Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020.

Policy objectives and the reasons for them

Amendments to the Criminal Code

On 2 September 2019, the Attorney-General and Minister for Justice and Leader of the House (Attorney-General) referred to the Queensland Law Reform Commission ('the QLRC') a review of consent laws and the excuse of mistake of fact.

The Terms of Reference for the referral required the QLRC to conduct a review of the operation and practical application of the definition of consent in section 348 and the operation of the excuse of mistake of fact under section 24 as it applies to rape and sexual assaults in Chapter 32 of the Criminal Code, and to recommend whether there was a need for reform of those and any other matters.

Chapter 32 (Rape and Sexual Assaults) of the Criminal Code deals with sexual offending against adults where the absence of consent is an element of the offence.

Section 348 (Meaning of consent) in Chapter 32 defines consent. Section 348(1) provides that consent means consent freely and voluntarily given by a person with the cognitive capacity to consent. Section 348(2) provides a non-exhaustive list of circumstances where consent is *not* freely and voluntarily given.

Chapter 5 (Criminal Responsibility) sets out the limits of criminal responsibility under the Queensland Criminal Code. Under the Criminal Code, unless a particular state of mind is expressed as an element of the offence itself, the state of mind of the accused is irrelevant. The approach in the Criminal Code must be distinguished from the approach in common law jurisdictions (for example, New South Wales, Victoria and South Australia) where the accused's state of mind (that is, their intent and knowledge) must always be proven beyond reasonable doubt by the prosecution even if it is not expressly articulated as an element of an offence. Chapter 5 of the Criminal Code balances the absence of an embedded mental element in each offence by providing for particular circumstances where a person is *excused* from criminal responsibility. Although often referred to as 'defences' the provisions in Chapter 5 are exculpatory

provisions and if they are raised on the evidence, consistent with the precept of the presumption of innocence, the prosecution bears the onus of excluding their operation beyond reasonable doubt[1]. Section 24 (Mistake of Fact) is contained in Chapter 5 of the Criminal Code.

Section 24 provides that a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist. The mistaken belief must be both subjectively honest and objectively reasonable. Section 24 is available as an excuse for every criminal offence in Queensland unless its operation is expressly or impliedly excluded.

The law in Queensland is consistent with every other state and territory in Australia, in that it places the onus of proof on the prosecution to negative mistake as to consent.

On 30 June 2020, the QLRC delivered its report 'Review of consent laws and the excuse of mistake of fact' (the QLRC report). The Attorney-General tabled the QLRC report on 31 July 2020. The QLRC report can be access at the following links:

https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T1217.pdf

https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/654958/qlrc-report-78-final-web.pdf

The recommendations in the QLRC's report are based on a rigorous examination of the operation of the laws on consent and excuse of mistake of fact in Queensland. The transcripts from 135 rape and sexual assault trials during 2018 and 40 appellate decisions from between 2000 and 2019 were examined in addition to another 76 trials referred to it at its invitation. The QLRC's analysis should be recognised as extensive constituting an almost exhaustive and entirely forensic examination of the current operation of the relevant laws in Queensland. The rigorous approach of the QLRC has produced an objectively solid evidence base for the most appropriate form of legislative amendment in response to the community concerns which gave rise to its Terms of Reference.

The QLRC's extensive and rigorous review did not find evidence to support a conclusion that Queensland's current laws should be the subject of extensive change. However, the QLRC concluded that some aspects of the existing law of Queensland would benefit from being made more explicit in the Criminal Code.

The QLRC report made five recommendations:

— 5-1 Section 348 of the Criminal Code should be amended to include a new subsection to expressly provide that a person is not taken to give consent to an act only because, at or before the time of the relevant act, the person does not say or do anything to communicate that they do not consent to that act.

[1] The exception is section 27(Insanity) where the accused is presumed to be of sound mind unless they can prove otherwise on the balance of probabilities.

— 5-2 Chapter 32 of the Criminal Code should be amended to apply the definition of 'consent' in section 348 to the offences provided for under sections 351(1) (assault with intent to commit rape) and 352(1)(a) (sexual assault).

— 5-3 Section 348 of the Criminal Code should be amended to include a new subsection to expressly provide that, if an act is done or continues after consent to the act is withdrawn by words or conduct, then the act is done or continues without consent.

— 7-1 The Criminal Code should be amended to provide that, for offences in Chapter 32, in deciding under section 24 whether a defendant did an act under an honest and reasonable, but mistaken, belief that the complainant gave consent to the act, regard may be had to anything the defendant said or did to ascertain whether the other person was giving consent to the act.

— 7-2 The Criminal Code should be amended to provide that, for offences in Chapter 32, in deciding under section 24 whether a defendant did an act under an honest and reasonable, but mistaken, belief that the complainant gave consent to the act, regard may not be had, in deciding whether a belief was reasonable, to the voluntary intoxication of the defendant by alcohol, a drug or another substance.

The QLRC also recommended that an inconsistency as to the application of the definition of consent, to different offences in chapter 32 of the Criminal Code, be remedied. The case law on this issue has very recently been clarified by the Queensland Court of Appeal in the case of *R v Sunderland*[2] (the Sunderland decision).

The amendments to the Criminal Code in this Bill implement the recommendations of QLRC report. These amendments to the Criminal Code are almost entirely declaratory of the existing law of Queensland. However, much of that existing law is found in Queensland's case law not in the words of the Criminal Code itself.

Where the application of the Criminal Code, through case law, has evolved, it is sometimes appropriate to amend the Criminal Code to reflect that position. This will assist judges to provide properly informed directions to a jury about this area of law.

The QLRC noted that the community is 'the ultimate user of a law' and that effective communication of legislative rights and obligations is a key component of access to justice.

By making the existing law clear in the Criminal Code the Bill will strengthen, modernise and make the law more accessible for all Queenslanders and facilitate a more consistent and correct understanding of the law by judges, legal practitioners and juries.

It is important that the Criminal Code is clear and unambiguous in its statement of the law.

[2] [2020] QCA 156

Amendments to the Legal Profession Act 2007

The Legal Practitioners' Fidelity Guarantee Fund (the Fund) was established to provide a source of compensation for persons who have lost trust money or property due to a dishonest default by a solicitor law practice. The Queensland Law Society (QLS) administers the Fund pursuant to part 3.6 of the *Legal Profession Act 2007* (LPA). Section 396(1) of the LPA provides that a regulation may:

- fix the maximum amounts, or the method of calculating maximum amounts, that may be paid from the Fund for individual claims or classes of individual claims; and
- fix the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the Fund for all claims in relation to individual law practices or classes of law practices.

Section 76 of the *Legal Profession Regulation 2017* provides that the maximum amount that may be paid from the Fund for a single claim is $200,000 and the maximum aggregate amount that may be paid from the Fund for all claims made in relation to a single law practice is $2 million (the statutory caps).

Section 396(2) of the LPA prohibits payment from the Fund of amounts in excess of the statutory caps. However, section 396(4) of the LPA provides that the QLS may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the Fund and the circumstances of the particular case.

The statutory caps under section 396 of the LPA were introduced as protection against an extraordinary claim against the Fund which, if paid in full, would result in the Fund being exhausted to the detriment of subsequent claims.

For a period, the QLS applied the caps to all claims. As a result of this approach, a number of claimants did not have their claims against the Fund paid in full.

On 24 November 2016, the QLS adopted a new policy in relation to the statutory caps which has the effect of persuading the QLS Council to determine any application to exceed the statutory caps in favour of an applicant unless there are strong policy reasons to the contrary.

Given that the Fund currently has a substantial balance, the QLS is supportive of legislative amendments to facilitate additional payments being made to claimants who had the statutory cap applied to their claims prior to 2016.

The amendments will authorise the full payment of any claim not paid in full since the commencement of the LPA due to the operation of the statutory caps, and will also provide clearer guidance to the QLS as to when the statutory caps should be applied in the future.

Tackling Alcohol-Fuelled Violence Policy (TAFV Policy) amendments

The objectives of the Bill include to further the Government's commitment to reducing the risk of harm from alcohol-fuelled violence. The proposed amendments to the *Liquor Act 1992* (Liquor Act), *Gaming Machine Act 1991* (Gaming Machine Act) and *Police Powers and Responsibilities Act 2000* (PPRA) are the second tranche of the Government's legislative response to the final evaluation report of the TAFV Policy.

The Queensland Alcohol-related violence and Night-Time Economy Monitoring Project were commissioned by the Government to provide a final evaluation report of the TAFV Policy. The Government's interim response to the evaluation report and first tranche of legislative amendments were progressed in the second half of 2019. Following further consideration of the recommendations of the final evaluation report, the Government has committed to additional legislative amendments which provide greater rigour around ID scanning and the banning regime; ensure the ongoing effectiveness of safe night precincts; and increase transparency around liquor and gaming machine decisions.

Enhancing the operation of police banning notices

To support the Government's updated interim response to recommendation 17 of the final evaluation report, the Bill amends the PPRA to increase the duration of an initial police banning notice from 10 days to up to one month. This amendment will enhance public safety in relevant public places by excluding disorderly, offensive, threatening or violent persons for longer periods of time where their ongoing presence poses an unacceptable risk of violence or compromising the safety or reasonable enjoyment of others at the relevant place.

The Bill also makes a number of other minor amendments to the PPRA to enhance the operation and effectiveness of police banning notices consistent with the policy objective of recommendation 17 to create a safer night-time environment.

Miscellaneous amendments

Clarifying 'designated authority' for the Co-operatives National Law

An objective of the Bill is to also rectify an unintended omission in the *Co-operatives National Law Act 2020* (CNL Act) by clarifying that the chief executive is the 'designated authority' for the operation of certain provisions of the *Corporations Act 2001* (Cth), which are modified and applied as part of the Co-operatives National Law.

Exemption from cartel provisions for liquor accords and safe night precinct local boards

The Bill amends the Liquor Act to ensure that Queensland liquor accords and Safe Night Precinct (SNP) local boards seeking to implement controls on the price and/or supply of liquor for the purposes of harm-minimisation are not captured by the cartel provisions of the *Competition and Consumer Act 2010* (Cth) (Competition Act).

In 2017, the Australian Competition and Consumer Commission (ACCC) Deputy Chair wrote to the former Queensland Liquor and Gaming Commissioner (the Commissioner), to request that consideration be given to amending the Liquor Act to provide a legislative exemption for Queensland liquor accords, in accordance with section 51 of the Competition Act.

Wagering inducement restrictions

In November 2018, the Queensland Government committed to the National Consumer Protection Framework for Online Wagering (NCPF). The NCPF contains ten consumer protection measures, including a ban on inducements to open an account, or refer a friend to open an account, with an online wagering provider.

The Bill seeks to progress amendments to the *Interactive Gambling (Player Protection) Act 1998* (Interactive Gambling Act) and *Wagering Act 1998* (Wagering Act) to prohibit inducements to open an account, or refer a friend to open an account, with an online wagering provider. The prohibition applies whether the wagering provider is licensed in Queensland under the Wagering Act, or, by virtue of amendments to the Interactive Gambling Act, in any other jurisdiction.

The NCPF National Policy Statement also applies to the betting activities of racing bookmakers where they are approved under the *Racing Integrity Act 2016* (Racing Integrity Act) to conduct offcourse betting through a telecommunications system (telephone, internet or other electronic means) from a place other than the licensed venue, or where the bettor is not present at the licensed venue.

