

Safe Night Out Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Short title

The short title of the Bill is the Safe Night Out Legislation Amendment Bill 2014

Policy objectives and the reasons for them

The objectives of the amendments to sections of the Bill are to ensure that the original objectives of the Bill, as outlined in the original Explanatory Notes, are achieved by:

- ensuring efficient and managed timeframes for implementation of policy initiatives given effect by the legislative amendments;
- introducing additional measures to support and facilitate policy initiatives given effect by the Bill;
- making minor amendments to ensure the clarity and effectiveness of the legislation;
- enhancing enforcement and compliance measures in relation to unreasonable noise emanating from licensed premises;
- relocating the new offence of Unlawful striking causing death from existing Chapter 28 of the Criminal Code to newly created Chapter 28A of the Criminal Code to ensure the new offence operates appropriately within the existing framework of the Criminal Code. New chapter 28A will be specific to the offence of Unlawful striking causing death. Further, the new offence will be amended to make it clear that the striking of another person is unlawful unless it is authorised, justified or excused by law. Consequential amendments are made to the Bill, and other Acts, as a result of the relocation and renumbering of the offence;
- inserting a cross-reference to the circumstance of aggravation underpinning the new mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill in each of the prescribed offences of violence to which the new regime will apply (that is, that the offence was committed in a public place while the offender was adversely affected by an intoxicating substance);

- amending existing section 108 (Termination of a community service order) of the *Penalties and Sentences Act 1992* consequential to the amendment to section 120A of the *Penalties and Sentences Act* under the Bill;
- redrafting new section 108B (When a community service order must be made) of the *Penalties and Sentences Act 1992* to make it clear that the mandatory community service order must be made in the prescribed circumstances whether or not the sentencing court also makes any other order. Existing section 110A of the *Penalties and Sentences Act*, which provides for the making of a graffiti removal order, is consequentially amended due to the restructuring of new section 108B to ensure consistency in drafting. The current operation of section 110A is not changed; and
- making consequential amendments to the *State Penalties Enforcement Regulation 2014* to reflect amendments to the *Liquor Act 1992*, *Police Powers and Responsibilities Act 2000* and *Summary Offences Act 2005* under the Bill.

Achievement of policy objectives

Ensuring efficient and managed timeframes for implementation of policy initiatives given effect by the legislative amendments

Clause 2 of the Bill provides for commencement of provisions. Currently, the majority of provisions, under clause 2(3) commence on a day fixed by proclamation. The Department of Justice and the Attorney-General (DJAG), the Queensland Police Service (QPS) and the Public Safety Business Agency have given further consideration to the provisions and, in the interests of ensuring a quick and efficient implementation, have identified a number of amendments to various Acts that can commence on assent or a particular date, rather than proclamation. The amendments provide for the changes to commencement dates for particular sections of the Bill.

Introducing additional measures to support and facilitate policy initiatives given effect by the Bill

The Bill makes significant amendments to the *Liquor Act 1992* (Liquor Act) with respect to licences, including the replacement of the existing subsidiary on-premises licence (entertainment) with a new nightclub licence, and changes to the requirements and available extended trading hours for subsidiary on-premises licences (meals). Through consultation with the Office of Liquor and Gaming Regulation (OLGR), it was identified that additional transitional provisions were required to support and facilitate these changes. The additional transitional provisions inserted are:

- a provision to address subsidiary on-premises licence (entertainment) applications that are undecided as at the introduction of the nightclub licence, by providing that the Commissioner for Liquor and Gaming (commissioner) will grant successful applications as nightclub licences;
- a provision to facilitate the transition of existing subsidiary on-premises licences (entertainment) to nightclub licences, by ensuring that the existing licence conditions and extended trading hours of these licences remain in operation after the transition;
- a provision to “grandfather” trading hours for a certain period of time if a licensee of a subsidiary on-premises licence (meals) applies for a different type of licence prior to the wind back of trading hours; and
- transitional provisions to ensure that changes to disciplinary action provisions in the Liquor Act do not prevent disciplinary action being taken against licensees and permittees, if the grounds for the disciplinary action occurred prior to commencement.

A number of amendments also introduce new measures to support and ensure the effective functioning of the ID scanning framework including:

- a provision providing the commissioner with the power to assume the functions of an approved operator in the event that there is no longer an approved operator for an approved ID scanning system;
- a provision exempting certain persons from the requirement to produce an ID for scanning before entering a regulated premises;
- a provision requiring the approved operator to advise the commissioner when there is an ID scanning system failure;
- a provision giving licensees of newly declared regulated premises three months from the date they are declared regulated premises to abide by the ID scanning obligations;
- a provision providing the commissioner with the power to issue an immediate suspension of an approval for an ID scanner or ID scanning system if harm may be caused to members of the public if urgent action to suspend the approval is not taken;
- a provision providing the commissioner with the power to issue a formal direction to an approved operator or an applicant who sought approval for an ID scanning system to fix the system within a specified period;
- a provision providing the commissioner with the power to suspend an approval to operate an ID scanning system; and
- additionally, the Bill amends the standard commencement time for the scanning of IDs to 10pm.

