

Safe Night Out Legislation Amendment Bill 2014

Explanatory Notes

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 primary objective of the Bill is to reduce alcohol- and drug-related violence in Queensland's nightlife.

The Bill aims to make Queensland's nightlife safer for all through the reduction of alcohol- and drug-related violence.

The Bill seeks to address alcohol and drug related violence by ensuring bad behaviour is not tolerated, providing safe and supportive entertainment precincts and through working to change the culture by making it clear that everyone is responsible.

Achievement of policy objectives

The Bill will achieve the policy objectives by increasing penalties and police powers, strengthening liquor licensing compliance measures and creating stronger local management of entertainment precincts.

The Criminal Code is amended to:

- create a new offence of Unlawful striking causing death, carrying a maximum penalty of life imprisonment. The offence will target 'coward punch' cases where the victim tragically dies;
- amend section 340 (Serious assaults) to increase the maximum penalty for assaults on public officers which: involve spitting, biting or the application of a bodily fluid or faeces; cause bodily harm; or where the offender is, or pretends to be, armed. The amendment will make the penalty for such assaults consistent with similar assaults on police officers and recognises the inherent dangers faced by our front line public officers; and
- insert a new chapter 35A to provide for the circumstances where a person, charged with certain serious offences of violence committed in a public place and while adversely affected, is to be taken to be (in the case of alcohol) or presumed to be (in the case of drugs) adversely affected by an intoxicating substance at the time of the offending. New chapter 35A is relevant to the new mandatory community service orders regime introduced in this Bill.

The *Penalties and Sentences Act 1992* is amended to:

- require the sentencing court to impose a community service order, in addition to any other sentence, for prescribed offences of violence committed in a public place while the offender was adversely affected by an intoxicating substance;
- ensure that voluntary intoxication cannot be relied upon at sentence to mitigate an offender's sentence; and
- extend the current court banning orders to allow a court to ban an offender from in and around licensed premises for any period of time including a life-time ban if the court deems it appropriate.

The Bill amends the *Police Powers and Responsibilities Act 2000* to ensure that the police are empowered to conduct drug and alcohol testing to establish whether a person charged with a relevant offence was adversely affected by an intoxicating substance for the purposes of triggering the mandatory community service order provisions.

The Bill amends the *Bail Act 1980* to create a mandatory condition of bail for offenders charged with prescribed offences of violence that they participate in a drug and alcohol assessment and referral programme.

The Bill will increase the fines associated with public order offending to better protect people in our entertainment precincts and in and around licensed venues.

The Bill will introduce new police banning notices to enable the police to issue on-the-spot banning notices if an individual is behaving in a disorderly, offensive, threatening or violent manner and poses a risk to the safety of persons or disrupting the reasonable enjoyment of licensed premises, events and people within a Safe Night Precinct.

The Bill amends the *Drugs Misuse Act 1986* and *Drugs Misuse Regulation 1987* to strengthen penalties for offences involving anabolic-androgenic steroids similar to those applying to other dangerous drugs such as methamphetamine and ecstasy.

The Bill will introduce a trial of a Sober Safe Centre in the Brisbane CBD. This will allow the police to detain a person who is intoxicated and behaving in a way that poses a risk of physical harm to themselves or another person or where the person commits a public nuisance offence, urinates in a public place or disobeys a police move-on direction. The Bill enables police to transport the person to the Sober Safe Centre and detain them for up to eight hours. A qualified medical professional will also be present at the centre to ensure the wellbeing of the person detained.

Changes to the liquor licensing system will also be introduced in the Bill. These measures will enhance liquor compliance measures and ensure the liquor licensing system is more responsive to concerns about community safety.

The enhanced compliance measures involve changes to:

- amend the meaning of 'unduly intoxicated' under the *Liquor Act 1992* to ensure successful action can be taken against licensees who serve alcohol to an intoxicated person regardless of whether they are intoxicated by alcohol or drugs;
- provide a new power to prohibit licensees from engaging in promotional practices that encourage rapid or excessive consumption of alcohol;

- allow an investigator to conduct covert filming, audio recording, photographing or similar activities in public areas or licensed premises without having to identify themselves
- ensure that all licensees state-wide required to have CCTV must meet certain requirements in the operation and storage of equipment and data.

The amendments proposed to make Queensland's licensing system more responsive to concerns about community safety include:

- providing greater emphasis on a licensee being required to ensure the amenity of the locality, including safety of patrons, in and around their licensed premises
- empowering the Commissioner for Liquor and Gaming to condition all venues or types of venues in a particular area with consistent conditions to prevent alcohol and drug-related violence
- to address concerns about restaurants trading as bars or entertainment venues, limiting trading hours where liquor can be consumed without a meal, improving the regulatory rigour applied to venues trading after midnight under a subsidiary on-premises (principal activity of meals) licence, and introducing a separate nightclub licence
- providing a right of veto for councils, acting on community concerns, before a new adult entertainment permit can be lodged with the Commissioner for Liquor and Gaming
- empowering the Commissioner for Liquor and Gaming to direct a licensee to amend its risk-assessed management plan to ensure a licensee's compliance with the *Liquor Act 1992*
- requiring the Commissioner for Liquor and Gaming to provide written reasons on how public safety concerns will be addressed when an extended trading hours approval is granted after the Commissioner for Police has made objections to the application.

The Bill also establishes a mechanism to declare Safe Night Precincts across Queensland. Each precinct will be managed by a local board association. The local board association must be an incorporated body. Its rules must comply with the Act and with rules prescribed in a regulation. It will be responsible for coordinating initiatives to address alcohol-related violence. The Bill proposes that relevant licensees with venues in the precinct must join their local board association, with other eligible members including local businesses and community organisations in the precinct, as well as representatives from local chambers of commerce. There will also be networked ID scanners throughout each precinct area.

Alternative ways of achieving policy objectives

Legislation is necessary to establish the particular initiatives contained in the Bill.

The Government has, through its *Safe Night Out Strategy*, committed to a range of initiatives to reduce alcohol- and drug-related violence and some of these initiatives do not require legislative change, for example, increased high-visibility policing in entertainment precincts and the joint Queensland Police Service/Office of Liquor and Gaming Regulation taskforce. However, the initiatives contained in the Bill are necessarily progressed only through legislative change.

Estimated cost for government implementation

The Government will incur initial and ongoing costs to implement the initiatives contained in the Bill. The costs are expected to include the establishment of the Safe Night Precincts, local rest and recovery services in Safe Night Precincts, enhanced liquor licensing compliance measures, drug and alcohol testing, and a trial Sober Safe Centre in the Brisbane CBD.

