures that any actions or references to the chief executive under these provisions will also relate to the QLGC, as the QLGC will be taking over some of the chief executive's decision making roles under the Liquor Act as a consequence of this Bill.

Clause 25 amends section 32 (Notification of review to interested persons) so that at least three days before the tribunal hears a review, the tribunal's registrar is to give the QLGC, if the review relates to a decision of the QLGC, a written notice of the time and place of the hearing. A new subsection (4) defines objection to include an objection made by the Minister under section 119A. The clause also renumbers the subsections to improve the clarity of the section.

Clause 26 inserts a new section 58A (Licences subject to conditions imposed under regulation) which is intended to provide that a regulation may prescribe standard conditions for licences. This will allow for a more efficient method of regulating licensees, with conditions being able to be applied in a standard manner (such as to certain licence types, licences generally or licences in a Drink Safe Precinct) rather than individually applied to each licence. The clause also provides that if a regulation is prescribed it applies to all relevant licences, whether granted before or after the commencement of the regulation.

Clause 27 amends section 86 (Hours to which application may relate etc.) including inserting new subsection (2A) so that an application may be made to sell take-away liquor between 10pm and 12 midnight and 9am to 10am if community need can be demonstrated. The clause amends subsection (3) to provide that the QLGC approves extended trading hours applications. The clause also inserts subsection (7) that provides that for subsections (3) and (5)(a), the QLGC can only be satisfied that there is a

demonstrated community need if an applicant demonstrates that there is a level of demand within the local community that justifies the extended trading hours sought in the application. Paragraph (7)(b)(i) outlines examples of reasons for a level of demand that requires extended trading hours, including that the licensed premises are located in an area popular with tourists or for dining, or that there has been a significant increase in population in the local area.

However, the clause also inserts subsection (8) that ensures that the QLGC is not limited by anything stated in subsection (7) to take into consideration other matters when determining whether there is demonstrated community need. The intention of subsection (8) is to clarify that the threshold for the QLGC in deciding what constitutes demonstrated community need must be a balance of factors, not limited to only demand. In addition to demand that may result, for example, from the premises being located in a tourist or dining area, the QLGC must also consider community amenity and safety, the health and social impact of the extended trading hours on the local area, proximity to sensitive sub-communities such as places of worship and schools, or any other matter consistent with the Liquor Act's main purpose as stated in section 3(a) (see clause 18).

It is intended this will allow for the QLGC to consider, for licensees that wish to apply for extended take-away liquor trading hours, whether the premises which are the subject of the application are located in a tourist destination area or dining destination area or within a shopping centre that trades outside the ordinary hours for the sale of take-away liquor.

The clause also amends subsections (3) and (5) replacing references to the chief executive with references to the QLGC, as the QLGC is to have the power to decide extended trading hour approvals.

Clause 28 amends section 87 (Restriction on grant of extended trading hours approval) to replace a reference to the chief executive with a reference to the commission.

Clause 29 amends section 89 (Definitions for div 8) to extend the existing moratorium on extended trading hours applications, as it applies to all areas in Queensland outside the prescribed extended trading hours precincts, until 31 December 2013.

Clause 30 amends section 94 (Protection from liability) to provide a definition of chief executive that includes the QLGC. This affords the QLGC with the same protection from liability as the chief executive with

regard to a decision not to consider, or further consider, an extended trading hours application under Division 8 of the Liquor Act.

Clause 31 amends section 95 (Minister may extend moratorium period), which allows for the Minister to extend the moratorium period for not more than three months, if it would be in the public interest having regard to the main purpose of the Act mentioned in section 3(a). The clause removes a reference to the Liquor Act's object and replaces it with a reference to the *main purpose* of the Liquor Act.

Clause 32 amends section 97 (When all or part of licensed premises must be classified as high risk) to allow for the chief executive to classify a licensed premises as high risk if satisfied there has been a level of violence at the premises during the relevant period that is unacceptable having regard to the main purpose of the Act mentioned in section 3(a).

Clause 33 amends section 107C (Chief executive may impose conditions on licences and permits) to allow for the QLGC (for commercial hotel licences, community club licences and subsidiary on-premises licences where the principal activity is the provision of entertainment) and chief executive (for all other licence types) to impose conditions on licences and permits (chief executive only for permits) to give effect to the main purpose of the Act mentioned in section 3(a). This replaces the ability for conditions to be imposed on the basis of minimising harm caused by alcohol abuse and misuse and associated violence (an element which is similarly captured in the new main purpose of the Act set out in section 3(a) – see clause 18).