Making minor amendments to ensure the clarity and effectiveness of the legislation

A number of other minor amendments have been made to clarify the amendments in the Bill, and ensure their effectiveness. For example, these minor amendments include:

- amendment of clause 4 of the Bill to ensure that the power to take a photograph of a person, the subject of the special bail condition pursuant to section 11(4AA)(a) of the *Bail Act 1980*, is not limited to the police officer who granted the bail;
- amendment of clause 17 of the Bill to correct the 2nd note in subsection 365A(2) of the *Criminal Code* to reflect what chapter 18A of the *Police Powers and Responsibilities Act 2000* does in applying section 80 of the *Transport Operations (Road Use Management) Act 1995*;
- amendment of clause 43 of the Bill to ensure that the wording of section 83B of the *Liquor Act* more closely reflects the wording in the existing section 67C, to ensure consistency and assist licensees;
- amendment of clause 66 of the Bill to correct a reference to section 142ZZ contained in section 142ZZC(4) of the *Liquor Act*;
- amendment of section 97(2) of the *Liquor Act* to update the note to the section to reflect the amended wording of the commissioner's power to issue guidelines, as contained in clause 33 of the Bill;
- amendment of section 173EH in clause 74 to clarify that IDs will need to be scanned on re-entry into a regulated premises;
- amendment of section 173EH in clause 74 to clarify that a regulated premises will only be required to scan IDs during regulated hours on days on which the regulated premises is authorised to trade past midnight;
- an amendment of section 173EH in clause 74 to clarify that the definition of 'system failure' includes the discontinuation or ending of the approval of an ID scanner;
- an amendment of section 173EJ to clarify that expired banning orders or licensee bans should not remain in the ID scanning system; and

- amendment of clause 118 of the Bill to ensure that a police banning notice that does not have an image attached can be distributed the same way an imaged order can be distributed under new part 5B of chapter 19 of the *Police Powers and Responsibilities Act 2000*.

In addition, these amendments make minor technical amendments to ensure clarity in the application of the ordinary trading hours framework under section 9 of the Liquor Act to commercial special facility licences. These amendments will clarify the authority of a commercial special facility licence remains within the ordinary and extended trading hours framework. In particular, that commercial special facility licensees which trade beyond midnight are deemed to hold an extended trading hours approval under Part 4, Division 7 of the Liquor Act and are required to pay the risk criterion fee for extended trading hours under section 36B of the *Liquor Regulation 2002* (Liquor Regulation). The amendment will address a legislative anomaly by removing the conflicting provisions contained in section 64 of the Liquor Act which states trading hours are those as specified in the licence. This anomaly means the risk fee criterion for late trading venues cannot be applied to commercial special licences despite it being accepted industry practice since 2009 when the risk criterion fee was established in legislation. As a consequence, the amendments will be retrospective to 2009.

The amendments also confirm the existing ability of commercial special facility licences relating to casinos and airports to trade on Good Friday, Anzac Day and Christmas Day in accordance with their specific licence conditions. Special dispensation to trade on these days has always been provided for, however, the amendment to section 64 requires that this ability to trade must now be specified in the trading hours provisions under section 9 and the licence conditioning provisions under section 107C.

Enhancing enforcement and compliance measures in relation to unreasonable noise emanating from licensed premises

Unreasonable noise from licensed venues can not only constitute a serious nuisance to the local community, but may also pose health risks to those living or working in the area if not addressed in a timely and appropriate manner.

While a prosecution or disciplinary action can potentially be taken against a licensee for ongoing noise issues, these processes may take some time and, in the interim, neighbouring residents may be subject to continual disturbance without immediate redress. Fines imposed later as a result of prosecution may also not be an immediate deterrent for some licensees, depending on the profits being made as a result of offending entertainment occurring at the premises.

The amendments regarding regulation of noise from licensed premises will make Queensland's licensing system more responsive to concerns about impacts of noise on the amenity of the community by:

- ensuring that the OLGR can continue to take swift action in response to a complaint or other detected circumstances where a licensee proves to be unwilling or unable to maintain reasonable noise levels at a licensed premises;
- requiring a licensee to take immediate and specific steps, as directed by the OLGR, to ensure that the amenity of the locality in and around their licensed premises is not affected by unreasonable noise from the premises; and
- providing a stronger deterrent, through increased penalties, for those licensees who do not comply with the requirements of a notice or order from the OLGR to address unreasonable noise.

The amendments provide an investigator from the Office of Liquor and Gaming Regulation the ability to issue an abatement notice for a period of three months with a possible extension in circumstances where unreasonable noise is emanating from the licensed premises, or a premises to which a restricted liquor permit relates. It is the intention of an abatement notice that the licensee, upon receipt of the abatement notice, will take proactive steps to permanently address the level of noise that is emanating from the premises. While the abatement notice is in operation, the licensee is obligated to reduce the level of noise emanating from the premises to a reasonable level.

To address licensees who are not willing to comply or unable to maintain compliance with noise restrictions within the Liquor Act or the Liquor Regulation, the amendments also provide the commissioner the authority to issue a compliance order to a licensee to stop all noise emanating from the source of the disturbance. A compliance order to stop noise will be issued by the commissioner when unreasonable noise continues to emanate from a premises despite the issue of one or more abatement notices for unreasonable noise in the past 12 months. The intention is that this be a more strict measure whereby the order can immediately require the licensee to stop all noise specified on the order until the licensee can demonstrate they can permanently limit the noise to a reasonable level.

This type of stop noise order will specify the noise to be stopped, including the kind of noise, the location or times when the noise must be stopped. The order may also require the licensee to obtain a qualified acoustic engineer's report in order to inform the actions required to be taken by the licensee to comply with reasonable noise limits. However, the amendments also allow the commissioner to amend the order to accommodate licensees as they start to implement measures that prevent unreasonable noise from occurring.

The amendments re-establish the practice previously undertaken by the OLGR under the provisions of section 187 of the Liquor Act. Due to recent Court precedents, it has been established the previous practice to issue notices to stop all noise at the offending source at a premises until soundproofing could be undertaken was beyond the power of section 187 despite its intent. The amendments clearly specify this power under new provisions specified in section 46.