\$29.1M over four years and \$4.94M per annum has been provided as additional funding to Queensland Government agencies to implement some of the initiatives. Other initiatives will be funded through existing resources.

Consistency with fundamental legislative principles

Any potential breaches of the fundamental legislative principles are justified in order to address alcohol and drug-related violence in Queensland.

Criminal law amendments

The Bill amends the Criminal Code to create a new offence of unlawful striking causing death and a new circumstance of aggravation with an increased penalty for the serious assault of a public officer. The Bill increases the penalties for the unlawful possession, production, supply or trafficking in, steroids.

The Bill also amends the Criminal Code to create a new circumstance of aggravation which will apply to a range of offences of violence and which will result in mandatory community service orders. The circumstance of aggravation will apply where the relevant offence is committed in a public place and when the offender is adversely affected by an intoxicating substance. The Bill also amends the *Bail Act 1980* to insert a mandatory condition of bail that the accused attend a drug and alcohol assessment and referral course where the accused is charged with prescribed offences of violence and it is alleged that the offence was committed in a public place and while adversely affected by an intoxicating substance.

Such amendments will affect the rights and liberties of some individuals and arguably impinge on the independence and discretion of the courts. The potential breaches of fundamental legislative principles are justified to ensure the community is protected from the violence associated with excessive alcohol consumption and illicit drug use.

The creation of the new offence of unlawful striking causing death is to principally address the 'coward-punch' homicide cases.

Currently, in Queensland, the offences charged in the circumstances of a fatal 'coward-punch' are murder and/or manslaughter. However, in the absence of overt evidence that the offender intended to kill the victim, a conviction of murder is difficult to secure. Further, the operation of section 23(1)(b) of the Criminal Code poses a challenge to securing a conviction for manslaughter in cases involving a 'coward-punch'. Section 23(1)(b) will exempt an accused from criminal responsibility for the consequences of their actions (example, death resulting from a punch), if the consequence was not intended or foreseen by the offender and would not reasonably have been foreseen by an ordinary person.

The new offence will fill a legislative gap and ensure that the community is protected from such cowardly acts of violence. The new offence of unlawful striking causing death precludes an accused from attempting to argue that although the strike was deliberate and wilful, the death of the victim was an 'accident'.

The Bill creates a new circumstance of aggravation with an increased penalty for the offence of serious assault of a public officer. The increased penalty will apply where the assault : involved the offender biting or spitting on the officer; or throwing or applying a bodily fluid or faeces on the officer; causes bodily harm; or where the offender is or pretends to be, armed. The increased penalty from seven to 14 years imprisonment is justified to protect Queensland's front line officers from the dangers inherent in their duties and to ensure the appropriate punishment and deterrence of such offending conduct.

The increase in penalties for the unlawful possession and supply etc of steroids recognises the potential harm to the individual caused by the unsupervised use of such substances and acknowledges that such use may be linked to aggressive and violent behaviour.

The Bill amends the Criminal Code to create a new circumstance of aggravation which will apply to a range of offences of violence and which will result in mandatory community service orders. The circumstance of aggravation will apply where the relevant offence is committed in a public place and when the offender is adversely affected by an intoxicating substance.

These amendments acknowledge the community's expectations regarding violence within our society, to deliver on the Government's commitment to ensure the safety of the community and to recognise the prevalence of violence fuelled by alcohol and drug consumption.

It may be argued that the mandatory orders impinge on the independence and discretion of the courts. However, the mandatory community service orders will be imposed as part of the sentence determined by the court. The court retains discretion to otherwise structure the sentence as appropriate.

The Bail Act is amended to require the bail granting authority to, in certain circumstances, impose a special condition of bail that the offender attends a drug and alcohol assessment and referral course. The bail granting authority retains full discretion as to whether to grant bail or not in a particular matter and to otherwise impose conditions on the grant of bail that are necessary. The compulsory intervention program is aimed at benefiting the accused and the community by helping to facilitate the accused's rehabilitation.

Amendments to the Liquor Act

The clauses described below could be perceived as a departure from the fundamental legislative principles.

Relevant principle: legislation should not adversely affect rights and liberties or impose obligations retrospectively (section 4(3)(g) of the Legislative Standards Act 1992).

Retrospective amendment

Amendments to the *Liquor Act 1992* require potential applicants for new adult entertainment permits to have written consent of the local council for the locality to which the permit relates before they can make the adult entertainment permit application to the Commissioner for Liquor and Gaming. This effectively gives the local council a veto over an application, if it is a new application. The intent is to ensure local councils can have greater input into determining the impact on local communities of these sensitive applications.

This requirement for local council consent for new applications is given effect by the insertion of new section 105B, which makes it a requirement for applicants for a new adult entertainment to make the application with the written consent of the local council.

It is intended for this amendment to commence on 6 June 2014, in line with the introduction of the Bill. This is a potential inconsistency with fundamental legislative principles. Under section 4(3)(g) of the *Legislative Standards Act 1992*, legislation should not adversely affect rights and liberties or impose obligations retrospectively.

The intent of commencing the amendments on introduction rather than assent of the Bill is to avoid a potential influx of new adult entertainment applications being made between introduction (when the proposed changes will become known publicly) and assent, in order to avoid the local council veto.

Without the retrospective commencement, the integrity and intent of the amendment would be compromised, as it could be circumvented by applicants lodging new applications prior to the assent date.

Introduction of ID Scanners

Pursuant to clause 173EH, patrons seeking entry into certain late night trading venues will be required to have their identification scanned. This requirement may be seen by some to be an encroachment on their right to privacy and by implication, a breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

Although ID scanning technology can raise significant privacy considerations for individuals, it is considered that the amendments being proposed contain sufficient safeguards to minimise these risks to privacy. For example, the responsibility for collecting, disseminating and removing banning information through the ID scanner network will lie with a probity approved third party ID scanner system provider to prevent unauthorised access, use or disclosure of personal information. Furthermore, all late trading licensees, ID scanner providers and other licensees as conditioned by the Commissioner will be required to abide by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles.

Amendments to the *Police Powers and Responsibilities Act 2000*

The Bill introduces a Sober Safe Centre trial in the Brisbane CBD. The trial enables a police officer to detain and transport an adult the officer reasonably suspects is intoxicated and is behaving in a safe night precinct in a way that constitutes a nuisance offence or could pose a risk of physical harm to themselves or another person. Arguably this breaches the rights and liberties of individuals.

While violent or aggressive intoxicated persons can pose a risk to the safety of persons enjoying a safe night out, it is equally important to recognise intoxicated persons are vulnerable to harm. The Sober Safe Centre trial aims to protect persons who are in an impaired state from alcohol or drugs as well as the broader community. The centres also offer an alternative to charging a person with a nuisance offence.