Clause 34 amends section 116 (When community impact statement to be given to chief executive). The clause omits the reference to community club licences in s116(1)(a) and (2)(a) to ensure that a community impact statement is prepared and submitted for all community club licence applications, in the same way that it must be for all other licence types except for a community other licence. Subsection (3) is amended to provide that if the chief executive reasonably believes an application for a community other licence, commercial public event permit or community liquor permit may be inconsistent with the main purpose as stated in section 3(a) of the Liquor Act then the applicant can be required to give the chief executive a community impact statement in relation to the application.

The clause also inserts new subsection (3A) to provide that the chief executive may waive or relax the requirement for a community impact

statement for all relevant licence type applications if satisfied that the community impact statement is not necessary because:

- the application does not involve significant change to the premises or nature or extent of the business; or
- of the remote location of the premises; or
- the purpose of the requirement of the community impact statement can be achieved by other means, or because of other special circumstances.

The new subsection mirrors the existing section 55G of the *Gaming Machine Act 1991* and allows for the streamlining of new liquor and gaming licence processes and decision making.

Subsection (5) and inserts a new subsection (6) is also amended to expand the purpose of a community impact statement for applications to the QLGC as well as the chief executive. The purpose of the community impact statement is to help the chief executive in determining the impact on the community were the application to be granted. If the application is to be decided by the QLGC, the community impact statement is to assist the chief executive in making a recommendation to the QLGC, and the QLGC in making its decision. The chief executive and the QLGC are to have due regard to the main purpose of the Act in using the community impact statement to assess the impact that the grant of an application may have on a community.

The clause also renumbers the subsections as a consequence of the amendments.

Clause 35 amends section 118 (Advertisement of applications) to clarify that the existing paragraph 118(1)(b) refers to an application for an approval of a detached bottle shop.

Clause 36 amends section 119 (Objection to grant of applications) to expand the grounds on which a member of the public may make an objection to an application, other than an application for an adult entertainment permit, advertised under section 118. The clause enables a member of the public to make an objection to an application on the grounds that if the application were granted, one or more of the following may happen:

- undue offence, annoyance, disturbance or inconvenience to persons who reside or work or do business in the locality concerned, or to

persons in or travelling to or from an existing or proposed place of public worship, hospital or school; or

- harm from alcohol abuse, misuse and associated violence; or
- an adverse effect on the health or safety on the members of the public or on the amenity of the community .

Subsection (4) is amended to align the grounds for objection regarding an application for an adult entertainment permit with the grounds stated in s119(3).

Clause 37 inserts a new section 119A (Objection by Minister to grant of applications having significant community impact) to allow the Minister to object to an application for a commercial hotel licence, community club licence or subsidiary on-premises licence where the principal activity is the provision of entertainment; or, to object to an extended trading hours approval or variation of an extended trading hours approval on one of the aforementioned licence types. This section is intended to ensure the Minister may object to any of the applications which the QLGC has the power to decide under new section 142AO (and which are advertised under section 118). The Minister may object in writing during the advertising period defined in section 118 on the same grounds that a member of the public may object to an application, as outlined in clause 36.

Clause 38 amends section 121 (Matters the chief executive must have regard to) to require the QLGC (for applications for a commercial hotel licence, community club licence or subsidiary on-premises licence where the principal activity is the provision of entertainment) and chief executive (for all other licence applications) to have regard to, in deciding whether to grant an application, the public interest as it relates to the new main purpose of the Act mentioned in section 3(a). This is a consequential amendment arising from the amendment of section 3(a) of the Liquor Act (see clause 18). The clause also inserts a new paragraph (section 121(h)) to provide that the decision maker, in deciding whether to grant an application, must have regard to any relevant conditions imposed on a development approval, given by a local government under the *Sustainable Planning Act 2009*, that relates to premises the subject of the application. The clause also inserts a new subsection 121(2) that clarifies that a reference to an objection in this section includes an objection made by the Minister under section 119A (see clause 37).