Enhancement of safeguards for the Sober Safe Centre Trial

Clause 113 of the Bill inserts the Sober Safe Centre Trial into the *Police Powers and Responsibilities Act 2000* to enable police to detain intoxicated person for up to 8 hours. Proposed section 390M requires the manager of the Sober Safe Centre to give a notice requiring payment of the cost recovery charge to every person who has been admitted into the centre. The Bill is amended to provide the manager of the Sober Safe Centre with a discretion not to issue the notice in circumstances where it is reasonably suspected the Commissioner of Police would not be able to recover the charge from the person.

Clause 113 of the Bill is further amended to enable a person, who has been issued with a cost recovery charge, to apply to the Commissioner of Police to have the charge waived on the grounds that payment of the charge would cause the person financial hardship.

Proposed section 130N of the Bill provides the Commissioner of Police with the option of providing details of an unpaid cost recovery charge to the registrar under the *State Penalties Enforcement Act 1999* for collection of the charge. Proposed section 130N is amended to exclude the issuing of an arrest and imprisonment warrant from the enforcement options available to the registrar under the State Penalties Enforcement Act. The detention of a person in a sober safe

centre is, in effect, an alternative to the person being arrested and brought into the criminal justice system.

Amendments to the State Penalties Enforcement Regulation 2014

Consequential amendments are required to the *State Penalties Enforcement Regulation 2014* (SPER), which commences on the 1 September 2014, to reflect amendments to the *Liquor Act*, *Police Powers and Responsibilities Act 2000* and *Summary Offences Act 2005* contained in the Bill.

The prescribed penalty amounts for sections 165(2), 165(4) and 165A(2) of the *Liquor Act* will increase from 4 penalty units to 5 penalty units to correspond with increases to the maximum penalties. An additional offence – section 165A(4) - will be prescribed as a penalty infringement notice offence with a penalty amount of 5 penalty units.

Amendments to the SPER entries relating to sections 790(1) and 791(2) of the *Police Powers and Responsibilities Act 2000* (relating to assault and obstruction of a police officer or contravening a direction) and sections 6(1) and 7(1) of the *Summary Offences Act 2005* (relating to public nuisance and urinating in a public place) reflect amendments in the Bill to introduce a circumstance of aggravation where an offence is committed in, or within, the vicinity of licensed premises.

Alternative ways of achieving policy objectives

Wherever possible, administrative options have been sought to address issues. However, for matters outlined in these explanatory notes, amendment to the Bill is the only possible option to achieve the original policy objectives.

Estimated cost for government implementation

No additional costs to government are expected from the amendments to the Bill, other than those already outlined in the original explanatory notes.

Consistency with fundamental legislative principles

The amendments to the Bill are generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

The amendments to the *Liquor Act* which clarify the application of the ordinary trading hours and extended trading hours framework to commercial special facility licensees are retrospectively applied and therefore inconsistent with fundamental legislative principles under section 4(3)(g) of the *Legislative Standards Act 1992*. However, the retrospective amendments are justified in order to address potential ambiguity in the application of risk criterion fees for extended trading hours to commercial special facility licensees and ensure consistency in their application across the various licence types.

With effect from 1 January 2009, the *Liquor and Other Acts Amendment Act 2008* amended the *Liquor Act* to implement liquor licence fees across all licence types with additional loadings for risk criterion such as extended trading hours. It was the explicit intent of these amendments that all licence types, including commercial special facility licensees, would be subject to the ordinary trading hours framework and a risk criterion fee for extended trading hours to trade outside of

these times. The retrospective amendments reinforce the original intent of these amendments and reinforce current practice, which has been in place since 2009. The payment of the risk criterion fee for extended trading hours by commercial special facility licensees has an accepted practice by industry until a recent challenge by a licensee.

Consultation

Consultation was undertaken with the OLGR in relation to Liquor Act amendments in the Bill. The OLGR provided significant feedback regarding measures that would be required to support, facilitate and clarify the provisions given effect by the Bill, and much of this feedback has formed the basis for the further amendments to these provisions. Additionally, amendments were also made in response to recommendations of the Legal Affairs and Community Safety Committee (Report No. 70), which was informed by submissions from industry and the public.

Consistency with legislation of other jurisdictions

The amendments during consideration in detail remain consistent with what was stated in the original explanatory notes of the Bill in regards to consistency with other jurisdictions.

In relation to amendments to address unreasonable noise, almost all Australian jurisdictions explicitly provide for a liquor licence or permit to include a condition relating to noise levels or noise abatement. However, the liquor regulator is not always involved in regulating noise from licensed premises once a licence or permit has been issued. Rather, the responsibility for regulation of noise may fall to the liquor regulator, local council, police or the relevant environmental protection authority, or a combination of these, depending on the jurisdiction.

As such, the powers exercised by the commissioner under the Liquor Act are reflective of the powers exercised by liquor regulators, local councils, police and environmental protection authorities, across the other Australian jurisdictions. For example:

- in the Australian Capital Territory the commissioner may issue a written direction to a licensee to reduce loud noise coming from premises;
- in South Australia, the commissioner may make interim orders in response to a complaint about noise emanating from licensed premises;
- in Western Australia, the Director of Liquor Licensing may make interim and final orders in response to a complaint about noise emanating from licensed premises.

Notes on provisions

Clause 1 amends clause 2 to change commencement dates of sections of the Bill to ensure the efficient implementation of initiatives given effect by the Bill. The amendments clarify that the omission of the moratorium on extended trading hours applications under the Liquor Act, and associated transitional amendments, will commence on 1 September 2014, even if final assent of the Bill is after that date.