The Bill makes a person admitted to a centre liable to pay a cost recovery charge. This may be seen as further breaching the rights and liberties of individuals. The cost payable increases for each subsequent time the same person is admitted to a centre, however the maximum cost a person can be liable for is eight penalty units. It is considered justified that people who intoxicate themselves to the point where they are reckless in their behaviour should not have the benefit of the cost of their health and well being paid for by the community. In order to provide a clear message of deterrence and ultimately encourage a change in the drinking culture in the community so that people feel accountable for managing their own intake of alcohol, they should be responsible for a portion of the costs associated with the provision of their care.

The Bill allows a police officer to require a specimen of a person's breath, saliva, urine or blood in relation to a relevant assault offence. This might be viewed as breaching the rights and liberties of individuals. The powers are comparative to existing police powers in transport legislation. A substantial percentage of serious assaults and other offences in liquor precincts are fuelled by drugs or alcohol, and the adverse effects to the community have been well documented by the serious injuries and, in some cases, deaths reported by the media. Given the powers are applicable only to assault offences at the more serious end of the spectrum, the detention of persons to test their level of intoxication is limited in effect. If a person is found to be adversely affected by alcohol under these provisions, upon conviction, the person can be ordered to perform community service affording an opportunity to repay the community for the harm caused by irresponsible alcohol or drug consumption.

In order for police to drug and alcohol test persons who have committed a relevant assault offence the Bill applies the same procedures used under the *Transport Operations (Road Use Management) Act 1995* (the Road Use Management Act). This is arguably an ambiguous way of drafting the provisions. The provisions regarding the testing of persons for intoxication under the Road Use Management Act have been developed over many years with numerous amendments to address deficiencies in that regime. The provisions are well understood and frequently applied. Applying the provisions to relevant assault offences will create certainty for police officers exercising the powers, members of the community subject to the powers and members of the legal profession who interpret the powers.

The Bill introduces police issued banning notices. A banning notice is a written notice prohibiting a person from attending places such as a specified licensed premises or a safe night precinct. Arguably this breaches the rights and liberties of individuals. The issue of a banning notice provides an additional option to a police officer in their efforts to curb and deter alcohol and drug related violence in liquor precincts. The issue of a notice at the time the relevant behaviour occurs will provide immediate protection to members of the community enjoying a safe night out.

The on the spot issue of a banning notice might be seen as inconsistent with principles of natural justice. However the need to protect the safety of the public by providing an immediate response was considered to outweigh the need for extensive formal natural justice

processes. The ability for police to respond to unacceptable conduct by issuing a banning notice will provide an immediate sanction and deterrent to a person. This immediacy will send a clear message to the person that violence and antisocial behaviour is unacceptable and will not be tolerated. There are a number of safeguards attached to the issue of banning notices. A senior officer of at least the rank of sergeant is required to approve the issue of the notice (for no longer than 10 days) and a senior sergeant is required to approve an extended police banning notice (up to 3 months). The terms of the police banning notice can be tailored to address the specific offending behaviour, and can allow the person to access the area if the person lives or works in the area.

The Bill also contains specific criteria for a police officer to make an informed decision on whether or not to issue a banning notice involving a number of elements, including for example, that the person has behaved in a disorderly, offensive, threatening or violent way in a public place, and that the person's continued presence poses an unacceptable risk of violence. The recipient of a notice may apply to the Commissioner to amend a condition of, or cancel an initial banning notice (up to 10 days) or an extended banning notice (up to three months). If unsatisfied with a decision of the Commissioner relating to an extended banning notice, the recipient may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the decision. An internal review process to the Commissioner will apply before the external appeal to QCAT ensuring a timely and low cost review mechanisms, whilst still ensuring external appeal mechanisms are available. It also addresses accessibility issues given QCAT lodgement fees and the possible time it would take QCAT to hear the matter.

An increase in the maximum penalty applicable to an offence may be argued as breaching the rights and liberties of individuals. The Bill increases the maximum penalty for certain offences committed within licensed premises or in the vicinity of licensed premises. The increase in penalties is necessary to provide adequate deterrence to persons who would compromise the safety or comfort of other patrons enjoying a night out.

Amendments to the *Summary Offences Act 2005*

The Bill increases the maximum penalties to a number of offences under the *Summary Offences Act 2005* which may be seen as a breach of the rights and liberties of individuals. The Bill increases the monetary penalties for the offences of 'Public nuisance' and 'Urinating in a public place' when the offences are committed within licensed premises or in the vicinity of licensed premises. The maximum fine for 'Public nuisance' will increase from \$1100 to \$2750. The maximum fine for 'Urinating in a public place' will increase from \$220 to \$440. The increase in fines forms part of the Safe Night Out Strategy in reshaping the drinking culture into one which is responsible and considerate of others. The increase in penalties is also necessary to provide adequate deterrence to persons who would compromise the safety or comfort of other patrons enjoying a night out.

Consultation

Broad community consultation has occurred on a broad range of initiatives to address alcohol- and drug-related violence. Many of the measures in the Government's *Safe Night Out Strategy* are preventative, non-legislative responses to address the problem. These are supported by the legislative measures in this Bill.

In February 2014, the Department of the Premier and Cabinet (DPC) conducted an online survey asking the community general questions about alcohol and drug-related violence and measures that were perceived to be effective to address these problems. DPC received 12,342 responses to the survey.

Three-quarters (75%) of Queenslanders who responded to the survey believed that alcohol-related violence was primarily a problem in our central nightclub districts.

Respondents were also asked to identify which strategies they felt would be most effective in reducing alcohol-related violence. Tougher penalties and sentences for law-breakers affected by drugs or alcohol had the broadest and strongest support. This was followed by ID scanners to prevent problem patrons from entering venues and better responsible service of alcohol practices by venues.

Respondents overwhelmingly agreed that the Government must do something about alcohol-related violence (82.3%), but at the same time, agreed (89.5%) that the community also had to play a role in responding to alcohol-related violence.

In March 2014, the Government publicly released its draft *Safe Night Out Strategy*, which proposed a range of initiatives, many of which are contained in this Bill. The Government received 1816 responses to the survey and over 100 written submissions from both members of the public and industry and community stakeholders.

Overall, the measures proposed in the Strategy were supported by respondents to the survey, with 74% supporting or strongly supporting the statement that “the Strategy provides a comprehensive range of responses that are likely to be effective in addressing alcohol- and drug-related violence”.