Clause 39 amends section 122 (Procedure on receipt of objections) to insert a new subsection (3) to clarify that the procedure provided for in the

section also applies to an objection made by the Minister under section 119A.

Clause 40 amends section 125 (Temporary authority) to allow the chief executive to impose conditions on a temporary authority to give effect to the main purpose of the Act mentioned in section 3(a). This replaces the ability of the chief executive to impose conditions on a temporary authority to ‘minimise harm caused by alcohol abuse and misuse and associated violence’ as this element is similarly captured in the new main purpose of the Act set out in section 3(a) (see clause 18).

Clause 41 amends section 131A (Decision by chief executive on application to continue trading in certain circumstances) to allow the chief executive to impose conditions on an authority granted under section 129 of the Liquor Act to give effect to the main purpose of the Act mentioned in section 3(a). This replaces the ability of the chief executive to impose conditions on this type of authority to ‘minimise harm caused by alcohol abuse and misuse and associated violence’ as this element is similarly captured in the new main purpose of the Act set out in section 3(a) (see clause 18).

Clause 42 amends section 137(1) (Procedure for taking disciplinary action in relation to licence) to enable the QLGC, in addition to the chief executive, to initiate procedures for taking disciplinary action in relation to a licence.

Clause 43 amends section 137A (Decision about disciplinary action) to add references to the QLGC, in addition to the existing references to the chief executive, to reflect that the QLGC may make decisions about disciplinary actions in relation to licences.

Clause 44 amends section 137B (Notice to be given about chief executive’s decision) to add references to the QLGC, in addition to the existing references to the chief executive, to reflect that the QLGC may make decisions about disciplinary actions in relation to licences as outlined in new section 142AO.

Clause 45 amends section 137D (Amount payable as a debt due to the State) so that a decision to take disciplinary action that requires the licensee to pay an amount to the State can be a decision of either the chief executive or the QLGC.

Clause 46 inserts a new Division 7 (Decisions of significant community impact to be made by Commission) in part 5 of the Liquor Act to allow the

QLGC to make decisions in relation to liquor applications of significant community impact. Decisions of significant community impact are decisions on applications for a commercial hotel licence, community club licence, subsidiary on-premises licence where the principal activity of the business to be conducted under the licence is the provision of entertainment (intended to capture nightclubs and cabarets, amongst other licensees), and extended trading hours approval. However, this does not include decisions for a licence for premises in a restricted area.

New section 142AM (Definition for division 7) provides a divisional definition for *decision of significant community impact*.

New section 142AN (Purpose of this division) provides that the purpose of this division is to give to the QLGC responsibility for making decisions of significant community impact.

New section 142AO (Decisions to be made by commission) provides for the QLGC to make decisions on applications of significant community impact as well as to make decisions on the following matters relating to a commercial hotel licence, community club licence, and subsidiary on-premises licence where the principal activity of the business to be conducted under the licence is the provision of entertainment:

- the imposition of a condition on the licence
- a variation to the licence
- a provisional licence in relation to an application for one of the aforementioned licences
- a staged development approval in relation to an application for one of the aforementioned licences
- a decision to cancel, suspend (other than urgent suspension) or (as disciplinary action) vary one of the aforementioned licences.

The QLGC will make these decisions on the nominated licence types from the commencement of the provision, irrespective of whether the licence was originally approved by the chief executive.

New section 142AP (Recommendation by chief executive in relation to decision to be made by commission) provides for the chief executive to make a recommendation to the QLGC on all matters the QLGC has the power to decide under new section 142AO. The chief executive is required to conduct investigations the chief executive considers necessary to help with making a recommendation and may also ask the holder of a licence or

applicant for a licence to which a decision of the QLGC relates, to provide further information or documentation which is required to assist the chief executive with making a recommendation. In making a recommendation to the QLGC, the chief executive is to have regard to any supporting material for the application, which is intended to include the community impact statement which accompanies the application of significant community impact. In making a recommendation, the chief executive must also have regard to any relevant guideline issued by the QLGC and any other relevant information the chief executive considers relevant.