Racing bookmakers currently take bets from a licensed venue by telephone only and there are currently no bookmakers approved for offcourse betting in Queensland. However, the Racing Integrity Commission has received four applications which will be subject to the Minister's approval.

The Racing Integrity Act allows the Minister to impose conditions which would allow for the administrative implementation of the restrictions of inducements if the offcourse approval is granted but there is no provision for the Racing Integrity Commission to administratively restrict betting inducements in circumstances where the bettor is at a location other than the licensed venue.

Provide for discretionary minimum dividends under the Wagering Act

The Bill also provides for the validity of discretionary minimum dividends declared by the wagering licensee under existing provisions of the Wagering Rule 2010. Section 164 of the Wagering Act currently requires the wagering licensee to round dividends down to the nearest 5c, regardless of any declared minimum dividend. The Bill proposes that if this rounding requirement would result in a dividend that is lower than a declared minimum dividend, the wagering provider must pay the declared minimum dividend. The amendment will be beneficial to punters, while also making Queensland's wagering licensee more competitive with corporate bookmakers licensed in other jurisdictions.

Achievement of policy objectives

Amendments to the Criminal Code

The Bill achieves its objective of implementing the recommendations of the QLRC amendments by:

Amending sections 1 (Definitions) and 347 (Definitions for ch 32) of the Criminal Code to clarify that for offences in Chapter 32, including sexual assault and assault with intent to commit rape, the definition of consent under section 348 (as read with the definition of assault in section 245) applies;

The definition of consent for the offences of rape and attempt to commit rape in the Queensland Criminal Code, has historically been interpreted by Queensland Courts to be different than it is for offences of assault with intent to commit rape and some offences of sexual assault. This interpretation was based on the offences in sections 351 (Assault with intent to commit rape) and 352(1)(a) (Sexual assault) in Chapter 32 of the Criminal Code not containing the word 'consent' in the offences themselves. Rather, the element of consent in those offences comes from the element of 'assault' contained within both of those offences which is defined in Chapter 26 (Assaults and violence to the person generally) of the Criminal Code. The definition of 'consent' at section 348 of the Criminal Code in Chapter 32 begins with the words 'In this Chapter' and Courts have therefore interpreted this to mean it should not apply directly to the offences at section 351 and 352 because the element of consent with respect to those offences is contained within Chapter 26 of the Criminal Code. The QLRC recommended an amendment to correct this so-called anomaly, noting that at the date the QLRC delivered its report there was no definitive Court of Appeal authority on this point of law.

The Sunderland decision was delivered on 24 July 2020 (nearly a month after the QLRC's report). The Court of Appeal in the Sunderland decision found that the definition of consent in section 348 of the Criminal Code applies to inform the element of assault with respect to sections 351 (assault with intent to commit rape) and 352(1)(a) (sexual assault) in the Criminal Code and that the alternative interpretation described above would be 'absurd'.[3]

The amendments to sections 1 and 347 of the Criminal Code are intended to amplify the clarity provided by the Court of Appeal's decision and assist in making the law in Queensland on this issue clear and accessible for Queensland's Courts, the legal profession and the public at large.

The amendments place into the Criminal Code a clear statement that the definition of consent at section 348 of the Criminal Code is the definition of consent that must be applied to all offences that are in chapter 32 of the Criminal Code.

Amending section 348 of the Criminal Code by creating a new subsection (3) to provide that a person is not taken to give consent to an act only because the person does not,

[3] *R v Sunderland* [2020] QCA 156, [41] (Sofronoff P)

before or at the time the act is done, say or do anything to communicate that the person does not consent to the act;

The current law in Queensland, as set out clearly in the case of *R v Makary*,[4] provides that a person who does not say or do anything to communicate absence of consent to a sexual act is not by reason only of that fact, to be taken to have consented to that act. This position was recently confirmed in the following way in the Sunderland decision:

> *The giving of consent, in the context of a charge of a sexual offence, involves the making of a representation by one person to another, to the effect that the first person agrees to participate in the sexual act that would otherwise be an offence. Such a representation might be made by words or by actions or by a combination of both. Sometimes the words or actions cannot be understood apart from the surrounding circumstances. In cases where the complainant has communicated neither consent nor dissent by words or actions, the inaction cannot be considered in a vacuum. It too must be considered with all of the relevant circumstances surrounding the sexual act. The circumstances involve matters both past and present. So, inaction in the context of prior acts or words might mean that the complainant has previously given consent which remains operative until withdrawn. This might be established by evidence of relationship or previous interactions between the complainant and accused. So too, inaction, when taken with the other circumstances, may be a manifestation of unwilling submission rather than consent. Indeed, continued or sustained inaction for the duration of a sexual act may be a strong indicator of submission rather than consent. In R v Day Coleridge J said that every consent to an act "involves a submission; but it by no means follows, that a mere submission involves consent". In R v Wollaston Kelly CB said that "[m]ere submission is not consent, for there may be submission without consent, and while the feelings are repugnant to the act being done. Mere submission is totally different from consent"*[5].

The QLRC found that there may not be wide understanding about the current law in Queensland within the general community or even amongst legal stakeholders. This is, in the QLRC's view, partly a consequence of some of those matters being found in case law rather than in the express terms of the Criminal Code.

The amendment creating the new section 348(3) makes the current case law in Queensland explicit in the Criminal Code.

Amending section 348 of the Criminal Code by creating a new subsection (4) to provide that if an act is done or continues after consent is given and a person subsequently communicates by words or conduct that consent has been withdrawn, then the act is done or continues to be done without consent;

[4] [2019] 2 Qd R 528
[55] *R v Sunderland* [2020] QCA 156, [44] (Sofronoff P)

Offences of rape and sexual assault include, as a key element, that a sexual act is done without consent. Current Queensland case law (examples of which are provided at paragraphs 5.113 and 5.114 of the QLRC Report) clearly establishes that once consent is given, it can be withdrawn at any time and the offences of rape or sexual assault can occur from the point of time after which consent is withdrawn and the withdrawal is communicated by the complainant.

The new section 348(4) proposed in the Bill implements the QLRC's recommendation that the Criminal Code should be amended to expressly provide that if a sexual act is done or continues after consent is withdrawn, it occurs without consent.

Further, in accordance with QLRC's recommendation, the amendment in the Bill requires that the withdrawal of consent be communicated by 'words or conduct'. That is distinct from the communication of an initial consent which must be 'given' or communicated with no requirements about how that consent is given or how a representation is made. As noted by the QLRC at paragraph 5.144 of the QLRC Report:

> *'As a matter of fairness, it is necessary that the other person is made aware that consent is withdrawn and given the opportunity to respond to that withdrawal by ceasing to engage in the relevant act'.*

Creating new section 348A of the Criminal Code to provide that when deciding whether a person was acting under an honest and reasonable, but mistaken, belief that another person gave consent to an act, regard can be had to anything the person said or did to ascertain consent and in deciding whether the belief was reasonable, regard cannot be had to voluntary intoxication of the defendant;

The QLRC recommended that clear expression should be given in the Queensland Criminal Code to the effect that for offences in Chapter 32 in deciding whether a defendant acted under an honest and reasonable, but mistaken belief about consent, regard may be had to what, if anything the defendant said or did to ascertain whether the complainant gave consent. The Bill proposes to implement this recommendation in new section 348A(2).

This amendment in the Bill is not intended to shift the burden of proof onto a defendant. It will remain for the prosecution at all times to prove beyond a reasonable doubt each element of the offence and negative the excuse of mistake where it is raised on the evidence. The amendment also does not mean that a person is required by law to take any particular step or steps to ascertain consent. What the amendment provides for is that anything said or done by a defendant to ascertain consent can be taken into account along with any other relevant circumstances in determining whether a defendant acted under an honest and reasonable, but mistaken belief about consent. However, if a jury is directed in terms of the proposed new section 348A, it will to an extent properly tilt their focus towards the actions of a defendant. This tilt in focus is consistent with the type of affirmative model of consent which already exists in the Criminal Code by requiring consent to be *given*.

The QLRC Report, at paragraphs 7.117 to 7.119, noted that the current case law authority in Queensland provides that although a jury must have regard to the personal circumstances of a defendant in deciding whether that defendant acted under an honest and reasonable but mistaken belief about consent, the defendant's voluntary intoxication is not a relevant consideration in deciding whether that belief was reasonable.

Despite clarity in the case law, the QLRC's review of trials conducted in Queensland in 2018 suggested that this position is not always communicated clearly to juries. The QLRC therefore recommended that an express provision be added to the Criminal Code to provide that for offences in Chapter 32, in deciding whether a defendant acted under an honest and reasonable, but mistaken belief as to consent, regard may *not* be had to the voluntary intoxication of the defendant in deciding whether a belief was reasonable. The Bill proposes to implement this recommendation in new section 348A(3).

As noted by the QLRC Report (at paragraph 7.134), an express provision that voluntary intoxication of a defendant is not relevant in considering whether a defendant's belief as to the giving of consent is reasonable should result in a direction to the jury to that effect being given in relevant cases. This amendment is intended to ensure that this occurs.

Amendments to the Legal Profession Act 2007

The amendments will achieve their objectives by:

- providing that the statutory caps are only to be applied to a claim where, despite measures the QLS may take under section 368 (Contribution to fidelity fund) and 369 (Levy for benefit of fidelity fund), the QLS believes that payment of the claim in full is likely to result in the Fund being insufficient to meet its ascertained and contingent liabilities; and

- providing for the QLS to make additional payments to claimants who were not paid in full due to the operation of the statutory caps.

TAFV Policy amendments

<u>Providing greater rigour around the ID scanning and banning regime</u>

The Bill provides greater rigour around ID scanning by amending the Liquor Act to:

- create a vexatious ban offence by amending section 185 of the Liquor Act (Obstruction of investigators), to include that a licensee is taken to obstruct an investigator in the exercise of a power under the Liquor Act if the licensee bans the investigator from entering the licensee's licensed premises (unless relating to an investigator's behaviour as a patron of the licensed premises);
- require an approved ID scanning operator to remove licensee bans 30 days after a licence transfer, unless otherwise requested by the new licensee;
- create an offence to ensure a staff member responsible for controlling entry to a regulated premises complies with the ID scanning entry requirements for each patron the staff member allows entry to the premises; and

- provide the Commissioner with discretion to notify only affected (rather than all) licensees when an approved operator has been directed to address ID scanning system errors and malfunctions.

The Bill enhances the operation of police banning notices by amending the PPRA to:
- increase the duration of an initial police banning notice from 10 days to up to one month to lengthen the time that the respondent is banned from the places or events stated in the police banning notice;
- improve procedural fairness for the respondent of an initial police banning notice by increasing the period within which the respondent can apply for an internal review from 5 days to 15 days;
- provide a power for a police officer, of at least the rank of senior sergeant, to cancel an extended police banning notice;
- remove the prescriptive and impractical requirement that a photograph of the respondent for a banning order must only be of the respondent's face, neck and hair and instead allowing the photograph to be of the person generally but limiting the purpose of taking the photograph to attaching an image to a banning order for the respondent;
- enable police to serve a police banning notice on a person electronically by sending the notice to a unique electronic address voluntarily nominated by the person; and
- provide broad examples of the behaviours for which an initial police banning notice can be given to aid interpretation and enhance the consistency of police decision-making in issuing initial police banning notices.

Ensure ongoing effectiveness of safe night precincts

The Bill ensures the ongoing effectiveness of safe night precincts by amending the Liquor Act to require regular review of safe night precincts to ensure a precinct continues to achieve the purposes outlined in the relevant Part of the Liquor Act.