Initiatives that generated the highest levels of support that are included in the Bill are:

- a. Require offenders to perform community services and undertake compulsory drug and alcohol counselling (support from 85% of respondents).
- b. Introduce tougher penalties for those who are affected by alcohol or drugs and engage in anti-social and violent behaviour in and around licensed venues and in public (support from 83% of respondents).
- c. Improve services and develop and implement ways to effectively deal with people who are drunk in public places, including ‘Sober Safe Centres’, better transport services and targeting known problem areas (support from between 87% and 91% of respondents).

Consultation on the Bill has also occurred within Government.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However, a number of other jurisdictions have broadly similar legislative provisions to deal with alcohol and drug-related violence. This includes public-order style offences and increased penalties for enhanced liquor licensing compliance measures.

Western Australia, the Northern Territory and New South Wales have also enacted unlawful assault causing death offences. New South Wales has also passed a legislative scheme for a sobering up centre.

For many amendments to the *Liquor Act 1992*, there is similar comparable legislation in other jurisdictions, such in relation to the meaning of ‘unduly intoxicated’. Overall, the amendments in the Bill will not create any major inconsistency between Queensland liquor legislation and the legislation in other Australian jurisdictions.

Victorian police have the power to issue a notice which bans a person from a designated area or all licensed premises in the designated area when they reasonably suspect a person has committed a specified offence. The banning notice can be issued for up to 72 hours. A banning notice is issued to prevent a person from continuing to commit offences that may involve or give rise to risk of alcohol-related violence or disorder in the designated area. The Victorian liquor legislation also provides that a court may issue an exclusion order banning a person from licensed premises upon the court finding a person guilty of a specified offence. The exclusion order is for a period of time not exceeding 12 months. In the reporting period of 2011-12 the number of banning notices given was 1005. In the reporting period of 2012-13 the number of banning notices given was 727.

New South Wales are nearing the conclusion of a 12 month trial of sobering up centres for intoxicated persons, otherwise known as “drunk tanks”. The sobering up centre in the Sydney CBD will continue on a two year trial basis from July 2014. New South Wales police also have the power to test persons for intoxication for the offence of assault causing death, a power introduced as a result of an unacceptable level of drug and alcohol fuelled assaults leading to serious harm in that State. In relation to the offence police have the power to require a person to undertake a breath test and breath analysis to detect the presence of alcohol. New South Wales police may also require blood and urine samples for analysis of the presence of alcohol or drugs.

The majority of Australian jurisdictions have public nuisance type offences along with offences comparative to public urination and drunkenness in a public place. Under the *Summary Offences Act 1966* (Vic) the offence of ‘Persons found drunk’ attracts a sanction of 8 penalty units. Being intoxicated in a public place in Queensland will be punishable by a maximum of 2 penalty units. In the Australian Capital Territory urinating in a public place is punishable by 10 penalty units. In South Australia the same offence has a maximum penalty of \$250. In the Northern Territory a person on a train or railway premises that urinates other than in the amenities provided is liable to a maximum penalty of 20 penalty units.

In Western Australia the maximum penalty for ‘Disorderly behaviour in public’ under section 74A of their Criminal Code is \$6000. Under section 4 of the *Summary Offences Act* (NSW) the offence of ‘Offensive conduct’ is punishable by a maximum penalty of 6 penalty units or 3 months imprisonment. Some jurisdictions have penalties which reflect drunkenness as an aggravating factor. For example, the offence of ‘Disorderly conduct’ in Victoria is punishable by 10 penalty units whereas ‘Persons found drunk and disorderly’ for a first offence are liable to 20 penalty units or 3 days imprisonment and for a second offence 20 penalty units or 1 month imprisonment. In Queensland where a person commits a public nuisance offence within or in the vicinity of a licensed premises the aggravated penalty will be 25 penalty units or 6 months imprisonment.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the Act will be cited as the *Safe Night Out Legislation Amendment Act 2014*.

Clause 2 deals with the commencement of the provisions in the Bill.

Part 2 Amendment of Bail Act 1980

Clause 3 states that this Part amends the *Bail Act 1980*.

Clause 4 amends section 11 (Conditions of release on bail) to insert new subsections (4AA) and (9A).

New subsection (4AA) provides that if a police officer or the court imposes a bail condition under section 11(3) banning the person from a licensed premises or stated area, then: the police officer may detain and photograph the person; or the court may require the person to report to police station within 48 hours to be photographed. The photograph is attached to relevant documentation and distributed to relevant persons.

New subsection (9A) is consequential to the insertion of new section 11AB which requires the completion of a Drug and Alcohol Assessment Referral course for prescribed defendants.

Clause 5 inserts section 11AB (Condition requiring completion of DAAR course) which provides for a new mandatory bail condition for prescribed offences of violence.

New section 11AB provides that a court or police officer, in granting bail for a defendant charged with a prescribed offence (as defined under section 11AB) and where the charge alleges that the offence was committed in a public place (as defined under section 11AB) and while the defendant was adversely affected by an intoxicating substance, must impose a condition of bail that the defendant complete a Drug and Alcohol Assessment Referral course (DAAR course) by a stated date.

The following Criminal Code offences constitute a ‘prescribed offence’ for the purpose of new section 11AB: section 72 (Affray), section 320 (Grievous bodily harm), section 323 (Wounding), section 335 (Common Assault), section 339 (Assault occasioning bodily harm), sections 340(1)(b) and 340(2AA) (Serious Assault); and also section 790 (Offence to assault or obstruct police officer) of the *Police Powers and Responsibilities Act 2000*.

Section 11AB defines a ‘Drug and Alcohol Assessment Referral course’ to mean a course provided to a person by an approved provider (that is, an entity approved by the chief executive (health) by gazette notice to provide DAAR courses) in which the person’s drug or alcohol use is assessed and the person is given information about appropriate options for treatment and may be offered counselling or education.

The mandatory bail condition does not apply to a person under 18 years or where section 11A (Release of person with an impairment of the mind) applies. The mandatory bail condition

does not apply if the defendant has already completed two DAAR courses within the past five years.

Clause 6 amends section 34F (Commissioner may give information about special condition of bail to licensee under Liquor Act 1992) consequential to the establishment of the new ID scanning system under the *Liquor Act 1992* as inserted by the Bill.

Clause 7 inserts new section 44 (Transitional provision for Safe Night Out Legislation Amendment Act 2014) to provide for the application of new section 11AB. Section 11AB applies in relation to the release of a person on bail on or after commencement. It is irrelevant whether the act or omission constituting the offence for which the defendant was granted bail happened, or the proceedings for the offence started, before or after commencement.

Part 3 Amendment of Corrective Services Act 2006

Clause 8 states that this Part amends the *Corrective Services Act 2006*.