New section 142AQ (Functions, limitations and protections of commission) applies so that the QLGC has the same powers and functions as are stated to apply to the chief executive throughout the Liquor Act in so far as those functions or powers relate to decisions of the QLGC. For example, it is intended that in deciding whether to grant a liquor application of significant community impact, the QLGC must have regard to the matters listed in section 121 of the Liquor Act, despite that section stating the matters listed are those which the chief executive must have regard to in deciding whether to grant an application. It is intended that new section 142AQ also applies the same restrictions and limitations and affords the same protections that apply or are afforded to the chief executive throughout the Liquor Act in so far as those restrictions, limitations and protections relate to decisions of the QLGC. However, the QLGC does not have the functions of the chief executive as are set out in sections 31(1), 32(1), 79(1)(b), 85(2), 112(1), 126(1), 126(3), 137, 137A(2) or 137B(1) of the Liquor Act. The functions of the chief executive set out in these sections are administrative in nature and are not intended to be performed by the QLGC e.g. issuing of written notices, endorsement of licences approved by the QLGC (it is intended that these functions are to continue to be performed by the chief executive).

New section 142AR (Commission may issue guidelines) provides for the QLGC to issue guidelines to inform persons about the attitude the QLGC is likely to adopt on a particular matter. This follows from the power the QGC already has under the Gaming Machine Act to issue guidelines. However, the new section provides that it will be for the chief executive to provide copies to members of the public of the guidelines issued by the QLGC, either through the department's head office or on the departmental website.

New section 142AS (Delegation) allows for the QLGC to delegate its decision making powers to the chief executive. The provision is modelled

on section 50 of the *Gaming Machine Act 1991* to allow the QLGC to delegate functions at its own discretion. This will allow the QLGC to focus on higher risk applications and ensure efficient and timely decision making. Once the QLGC has made a delegation to the chief executive, the provision provides for the sub-delegation of the decision making power or function to another officer of the department by the chief executive. This is to provide certainty about the ability of the chief executive to sub-delegate these powers due to section 27A(12) of the *Acts Interpretation Act 1954*.

Clause 47 inserts new parts 6B (Drink safe precincts) and 6C (Civil banning orders). Section 173O (Purpose of pt 6B) provides that the purpose of the new part 6B is for the prescribing of certain areas as a means of minimising harm associated with alcohol-related issues. Section 173P (Drink safe precinct may be prescribed under regulation) provides that a regulation may prescribe an area to be a drink safe precinct. Before the Minister can recommend to the Governor in Council that an area be declared a drink safe precinct, the Minister must be satisfied the declaration is necessary in order to achieve the purpose of part 6B, as stated in section 173O. The regulation may designate a single licensed premise, multiple licensed premises or an area in the vicinity of licensed premises (or multiple licensed premises) as a drink safe precinct.

Part 6C (Civil banning orders) provides the legislative framework for the civil banning order regime.

New section 173Q (Definitions for pt 6C) is the definition section for Part 6C. It defines the terms ‘*authorised person*’, ‘*civil banning order*’, ‘*drink safe precinct*’, ‘*interim civil banning order*’ and ‘*respondent*’.

New section 173R (Purpose of pt 6C) establishes that the purpose of Part 6C is to provide for the making of civil banning orders to particular persons to minimise harm caused by alcohol abuse and misuse and associated violence; and alcohol related disturbances or public disorder in drink safe precincts.

New section 173S (What is a civil banning order) outlines that a civil banning order is an order made by the Magistrates Court against an adult for up to 12 months in duration, which may prohibit the person from doing or attempting to do any of the following: entering or remaining in a stated licensed premises or class of licensed premises within a drink safe precinct; entering or remaining, during stated hours, within a stated distance or location of licensed premises (or class of licensed premises) within a drink safe precinct; or attending or remaining at a stated event to be held at a

public place located within a drink safe precinct, at which liquor will be sold for consumption.

The civil banning order takes effect from when it is made if the respondent or legal or other representative of the respondent is present at the hearing of the application; or otherwise, when the respondent is served with the order.

New section 173T (Who may apply for a civil banning order) provides that an authorised person may apply to a Magistrates Court for a civil banning order. An authorised person is defined under section 173Q as the chief executive or a police officer.

New section 173U (Application for a civil banning order) sets out the information that must be contained in an application for a civil banning order. The application must be accompanied by any affidavit the authorised person intends to rely on at the hearing of the application. The application and affidavit material are to be filed and then served on the respondent within 10 business days of filing.