Increase transparency around liquor and gaming machine decisions

The Bill increases transparency around liquor and gaming machine decisions by amending the Gaming Machine Act to require relevant information (including details of the application and a summary of the reasoning) about decisions made for gaming machine licensing applications to be published online if community comments or representations were received. Further, the Commissioner will be required to notify objectors, and those making representations on gaming machine applications of significant community interest, of the decision made on the application.

Miscellaneous amendments

Clarifying 'designated authority' for the Co-operatives National Law

The objective of clarifying the meaning of 'designated authority' under the CNL Act will be achieved through a minor, technical amendment to section 9 of the CNL Act.

Exemption from cartel provisions for liquor accords and safe night precinct local boards

The Bill exempts particular behaviours from liquor accords and SNP local boards from the cartel provisions of the Competition Act by amending the Liquor Act to create a registration process. The amendments provide that if a liquor accord or an SNP local board wishes to implement a price control and/or supply control measure on alcohol, they must apply to the Commissioner to register the liquor accord or SNP local board initiative for the purpose of exemption from the Competition Act. The Bill also amends the Liquor Act to provide definitions for price controls, supply controls, and mirror controls.

Wagering inducement restrictions

The Bill will achieve its policy objective of restricting inducements offered by licence operators by amending the Wagering Act to prescribe new offences to:

- prohibit a licence operator, or another person acting for a licence operator, from offering or causing to be offered to a person who is in Queensland, any credit, voucher, reward or other benefit as an incentive:
  - to open, or refer another person to open, an interactive wagering account with the licence operator; or
  - not to close an interactive wagering account with the licence operator;
- prohibit a licence operator, or a person acting for a licence operator, from offering a free bet to an interactive wagering customer who is in Queensland and has an interactive wagering account with the licence operator, unless the interactive wagering customer can withdraw any payouts arising from the free bet at any time;
- prohibit a licence operator, or a person acting on behalf of a licence operator, from sending promotional or advertising material directly by email, SMS message or other direct means to a person who is in Queensland without their express and informed consent;
- require a licence operator, or person acting for a licence operator, to provide the person with a means to easily withdraw the consent to receiving promotional or advertising material directly at any time; and if the person attempts to withdraw consent, a licence operator, or a person acting on behalf of a licence operator, is prohibited from offering, or causing to be offered, any credit, voucher, reward or other benefit as an incentive for the person not to withdraw consent;
- require a licence operator, or a person acting on behalf of a licence operator, to provide a mechanism in material sent electronically, allowing the person to easily withdraw consent from promotional and advertising material; and
- ensure that a licence operator must, when receiving a bet made from an interactive wagering account, take reasonable steps to identify the location of the person making the bet.

The Bill proposes applying similar wagering inducement restrictions to interactive wagering operators located interstate and racing bookmakers taking bets through a telecommunications system by amending the Interactive Gambling Act and Racing Integrity Act respectively. The Bill includes an additional amendment to the Racing Integrity Act to prohibit the offer of an inducement to make bets, or refer another person to make bets, through the racing bookmaker's telecommunications system. This additional amendment is not contemplated for interactive wagering operators or licence operators under the Interactive Gambling Act or Wagering Act.

Provide for discretionary minimum dividends under the Wagering Act

The Bill addresses issues with the mandatory rounding of dividends to allow the Queensland wagering licensee to validly declare minimum dividends and be more competitive with corporate bookmakers licensed in other jurisdictions.

Alternative ways of achieving policy objectives

Amendments to the Criminal Code and Legal Profession Act 2007 and TAFV Policy amendments

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Miscellaneous amendments

With the exception of the proposed amendments to exempt liquor accords and SNP local boards from cartel provisions, the policy objectives can only be achieved through legislative amendments.

An alternative way of exempting liquor accords and SNP boards from cartel provisions is to continue with the current process where the Office of Liquor and Gaming Regulation (OLGR) applies every five years to the ACCC for an authorisation to approve a pro-forma liquor accord agreement for liquor accords or SNP local boards seeking to institute price control and/or supply control measures. Seeking an authorisation, or a re-authorisation, is time-consuming and resource intensive at a State and Commonwealth level. The provisions of section 51 of the Competition Act contemplate State legislated exemptions and the ACCC has recommended this course of action to OLGR.

Estimated cost for government implementation

Amendments to the Legal Profession Act 2007

There will be no costs for government in implementing the amendments.

Other Amendments

Any costs to the Government resulting from these amendments in this Bill will be met from within existing resources.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

Amendments to the Criminal Code – transitional provisions

Under section 3(g) of the LSA, legislation should not adversely affect rights retrospectively. A transitional provision is included at Clause 10 of the Bill to provide that the amendments to the Criminal Code will apply to any offence charged after commencement regardless of whether the offence is committed before commencement. This provides for some retrospective application of the law.

Whilst it is not intended that the amendments will alter the current law, it is intended that the amendments will improve the clarity and adequacy of directions given to juries which may in turn alter the way in which prosecutors and defence lawyers choose to approach a particular set of facts, therefore in the interests of fairness to all parties involved in matters that are currently on foot a transitional provision is required. It is not intended to change the nature of directions that might be given in the course of a trial that has already commenced. Nor is it desirable to change the law after a person has been charged with an offence, because the way that a trial will be conducted and what directions the jury is likely to be given, may inform decisions made by the defence from the commencement of proceedings.

The retrospective element of the transitional provision is justified on the basis that the amendments are only intended to clarify and make the existing law more accessible with modernised language (therefore not altering existing rights). It is further justified on the basis that the criminal justice system could benefit immediately from the increased clarity the amendments will provide.

Amendments to the Legal Profession Act 2007

The fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LSA).

The amendments which require the QLS to make additional payments to claimants who did not receive full payment due to the operation of the statutory caps are retrospective in operation, and can therefore be seen to infringe the principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments are considered justified because they operate for the benefit of previous claimants under the Fund and are only adverse to the QLS and its membership. Given that the additional payments can be made without affecting the sufficiency of the Fund, on balance the amendments do not have a significant adverse impact on the rights of legal practitioners who may be required to make future contributions to the Fund.

The amendments also exclude review of a decision by the QLS to reduce the amount of a claim to the statutory caps. The amendments can therefore be seen to infringe the principle that legislation should make rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

However, the QLS can only apply the statutory caps to reduce the amount of a claim if it believes that full payment of the claim would result in the Fund being insufficient to meet its present and future liabilities. The amendments are therefore considered justified as they allow the QLS to ensure that the Fund continues to be sufficient to meet any future claims made against it.

The fundamental legislative principles also require that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the LSA). Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (section 4(4)(a) of the LSA); and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(b) of the LSA).

New section 787(4) of the LPA provides that interest must be calculated at the rate prescribed by regulation. It is considered appropriate for a regulation to prescribe the interest rate as this will facilitate consideration of an appropriate interest rate at the time the relevant payments are due to be made. Further, a regulation when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

Common law rights of licensees – various ID scanning amendments

Licensees have a common law right to ban people from their premises. Licensees routinely use these bans to manage problematic behaviour and reduce the risk of harm occurring on licensed premises. However, the evaluation report found there is potential for the irresponsible use of licensee bans to undermine the effectiveness of the ID scanning regime.

Some proposed amendments may be perceived as restricting the common law right of licensees to ban patrons from the premises, and subsequently may interfere with the rights and liberties of individuals under section 4(2)(a) of the LSA. Broadly, it is considered these potential breaches are justified as they are in the public interest and will ensure fairness and effectiveness in the regulatory framework.

The Bill amends section 185 of the Liquor Act to create a vexatious banning offence that may be perceived as restricting the common law right of licensees to ban patrons from the premises, and subsequently may interfere with the rights and liberties of individuals under section 4(2)(a) of the LSA. As the proposed penalty only applies to inappropriate bans imposed on investigators with the intent of impacting behaviour in their professional capacity, it is considered to be a justifiable restriction on a licensee's common law right that is in the public interest and protects the integrity of the regulatory framework. Further, licensees will retain their ability to ban any persons based on their behaviour in a personal capacity.

The Bill also proposes amendments to section 173EJ of the Liquor Act to ensure that, unless specifically requested to remain in place by the new licensee, all licensee bans would be removed in the event of the transfer of the licence. These amendments could also be seen as impacting on a licensee's common law right in regard of banning patrons. However, this amendment does not limit the ability for the new licensee to continue to ban a particular person, nor does it limit the placement of new bans. Accordingly, it is considered a licensee's common law right is not substantively impacted by the proposed amendment.

Further, the amendments will ensure affected patrons are not indefinitely excluded from licensed venues without proper review and consideration by a new venue operator. This

will also mitigate potential long-term impacts on a person's right to freedom of movement.

Administratively impose banning periods – amendments to the PPRA

The proposal to amend the PPRA to increase the duration that an initial police banning notice is in effect from 10 days to up to one month may engage section 4(3)(a) of the LSA. Section 4(3)(a) of the LSA requires the legislation to have sufficient regard to the rights and liberties of individuals by making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Police are empowered to administratively impose banning periods on an individual through issuing an initial police banning notice. The proposal seeks to extend the period of time police can administratively ban a person; however, the power is sufficiently defined by providing that the banning period associated with an initial banning notice can only be of a duration up to one month.

Initial police banning notices have limited scope in terms of the places from which a respondent is banned and must be stated on the notice. Additionally, initial police banning notices can only be issued for limited reasons outlined in section 602C of the PPRA, such as, in response to disorderly, offensive, threatening or violent behaviour by the respondent and for reasons associated with the prevention of violence at the places stated in the notice and preservation of the safety and reasonable enjoyment of other persons at the places stated in the notice.

Existing safeguards including the requirement for a police officer to obtain approval from a police officer of at least the rank of sergeant, unless the police officer giving the notice has that rank, are retained. The decision of a police officer to issue an initial police banning notice will continue to be subject to internal review via an application to the Police Commissioner to amend or cancel the notice. It is proposed that, as part of the Bill, procedural fairness for the respondent will be improved by increasing the period within which the respondent can apply for an internal review from 5 to 15 days. This ensures the time available to a respondent to apply for an internal review is proportionate to the increased duration of the banning period for the initial banning notice.

The Police Commissioner is required to decide an application for internal review as soon as practicable in the case of initial police banning notices. A police officer of at least the rank of senior sergeant may also decide, at any time and on the officer's own initiative, to cancel an initial police banning notice if reasonably satisfied and having regard to the circumstances in which the notice was given that the notice should not have been given to the respondent or the notice is causing, or will cause, undue hardship.

The proposal to amend the PPRA to remove the prescriptive requirement that a photograph of the respondent for a banning order must only be of the respondent's face, neck and hair may engage section 4(3)(g) of the LSA. Section 4(3)(g) of the LSA requires the legislation to have sufficient regard to the rights and liberties of individuals by not adversely affecting rights and liberties, or impose obligations, retrospectively.

An individual's right to privacy and reputation is potentially negatively impacted by the proposed power for police to photograph the respondent for a banning order no longer being limited to the person's face, hair and neck.

However, this amendment seeks to enhance the practicality of the banning order photography provisions in the context of the circumstances in which photographs of banned persons are taken. Generally, it is not realistic to limit the parts of a person photographed by a police officer for a banning order to just the person's face, neck and hair as the majority of individuals being issued, in particular, an initial police banning notice, are intoxicated, violent, obstructive and non-compliant. As an appropriate safeguard, the purpose for which a police officer may take a photograph of a banned person is limited to attaching the image to a banning order. The existing photograph destruction provisions under sections 602V and 602W of the PPRA will continue to apply.