Clause 9 omits and replaces section 182A (Parole eligibility date for prisoner serving a term of imprisonment for drug trafficking offence) consequential to the creation of the new Criminal Code offence of Unlawful striking causing death (section 302A) under the Bill.

The heading to section 182A is amended to omit the reference to ‘drug trafficking offence’ at the end of the heading and insert a reference to ‘Parole eligibility date for prisoner serving term of imprisonment for other particular serious offences’.

New section 182A is extended to apply to a person who is serving a term of imprisonment, other than a term of life imprisonment, for an offence against new section 302A of the Criminal Code (Unlawful striking causing death).

The prisoner’s parole eligibility date is the day after the day on which the prisoner has served 80 percent of the prisoner’s term of imprisonment or 15 years imprisonment; whichever is the lesser of the two. However, if a later parole eligibility date is fixed for the period of imprisonment under the *Penalties and Sentences Act 1992*, Part 9, Division 3 - Parole, the prisoner’s parole eligibility date is the later date fixed under that division. Section 182A is subject to section 185 (Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances) of the *Corrective Services Act 2000*.

Clause 10 amends section 184 (Parole eligibility date for other prisoners) consequential to the amendment to section 182A of the *Corrective Services Act 2006* under the Bill.

Clause 11 inserts new Chapter 7A, Part 8 (Transitional provision for Safe Night Out Legislation Amendment Act 2014) to provide for the transitional application of amended section 182A.

Part 4 Amendment of Criminal Code

Clause 12 states that this Part amends the Criminal Code.

Clause 13 amends section 300 (Unlawful homicide) consequential to the creation of the new offence of Unlawful striking causing death (section 302A of the Criminal Code) under the Bill.

Clause 14 inserts new section 302A, which creates the new offence of Unlawful striking causing death. New section 302A provides that a person who unlawfully strikes another person to the head or neck causing, directly or indirectly, the death of the other person is guilty of a crime.

The offence carries a maximum penalty of life imprisonment and where the offender is sentenced to a term of imprisonment, the court must impose a mandatory minimum non-parole period of 80 percent or 15 years imprisonment, whichever is the lesser.

The mandatory minimum non-parole period does not apply where the court sentences the offender to a term of imprisonment for life (see section 181 of the *Corrective Services Act 2006*), an indefinite sentence under the *Penalties and Sentences Act 1992*, an intensive correction order or where the court orders that the whole or part of the term of imprisonment be suspended under the *Penalties and Sentences Act 1992*.

Section 302A defines the term ‘*strike*’ a person to mean: directly apply force to the person by punching or kicking, or by otherwise hitting using any part of the body, with or without the use of a dangerous or offensive weapon or instrument.

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 under new section 302A.

Section 302A expressly provides that an assault is not an element of this new offence; the consequence being that the defence of provocation under sections 268 and 269 of the Criminal Code have no application to this new offence.

Accordingly, the offence as framed in effect excludes any consideration of whether the ensuing death of the victim due to the strike by the person to the victim’s head or neck was likely or foreseeable (whether reasonably or otherwise) in the circumstances.

New section 302A however provides that a person is not criminally responsible if the act of striking the other person was done as part of a socially acceptable function or activity (which includes a sporting event); and was reasonable in the circumstances.

Clause 15 amends section 303 (Definition of manslaughter) consequential to the insertion of the new offence of Unlawful striking causing death (section 302A) under the Bill.

Clause 16 amends section 340 (Serious assault), in particular, subsection (2AA).

A new circumstance of aggravation is inserted into section 340(2AA) to increase the maximum penalty where the offender assaults a public officer in any of the following circumstances:

- (i) the offender bites or spits on the public officer or throws at, or in any way applies to, the public officer a bodily fluid or faeces;

- (ii) the offender causes bodily harm to the public officer;
- (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

In any of the abovementioned circumstances the maximum penalty for the offence increases to 14 years imprisonment. The amendment is consistent with the current aggravated offence of serious assault of a police officer under section 340(1)(b), penalty paragraph (a).

In all other circumstances, a person convicted of serious assault of a public officer under section 340(2AA) of the Criminal Code is liable to a maximum penalty of seven years imprisonment.

Clause 17 inserts new Chapter 35A (Circumstances of aggravation for particular offences) into the Criminal Code to provide for the circumstances where a person, charged with certain offences of violence committed in a public place and while adversely affected by an intoxicating substance, is to be taken to be (in the case of alcohol) or presumed to be (in the case of drugs) adversely affected by an intoxicating substance at the time of the offending. The provisions under new chapter 35A are relevant to establishing the new circumstance of aggravation (that the offence was committed while adversely affected by an intoxicating substance) for the purpose of the new mandatory community service order regime inserted by the Bill into the *Penalties and Sentences Act 1992*.

New chapter 35A of the Criminal Code is to be read with reference to new chapter 18A (Breath, saliva, blood and urine testing of persons suspected of committing particular assault offences) under the *Police Powers and Responsibilities Act 2000* as inserted by the Bill.

New section 365A provides that Chapter 35A applies to the following offences: section 320 (Grievous bodily harm), section 323 (Wounding) and sections 340(1)(b) (Serious assault - police officer) if penalty paragraph (a) applies (namely, the maximum penalty of 14 years imprisonment) and 340(2AA) (Serious Assault – public officer) if penalty paragraph (a) applies (namely, the maximum penalty of 14 years imprisonment).

New section 365B (Application of defences) expressly provides that the Criminal Code excuse of mistake of fact in section 24 does not apply in relation to a belief held by the person that they were not adversely affected by an intoxicating substance. However, it is a defence for the person to prove that the person:

- ingested an intoxicating substance that the person did not know the person was ingesting; and
- an ordinary person would not reasonably have known the person was ingesting the intoxicating substance; and
- the person would not be adversely affected by an intoxicating substance at the relevant time part from that ingestion.

New section 365C (Proof of being adversely affected by an intoxicating substance) provides that in certain circumstances a relevant offender is: deemed to have been adversely affected

by an intoxicating substance; or is presumed to have been adversely affected by an intoxicating substance and the legal onus then shifts to that person to establish otherwise.

A person is taken to be adversely affected by an intoxicating substance if the concentration of alcohol in the person's blood is at least 150mg of alcohol in 100mL of blood; or the concentration of alcohol in the person's breath is at least 0.150g of alcohol in 210L of breath. In these circumstances the person is statutorily deemed to be adversely affected by an intoxicating substance. These concentrations of alcohol in the person's blood and breath equate to the concentration of alcohol amounting to the *high alcohol limit* under the *Transport Operations (Road Use Management) Act 1995* (section 79A(3)).