New section 173V (Response by respondent) provides that the respondent may file a response to the application and in doing so, must state the facts relied on by the respondent in the response to the application. The response must be filed within 28 days after the day the application is filed and be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

New section 173W (Hearing of application) provides for the hearing of an application for a civil banning order. If the respondent appears before the court that is to hear and decide an application for a civil banning order, the court may: hear and decide the application; adjourn the matter of the application (whether or not it makes an interim order); or dismiss the application. If the respondent fails to appear before the court that is to hear and decide an application for a civil banning order and the court is satisfied that a copy of the application has been served on the respondent, the court may: hear and decide the application in the absence of the respondent; or adjourn the matter of the application (whether or not it makes an interim civil banning order).

New section 173X (Making a civil banning order) provides for the making of a civil banning order. The court may make a civil banning order civil banning order if satisfied of the following:

- the respondent committed an act of violence against another person or property of such a nature that this conduct would cause a person in the

vicinity to reasonably fear bodily harm to any person or damage to property. It is intended that conduct involving the application of force to a person or to the property of another (or attempting or threatening such force) will be caught by the definition. It is intended that sexual assault will be captured. Further, other sexual offending will be captured, provided such offending involved the application or attempted or threatened application of force;

- the act of violence was committed within 12 months before the application was filed;
- the act of violence was committed in licensed premises or in an area in the vicinity of licensed premises located in a drink safe precinct;
- the respondent did not have reasonable excuse for committing the act of violence; and
- unless the order is made, the respondent would pose an unacceptable risk to: the good order of licensed premises and areas in the vicinity of licensed premises within a drink safe precinct; or the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises within a drink safe precinct.

Subsection (2) provides a non-exhaustive list of matters that the court must have regard to in considering whether to make a civil banning order. The matters listed are self-explanatory.

The court, in making a civil banning order, may impose any conditions it considers necessary but the civil banning order does not stop the respondent from entering or remaining in: their residence; place of employment; place at which they are receiving formal education; a mode of transport; and any other place that would cause undue hardship to the respondent or a member of their family. The respondent bears the onus of satisfying the court as to the existence of such matters. If the respondent satisfies the court of the existence of these matters, the civil banning order must be framed so as to reflect this.

The court may make a civil banning order whether or not the respondent has been charged with, convicted of, acquitted of, or sentenced for, an offence arising out of the act of violence (including threatened use of or attempted use of) relied upon to impose the civil banning order.

New section 173Y (Interim civil banning order) provides for the making of an interim civil banning order.

The section applies if an authorised person has made an application for a civil banning order under section 173U.

The authorised person may apply to the court for an interim civil banning order to be in force until the court finally decides the application for the civil banning order or the application otherwise ends. Subsection (3) sets out the information that must be contained in an application for an interim civil banning order.

The application for an interim banning order and accompanying affidavit must be filed and thereafter served on the respondent within 5 business days after the application is filed. The respondent may file a response to the application for an interim civil banning order and must do so within 15 business days after the application is filed.

The court may make an interim civil banning order if satisfied: the application for the interim civil banning order has been served on the respondent and there are reasonable grounds for believing there is a sufficient basis to make a civil banning order. An interim civil banning order may be made whether or not the respondent appears before the court or makes submissions. An interim civil banning order takes effect from when it is made if the respondent or legal or other representative of the respondent is present at the hearing of the application; or otherwise, when the respondent is served with the order. An interim civil banning order may prohibit the respondent from doing or attempting to do anything that a person may be prohibited from doing by a civil banning order.

New section 173Z (Amending or revoking civil banning order) provides that an authorised person or the respondent may apply to the court to amend or revoke a civil banning order. However, the respondent can not apply within six months after the civil banning order was made, except with leave of the court. A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the respondent that justifies the amendment or revocation. In determining the application for revocation, the court must take into account the outcome of any related criminal proceedings.

New section 173ZA (Court may make civil banning order by consent) provides that a court may make a civil banning order in a form agreed to by the authorised person and respondent.

New section 173ZB (Orders must be explained) requires that a civil banning order or an interim banning order must be explained to the respondent in terms of the purpose and effect of the order; the

consequences of contravening the order; and (for a civil banning order) that the order may be amended or revoked on the application of an authorised person or the respondent.