Clause 2 amends proposed subsection 11(4AA)(a) to ensure that the power to take a photograph of a person, the subject of a special bail condition pursuant to section 11(4AA)(a) of the *Bail Act 1980*, is not limited to the police officer who granted the bail.

Clause 3 amends section 182A (Parole eligibility date for prisoner serving term of imprisonment for drug trafficking offence) of the *Corrective Services Act 2006*, as amended by clause 9 of the Bill, to replace the reference to section 302A with a reference to section 314A consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 4 amends section 182A (Parole eligibility date for prisoner serving term of imprisonment for drug trafficking offence) of the *Corrective Services Act 2006*, as amended by clause 9 of the Bill, to replace the reference to section 302A with a reference to section 314A consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 5 omits and replaces clause 13 of the Bill. The consequential amendment to section 300 (Unlawful Homicide) of the Criminal Code under the Bill is no longer required because of the relocation of the offence of Unlawful striking causing death from Chapter 28 to new Chapter 28A of the Criminal Code under clause 6 of the amendments.

New clause 13 amends section 72 (Affray) of the Criminal Code to insert new subsection (3A) to provide a cross-reference to the new circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill; that is, the offence was committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 6 amends clause 14 of the Bill to relocate the new offence of Unlawful striking causing death from existing Chapter 28 of the Criminal Code to newly created Chapter 28A (Unlawful Striking Causing Death) of the Criminal Code and renumbers the offence provision as new section 314A of the Criminal Code.

Clause 7 amends clause 14 of the Bill to make it clear that the striking of another, in the context of the offence of Unlawful striking causing death, is unlawful unless it is authorised, justified or excused by law.

Under the Bill, the application of section 23(1)(b) of the Criminal Code and the defence under section 270 (Prevention of repetition of insult) are expressly excluded with regards to the new offence of Unlawful striking causing death. Further, the offence provision expressly provides that an assault is not an element of this new offence; the consequences being that the defence of provocation under sections 268 and 269 of the Criminal Code have no application and considerations regarding consent to the use of force do not arise in the context of this new offence

(that is, the strike by a person to another may be unlawful although it is done with the consent of that other person).

Clause 8 amends clause 14 of the Bill to correct a grammatical error in the new offence of Unlawful striking causing death by replacing the word ‘was’ with ‘is’.

Clause 9 omits and replaces clause 15 of the Bill. The consequential amendment to section 303 (Definition of manslaughter) of the Criminal Code under the Bill is no longer required because of the relocation of the offence of Unlawful striking causing death from Chapter 28 to new Chapter 28A of the Criminal Code under clause 6 of the amendments. New clause 15 amends section 320 (Grievous bodily harm) of the Criminal Code to insert new subsection (3A) to provide a cross-reference to the new circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill; that is, that the offence was committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 9 also inserts new clauses 15A, 15B and 15C in the Bill to provide a cross-reference to the new circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* under the Bill, with regards to the following Criminal Code offences respectively: section 323 (Wounding), section 335 (Common Assault) and section 339 (Assault occasioning bodily harm).

Clause 10 amends clause 16 of the Bill, which amends section 340 (Serious Assault) of the Criminal Code. Clause 10 inserts new subsection (1C) to provide a cross-reference to the circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill, with regards to section 340(1)(b); that is, that the offence was committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 11 amends clause 16 of the Bill, which amends section 340 (Serious Assault) of the Criminal Code regarding the serious assault of a public officer. Clause 11 inserts new subsection (2B) to provide a cross-reference to the circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill, with regards to section 340(2AA); that is, that the offence was committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 12 amends clause 17 of the Bill to omit and replace Note 2 under new section 365A(2), which sets out the application of new Chapter 35A (Circumstance of aggravation for particular offences), of the Criminal Code. Note 2 provides a clear cross-reference to new Chapter 18A inserted into the *Police Powers and Responsibilities Act 2000* under the Bill.

Clause 13 inserts new Parts 6A and 6B, and new clauses 26A to 26D into the Bill to amend the *Evidence Act 1977* and the *Introduction Agents Act 2001*, consequential to the relocation and renumbering of the Criminal Code offence of Unlawful striking causing death. New clause 26A provides that Part 6A of the Bill amends the *Evidence Act 1977*. New clause 26B consequentially amends section 21AC (Definition for div 4A) to insert a reference to new Chapter 28A (Unlawful striking causing death) of the Criminal Code into the definition of ‘offence involving violence’. New clause 26C provides that Part 6B of the Bill amends the *Introduction Agents Act 2001*. New clause 26D consequentially amends Schedule 1 (Disqualifying offence provisions under the Criminal Code) to insert a reference to new Chapter 28A (Unlawful striking causing death) of the Criminal Code into the list of disqualifying offences.

Clause 14 amends clause 28 by inserting the definition of abatement notice in section 4 of the Liquor Act.

Clause 15 amends clause 28 by inserting the definition of compliance order in section 4 of the Liquor Act.

Clause 16 amends clause 28 of the Bill by inserting a definition for system failure regarding an approved ID scanner and an approved ID scanning system in section 4 of the Liquor Act. The clause also inserts the definition of unreasonable noise.

Clause 17 inserts a new clause 29A in the Bill to amend section 9 of the Liquor Act to provide that an airport or casino trading under the authority of a commercial special facility licence may trade on Christmas Day, ANZAC Day and Good Friday. The authority to trade on these days is limited to the hours and circumstances prescribed as a condition on the commercial special facility licence.