The proposal to amend the PPRA to provide that, unless the contrary is proved, a police banning notice that is electronically served by a police officer is deemed to have been received by the respondent on the day and at the time it is sent to the respondent's nominated unique electronic address may engage section 4(3)(d) of the LSA. Section 4(3)(d) of the LSA states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation does not reverse the onus of proof in criminal proceedings without adequate justification. Deeming that a respondent for a police banning notice received the notice on the day and at the time it is sent by the police officer to the unique electronic address nominated by the respondent ensures consistency with existing electronic service provisions in the PPRA, such as, those in section 53BAC(6)(b).

The onus that would ordinarily rest on the prosecution to prove that the respondent electronically received the police banning notice is reversed to the respondent needing to raise evidence that they did not receive the notice. This is necessary as the respondent may deliberately nominate an invalid email address or phone number to the police officer to avoid receiving the notice and police will not be able to prove that the respondent received the notice and was aware of the banning period and places from which the respondent was banned.

The purpose of police banning notices is to ensure public safety by excluding individuals from particular places or events who have demonstrated violent, disorderly, offensive or threatening behaviour and are considered to pose an unacceptable risk of causing violence at the places stated in a police banning notice or otherwise impacting the safety or peaceful passage or reasonable enjoyment of others at the relevant places. The safety of others at the places from which a respondent is banned is reliant on the respondent having knowledge of the places they are banned from and the period for which they are banned. It is therefore essential to the effective operation of the police banning notice scheme that there is no incentive for a respondent to provide a false electronic address to a police officer or technical reason that a police banning notice would be invalidated.

In an unlikely scenario where a respondent did nominate a valid electronic address but did not receive the notice, the deeming provision provides that 'unless the contrary is

proved' which affords the respondent the ability to challenge the presumption that they received the notice.

Require a review of safe night precincts every three years

Under Part 4, Division 7 of the Liquor Act, licensees in safe night precincts may seek extended trading hours approval to trade on a regular basis between 12am and 3am. Licensees outside safe night precincts may only apply for regular extended trading hours from 12am to 2am. Section 173NCA of the Liquor Act currently provides if a licensed premises with approved extended trading hours to 3am ceases to be in a safe night precinct as a result of a regulation change to the area of a safe night precinct the premises' hours will reduce to 2am and no compensations is payable. Therefore, removing safe night precinct status or altering safe night precinct boundaries, as the recommended outcome of a review, may result in a lost trading hour for some licensees.

The Bill makes clarifying amendments to section 173NCA to ensure the section applies to both changing or revoking a safe night precinct area. As this entails the removal of an existing right, the amendment proposed to section 173NCA of the Liquor Act may breach provisions of section 4(2)(a) of the LSA in relation to showing due regard to the rights and liberties of individuals.

However, it is noted that section 173NCA of the Liquor Act already provides that no compensation is payable to a person if their licensed premises ceases to be located within a safe night precinct as the result of a regulatory amendment under section 173NC of the Liquor Act. As such, Parliament has already determined that any potential breach is justified as the sale of liquor is a regulated industry, involving a potentially harmful product. Businesses operate within this regulated environment and are aware that conditions around trading may be subject to change.

Imposition of new offence provisions – various amendments

The proposed amendments seek to impose a number of new offence provisions. A considered and justifiable approach was undertaken when determining the proposed penalty unit amount for each new offence provision. Under this approach, each proposed penalty unit amount was assessed to ensure it:

- aligns with similar offence provisions within the same (or associated) legislation; and
- is commensurate with the nature of the offence and the harm that may arise from a breach.

Accordingly, it is considered any potential breaches of individual rights and liberties initiated by the proposed new offence provisions are justified and appropriate as outlined below.

Imposition of new offences in the Liquor Act

The Bill replaces section 173EH of the Liquor Act to create a new offence of a staff member responsible for controlling an entry to a regulated premises failing to ensure ID scanning entry requirements are complied with for each patron. A maximum penalty

of 10 penalty units applies. The penalty applying to staff members is the same as the existing penalty applied to licensees and the penalty amount is relatively low. The implementation of the penalty is considered consistent and appropriate to the intent of the legislation.

The Bill amends section 173EJ of the Liquor Act to require an approved operator, following the transfer of a liquor licence, to remove the details of licensee bans as soon as practicable after the 30 day transfer period ends, unless the new licensee for the transferred licence requests the licensee ban not be removed from the system within the transfer period. A maximum penalty of 25 penalty units applies. The penalty is considered justifiable as the penalty amount is consistent with other penalties in section 173EJ.

The Bill also amends section 185 of the Liquor Act to apply the existing offence provisions relating to a licensee obstructing an investigator in the exercise of a power under this Act to circumstances where the licensee, or a person authorised to act on behalf of the licensee, bans an investigator from entering the licensee's licensed premises during the course of their duties. The maximum penalty for this offence is 200 penalty units or 1 year's imprisonment. The application of the existing penalty is appropriate given the circumstances of vexatious banning practices would readily align with the obstructive behaviour contemplated by section 185.

Imposition of new offences in the Interactive Gambling Act and Wagering Act

The Bill prescribes new offences under the Interactive Gambling Act and Wagering Act with respect to restrictions on wagering inducements, which may breach provisions of section 4(2)(a) of the LSA. The new offences prescribed in new sections 166B (Prohibited inducements), 166C (Wagering using free bets) and 166D (Restrictions on direct marketing) of the Interactive Gambling Act carry a maximum penalty of 200 penalty units for a corporation, and 20 penalty units for an individual. Similarly, the Bill provides the same penalties for corporations and individuals under similar offence provisions in new sections 228B (Prohibited inducements), 228C (Wagering using free bets) and 228D (Restrictions on direct marketing) of the Wagering Act.

The penalties imposed for offences under these provisions are considered reasonable and appropriate given the serious nature of the offences and the potential risk of harm posed to interactive wagering customers and persons in Queensland. The penalties are consistent with existing penalties for serious offences under the respective Acts and are lower than penalties applied for contravention of codified NCPF restrictions in other jurisdictions, such as New South Wales.

The Bill also prescribes new offences under new section 166E of the Interactive Gambling Act and new section 228E of the Wagering Act in respect of the requirement for an interactive wagering operator or licence operator to identify the location of the person making a wager or bet from an interactive wagering account. This requirement is essential to the enforceability of the inducement bans, as they apply only in respect of interactive wagering customers and persons who are in Queensland. The maximum penalty for this offence under each of the two Acts is 100 penalty units, which is consistent with the penalty imposed for a similar offence under section 22 of the *Betting Tax Act 2018*.

Imposition of new offences in the Racing Integrity Act

The Bill prescribes new offences under the Racing Integrity Act to restrict betting inducements which may breach provisions of section 4(2)(a) of the LSA.

New section 134B prohibits a racing bookmaker or a person acting for a racing bookmaker from offering or cause to offer any credit, voucher, reward or other benefit as an incentive to:

- open an interactive betting account with the racing bookmaker;
- refer another person to the racing bookmaker for the purpose of that person opening an interactive betting account with the racing bookmaker;
- make bets through the racing bookmaker's telecommunications system;
- refer another person to the racing bookmaker to make bets through the racing bookmaker's telecommunications system; and
- not close an interactive betting account with the racing bookmaker.

New section 134C prohibits a racing bookmaker or a person acting for the racing bookmaker from offering a free bet to an interactive bettor in Queensland who has an interactive betting account with the racing bookmaker, unless the interactive bettor can withdraw any payouts from the free bet at any time.

New section 134D(1) that a racing bookmaker or a person acting for the racing bookmaker must only send to a person in Queensland, promotional or advertising material directly by email, SMS message or other direct means if they have obtained the person's express and informed consent to receive that material by that means and the person has not withdrawn the consent. The prohibition to sending the material once consent has been withdrawn is subject to the racing bookmaker or the person acting for the racing bookmaker being aware that the consent has been withdrawn.

New section 134D(2)(a) requires that the racing bookmaker or person acting for the racing bookmaker must provide a person in Queensland who has given consent to receive promotional or advertising material, with the means to withdraw the consent at any time. Paragraph (b) prohibits the offer or supply of an incentive to the person when attempting to withdraw consent.

New section 134D(3) requires the racing bookmaker or person acting for the racing bookmaker who is sending promotional or advertising material to a person in Queensland, to provide a mechanism in the material, such as an electronic link to allow the person to easily withdraw consent from receiving promotional or advertising materials at any time~~s~~. Paragraph (b) prohibits the offer or supply of an incentive to the person when attempting to withdraw consent.

New section 134D(4) provides the racing bookmaker or the person acting for the racing bookmaker five business days or a shorter period prescribed by regulation after a person withdraws consent to action the withdrawal of consent.

These restrictions will protect a person from Queensland from incentive-based marketing measures and new section 134C prevents the application of turnover requirements to prevent withdrawing winnings from free bets. This will assist individuals who are at-risk of, or already experiencing, significant harm caused by online gambling.

The maximum penalty for each of these new offences is 20 penalty units for an individual and 200 penalty units for a corporation. This is at an appropriate level given the nature of the offence and the harm that may arise from excessive online wagering in response to an inducement. The penalty is also consistent with the amendments proposed for the Interactive Gambling Act and Wagering Act.

New section 134E ensures that the racing bookmaker takes reasonable steps to identify the location of the person making the bet when they receive a bet made from an interactive betting account.

The maximum penalty of 100 penalty units is an appropriate level as it reflects the importance of identifying the location of the person to ensure the enforceability of the inducements ban will apply to all bets placed by an interactive bettor who has an interactive betting account and who are in Queensland. The penalty is also consistent with equivalent provisions proposed for the Interactive Gambling Act and Wagering Act.

Consultation

Amendments to the Criminal Code

The QLRC's report was informed by wide consultation with a range of classes of stakeholders and the public generally.

The QLRC released a detailed Consultation Paper outlining the key issues raised in the review and called for submissions on a number of specific questions. The Commission received 87 submissions from respondents including legal professional bodies, community legal centres, academics, individuals who had experienced sexual violence, organisations that support and represent victims and survivors of sexual violence, and members of the public.

The Commission also held a consultation workshop with representatives from organisations that support and represent victims and survivors of sexual violence, as well as victims and survivors who wished to attend.

The submissions to the review raised many issues and reflected a wide range of views.

Amendments to the Legal Profession Act 2007

The QLS has been consulted and supports the amendments.

As the amendments to the LPA in relation to the Fund fall within agency assessed exclusion category (c) 'Regulatory proposals for the internal management of the public sector or a statutory authority' as listed in the *Queensland Government Guide to Better*

Regulation, the amendments do not require further regulatory impact assessment and the Office of Best Practice Regulation was not consulted.

TAFV Policy amendments

The final TAFV Policy evaluation report was publicly released together with the Government's interim response on 26 July 2019. The Department of Justice and Attorney-General consulted extensively with licensees, peak bodies and community organisations to invite their comment on the relevant evaluation report recommendations which are now the subject of the amendments. Comment was sought via targeted letters and stakeholder forums held in Brisbane on 22 August 2019 and Townsville on 25 September 2019. The results of these stakeholders consultation processes have demonstrated significant stakeholder support for the TAFV Policy amendments.

Greater rigour around the ID scanning regime

The Queensland Police Service acknowledged licensee bans significantly deter problem behaviour and lead drinking culture change and raised some concerns about police officers or witnesses to assaults being subject to licensee bans.