New section 173ZC (No costs to be awarded) provides that the Magistrates Court must not award costs on proceedings under this division unless the court dismisses the application as frivolous or vexatious or another abuse of process.

New section 173ZD (No filing fee is payable) provides that no fees are payable for making an application or filing another document under this Part.

New section 173ZE (Standard of proof) provides that a question of fact in proceedings under this Part, other than proceedings for an offence, is to be decided on the balance of probabilities.

New section 173ZF (General application of rules of court) provides that the Uniform Civil Procedure Rules 1999 (UCPR) apply to all applications made to the court under this Part to the extent that those rules are consistent with this Part.

New section 173ZG (Interaction with criminal proceedings) sets out the interaction of the civil banning order regime with criminal proceedings. It allows for an application for a civil banning order or an interim banning order to be made, and a court to dispose of the application, even if the respondent has been charged with an offence arising out of the act of violence on which the application is based. A reference to the making (or refusal to make) the order or a revocation or variation; or the existence of current proceedings in which a civil banning order is sought against the respondent; or the fact that evidence of a particular nature or content was given in the proceedings in which the order, revocation or variation was made or refused or the current proceedings; is inadmissible in the trial of the person for an offence arising out of the act of violence on which the application for the order, revocation, or variation, or relevant to the current proceedings, is based.

This applies if the respondent against whom a civil banning order has been made; or a court refused to make a civil banning order; or proceedings are current in which a civil banning order is sought, is charged with an offence arising out of an act of violence on which the application is based. It also applies if the respondent is charged with such an offence and the court has done either of the following relating to a civil banning order naming the person as the respondent: revoked, or refused to revoke, a civil banning

order; varied, or refused to vary, the civil banning order, including the conditions imposed by the order.

To remove any doubt, the section expressly declares that, subject to this section, an application, proceeding or order under this Part in relation to the conduct of the respondent does not affect any proceeding for an offence against the respondent arising out of the same conduct. Further, the respondent may be punished for the offence arising out of the act of violence on which the application is based despite any order made against the respondent under this Part.

New section 173ZH (Contravention of civil banning order or interim civil banning order) makes it an offence to contravene, without reasonable excuse, a civil banning order or an interim civil banning order, which is punishable by a maximum penalty of 40 penalty units or six months imprisonment.

### **Division 3 – Appeals**

New section 173ZI (Appeals) provides that an authorised person or the respondent in relation to whom a decision of the Magistrates Court under this Part has been made may appeal against the decision to the District Court.

New section 173ZJ (Time for appeal) makes it clear that an appeal must be started within one month after the decision is made but that period may be extended on application to the District Court.

New section 173ZK (Starting appeal) provides that a person starts an appeal by filing a notice of appeal with the registrar. The notice must be signed by the person or the person's lawyer and state, briefly and precisely, the grounds of the appeal. If the notice is not filed in the appeal period, the person must also file with the registrar a notice of application for extension of time for filing the notice.

New section 173ZL (Registrar to give respondent copies of particular documents) requires the registrar to give the respondent to an appeal copies of the notice to appeal and notice of application for extension of time for filing a notice of appeal.

New section 173ZM (Stay of operation of decision) makes it plain that an appeal does not stay the operation of the decision.

New section 173ZN (District Court's powers on appeal) sets out the powers of the District Court on appeal. An appeal is by way of rehearing. The decision of the District Court upon an appeal is final and conclusive.

New section 173ZO (No costs on appeal) provides that District Court must not award costs on an appeal under this division unless the court dismisses the application as frivolous or vexatious or another abuse of process

#### **Division 4 – Miscellaneous**

New section 173ZP (Service of documents) provides for the service of documents under this Part upon the respondent. It requires personal service but allows for substituted service if it appears to the court that it is not reasonably practicable to serve the document personally. If the document requires the appearance of the respondent in court, the person serving the document must explain the contents of the document to the respondent in language likely to be understood by the respondent.

New section 173ZQ (Commissioner must provide information relevant to applications) enables the Chief Executive to ask the Commissioner of the Queensland Police Service to provide them with information necessary to make (or consider making) an application for a civil banning order in relation to a person, for example the information may include: the criminal history of the person, police statements in relation to any act of violence committed by the person and statements of witnesses or victims of any act of violence committed by the person. The obligation of the Commissioner to comply with such a request applies only to information in the possession of the Commissioner or to which the Commissioner has access.