Clause 18 amends clause 32 of the Bill to correct a typographical error in the renumbering of section 21(1) of the Liquor Act.

Clause 19 inserts clause 33A to amend section 46 of the Liquor Act. The amendments insert a new basis to issue a compliance order under section 46 to stop or prevent unreasonable noise coming from a licensed premises. In addition, the amendments detail the administrative process associated with orders issued under this provision that include the requirements of a notice and the circumstances under which it will be extended by the commissioner. The provision also clarifies that the issuing of an order under section 46 does not preclude the commissioner from undertaking other disciplinary processes under the Liquor Act against the licensee.

Clause 19 also inserts clause 33B to insert a new section 46A which relates to issuing of compliance orders by the commissioner. A compliance order for unreasonable noise may be issued by the commissioner if, in the last year, at least one abatement notice has been issued with respect to a licensed premises. The compliance order may require the recipient to stop noise coming from the licensed premises that relates to noise of a certain kind or above a certain limit as specified on the notice. New section 46A also provides the commissioner the authority to require an acoustic report in relation to the licensed premises. After considering the acoustic report, the commissioner may amend the compliance order to require the person to take action to improve the acoustics of the premises in order to stop unreasonable noise coming from the premises.

Clause 20 amends the Bill by inserting a new clause which amends section 58A of the Liquor Act to clarify that a condition may be placed by regulation on all licences or a particular class of licence in a particular area. Further, the amendment makes clear that a condition imposed by regulation under section 58A may be overridden by a specific condition imposed under section 107C or 111 of the Liquor Act.

Clause 20 also inserts a new clause 40B into the Bill to amend section 64 of the Liquor Act which prescribes the authority of a commercial special facility licence. This amendment will clarify that a commercial special facility licence authorises the licensee to sell liquor on the licensed premises, for consumption on or off the premises, during ordinary trading hours or approved extended trading hours.

Clause 21 inserts clause 42A of the Bill to amend section 67D of the Liquor Act to insert a new subsection, which provides that the Commissioner must not grant a subsidiary on-premises

licence to a person if the Commissioner is satisfied that the proposed sale of liquor would be more appropriately be carried on under the authority of a different kind of licence.

Clause 22 amends clause 43 of the Bill to specify that, in the new section 83A(4) of the Liquor Act, a nightclub licensee must comply with section 67A(3)(b) to (d), to ensure that, if no entertainment is being provided prior to 5p.m., the licensee must only provide liquor in conjunction with the consumption of a meal.

Clause 23 amends clause 43 of the Bill to clarify that, if stated in the licence, the new nightclub licence in section 83B of the Liquor Act authorises the licensee to sell liquor for consumption off the licensed premises, subject to the new section 83D.

Clause 24 inserts clause 46A of the Bill to amend the note in section 97(2) of the Liquor Act, to reflect the amendments made by the Bill to section 42A of the Liquor Act, in relation to the Commissioner's ability to publish guidelines.

Clause 25 amends clause 50 of the Bill to amend section 107C of the Liquor Act to provide that a condition of a commercial special facility licence relating to an airport or casino may specify the trading hours for the licensed premises on ANZAC Day, Good Friday or Christmas Day. The amendment operates retrospectively to confirm that this authority has always existed. The clause also ensures a condition under section 107C may provide for matters mentioned in section 173EG of the Liquor Act.

Clause 26 amends clause 66 of the Bill in order to restructure and clarify the new section 142ZZA(1) of the Liquor Act.

Clause 27 amends clause 66 of the Bill to remove the examples that had been included in the new section 142ZZB(1) of the Liquor Act.

Clause 28 amends clause 66 of the Bill in order to correct a reference to section 142ZZ contained in the new section 142ZZC(4) of the Liquor Act, and to ensure that the section captures situations where a licensee or permittee has allowed anyone to advertise an unacceptable practice or promotion.

Clause 29 amends clause 74 of the Bill by amending the definition of approved evaluator in the new section 173EE.

Clause 30 amends clause 74 of the Bill by amending the definition of ID scanner in the new section 173EE to future proof how ID scanners may scan IDs.

Clause 31 amends clause 74 of the Bill by inserting a definition of system failure in the new section 173EE.

Clause 32 amends clause 74 of the Bill by inserting a provision in the new section 173EF clarifying that the ID scanning requirement does not apply to licensed premises that have an extended hours permit to trade after midnight.

Clause 33 amends clause 74 of the Bill by clarifying in the new section 173EG that section 58A of the Liquor Act may be exercised to impose a condition by regulation on a licence declaring a licensed premises to be regulated premises. Section 58A sits in part 4 of the Liquor Act.

Clause 34 amends clause 74 of the Bill by inserting a provision in the new section 173EG clarifying that a condition about regulated hours may be placed not only on the licence of a premises that has been deemed to be regulated premises under the new section 173EG(1) but also on the licence of a premises that has been deemed to be regulated premises by virtue of the new section 173EF(1).

Clause 35 amends clause 74 of the Bill by clarifying under the new section 173EH that a regulated premises is only required to scan IDs during its regulated hours on days on which the regulated premises is authorised to sell or supply liquor past midnight. Some venues may, for example, only be approved to sell or supply liquor beyond midnight on weekends, but not weekdays. Unless alternative regulated hours are specified on the licence of the premises, it is not the policy intention that these venues be required to scan photo IDs during days that they are not authorised to sell or supply liquor past midnight. The clause also inserts a new sub-section to clarify that a condition may be placed on a regulated premises requiring the regulated premises to scan patron IDs on days on which it is not approved to trade past midnight.