Relevant liquor industry stakeholders were consulted about the creation of a broad vexatious ban offence. Key concerns raised included preserving a licensee's right to legitimately refuse entry to any person for any period of time; providing a clear definition of when a ban is considered 'vexatious'; and the potential for a new offence to deter venues from applying appropriate bans to avoid the risk of complaints and compliance action. It was also identified that many venues have administrative processes in place to ensure bans are consistent or ratified by senior staff.

Stakeholders were consulted and were generally supportive of requiring approved operators to remove licensee bans after a licence transfer, as long as licensees have an opportunity to review the existing licensee bans and keep existing bans if desired.

Ensure ongoing effectiveness of safe night precincts

There was overall support for the periodic review of safe night precincts amongst industry stakeholders, security providers and safe night precinct support services providers. It was generally agreed that regular reviews would ensure resources are targeted towards need and relevant venues are included within safe night precinct boundaries.

Miscellaneous amendments

Clarifying 'designated authority' for the Co-operatives National Law

The CNL Act itself was subject to stakeholder consultation prior to its introduction and passage by the Legislative Assembly. As the amendment to the CNL Act contained in the Bill is a minor technical correction, no community consultation has been undertaken.

Exemption from cartel provisions for liquor accords and safe night precinct local boards

No consultation was undertaken in respect of the proposed amendments as they reflect the current administrative processes of OLGR's five yearly application to the ACCC for a conditional authorisation of the existing pro-forma liquor accord agreement.

Wagering inducement restrictions

Consultation with wagering stakeholders was undertaken in October 2019. Public consultation on the NCPF inducements ban was also undertaken at the national level via the Commonwealth Government's regulatory impact statement *A National Consumer Protection Framework for online wagering in Australia*.

The release of the discussion paper *Racing Integrity Reforms: Review of the Racing Integrity Act 2016* outlined the changes to the Racing Integrity Act and informed stakeholders of the implementation of inducement restrictions on racing bookmakers.

Provide for discretionary minimum dividends under the Wagering Act

Consultation has been undertaken with Queensland's exclusive sports wagering and race wagering licensee, UBET QLD Limited.

Regulatory Impact Assessment

The TAFV Policy and miscellaneous amendments were exempted from the regulatory impact assessment process. Accordingly, consultation with the Queensland Office of Best Practice Regulation on those specific amendments has not occurred.

Consistency with legislation of other jurisdictions

Amendments to the Criminal Code and the Legal Profession Act 2007

The amendments are specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

TAFV Policy amendments

While there may be similarities with aspects of liquor and gaming legislation in other jurisdictions, the complete suite of TAFV Policy legislative amendments are unique to the State of Queensland.

Miscellaneous amendments

Clarifying 'designated authority' for the Co-operatives National Law

The amendment of the CNL Act contained in the Bill is consistent with legislation of other states and territories applying the Co-operatives National Law.

Exemption from cartel provisions for liquor accords and safe night precinct local boards

Similar exemption provisions are contained in liquor legislation in New South Wales, Victoria, South Australia, Western Australia and the Northern Territory.

Wagering inducement restrictions

The proposed amendments are not inconsistent with other jurisdictions. Wagering operators Australia-wide are prevented from offering inducements to open an account or refer a friend to open an account due to the implementation of the NCPF in each jurisdiction. However, different approaches to implementation are adopted in each jurisdiction.

Provide for discretionary minimum dividends under the Wagering Act

The proposed amendment is not inconsistent with the approaches of other jurisdictions and is intended to allow the Queensland wagering licensee to be more competitive with corporate bookmakers licensed in other jurisdictions.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act which will be the Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020.

Clause 2 sets out the parts of the Bill which will commence on proclamation. All other parts of the Bill will commence on assent.

Part 2 Amendment of the Co-operatives National Law Act 2020

Clause 3 provides that this part amends the *Co-operatives National Law Act 2020*

Clause 4 inserts a reference to section 15 of the Co-operatives National Law into section 9 of the *Co-operatives National Law Act 2020* and renumbers section 9.

Part 3 Amendment of the Criminal Code

Clause 5 provides that this part amends the Criminal Code.

Clause 6 amends the definition of *assault* in section 1 (Definitions) of the Criminal Code.

Clause 7 amends section 347 (Definition for Ch 32) to provide definition of *assault* for the purposes of Chapter 32 of the Criminal Code.

Clause 8 amends section 348 (Meaning of consent) by creating new subsections (3) and (4).

New subsection (3) provides that a person is not taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act.

New subsection (4) provides that if a person does or continues to do an act after the consent to the act has been withdrawn by words or conduct, then the act is done or continues without consent.

Clause 9 creates a new section 348A (Mistake of fact in relation to consent).

Subsection (1) provides that the section applies when deciding whether, for section 24 (Mistake of fact), a person charged with an offence under Chapter 32 of the Criminal Code did an act under an honest and reasonable, but mistaken, belief that another person gave consent to the act.

Subsection (2) provides that in deciding whether a belief of a person was honest and reasonable, regard may be had to anything the person said or did to ascertain whether the other person was giving consent to the act.

Subsection (3) provides that in deciding whether a belief of the person was reasonable, regard may not be had to the voluntary intoxication of the person caused by alcohol, a drug or another substance.

Clause 10 inserts a new Chapter 104 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) into the Criminal Code. Proposed new section 754 (Offences charged before or after the commencement) provides that the amendments to the Criminal Code in this Bill apply to a person charged with an offence after the amendments' commencement regardless of whether the charge is for an offence committed before or after the commencement.

Part 4 Amendment of Gaming Machine Act 1991

Division 1 Preliminary

Clause 11 provides that this part amends the *Gaming Machine Act 1991*.

Division 2 Amendments commencing on assent

Clause 12 inserts new section 55FA to provide that the Commissioner must give written notice of a decision to approve or refuse an application of significant community impact, to a member of the public who made comment or an entity who made representations about the application. For comments made collectively by a group of members of the public, a notice issued to the person who is stated to be the sponsor for the comments is taken to be a notice issued to each member of the group.

Clause 13 amends section 55G to ensure that the Commissioner's powers to waive or vary a requirement for an application of significant community impact do not apply to the requirement to give written notice of decision to a member of the public who made comment or an entity who made representations about the application under new section 55FA.

Clauses 14, *15* and *16* amend sections 58 (Decision on application for a gaming machine licence), 63 (Decision on additional premises application) and 83 (Decision on increase application (gaming machines)) by inserting a note that notice of the decision must also be given to a member of the public who made comment or an entity who made representations about the application as they are applications of significant community impact.

Clause 17 inserts new Part 12, Division 22 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which includes new section 492 (Existing applications of significant community concern) to provide transitional provisions to specify that section 55FA does not apply in relation to an application lodged and not decided prior to commencement of the provisions.

Division 3 Amendments commencing by proclamation

Clause 18 inserts new section 55FB to provide that when a comment or representation is received from a member of the public or an entity objecting to the approval of an application of significant community impact, relevant information for the application,

once decided, must be published on the department's website and remain available for 3 months. The provisions outline that relevant information must include details of the nature of the application, location of the premises to which the application relates, the day the decision was made whether the decision was to approve or refuse the application and a brief summary of the reasons for the decision. The provisions also ensure that personal and commercially sensitive information cannot be published.

Clause 19 amends section 55G to ensure that the Commissioner's powers to waive or vary a requirement for applications of significant community impact do not apply to the requirement to publish information relating to the decision on the department's website under new section 55FB.

Part 5 Amendment of Interactive Gambling (Player Protection) Act 1998

Clause 20 provides that this part amends the *Interactive Gambling (Player Protection) Act 1998*.

Clause 21 inserts new Part 7, Division 15A (Interactive gambling inducements and direct marketing) comprising new sections 166A-166E. Part 7, Division 15A codifies the NCPF restrictions on wagering inducements offered by interactive wagering operators to interactive wagering customers and persons in Queensland. To ensure the NCPF restrictions on wagering inducements are applied equally to online wagering providers offering interactive wagering in Queensland, similar provisions are inserted into the *Wagering Act 1998* by clause 68.

New section 166A defines new terms *interactive wagering account*, *interactive wagering customer* and *interactive wagering operator* that are used in new Part 7, Division 15A (Interactive gambling inducements and direct marketing).

New section 166B (Prohibited inducements) prohibits an interactive wagering operator, or a person acting for an interactive wagering operator, from offering (or causing to be offered) any credit, voucher, reward or other benefit to a person who is in Queensland as an incentive to open, or refer another person to open, an interactive wagering account with the interactive wagering operator; or not to close an interactive wagering account.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 166C (Wagering using free bets) provides that an interactive wagering operator, or a person acting for an interactive wagering operator, must not offer (or cause to be offered), a free bet to an interactive wagering customer who is in Queensland and has an interactive wagering account with the operator unless the customer can withdraw payouts arising from the free bet at any time. This ensures all payouts, including any and all winnings, arising from the use of a complementary betting credit or token (e.g. a bonus bet) by an interactive wagering customer can be withdrawn by the customer without being subject to any turnover requirements.

Subsection (2) directs the reader to section 7 of the *Betting Tax Act 2018* for the definition of *free bet*. A free bet is a bet made wholly or partly using an amount that is

provided to the person making the bet by the betting operator with whom the bet is made and that is not immediately redeemable by the person for cash. For example, an amount provided for making a bet; an amount representing a bonus on a previous winning bet; or an amount representing a refund of all or part of the stake amount for a previous non-winning bet.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 166D (Restrictions on direct marketing) prescribes new offences relating to direct marketing practices of interactive wagering operators and persons acting for an interactive wagering operator.

New section 166D(1) provides that an interactive wagering operator, or person acting for an interactive wagering operator, must not send promotional or advertising material directly by email, SMS message or other direct means to a person who is in Queensland unless the person has given express and informed consent to receiving promotional or advertising material directly by that means; and the person has not withdrawn the consent, or the person has withdrawn the consent but the operator, or person acting for an operator, is not aware of the withdrawal.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 166D(2) requires that an interactive wagering operator, or person acting for an interactive wagering operator, must provide a person who has given consent to receiving promotional or advertising material directly, with a means to easily withdraw consent at any time; and if the person attempts to withdraw the consent, an interactive wagering operator, or person acting for an interactive wagering operator, must not offer (or cause to be offered) any credit, voucher, reward or other benefit as an incentive for the person to not withdraw consent. This ensures promotional or advertising material is only sent directly to persons and interactive wagering customers electing to receive it in this way and protects consumers by providing an avenue for consent to be withdrawn at any time without burden or inducement. A means to easily withdraw consent may include a person making a simple request via telephone or SMS message to be removed from a direct marketing list (e.g. requesting to unsubscribe).

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 166D(3) requires that if an interactive wagering operator, or a person acting for the interactive wagering operator, sends promotional or advertising material to the person electronically, the operator or person must provide a mechanism, including, for example an electronic link, in the material allowing the person to easily withdraw consent from receiving promotional or advertising material. An electronic link would allow the person to easily withdraw consent (e.g. unsubscribe) if the link is functional and easily accessible.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 166D(4) clarifies that for this section, if the person withdraws consent from receiving promotional or advertising material, the withdrawal takes effect five business days, or a shorter period prescribed by regulation, after the person withdraws consent. This affords the interactive wagering operator, or person acting for the interactive wagering operator, five business days to process the person's withdrawal of consent (e.g. request to unsubscribe or to stop receiving direct promotional and advertising materials). The specified five day period is consistent with new section 228D(4) of the *Wagering Act 1998* inserted by clause 68. This consistency is necessary to ensure all online wagering providers providing interactive wagering to persons in Queensland are subject to the same regulatory restrictions. Consistency between the two Acts also ensures consumers in Queensland are equally protected no matter the location of the online wagering provider (i.e. the point-of-supply). As some jurisdictions have a reduced grace period of 24 hours, new section 166(4) provides a power to enable a regulation to prescribe a shorter period.