New section 173ZR (Chief executive may give copy of order to commissioner) applies if the Chief Executive, as an authorised person, obtains an order under this Part and enables them to give a copy of the order to the Commissioner.

New section 173ZS (Police officer may give copy of order to chief executive) applies if a police officer, as an authorised person, obtains an order under this Part and enables them to give a copy of the order to the Chief Executive.

New section 173ZT (Authorised person may give copy of order to licensee) provides that an authorised person may give a copy of a civil banning order or an interim civil banning order to: the licensee of any licensed premises stated in the order; or the licensee of any licensed premises within a class

of licensed premises stated in the order; or the holder of the license to sell liquor at an event stated in the order.

Clause 48 inserts a new Division 11 (Transitional provisions for *Liquor and Other Legislation Amendment Act 2010*) in Part 12.

New division 11 provides the following transitional provisions:

- Section 299 contains definitions for the new division.
- Section 300 applies to licence applications that have been made to the chief executive but not decided as at commencement of this section. Under this section, the chief executive must decide on the relevant applications according to the provisions of the Liquor Act immediately before commencement of this section.
- Section 301 applies to extended trading hours approval applications that have been made to the chief executive but not decided as at commencement of this section. Under this section, the chief executive must decide on the relevant applications according to the provisions of the Liquor Act immediately before commencement of this section.
- Section 302 applies to licence variation applications that have been made to the chief executive but not decided as at commencement of this section. Under this section, the chief executive must decide on the relevant applications according to the provisions of the Liquor Act immediately before commencement of this section.
- Section 303 applies to variations of licences initiated by the chief executive under section 112 but not decided as at commencement of this section. Under this section, the chief executive must decide on whether to vary the licence according to the provisions of the Liquor Act immediately before commencement of this section.
- Section 304 applies to suspension, variation or cancellation of a licence as part of disciplinary action commenced by the chief executive, but not decided as at commencement of this section. Under this section, the chief executive must decide on whether to take disciplinary action according to the provisions of the Liquor Act immediately before commencement of this section.
- Section 305 clarifies that a licensee that is authorised to sell take-away liquor between 9am and 10pm and between 10pm and midnight before the commencement of this section are taken to have been granted an extended trading hours approval. This ensures that existing

bottle shops and other take-away outlets will not have their current actual trading hours affected as a result of provisions in this Bill.

- Section 306 provides that the civil banning orders only apply in relation to actions committed after the commencement of this section.
- Section 307 provides that even though the Bill amends the *Liquor Regulation 2002*, the amendments provided for in this Bill are still able to be amended or repealed by the Governor in Council, in the same manner as other provisions in the *Liquor Regulation 2002*.

## **Part 6                      Amendment of Liquor Regulation 2002**

Clause 49 states that Part 6 amends the *Liquor Regulation 2002*.

Clause 50 makes a minor consequential amendment to section 3 (Definitions) to indicate that the dictionary can now be found at schedule 15 of the Regulation (because of the insertion of new schedules in the Regulation).

Clause 51 inserts a new part 1B (Drink safe precincts) into the Liquor Regulation to prescribe the areas which constitute a DSP as shown by maps to be incorporated as schedules to the Regulation (Fortitude Valley, Surfers Paradise, Townsville CBD). Subsection (2) provides an important clarification that where a part of a boundary of a DSP is a road, premises on both sides of the road form part of the DSP.

Clause 52 inserts new schedules 12, 13 and 14 into the Regulation. Schedule 12 contains a map outlining the boundaries of the Fortitude Valley DSP. Schedule 13 contains a map outlining the boundaries of the Surfers Paradise DSP. Schedule 14 contains a map outlining the boundaries of the Townsville CBD DSP.

## **Part 7**                      **Amendment of Penalties and Sentences Act 1992**

Clause 53 provides that Part 7 amends the *Penalties and Sentences Act 1992*.

Clause 54 amends section 4 (Definitions) to amend the definition of ‘crown prosecutor’ and ‘prosecutor’, and to insert definitions for the terms ‘banning order’, ‘licensed premises’, ‘licensee’ and ‘public place’.

Clause 55 inserts a new Part 3B - Banning Orders, which establishes a new sentencing option of imposing a banning order in prescribed circumstances.