A person is presumed to be adversely affected by an intoxicating substance if any amount of a drug prescribed by regulation is present in the person's saliva or if a person fails to provide a specimen as required under section 80 of the *Transport Operations (Road Use Management) Act 1995* as applied by chapter 18A of the *Police Powers and Responsibilities Act 2000*. In these circumstances the section 365C provides that the legal onus shifts to that person to prove that he or she was not adversely affected by an intoxicating substance.

Nothing under section 365C limits the circumstances in which a person may be proven to be adversely affected by an intoxicating substance. That is, reliance can be placed on other any other admissible evidence to establish that the person was adversely affected, such as statements from the alleged offender, eye witness accounts as to the person's ingestion of drugs or alcohol, and witness testimony as to any indicia of intoxication shown by the person.

Part 5 Amendment of Drugs Misuse Act 1986

Clause 18 states that this Part amends the *Drugs Misuse Act 1986*.

Clause 19 amends section 4 to insert a new definition for the term "*whole weight*" in relation to a dangerous drug. This new term is used in the amendments in the Bill relating to possession and production of steroids.

Clause 20 amends section 8 (Producing dangerous drugs).

The offences of production and possession of a dangerous drug have a tiered regime of maximum penalties which depend upon the quantity of the drug involved.

New subsection (2) inserted by the Bill provides that a quantity of steroid is a reference to the total weight of any one or more of the different forms of steroids (listed in the new part 2 of schedule 1) and any preparation, solution or admixture that the steroid is contained in. By way of example, the quantity would be the total weight of liquid in which a steroid or combination of steroids is detected.

Clause 21 amends section 9 (Possessing dangerous drugs). A new subsection is also inserted into this section in relation to the reference to a quantity of steroids.

Part 6 Amendment of Drugs Misuse Regulation 1987

Clause 22 states that this Part amends the *Drugs Misuse Regulation 1987*.

Clause 23 amends schedule 1 (Dangerous drugs) to insert a new part relating to steroids. New part 1 (Non-steroid drugs) contains all existing schedule 1 dangerous drugs. A new heading for Part 2 is inserted for steroids at the end of part 1.

Clause 24 amends schedules 1 and 2 to delete all steroids from schedule 2 and move them into the new part 2 in schedule 1.

Clause 25 amends schedule 3 (Specified quantities for particular dangerous drugs) to insert a part containing the relevant quantity for steroids. Part 1 contains the quantities prescribed for all existing schedule 1 dangerous drugs. New part 2 is inserted into schedule 3 to provide that the quantity for steroids is 50.0g.

Clause 26 amends schedule 4 (Specified quantities for particular dangerous drugs) to insert a new part containing the relevant quantity for steroids. Part 1 contains the existing quantities for all existing schedule 1 dangerous drugs. New Part 2 is inserted into schedule 4 to provide that the quantity for steroids is 5000.0g.

Part 7 Amendment of Liquor Act 1992

Clause 27 states that Part 7 amends the *Liquor Act 1992* (Liquor Act).

Clause 28 amends section 4 to omit, amend and insert a number of definitions. This includes inserting definitions for irresponsible, local board and safe night precinct, and amending the definition of amenity.

Clause 29 omits section 4AA as it is no longer necessary to outline a meaning for ‘entertainment for the purposes of the subsidiary on-premises licence for which the principal activity is the provision of entertainment’. The term will be defined in the new section 83A in relation to a nightclub licence.

Clause 30 inserts a new section 9A which outlines when a person may be taken to be unduly intoxicated. This section provides a new test to determine whether a person is unduly intoxicated, and provides that the intoxication can be the result of the consumption of liquor, drugs or another intoxicating substance.

Clause 31 amends section 13 to change the reference to ‘rapid or excessive’ to ‘irresponsible’ and to refer to the new sections 142ZZ and 142ZZB.

Clause 32 amends section 21 to provide for review of Commissioner for Liquor and Gaming (Commissioner) decisions in relation to:

- the giving of a compliance notice under section 142ZZD;
- a request under section 142ZZD(8) to amend or revoke a compliance notice;
- a direction to change an approved risk assessed management plan under section 52A; or
- a decision for which an information notice must be given under the new part 6AA.

Clause 33 amends section 42A to clarify matters about which the Commissioner may make guidelines.

Clause 34 amends section 50 to state that a reference under Part 3A to a licence, licensee, or licensed premises refers to a restricted liquor permit, permittee or premises to which a restricted liquor permit relates respectively.

Clause 35 amends section 51 to remove a reference to permittee as a consequence of the amendment to section 50.

Clause 36 makes a minor amendment to the heading of section 52 (which enables a licensee or permittee to apply to change their risk-assessed management plan) to ensure the clarity of the legislation, as a consequence of the new section 52A which enables the Commissioner to require a licensee or permittee to change their risk-assessed management plan. The clause also removes references to permit and permittee as a consequence of the amendment to section 50.

Clause 37 inserts new section 52A which enables the Commissioner to require a licensee or permittee who has a risk-assessed management plan by written notice to change the plan if necessary for a purpose for which a condition may be imposed on the licence under section 107C(1) which is to:

- ensure appropriate compliance with the Liquor Act; or
- give effect to an agreement about the management of premises that has resulted from a decision of the tribunal; or
- give effect to the main purpose of the Liquor Act mentioned in section 3(a); or
- minimise alcohol-related disturbances, or public disorder, in a locality.

The licensee or permittee must comply with the direction, otherwise they commit an offence. The amended plan takes effect on the day that the Commissioner gives the licensee a notice approving it and does not depend on the licence being amended to identify the amended plan. The Commissioner may give a direction under this section to each licensee, or each licensee of a particular class, for licensed premises in a safe night precinct, restricted area or other area.

Clause 38 amends section 53 to include a reference to new section 52A so that changes to a risk-assessed management plan under section 52A can be recorded on the licence or permit. It also removes references to permit and permittee as a consequence of the amendment to section 50.

Clause 39 amends section 54 to remove references to permit and permittee as a consequence of the amendment to section 50, as well as making minor wording changes to improve the clarity of the provision without changing its intent.

Clause 40 amends section 58 to provide that a new type of licence, known as a nightclub licence, may be granted and held.

Clause 41 omits section 67AA, as the subsidiary on-premises licence (entertainment) will no longer be required upon the introduction of the new nightclub licence.

Clause 42 amends section 67A to outline the requirements that a licensee must meet in order to conduct a business on the licensed premises that is consistent with the principal activity of the provision of meals.