New section 166E (Obligation of interactive wagering operator to identify person's location) provides that an interactive wagering operator, when receiving a wager placed from an interactive wagering account, must take reasonable steps to identify the location of the person placing the wager. For the purpose of complying with the obligation, an interactive wagering operator can rely on an address given to the operator by an individual as the individual's residential address; or an address given to the operator by or for a company as the company's principal place of business, unless the operator has reasonable grounds to suspect that the address provided is not the location of the person placing the wager.

The requirement to identify the location of the person is important to ensure the enforceability of the inducements bans as they apply only in respect of interactive wagering customers and persons who are in Queensland. A maximum penalty of 100 penalty units is applied.

Clause 22 inserts new Part 12, Division 4 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which includes new section 272 (Interactive wagering accounts established before commencement).

New section 272 provides that the obligations imposed by new sections 166B (Prohibited inducements), 166C (Wagering using free bets) and 166E (Obligation of interactive wagering operator to identify person's location) apply in relation to an interactive wagering customer regardless of whether the customer's interactive wagering account (however called) was established before or after the commencement of the provisions.

Clause 23 amends schedule 3 (Dictionary) to insert new definitions for *interactive wagering account*, *interactive wagering customer* and *interactive wagering operator* which directs the reader to the new section 166A for the meaning.

Part 6 Amendment of Legal Profession Act 2007

Clause 24 provides that this part amends the *Legal Profession Act 2007*.

Clause 25 replaces section 396 (Caps on payments) with a new section 396 (Limiting payments from fidelity fund to capped amount).

New section 396(1) applies to a claim against the Fund if, despite measures the QLS may take under section 368 or 369, the QLS believes the Fund is likely to become insufficient as mentioned in section 397(1) if the allowed amount for the claim were to be paid in full.

New section 396(2) provides that the QLS may limit the payment from the Fund to the capped amount for the claim.

New section 396(3) provides that, if the QLS limits a payment from the Fund under subsection (2):

(a) the payment is made in full and final settlement of the claim; and
(b) no proceeding can be brought, by way of appeal, application for review or otherwise, to require the payment of a larger amount, or to require the QLS to consider payment of a larger amount, for the claim.

New section 396(4) provides that, as soon as practicable after limiting a payment under subsection (2), the QLS must give written notice to the Minister about the limitation.

New section 396(5) inserts definitions for *allowed amount* and *capped amount.*

Clause 26 inserts a new chapter 10, part 8 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which contains a new section 787 (Law society must make additional payments for claims limited under former s 396).

New section 787(1) applies if, before the commencement, the QLS paid an amount (the *capped payment*) from the Fund for a claim that was less than the allowed amount for the claim because the payment was limited by an amount fixed under former section 396.

New section 787(2) provides that as soon as practicable after the commencement, the QLS must pay the claimant an amount from the Fund for the claim that is equal to the difference between the capped payment and the allowed amount of the claim.

New section 787(3) provides that the QLS must also pay the claimant interest on the amount payable from the Fund under subsection (2).
New section 787(4) provides that the interest must be calculated at the rate prescribed by regulation from the day the capped payment was made, and is payable from the Fund.

New section 787(5) inserts definitions for *allowed amount* and *former section 396*.

Part 7 Amendment of Liquor Act 1992

Division 1 Preliminary

Clause 27 provides that this part amends the *Liquor Act 1992*.

Division 2 Amendments commencing on assent

Clause 28 amends section 4 (Definitions) to insert definitions of *regulated hours* and *staff member* which link to the definitions of *regulated hours* and *staff member* in section 173EE (Definitions for pt 6AA).

Clause 29 amends section 173EE (Definitions for pt 6AA) to insert definitions of *regulated hours* and *staff member.* The definition of *regulated hours* has been moved from section 173EH and is substantially the same. The definition of *staff member* of a regulated premises was also moved from section 173EH but has been expanded to include the licensee, a person engaged by the licensee to perform a function under part 6AA, and an employee of a person engaged to perform a function under part 6AA. The expanded definition is to capture sub-contractors engaged to perform ID scanning duties at licensed premises. Clause 29 also makes other minor amendments for readability. Clause 29(1) corrects a minor drafting error in section 173EE(1) by clarifying that the definitions contained in the section apply to the part, not the division. Clause 29(2) removes the current definition of *operating*. This definition relates to section 173EQ and clause 36 inserts a definition of *operate* there.

Clause 30 amends section 173EF (Licensed premises to which this division applies) to insert a new subsection (3) which clarifies that the division (Division 2 - Use of ID scanners in particular licensed premises) does not apply to a licensed premises subject to a condition declaring the premises not to be regulated premises for the division. Additionally, the division does not apply to a part of a licensed premises subject to a condition declaring that part of the licensed premises not to be regulated premises for the division.

Clause 31 amends section 173EG(5) to remove the reference to 173EH as the definition of *regulated hours* has moved from section 173EH to section 173EE, which is a general definition for part 6AA.

Clause 32 omits existing section 173EH and inserts new sections 173EH (ID scanning obligations of staff members for regulated premises) and 173EHAAA (ID scanning entry requirements for entry to regulated premises). In combination, these sections substantively replicate existing section 173EH. In addition, ID scanning obligations are expanded to persons engaged by the licensee to perform a function for part 6AA and their staff members, not just the licensee.

Replaced section 173EH sets out the ID scanning obligations specific to licensees of regulated premises and obligations for staff members for regulated premises (i.e. licensees, persons engaged by the licensee and employees of persons engaged by the licensee). Subsection 173EH(2) provides a new obligation for a staff member responsible for controlling an entry to a regulated premises to ensure the ID scanning entry requirements are complied with for each patron to whom the staff member allows entry to the premises.

A maximum penalty of 10 penalty units is applied.

The definitions of *regulated hours* and *staff member* are omitted from this section and moved with amendments to section 173EE.

New section 173EHAAA sets out the ID scanning entry requirements for entry to regulated premises. The new provisions substantively replicate the remainder of the provisions from previous section 173EH which had not been included in the replaced section 173EH. Provisions in new section 173EHAAA have also been extended from 'licensee' to 'staff member' where appropriate.

Clause 33 makes consequential amendments to section 173EHAA (Re-entry pass system for regulated premises) to, where appropriate, replace 'licensee' with 'staff member' to indicate the requirements apply to licensees, persons engaged by the licensee and employees of persons engaged by the licensee. Subsections (1) and (2) also update references with respect of the replaced section 173EH.

The definition of *regulated hours*, which previously linked to the definition in section 173EH(12), is omitted as *regulated hours* is now defined in section 173EE, which is a general definition section for part 6AA.

Clause 34 amends section 173EHA (Delayed application of section 173EH to particular regulated premises) to replace 'licensee' with 'a staff member' in subsection 173EHA(2).

Clause 35 amends section 173EOA (Direction about ID scanning system).

Clause 35(1) inserts new subsection 173EOA(2A) which provides that a direction to alter, adjust, maintain or repair the ID scanning system given to a responsible person under subsection 173EOA(2) may also require the responsible person to give a copy of the direction notice to all licensees or only stated licensees.

Clause 35(2) omits subsection 173EOA(4)(c), which removes the requirement for the Commissioner to give linked licensees a copy of the direction notice in each and every instance.

Clause 35(3) inserts new subsection 173EOA(4A) which gives the Commissioner discretion to give a copy of the direction notice to all, or some licensees.

Clause 35(4) renumbers section 173EOA(2A) to (5) as section 173EOA(3) to (7).

Clause 36 amends section 173EQ (Approval of persons to operate ID scanning systems) to insert a sectional definition of *operate*. This definition replaces the definition *operating* omitted from section 173EE (Definition for pt 6AA), as the definition relates specifically to section 173EQ. The new definition of *operate* inserted by clause 36 clarifies that a person using an ID scanner linked to an approved ID scanning system for the purpose of fulfilling the ID scanning entry requirements under section 173EHAAA(2) is not taken to be operating an ID scanning system and is therefore not subject to the requirements under section 173EQ. This reflects that the responsibilities for an operator of an approved ID scanning system extend beyond the responsibilities of persons tasked with operating an ID scanner linked to the system under section 173EHAAA(2).

Clause 37 amends section 185 (Obstruction of investigators). Clause 37(1) makes a technical amendment by inserting the existing maximum penalty from section 185(2) in section 185(1), as the actual offence provision is contained in section 185(1). The maximum penalty is consequentially omitted from section 185(2) by clause 37(2).

Clause 37(3) amends section 185 to insert new subsections (3) and (4) to provide that a licensee, or person acting on behalf of a licensee, such as an approved manager or crowd controller, who bans an investigator from entering the licensee's licensed premises is taken to obstruct an investigator. However, a licensee does not commit an offence if the licensee proves the ban was imposed because of the investigator's behaviour as a patron of the licensed premises.

Clause 38 inserts new section 224A to provide that if a liquor accord or a safe night precinct (SNP) local board wishes to implement a price control and/or supply control measure on alcohol, the parties to the liquor accord or SNP local board must apply to the Commissioner to register the liquor accord or local SNP initiative for the purpose of exemption from cartel provisions prescribed in the *Competition and Consumer Act 2010* (Cwlth) (Competition Act).

SNP local boards consist of licensees for licensed premises located within a safe night precinct. Liquor accords are agreements that generally apply to groups of licensees situated outside of SNPs.

It is an offence under the Competition Act (Cth) for two or more parties that are likely to be in competition with each other in relation to the supply of goods or services to implement or undertake to implement price control and/or supply control measures on the relevant goods or services (cartel provisions). Price control and/or supply control measures on alcohol implemented by Queensland liquor accords or SNP local boards for the purpose reducing the risk of alcohol-related harm may fall within the scope of the Competition Act's cartel provisions, unless they are expressly given either a legislative exemption, or authorisation by the Australian Competition and Consumer Commission (ACCC).

New section 224A replaces the current approach where the Liquor and Gaming Commissioner (Commissioner) seeks the ACCC's authorisation of a Pro-Forma Liquor Accord Agreement every five years, which Queensland liquor accords must register with the Office of Liquor and Gaming Regulation to be exempt from the Competition Act's cartel provisions. Under new section 224A(10) and (11), parties to agreements under a liquor accord or SNP local board initiatives that are registered under new section 224A will be authorised by the Liquor Act for the purpose of exemption from the cartel provisions of the Competition Act. The authorisation will only apply to the extent that the liquor accord or local initiative regulates the supply of liquor.

New sections 224A(1), (2) and (3) provide that if parties to a liquor accord or SNP local board wish to implement price or supply controls, they may apply to the Commissioner to register the liquor accord or local SNP board initiative. The parties must make the application in one of the ways approved by the commissioner. New subsection 224A(12) requires the Commissioner to publish the approved ways of making an application or providing information on the department's website.

New section 224A(13) outlines definitions for price and supply controls. Price controls include agreements or arrangements that impose a minimum sale price for a specific volume of liquor. For example, banning extreme discounts. Supply controls include agreements prohibiting or limiting the way a product can be supplied to a consumer. For example, limiting high alcohol content products after a certain time.