Clause 36 amends clause 74 of the Bill by clarifying in the new section 173EH(2) that the approved ID scanner should, in scanning a photo ID, only record the photo and other permitted information contained in or on the photo ID.

Clauses 37 and 38 amend clause 74 of the Bill by clarifying that the contingency arrangements under the new section 173EH that apply in the event of a system failure are to apply to all regulated premises, regardless of how they may come to be regulated premises.

Clause 39 amends clause 74 of the Bill by removing the need, in the new section 173EH(3)(a), for a licensee of regulated premises to check photo IDs manually against a list of persons subject to banning orders in the event of a system failure. The clause provides for checking the photo ID against a current list.

Clause 40 amends clause 74 of the Bill by inserting a provision in the new section 173EH which clarifies the meaning of a current list against which a licensee of regulated premises must check patron IDs. Clause 40 also inserts a provision exempting certain persons from the requirement to be subject to the scanning obligations provided for in the new section 173EH before entering a regulated premises. Clause 40 also further clarifies the meaning of 'permitted information'.

Clause 41 amends clause 74 of the Bill by amending the standard commencement time for the scanning of IDs to 10pm.

Clause 42 amends clause 74 of the Bill by removing the definition of system failure in the new section 173EH. The definition has been moved to the new section 173EE. The clause also inserts a new section 173EHA which provides that premises which, after the commencement of the new section 173EH, have been declared regulated premises by a licence condition will have at least three months after the premises have been so declared to comply with section 173EH.

Clause 43 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EJ(1).

Clause 44 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EJ(2).

Clause 45 amends clause 74 of the Bill by clarifying in the new section 173EJ(3) that personal information may be held in the approved ID scanning system for more than 30 days if it relates to information about a person subject to a banning order or licensee ban in force for the person.

Clauses 46, 48 and 50 amend clause 74 of the Bill by removing the need for an approved operator to immediately comply with a requirement under a court order or from the commissioner, police commissioner, linked licensee, or a person bound by a court order to include, remove or amend information about a banning order or licensee ban from the approved ID scanning system. Instead, the approved operator is only required to comply with the requirement as soon as reasonably practicable.

Clause 47 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EJ(4).

Clause 49 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EJ(5).

Clause 51 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EJ(6).

Clause 52 amends clause 74 of the Bill by inserting a new section 173EJA and a new section 173EJB. The provisions impose an obligation on the approved operator, after becoming aware of a system failure, to inform the commissioner and police commissioner of the system failure and provide the licensee of a regulated premises with access to a current list of persons who are subject to a banning order for the premises. The clause also clarifies the time period for which a list of banned persons remains current.

Clause 53 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EK(2).

Clause 54 amends clause 74 of the Bill by inserting a maximum penalty for the new section 173EM(1).

Clause 55 amends clause 74 of the Bill by inserting a new section 173EMA which declares that an approved operator may share with the commissioner and police commissioner details of banning orders and licensee bans to which the approved operator may have access. It is also intended that the approved operator be able to share banning information with licensees of all regulated premises regardless of whether the banning information relates to the regulated premises. Likewise, the court and police commissioner may give an approved operator details of banning orders.

Clause 56 amends clause 74 of the Bill by inserting a new section 173EOA which allows the commissioner to issue a direction to a responsible person to alter, adjust, maintain or repair an approved ID scanning system.

Clause 57 amends clause 74 of the Bill by clarifying in the new section 173EP that a suspension or revocation of an approval of an ID scanner or ID scanning system takes effect on the day stated in the information notice to the person to whom the approval was given. The day stated in the information notice must be at least 14 days after the notice is given.

Clauses 58 and 59 amend clause 74 of the Bill by re-numbering the subsections in the new section 173EP.

Clause 60 amends clause 74 of the Bill by inserting a new section 173EPA which provides that the commissioner may immediately suspend an approval relating to an ID scanner or ID scanning system if the commissioner is satisfied harm may be caused to members of the public if urgent action to suspend the approval is not taken.

Clause 61 amends clause 74 of the Bill by inserting examples of the matters to which the commissioner may have regard when deciding, under the new section 173EQ, whether an individual is a suitable person to operate an approved ID scanning system.

Clause 62 amends clause 74 of the Bill by amending the new section 173ER to clarify that the commissioner may suspend or revoke an approval to operate an ID scanning system. The clause also inserts a new section 173ES which provides the commissioner with the power to immediately suspend an approval to operate an ID scanning system if the commissioner is satisfied harm may be caused to members of the public if urgent action to suspend the approval is not taken. Lastly, clause 62 inserts a new section 173ET which provides that the commissioner may operate an approved ID scanning system in circumstances where an approved operator for an approved ID scanning system is no longer approved to operate the system.

Clause 63 inserts a new clause 79A to amend section 187 of the Liquor Act to provide a ground for issuing an abatement notice. As a result of this amendment, an abatement notice may be issued on the ground that noise coming from licensed premises, or a utility area for licensed premises, is unreasonable. An abatement notice provides timeframes for specific action which must be undertaken by the licensee to reduce the noise to reasonable levels. An abatement notice may be used by an investigator to reduce the noise from the licensed premises to a level that is no longer unreasonable. An abatement notice can be in effect for a period of three months and can be extended for further periods of up to three months.

Clause 64 amends clause 81 of the Bill to insert a new transitional section 321A into the Liquor Act, which will apply to applications for subsidiary on-premises licences (entertainment) made prior to 1 July 2015 that have not been decided or withdrawn as at 1 July 2015. The section provides that the Commissioner must deal with and decide the application under the unamended Liquor Act. If the Commissioner then decides to grant the licence, it must be granted as a nightclub licence.