Clause 43 inserts a new Part 4, Division 6A, which outlines the operation of the new nightclub licence. This includes the following:

- a new section 83A which outlines the principal activity of the new nightclub licence, being the provision of entertainment on the licensed premises and the sale of liquor for consumption on the licensed premises while the entertainment is being provided;
- a new section 83B which outlines the authority of the nightclub licence;
- a new section 83C which outlines the restrictions on the grant of the nightclub licence, which are that the licensed premises have toilet facilities for male and female patrons on the licensed premises and that the Commissioner must not grant the licence to a person for a vehicle used primarily to transport persons by road between licensed premises;
- a new section 83D to allow the sale of liquor, under the authority of the nightclub licence, off the licensed premises if the Commissioner is satisfied that the sale of liquor will be made only in the course of the licensee providing catering facilities for functions.

Clause 44 amends section 85 to state that an applicant for, or holder of, a community other licence may not apply to the Commissioner for an extended trading hours approval.

Clause 45 amends section 86 to state that an application for approval may be made to extend the regular trading hours for a subsidiary on-premises licence (meals) to including trading only between 12a.m. and 1a.m.

Clause 46 omits Part 4, Division 8 to remove the moratorium on extended trading hours applications, which will end on 31 August 2014.

Clause 47 amends section 101 to include a nightclub licence in the definition of "licence".

Clause 48 amends section 105A to change the reference to '12a.m. and 5a.m.' to '12a.m. and 1a.m.'.

Clause 49 inserts section 105B to provide that a person cannot make a new application for an adult entertainment permit without a written statement from the local government for the locality to which the application relates, that either provides consent for the application or states that the council abstains from making a decision on the application. Local governments therefore have the right to abstain in writing, but in doing so forfeit the right to stop the application.

A new application does not relate to:

- an application for premises to which a current adult entertainment permit relates; or
- in circumstances where an adult entertainment permit for the premises was held for the premises to which the application relates and it expired less than 30 days prior to the application's lodgement.

The amendment will mean that in situations where a licence is transferred and the adult entertainment permit is therefore cancelled under section 134(5), the new licensee will not

have to obtain council consent, as long as they make an application for the permit within 30 days of the permit's cancellation.

Clause 50 amends section 107C to allow the Commissioner to impose conditions prescribing a licensed venue to be 'regulated premises' or state the 'regulated hours' for a licensed venue for the purposes of Part 6AA, Division 2.

Clause 51 amends section 111 to enable the Commissioner to vary all licences, or classes of licence, in an area or precinct through the imposition of common conditions on the licence. The amendments also clarify the reasons the Commissioner may vary a licence (including imposing, amending or revoking a condition) include giving effect to the main purposes of section 3(a) of the Liquor Act or for any of the other purposes for which a licence may have been initially conditioned under section 107C.

Clause 52 amends section 112 to ensure, where the Commissioner seeks to vary the licence of a licensed premises operating in a restricted area, the Commissioner seeks comment from the agency responsible for alcohol management in discrete Aboriginal and Torres Strait Islander communities where alcohol restrictions apply, in relation to any potential impacts the variation may have for the community.

Clause 53 amends section 116 to change the reference to '12a.m. and 5a.m.' to '12a.m. and 1a.m.'.

Clause 54 amends section 117A to ensure, where the Commissioner receives an application relating to a licensed or permitted premises operating in a restricted area, the Commissioner may seek comment from the agency responsible for alcohol management in discrete Aboriginal and Torres Strait Islander communities where alcohol restrictions apply, in relation to any potential impacts the application may have for the community.

Clause 55 amends section 118 to change the reference to '12a.m. and 5a.m.' to '12a.m. and 1a.m.'.

Clause 56 amends section 121 to ensure the Commissioner has regard to any comment received from the agency responsible for alcohol management in discrete Aboriginal and Torres Strait Islander communities where alcohol restrictions apply, in addition to the community justice group, where the application relates to a licensed premises operating in a community area as defined by the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 57 inserts section 121A which provides that if the District Police Officer makes an objection to an application for an extended trading hours approval under section 117, and the Commissioner subsequently approves the application, the Commissioner must provide a written statement on the relevant departmental website identifying how public safety concerns will be addressed in relation to the premises to which the application relates.

Clause 58 inserts Part 5, Division 1A which provides for decisions by the Commissioner about matters which may adversely affect the health or safety of members of the public, or the amenity of a community or locality. It includes the following:

- a new section 128A which states how the division is to apply and identifies that the division does not limit the matters the Commissioner may consider in making a decision under the Liquor Act;
- a new section 128B which identifies particular matters to which the Commissioner may have regard in making a decision, including the behaviour of persons in or near the licensed premises; and
- a new section 128C which identifies that the Commissioner may impose conditions relating to public safety or amenity on a licence or permit under Part 5 to give effect to the main purposes of section 3(a) of the Liquor Act.

Clause 59 amends section 134 to provide that the Commissioner may cancel, suspend or vary a permit where use of the premises has caused or is causing an adverse effect on the amenity of the area in which the premises are located, and to clarify that the Commissioner may vary a permit by imposing a new condition, amending a condition or revoking a condition.

Clause 60 amends section 136 to provide that the Commissioner may take disciplinary action against a licensee where use of the premises has caused or is causing an adverse effect on the amenity of the area in which the premises are located.

Clause 61 amends section 142AA to address an incorrect section reference. Additionally, the clause amends section 142AA to clarify that trading on Anzac Day from 5a.m. for RSL or Services Clubs or other licensees holding a function on behalf of an RSL or Services Club is not subject to the lockout provisions in section 142AB.

Clause 62 amends section 142AF to refer to the purpose outlined in the new section 142ZX, and outline that the section does not limit the new sections 142ZX to 142ZZB.

Clause 63 amends section 142AG to clarify that, while the required number of crowd controllers for licensed premises in the area of the Brisbane City Council trading after 11p.m. may be prescribed by regulation, the Commissioner may impose a condition on a licence for a different required number of crowd controllers to be engaged.

Clause 64 amends section 142AH to ensure that licensees in the Brisbane City Council Area that are required to install closed-circuit television (CCTV) must maintain the equipment and store the recordings in a secure manner, including any ways prescribed under a regulation, in order to ensure that recordings are not corrupted and are available for review if requested by an investigator.

Clause 65 amends section 142AJ to change the reference to ‘rapid or excessive’ to ‘irresponsible’.