New section 224A(4) requires the Commissioner to consider applications and decide whether to register the liquor accord or local initiative. New section 224A(5) outlines that the Commissioner must register a liquor accord or initiative if the only price or supply controls in the application are mirror controls. A *mirror control* is defined under new section 224A(13) as a price or supply control that mirrors an existing prohibition or requirement of the Liquor Act. For example, an irresponsible practice prohibited under section 142ZZ.

If an application contains price or supply controls that are not mirror controls, new section 224A(6) provides the Commissioner may only register the liquor accord or local initiative if satisfied the controls are appropriate and proportionate to the alcohol-related problems intended to be reduced by the control. New section 224A(7) requires the Commissioner to have regard to guidelines when deciding to register a liquor accord or local initiative.

New section 224A(8) outlines the Commissioner must de-register a liquor accord or local initiative that is registered under section 224A if the Commissioner is no longer satisfied a price or supply control is appropriate or proportionate to the relevant alcohol-related problems and/or if the liquor accord or local initiative is amended to include a price or supply control that is not a mirror control.

New section 224A(9) requires parties to a liquor accord or local board to provide written notice to the commissioner if the liquor accord or local initiative is amended to include or change a price or supply control. The written notice must be in a way approved by the Commissioner. The Commissioner would then be required to consider the notice under new sections 224A (4) to (7).

New section 224A(13) outlines the definitions for the section.

Division 3 Amendments commencing by proclamation

Clause 39 amends section 48 to ensure the offence for disclosing information about the affairs of another person when administering the Liquor Act does not apply to publishing information about applications on the department's website under new section 121B.

Clause 40 amends section 113 (Application for transfer of licence) to require the Commissioner to provide a notice upon the transfer of a licence to the approved operator for an approved ID scanning system if the licensee uses an approved ID scanner at their licensed premises. The clause also provides definitional references to various ID scanning definitions under section 173EE

Clause 41 amends the heading of section 121A to clarify the requirement to publish a written statement on the department's website to address any public safety concerns raised in an objection from the police district officer is only required for applications for an extended trading hours approval.

Clause 42 inserts new section 121B to provide that when a comment, submission or objection to the grant of the application is received from the local government, police district officer, Minister or member of the public, relevant information for the application, once decided, must be published on the department's website and remain available for 3 months. The provisions outline that relevant information must include details of the nature of the application, location of the premises to which the application relates, the day the decision was made whether the decision was to approve or refuse the application and a brief summary of the reasons for the decision. The provisions also ensure that personal and commercially sensitive information cannot be published.

Clause 43 amends section 173EJ (Obligations about operation) to insert new subsections (6A) and (6B) which require an approved operator of an approved ID scanning system upon receipt of a notice of transfer of the licence from the Commissioner to remove all licensee bans entered into the ID scanning system for the premises after the expiry of the transfer period. The transfer period is defined in subsection (7) as 30 days after the transfer takes effect.

However, new subsection (6C) states the approved operator is not required to remove the licensee bans relating to the licensed premises if the new licensee for the premises requests the bans not to be removed from the ID scanning system within the 30 day period.

Clause 44 inserts new section 173NCAA (Review of safe night precincts) which provides a framework for regular review of areas prescribed as safe night precincts. Subsection (1) provides that the review must consider whether the prescribing of the relevant safe night precinct area, or part of the area, continues to achieve the purposes outlined for Part 6AB (Safe night precincts) of the Liquor Act. Subsection (2) ensures that the Minister must start a review of a safe night precinct as soon as practicable after the amendments commence. Further, subsection (3) ensures the ongoing, periodic review of safe night precincts by providing that a further review of a safe night precinct must start no later than 3 years after the previous review is completed.

Following a review, or further review, the Minister must recommend the Governor in Council make a regulation changing or revoking an area prescribed under section 173NC(1), if the Minister is satisfied the area, or part of the area, no longer continues to achieve the purposes of Part 6AB of the Liquor Act.

Clause 45 makes amendments to section 173NCA as a consequence of the insertion of new section 173NCAA by clause 44. Clause 45 amends the heading for section 173NCA to clarify that the section applies to both changing or revoking an area of a safe night precinct. Similarly, the clause also amends subsection 173NCA(1) to clarify that the section applies to an amendment of a regulation under section 173NC to change or revoke the area of a safe night precinct. These amendments ensure the existing requirements under 173NCA for changing a safe night precinct area also apply if the area is revoked.

Part 8 Amendment of Police Powers and Responsibilities Act 2000

Clause 46 provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 47 amends section 53BAC of the Police Powers and Responsibilities Act, consequential to the amendments to replace the definition of *electronic address* with *unique electronic address* in clause 61(2).

Clause 48 amends section 602A to omit the definitions for *ending time* and *starting time* that applied in Part 5A.

Clause 49 inserts examples of disorderly, offensive, threatening or violent behaviour in section 602C(3)(a) to aid interpretation and enhance consistency in police decision-making about whether to issue an initial police banning notice to a person in particular circumstances.

Clause 50 replaces section 602D with a new section 602D to provide for the start and ending times for an initial police banning notice and the associated banning period.

New section 602D(a) provides that an initial police banning notice takes effect, if the notice is personally served on the respondent by a police officer, from the day and time the notice is personally served on the respondent, or if the notice is sent to the respondent by electronic communication under section 602G(1)(b), from the day and time the notice is sent to the unique electronic address nominated by the respondent.

New section 602D(b) provides that an initial police banning notices continues in effect, if the notice applies to a stated event, the end of the day on which the event ends, or otherwise, the end of the day stated in the notice that is no more than 1 month after the day the notice takes effect.

The amendments in clause 50 extend the duration for which an initial police banning notice, other than a notice given in relation to a stated event, can be in effect from 10 days to not more than 1 month.

The amendments in clause 50 also replace the ending time for an initial police banning notice from, in relation to a stated event, the day and time the event ends, to the end of the day on which the event ends. In circumstances other than those involving a stated event, clause 50 also replaces the reference to the banning period concluding on the day and time that is 10 days after the starting time with a reference to the banning period concluding on the end of the day stated in the initial police banning notice that is no more than 1 month after the day the notice takes effect. These amendments are intended to simplify the operation of initial police banning notices by providing that all initial police banning notices cease to have any effect at the end of the day on the stated event or the stated period they apply to.

Clause 51 amends section 602E of the Police Powers and Responsibilities Act to separate the provisions that require a police officer to explain or cause to be explained

to the respondent that an extended police banning notice may be given that extends the banning period imposed on the respondent under an initial police banning notice and the fact that a police banning notice may be cancelled by a police officer.

Subclause (1) amends section 602E(c) consequential to the amendments in clause 54 that insert a power for a police officer of at least the rank of senior sergeant to cancel an extended police banning notice under new section 602JA.

Subclause (2) inserts 'initial police banning' before 'notice' in section 602E(d) to clarify that the police officer must explain or cause to be explained to the respondent that the respondent may apply to the commissioner to amend or cancel the initial police banning notice.

Subclause (3) renumbers new sections 602E(ca) and (d) as a result of the separation of section 602E(c) into two new subsections in subclause (1).

Clause 52 amends the heading of Chapter 19, Part 5A, Division 3 of the Police Powers and Responsibilities Act to remove 'or cancellation'.

Clause 53 amends section 602F to simplify the operation of extended police banning notices by providing that all extended police banning notices cease to have any effect at the end of the day that is no more than 3 months after the day the initial police banning notice took effect.

Subclause (1) amends section 602F(3)(a) to replace the reference to an extended police banning notice ending on 'the day and time' no later than 3 months after the starting time of the initial police banning notice to the extended police banning notice ending at the end of the day that is no more than 3 months after the day the initial police banning notice took effect.

Subclause (2) amends section 602F(5) consequential to the amendments to provide that initial police banning notices cease to have effect at the end of the day on the stated event or the stated period they apply to in clause 50.

Clause 54 amends section 602G to broaden the power of a police officer, of at least the rank of senior sergeant, to cancel an extended police banning notice. This power is in addition to the existing power for a police officer, of at least the rank of senior sergeant, to cancel an initial police banning notice.

Subclause (1) amends the heading of section 602G to remove 'initial police banning notice' and insert 'police banning notices by police officers' to ensure the section relates to the cancellation of both initial police banning notices and extended police banning notices.

Subclause (2) replaces the reference to 'an initial police' with 'a police' in section 602G(1) to remove the limitation on the power for a police officer of, at least the rank of senior sergeant, to cancel only an initial police banning notice and ensure this power applies to both initial police banning notices and extended police banning notices.

Subclause (3) omits the reference to 'initial' in section 602G(2) consequential to the amendments in subclause (1) and (2) to provide that the power for a police officer to cancel a police banning notice relates to both initial police banning notices and extended police banning notices.

Subclause (4) relocates section 602G to Chapter 19, Part 5A, Division 4 after section 602J and renumbers section 602G as section 602JA as a result of the insertion of a new section 602G by clause 55.

Clause 55 inserts a new section 602G before section 602H to broaden the methods of service available to a police officer to serve a police banning notice on a person by including electronic service in addition to personal service.

Subclause (1) provides that a police officer may serve a police banning notice on the respondent by personally serving the notice on the respondent or by sending the notice by electronic communication to a unique electronic address, such as an email address, mobile phone number or user account, voluntarily nominated by the respondent to the police officer.

Subclause (2) provides that a police officer must be in the presence of the respondent to give an initial police banning notice to the respondent electronically. This ensures the respondent is aware that the initial police banning notice has been sent to the unique electronic address nominated by the respondent to the police officer.

Subclause (3) provides that, unless the contrary is proved, a police banning notice that is electronically served by the police officer sending the notice to the unique electronic address nominated by the respondent is deemed to have been received by the respondent on the day and at the time it is sent to the respondent's unique electronic address.

Clause 56 replaces section 602H(e) with a new section 602H(e) and (ea), consequential to the amendments in clause 54, and renumbers sections 602H(ea) to (i) as section 602H(f) to (j).

Clause 57 replaces section 602L(1), note, 'division 3' with 'section 602JA', consequential to the amendments in clause 54 to renumber the provision to cancel a police banning notice from section 602G to section 602JA and relocate from division 3 to division 4.

Clause 58 amends section 602N(1)(a) to increase the period of time within which a respondent for an initial police banning notice may apply, in the approved form, to the police commissioner to amend or cancel the notice from 5 days to 15 days.

The amendment in clause 58 improves procedural fairness for the respondent of an initial police banning notice by increasing the time available to a respondent to apply for an internal review commensurate with the increased duration of the banning period for the initial banning notice from 10 days to no more than one month.

Clause 59 amends section 602S(3)(c) to omit the requirement that a photograph taken by a police officer under section 602S may only be of the person's face, neck and hair. The limitation on the parts of a person that can be photographed by a police officer

under section 602S is impractical in the context of the circumstances in which photographs of banned persons are taken as the majority of individuals, particularly those being issued with an initial police banning notice, are intoxicated, violent, obstructive and non-compliant.

A safeguard is included in clause 59 that a police officer may only photograph the person for the purpose of attaching an image of the person to a banning order for the person to limit the reasons the person may be photographed. A *banning order* is defined under section 602R for the purpose of Chapter 19, Part 5B to mean 'a police banning notice' or 'a document recording a special condition to which a person's bail is subject under the *Bail Act 1980*, section 11(3)' or 'banning order made under the *Penalties and Sentences Act 1992*, part 3B'.