Clause 65 amends clause 81 of the Bill to clarify the new section 322 of the Liquor Act to provide that, from 1 July 2015, a subsidiary on-premises licence (entertainment) that has transitioned to a nightclub licence will be held by the licensee under the same terms as the previous licence, such as the approved trading hours. The section then specifies that, if the previous licence was subject to a condition immediately prior to the transition, the nightclub licence is taken to be subject to the condition. The section also omits an unnecessary transitional provision relating to toilet requirements.

Clause 66 amends clause 81 of the Bill to insert additional transitional arrangements into the new section 323 of the Liquor Act, in relation to extended trading hours beyond 1a.m. for subsidiary on-premises licences (meals). If, prior to 1 July 2015, an affected licensee applies for a different type of licence that allows extended trading hours beyond 1a.m., the licensee will be able to continue trading under their existing extended trading hours. This authorisation will cease on the day after the Commissioner notifies the licensee of his decision on the application, or until 1 January 2016, whichever is earlier.

Clause 67 amends clause 81 of the Bill to insert new transitional sections 325 and 326 in the Liquor Act to ensure that incidents that occurred at the premises prior to the commencement of prior to commencement of the clauses 59 and 60 of the Bill can be used as grounds for disciplinary action that has either commenced but not been finalised on commencement or has not commenced on commencement.

Clause 67 also amends clause 81 of the Bill to insert new sections 327 and 328 into the Liquor Act. New section 327 applies to commercial special facility licensees which have the authority to trade between midnight and 5am without the authority of an extended trading hours approval under Part 4, Division 7 of the Liquor Act. At the commencement of this provision, these licensees will be deemed to hold an extended trading hours approval for the purposes of the Liquor Act.

New section 328 applies to commercial special facility licensees which, at any period between 1 January 2009 and the commencement of this provision, have traded between midnight and 5am on a regular basis in accordance with hours stated on their licence. This section will apply retrospectively to these licensees to ensure that the licences are taken to have been endorsed with an extended trading hours approval under Part 4, Division 7 of the Liquor Act. Section 328 will also ensure that licence fees payable during the period from 1 January 2009 to the commencement date have always been payable as if the licensee had held an extended trading hours approval under Part 4, Division 7 of the Liquor Act. However, the retrospective operation of section 328 will not apply to commercial special facility licensees disputing the payment of an extended trading hours approval fee which relates to post-midnight trading if the legal proceeding is decided prior to the commencement date. Section 328 also clarifies that no compensation is payable by the State to any person because of the operation of the provision.

Clause 67 also inserts a new transitional section 329 into the Liquor Act. The section provides that, for the purposes of determining whether an entity is an eligible entity for the sale of liquor at a fundraising event under section 13(3) of the Liquor Act, the entity will not be an eligible entity if the entity or its executive officer has been convicted of an offence under the repealed section 148A(2) or (4) within the 5 years immediately before the event.

Clause 68 inserts new clause 91A into the Bill to amend section 108 (Termination of community service order) of the *Penalties and Sentences Act 1992* consequential to the amendment to section 120A of the *Penalties and Sentences Act* under clause 94 of the Bill.

Clause 69 amends clause 92 of the Bill which establishes the mandatory community service order regime for offenders convicted of a prescribed offence of violence committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 69 omits and replaces new section 108B under the Bill to redraft the provision to make it clear that the mandatory community service order must be imposed in each instance. That is, whether or not the court also makes any other order.

Clause 70 inserts new clause 92A into the Bill to consequentially amend existing section 110A of the *Penalties and Sentences Act 1992*. The amendment reflects the restructuring of new section 108B under clause 69 of the amendments and is to ensure consistency in drafting across the two provisions. The current operation of section 110A is not changed.

Clause 71 amends clause 98 of the Bill consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 72 amends clause 99 of the Bill consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 73 amends clause 101 of the Bill consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 74 corrects a grammatical error in new subsection 46(2A) of the *Police Powers and Responsibilities Act 2000* by replacing the word 'subsections' with the 'subsection'.

Clause 75 corrects a grammatical error in new subsection 47(2A) of the *Police Powers and Responsibilities Act 2000* by replacing the word 'subsections' with the 'subsection'.

Clause 76 corrects a grammatical error in new subsection 390M(1)(a) of the *Police Powers and Responsibilities Act 2000* by removing the word 'or' at the end of the subclause.

Clause 77 omits and replaces subsection 390M(3) of clause 113. In order to provide the manager of a Sober Safe Centre with a discretion of not issuing a notice for a cost recovery charge, the existing provision is omitted. New subsection 390M(3) provides that a person is only liable to pay the cost recovery charge if the manager dices them a notice for the charge. The subsection also require the notice to be in the approved form.

Clause 78 amends clause 113 of the Bill by inserting new subsection 390M(5). This subsection sets out the circumstances when the manager of the Sober Safe Centre does not have to issue a person who has been admitted into the Sober Safe Centre with a cost recovery charge notice.

Clause 79 amends clause 113 of the Bill by inserting new section 390MA. This section sets out the criteria for when and how a person may apply to the Commissioner of Police for a waiving of the cost recovery charge as payment of the charge would cause financial hardship to the person. Subsection (3) places a requirement to decide the application with 7 days and provide the applicant with written notification of the decision.