New section 43G (Definitions for pt 3B) is the definition section for Part 3B. The terms, ‘banning order’, ‘licence’, licensee’ and ‘licensed premises’, are defined.

New section 43H (Record of conviction not required) provides that a court may make a banning order whether or not it records a conviction.

New section 43I (What is a banning order) provides that a banning order may prohibit a person from entering or remaining (or attempting to enter or remain): in a stated licensed premises or a class of licensed premises; in an area within a certain distance or location to licensed premises or a class of licensed premises, during stated hours; or at an event, to be held in a public place, at which liquor will be sold for consumption. The order may be for up to 12 months. In the case of an offender sentenced to a term of imprisonment, which is not wholly or partially suspended, the court will have discretion to order that the ban run from the date it is made up to 12 months after the full time expiry date of that sentence. In the case of an offender sentenced to a suspended sentence, the court will have discretion to order that the ban run from the date it is made up to 12 months after the end of the operational period.

New section 43J (Making a banning order) provides that a court may make a banning order for an offender if:

- the offender has been convicted of an offence that involved the use, threatened use or attempted use of unlawful violence to a person or property; and

- having regard to the evidence available to the court, the court is satisfied that the offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and
- the court is satisfied that, unless the order is made, the offender would pose an unacceptable risk to: the good order of licensed premises and areas in the vicinity of licensed premises; or the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.
- The order may be made in addition to any other order the court may make under the Penalties and Sentences Act.

Section 43J(3) provides a non-exhaustive list of matters that the court must have regard to in considering whether to make a banning order. The matters listed are self-explanatory.

Subsection (4) and (5) together provide that the court may impose any conditions it considers necessary on a banning order. However, the banning order must not stop the offender from accessing their residence, place of employment, place at which they are receiving formal education, a mode of transport and any other place that would cause undue hardship to the offender or a member of his or her family. The offender bears the onus of satisfying the court as to the existence of such matters.

New section 43K (Banning order to be explained) places a mandatory requirement on the court to explain, or cause to be explained, to the offender the purpose and effect of the order; the consequences of contravening the order; and that the order may be amended or revoked on the application of the offender or prosecutor. The explanation needs to be in language or in a way likely to be readily understood by the offender.

New section 43L (Amending or revoking banning order) allows a prosecutor or the offender to apply to the court for the revocation or amendment of a banning order. However, the offender can not apply within six months after the order was made. A court may amend or revoke the order if satisfied there has been a material change in the circumstances of the offender that justifies the amendment or revocation.

New section 43M (Banning order to be given to interested persons) provides for copies of an order made under Part 3B to be given to the offender and other interested parties including the police commissioner. A failure to comply with this requirement does not invalidate the order.

New section 43N (Commissioner may give copy of banning order to licensee) provides that the Commissioner of the Queensland Police Service may give a copy of an order made under this Part to: the licensee of any licensed premises stated in the order; or the licensee of any licensed premises within a class of licensed premises stated in the order; or the holder of the license to sell liquor at an event stated in the order.

New section 43O (Contravention of banning order) provides the offence of contravening a banning order without a reasonable excuse. The offence carries a maximum penalty of 40 penalty units or 1 years imprisonment.

Subsections (2) to (5) are consistent with the applicable process in Part 3A which deals with non-contact orders.

Clause 56 inserts a new section 220 (Transitional provision for Liquor and Other Legislation Amendment Act 2010). It provides that Part 3B applies in relation to an offence for which the offender was convicted after the commencement of this section. It is irrelevant whether the act or omission constituting the offence happened before or after the commencement of this section.

## **Part 8                      Consequential Amendments**

Clause 57 contains a schedule that makes minor consequential amendments to the *Police Service Administration Act 1990* and the *Public Service Act 2008* to ensure they align with amended provisions in this Bill.

The schedule amends section 10.2B of the *Police Service Administration Act 1990* to correct a subsection reference to the *Bail Act 1980*. Section 10.2B refers to subsection 11(4) of the *Bail Act 1980*, which was renumbered as subsection 11(9) by this Bill.

The schedule also amends the *Public Service Act 2008* to replace a reference to the 'Queensland Gaming Commission' with the new title of 'Queensland Liquor and Gaming Commission'.