The existing photograph destruction provisions under sections 602V and 602W of the Police Powers and Responsibilities Act will continue to apply.

Clause 60 inserts a new Chapter 24, Part 21 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which includes new section 890 (Existing police banning orders).

New section 890(1) states that former section 602D and former section 602N continue to apply in relation to a police banning notice in effect immediately before the commencement of Part 7 (Amendment of the Police Powers and Responsibilities Act 2000) of the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020.

New section 890(2) defines *former*, for a provision of the Police Powers and Responsibilities Act, to mean the provision as in force from time to time before the commencement.

Clause 61 amends the definitions provided for in Schedule 6 of the Police Powers and Responsibilities Act.

Subclause (1) omits the definitions for *ending time* and *starting time* consequential to the amendments in clauses 50 and 53.

Subclause (2) inserts definitions for *communication network* and *unique electronic address* that are consistent with definitions for the same terms in the *State Penalties Enforcement Act 1999*.

Part 9 Amendment of Racing Integrity Act 2016

Clause 62 provides that this part amends the *Racing Integrity Act 2016*.

Clause 63 inserts new Chapter 4, Part 3A (Betting inducements and direct marketing) which comprise new sections 134A -134E.

New section 134A (Definitions for part) defines new terms *interactive betting account* and *interactive bettor* that are used in new part 3A (Betting inducements and direct marketing).

New section 134B (Prohibited inducements) prohibits a racing bookmaker or a person acting for a racing bookmaker from offering or supplying any credit, voucher, reward or other benefit to a person in Queensland as an incentive to open or refer another person in Queensland to open an interactive betting account with the racing bookmaker; to make bets or refer another person to make bets through the bookmaker's telecommunications system; and not to close an interactive betting account.

A maximum penalty to 20 penalty units for an individual and 200 penalty units for a corporation is applied.

New section 134C (Betting using free bets) restricts a racing bookmaker or a person acting for a racing bookmaker from offering or causing to be offered, a free bet to an interactive bettor with an interactive betting account with the bookmaker unless the interactive bettor can withdraw payouts arising from the free bet at any time. Subsection (2) directs the reader to section 7 of the *Betting Tax Act 2018* for the definition of *free bet*. A free bet is a free amount of the bet (whole or partial) provided to the person making the bet by the betting operator with whom the bet is made that is immediately redeemable for cash. For example, an amount for making a bet or a bonus on a previous winning bet or a refund of a previous non-winning bet.

A maximum penalty to 20 penalty units for an individual and 200 penalty units for a corporation applies to the new offence.

New section 134D (Restrictions on direct marketing) prescribes new offences which impose obligations on a racing bookmaker or a person acting for the racing bookmaker.

Section 134D(1) requires that a racing bookmaker or a person acting for the racing bookmaker must only send to a person in Queensland, promotional or advertising material directly by email, SMS message or other direct means if they have obtained the person's express and informed consent to receive that material by that means and the person has not withdrawn the consent. The prohibition to sending the material once consent has been withdrawn is subject to the racing bookmaker or the person acting for the racing bookmaker being aware that the consent has been withdrawn.

New section 134D(2) requires that a racing bookmaker or a person acting for the racing bookmaker must provide the person who has given consent to receiving promotional or advertising material, a means to easily withdraw the consent at any time. Paragraph (b) provides that a racing bookmaker or person acting for the racing bookmaker must not offer or supply any credit, voucher, reward or other benefit to a person in Queensland as a dis-incentive to the person who attempts to unsubscribe.

New section 134D(3) requires a racing bookmaker or a person acting for the racing bookmaker, who sends promotional or advertising material electronically to a person in Queensland, to provide a mechanism including an electronic link in the material to allow the person to withdraw consent to receiving promotional or advertising material.

A maximum penalty to 20 penalty units for an individual and 200 penalty units for a corporation applies to each of the new offences.

New section 134E provides that the racing bookmaker takes reasonable steps to identify the location of the person making the bet when they receive a bet made from an interactive betting account. A racing bookmaker will comply with the requirement if they rely on a residential address of the individual making the bet, or a principal place of business of a company making the bet unless the racing bookmaker knows, or has reasonable grounds to suspect that the address provided, is not the location of the person when the bet is made.

The requirement to identify the location of the person is important to ensure the enforceability of the inducements ban applying to all bets placed by an interactive bettor who has an interactive betting account and who is in Queensland.

Section 134E includes an example when a racing bookmaker cannot rely on the address provided by the person. That is, when the person has previously given an interstate residential address and when making the bet, the person tells the racing bookmaker they are in Queensland.

Clause 64 replaces the existing heading for Chapter 9 with the new heading (Other transitional provisions) as a consequence of the new additional transitional provisions inserted into the new Chapter 9, Part 2 by clause 65. Clause 64 also establishes Chapter 9 (Other transitional provisions) Part 1 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016) which is comprised of the existing transitional provisions.

Clause 65 inserts new Chapter 9, Part 2 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which includes new section 297 (Interactive betting accounts established before the commencement).

New section 297 provides obligations in new sections 134B (Prohibited inducements), 134C (Betting using free bets) and 134E (Obligation of racing bookmaker to identify person's location) to apply to an interactive bettor regardless of whether the interactive betting account was established before or after the commencement of the provisions.

Clause 66 amends schedule 1 (Dictionary) to insert new definitions for *interactive betting account* and *interactive bettor* which directs the reader to the new section 134A for the meaning.

Part 10 Amendment of Wagering Act 1998

Division 1 Preliminary

Clause 67 provides that this part amends the *Wagering Act 1998*.

Division 2 Amendments commencing on assent

Clause 68 inserts new Part 11, Division 5 (Wagering inducements and direct marketing) comprising new sections 228A-228E. New Part 11, Division 5 codifies the NCPF restrictions on inducements offered by licence operators to interactive wagering customers and persons in Queensland. To ensure the NCPF restrictions on inducements are applied equally to all online wagering providers offering interactive wagering in

Queensland, similar provisions are inserted into the *Interactive Gambling (Player Protection) Act 1998* by clause 21.

New section 228A defines new terms *interactive wagering account* and *interactive wagering customer* that are used in new Part 11, Division 5 (Wagering inducements and direct marketing).

New section 228B (Prohibited inducements) prohibits a licence operator, or a person acting for a licence operator, from offering (or causing to be offered) any credit, voucher, reward or other benefit to a person who is in Queensland as an incentive to open, or refer another person to open, an interactive wagering account with the licence operator; or not to close an interactive wagering account.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 228C (Wagering using free bets) provides that an licence operator, or a person acting for a licence operator, must not offer (or cause to be offered), a free bet to an interactive wagering customer who is in Queensland and has an interactive wagering account with the licence operator unless the customer can withdraw payouts arising from the free bet at any time. This ensures all payouts, including any and all winnings, arising from the use of a complementary betting credit or token (e.g. a bonus bet) by an interactive wagering customer can be withdrawn by the customer without being subject to any turnover requirements. Subsection (2) directs the reader to section 7 of the *Betting Tax Act 2018* for the definition of *free bet*. A free bet is a bet made wholly or partly using an amount that is provided to the person making the bet by the betting operator with whom the bet is made and that is not immediately redeemable by the person for cash. For example, an amount provided for making a bet; an amount representing a bonus on a previous winning bet; or an amount representing a refund of all or part of the stake amount for a previous non-winning bet.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 228D (Restrictions on direct marketing) prescribes new offences relating to direct marketing practices of licence operators and persons acting for a licence operator.

New section 228D(1) provides that a licence operator, or person acting for a licence operator, must not send promotional or advertising material directly by email, SMS message or other direct means to a person who is in Queensland unless the person has given express and informed consent to receiving promotional or advertising material directly by that means; and the person has not withdrawn the consent, or the person has withdrawn the consent but the licence operator, or person acting for the licence operator, is not aware of the withdrawal.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 228D(2) requires that a licence operator, or person acting for a licence operator, must provide a person who has given consent to receiving promotional or advertising material directly, with a means to easily withdraw consent at any time; and if the person attempts to withdraw the consent, the licence operator, or person acting for a licence operator, must not offer (or cause to be offered) any credit, voucher, reward or other benefit as an incentive for the person to not withdraw consent. This ensures promotional or advertising material is only sent directly to persons and interactive wagering customers electing to receive it in this way and protects consumers by providing an avenue for consent to be withdrawn at any time without burden or inducement. A means to easily withdraw consent may include a person making a simple request via telephone or SMS message to be removed from a direct marketing list (e.g. requesting to unsubscribe).

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 228D(3) requires that if a licence operator, or a person acting for the a licence operator, sends promotional or advertising material to the person electronically, the licence operator, or person acting for a licence operator, must provide a mechanism, including, for example an electronic link, in the material allowing the person to easily withdraw consent from receiving promotional or advertising material. An electronic link would allow the person to easily withdraw consent (e.g. unsubscribe) if the link is functional and easily accessible.

A maximum penalty of 20 penalty units is applied for an individual and 200 penalty units is applied for a corporation.

New section 228D(4) clarifies that for this section, if the person withdraws consent from receiving promotional or advertising material, the withdrawal takes effect five business days, or a shorter period prescribed by regulation, after the person withdraws consent. This affords the licence operator, or person acting for a licence operator, five business days to process the person's withdrawal of consent (e.g. request to unsubscribe or to stop receiving direct promotional and advertising materials). The specified period of five business days reflects the grace period afforded to Queensland's sole wagering licensee under existing licence conditions. As some jurisdictions have a reduced grace period of 24 hours new section 166(4) provides a power to enable a regulation to prescribe a shorter period.

New section 228E (Obligation of licence operator to identify person's location) provides that a licence operator, when receiving a bet made from an interactive wagering account, must take reasonable steps to identify the location of the person making the bet. For the purpose of complying with the obligation, a licence operator can rely on an address given to the operator by an individual as the individual's residential address; or an address given to the operator by or for a company as the company's principal place of business, unless the operator has reasonable grounds to suspect that the address provided is not the location of the person placing the wager.

The requirement to identify the location of the person is important to ensure the enforceability of the inducement bans as they apply only in respect of interactive

wagering customers and persons who are in Queensland. A maximum penalty of 100 penalty units is applied.

Clause 69 inserts new Part 17, Division 8 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) which includes new section 340F (Interactive wagering accounts established before the commencement).

New section 340F provides that the obligations imposed by new sections 228B (Prohibited inducements), 228C (Wagering using free bets) and 228E (Obligation of licence operator to identify person's location) apply in relation to an interactive wagering customer regardless of whether the customer's interactive wagering account (however called) was established before or after the commencement of the provisions.

Clause 70 amends schedule 2 (Dictionary) to insert new definitions for *interactive wagering account* and *interactive wagering customer* which directs the reader to the new section 228A for the meaning.

Division 3 Amendments commencing by proclamation

Clause 71 modifies section 164 of the Wagering Act to provide that where an authority operator decides to apply a minimum dividend on an investment in a totalisator, the dividend payable will not be less than the amount of the minimum dividend irrespective of the application of the rounding provisions of section 164(2).

Part 11 Other amendments

Clause 72 provides that Schedule 1 amends the legislation mentioned.

Schedule 1 Other amendments

Schedule 1 makes consequential sectional reference amendments to the *Gaming Machine Act 1991* and Gaming Machine Regulation 2002. It also corrects a minor technical error in the definition for *registered corresponding foreign procedure order* in Schedule 6 of the *Police Powers and Responsibilities Act 2000*.