Clause 80 amends clause 113 of the Bill by inserting new subsection 390N(4). Subsection (4) restricts the registrar under the *State Penalties Enforcement Act 1999* from issuing an arrest and imprisonment warrant, as an enforcement option, following the default of an enforcement order in relation to an unpaid cost recovery charge.

Clause 81 corrects a grammatical error in clause 117, new subsection 390M(1)(a) by removing the word 'and' at the end of the subclauses (a) and (b).

Clause 82 corrects a grammatical error in the heading Part 2, of Chapter 18A of clause 117. The amendment replaces the abbreviation 's' with the word 'section'.

Clause 83 corrects a grammatical error in clause 118 of the Bill, new subsection 602F(4)(f) by replacing the word 'for' with the word 'of'.

Clause 84 corrects a drafting error in new section 602P of clause 118. The existing clause incorrectly provides that the person may apply to QCAT for a review of the police banning notice. Section 602P is amended to provide that the person may apply to QCAT for a review of the Commissioner of Police's decision made about an extended police about an extended police banning notice under section 602O.

Clause 85 amends the heading in Part 5B of clause 118 of the Bill as a result of amendments being made to part 5B clarifying that the power to distribute imaged orders includes a power to distribute a police banning notices without an image attached.

Clause 86 corrects a grammatical error in the alphabetical placement of the definitions in section 602R of clause 118.

Clause 87 corrects a grammatical error in the definition of ‘banning order’ contained in section 602R of clause 118 by inserting the word ‘or’ at the end of paragraph (b) of the definition.

Clause 88 amends the division 2 heading in Part 5B of clause 118 of the Bill. The heading is amended to reflect changes being made in the part clarifying that the power to distribute imaged orders also includes the power to distribute a police banning notice without an image attached. Division 2 heading when amended will be ‘Power to photograph persons and distribute orders and images’.

Clause 89 amends section 602S(1)(b) of clause 118 of the bill to correct the cross reference to the Bail Act 1980 providing the power for a police officer to detain and photograph a person who is subject of a special bail condition under section 11(3) of the *Bail Act 1980*.

Clause 90 amends clause 118 to clarify that the example for section 602T(3) relates to a banning order made under part 3B of the *Penalties and Sentences Act 1992*.

Clause 91 amends the heading of section 602U of clause 118 to reflect amendments made to Part 5B clarifying that police banning notice can be distributed in the same was an imaged order.

Clause 92 amends section 602U of clause 118 by inserting new subsection (3A) to clarify that a police banning notice may be distributed in the same way an image order may be distributed under section 602U.

Clause 93 amends the heading of section 602W of clause 118 to reflect amendments made to Part 5B clarifying that police banning notice can be distributed in the same was an imaged order.

Clause 94 amends the Bill at clause 118 to correct a cross referencing error in subsection 602W(1). The amendment replaces the reference to section 602T with the correct reference to 602U.

Clause 95 amends clause 118 of the Bill by inserting new subsection (4) into section 602W to clarify that a reference to an imaged order in the section includes a reference to a police banning notice without an image attached.

Clause 96 makes a technical amendment to clause 120 of the Bill to insert a subclause (1) consequential to clause 97 of the amendments.

Clause 97 amends clause 120 of the Bill, which amends section 790 (Offence of assault or obstruct police officer) of the *Police Powers and Responsibilities Act 2000* to provide a cross-reference to the new circumstance of aggravation underpinning the mandatory community service order regime inserted into the *Penalties and Sentences Act 1992* by the Bill; that is, that the offence was committed in a public place while the offender was adversely affected by an intoxicating substance.

Clause 98 corrects a grammatical error in the alphabetical placement of the definitions in clause 122.

Clause 99 inserts new Part 9A and new clauses 122A and 122B into the Bill to amend the *Security Providers Act 1993* consequential to the relocation and renumbering of the Criminal Code offence of Unlawful striking causing death. New clause 122A provides that Part 9A amends the *Security Providers Act 1993*. New clause 122B consequentially amends Schedule 1 (Disqualifying offence provisions under the Criminal Code) to insert a reference to new Chapter 28A (Unlawful striking causing death) of the Criminal Code into the list of disqualifying offences. The clause also inserts new Part 9B and clauses 122C and 122D into the Bill to amend schedule 1 of the *State Penalties Enforcement Regulation 2014* to effect consequential amendments to nominated offences of the *Liquor Act 1992*, the *Police Powers and Responsibilities Act 2000* and the *Summary Offences Act 2005* to reflect changes made to substantive offence provisions and maximum penalties under the Bill.

Clause 100 inserts new Part 10A and new clauses 126A to 126C into the Bill to amend the *Transport Operations (Passenger Transport) Act 1994* consequential to the relocation and renumbering of the Criminal Code offence of Unlawful striking causing death. New clause 126A provides that Part 10A amends the *Transport Operations (Passenger Transport) Act 1994*. New clause 126B consequentially amends Schedule 1 (Disqualifying offences – provisions of the Criminal Code) to insert a reference to new Chapter 28A (Unlawful striking causing death) of the Criminal Code into the list of disqualifying offences. New clause 126C consequentially amends Schedule 1A (Driver disqualification offences) to insert a reference to new Chapter 28A (Unlawful striking causing death) of the Criminal Code into the list of disqualifying offences.

Clause 101 amends clause 128 of the Bill consequential to the renumbering of the new Criminal Code offence of Unlawful striking causing death under clause 6 of the amendments.

Clause 102 amends the long title to the Bill to include reference to the following Acts: the *Evidence Act 1977*, *Introduction Agents Act 2001*, *Security Providers Act 1993*, *State Penalties Enforcement Regulation 2014* and *Transport Operations (Passenger Transport) Act 1994*.