Clause 66 inserts a new Part 6, Division 1AA, which provides provisions around the responsible service, supply and promotion of liquor. The new Division includes the following:

- a new section 142ZX which states the purpose of the new Division, which is to maintain a safe environment, to ensure liquor is served, supplied and promoted in a way that is compatible with minimising harm, and preserving the amenity of the area;
- a new section 142ZY which provides the meaning of ‘relevant premises’;

- a new section 142ZZ which outlines that a licensee or permittee must not engage in, or allow another person to engage in, an unacceptable practice or promotion in the conduct of business on the relevant premises, and outlines the types of practices or promotions that are unacceptable practices or promotions;
- a new section 142ZZA which outlines that a licensee or permittee must engage in practices or promotions that encourage the responsible consumption of liquor;
- a new section 142ZZB which introduces new offence and penalty provisions, reflecting the main purposes of section 3(a) of the Act, that will apply where a licensee or permittee fails to take all reasonable steps to ensure the safety of persons in and around the premises and to minimise any adverse effect on the amenity of the community in which the premises is located;
- a new section 142ZZC which prohibits the licensee or permittee from advertising or allowing anyone to advertise certain practices or promotions; and
- a new section 142ZZD which allows the Commissioner to issue a compliance notice if the Commissioner reasonably believes that a person is in contravention of section 142ZZ or 142ZZC, and lists the requirements for the compliance notice.

Clause 67 omits sections 148A and 148B, as the content of the sections have been incorporated into the new sections 142ZX to 142ZC.

Clause 68 inserts new section 148AA to ensure that licensees to which section 142AH does not apply to, but which are required by a condition on a licence to install CCTV are subject to the same requirements in regard to the operation, secure maintenance and storage of equipment and data as licensees who are subject to section 142AH. The purpose with this provision, as with section 142AH, is to ensure the licensee must do everything possible to maintain the equipment and store the recordings including any ways prescribed under a regulation, in order to ensure that recordings are not corrupted and are available for review if requested by an investigator.

Clause 69 makes a minor technical amendment to section 153(2) to clarify the intent to allow the licensee to sell liquor under the authority of the licence they hold including areas of the licensed premises to which they have entered a management agreement or are letting or subletting.

Clause 70 amends section 155 to change the reference to ‘the premises are being used for the conduct of business for the principal activity of providing entertainment on the premises’ to ‘the licence for the premises is a nightclub licence’, as the subsidiary on-premises licence (entertainment) is being removed and replaced with the nightclub licence.

Clause 71 inserts a new section 162A to provide that:

- a person must not take liquor onto premises to which a nightclub licence relates for consumption on the premises; and
- a person must not take liquor from premises to which a nightclub licence relates.

Clause 72 amends section 165 to increase the penalty from 25 penalty units to 50 penalty units for a person who refuses or resists removal from a licensed premises if required to by an authorised person.

Clause 73 amends section 165A to increase the penalty from 25 penalty units to 50 penalty units for a person who tries to enter a licensed premises to which they have been refused entry or resist an authorised person who is preventing them from entering the premises.

Clause 74 inserts a new part 6AA that provides for the use of approved ID scanners in particular licensed premises and the approval of ID scanner systems and operators.

Section 173EE is a new provision that provides the definition for various terms used in Part 6AA including banning order, approved ID scanning system, and approved ID scanner.

Section 173EF is a new provision that specifies that Division 2 applies only to those safe night precinct licensed premises approved to trade from midnight and those licensed premises that have been conditioned by the Commissioner. These licensed premises are to be known as regulated premises for the purposes of Division 2. Division 2 will not apply to an exempt class of licensed premises.

Section 173EG is a new provision that clarifies that a liquor licence may be conditioned so that Division 2 applies. The Police Commissioner may make a recommendation to the Liquor and Gaming Commissioner that the licence for particular premises be conditioned for Division 2. A recommendation from the Police Commissioner is not however, a pre-requisite for a licence to be conditioned.

Section 173EH is a new provision that specifies that, during certain hours, a regulated premises must not allow a person to enter the premises unless the person's photo ID is scanned and the person is not subject to a banning order. If a licensee cannot comply with the requirement because of a system failure, the licensee may still permit a person to enter the premises if the licensee manually checks photo IDs against a list of persons subject to banning orders and informs the Liquor and Gaming Commissioner and the Police Commissioner in writing of the system failure within 48 hours.

Section 173EI is a new provision that ensures that the *Privacy Act 1988 (Cth)* will apply to all regulated premises.

Section 173EJ is a new provision that provides that an approved operator for an approved ID scanning system may only record certain personal information about a person. Personal information must not be held in the approved ID scanning system for more than 30 days after it is entered into the system except where it relates to a banning order or a licensee ban.

Section 173EK is a new provision that provides that if an approved operator is a corporation, the approved operator must give the Commissioner written notice of a change to the approved operator's executive officers.

Section 173EL is a new provision that clarifies that an approved ID scanning system may only be operated by an approved operator (and its staff if the approved operator is a corporation).

Section 173EM is a new provision that ensures that the *Privacy Act 1988 (Cth)* will apply to an approved operator.

Section 173EN is a new provision that provides an approval process for ID scanners.

Section 173EO is a new provision that provides an approval process for ID scanning systems.

Section 173EP is a new provision that provides for the suspension and revocation of approvals relating to ID scanners and ID scanning systems.

Section 173EQ is a new provision that provides that a person may apply to the Commissioner for approval to operate an approved ID scanning system. It is intended that only a third party ID scanning system operator will be required to apply for approval. That is, staff members of licensed premises whose role it is to scan photo IDs using an approved ID scanner linked to an approved ID scanning system will not be required to obtain approval.

Section 173ER is a new provision that provides that the Commissioner may, under certain circumstances, revoke an approval given to an ID scanner operator. The section provides for natural justice to be provided. The section also clarifies that the Commissioner may obtain a criminal history report from the Police Commissioner about an approved operator at any time to ensure that the approved operator remains suitable to be an approved operator.

Clause 75 inserts a new Part 6AB that provides for the establishment of safe night precincts and safe night precinct local boards to manage those precincts..

Section 173NA is a new provision which defines the purpose of Part 6AB. To achieve this purpose, areas may be prescribed as safe night precincts and local boards and consultative committees may be established.

Section 173NB defines a relevant licensee for the purpose of other amendments that obligate the licensees of venues within an SNP to undertake certain activities, such as joining the SNP local board. The section allows for a regulation to prescribe certain licensees as exempt licensees. Exempt licensees are not relevant licensees and are therefore not required to join the local board.

Section 173NC is a new provision that allows a safe night precinct to be prescribed in a regulation. An area with a concentration of licensed venues may be prescribed. Additionally, a maximum of one local board may be prescribed for each precinct, though the existence of a local board is not a pre-requisite for prescribing the precinct and precincts may be prescribed where no local board has emerged. Before a local board for a safe night precinct can be prescribed in a regulation, the local board must be incorporated under the *Associations Incorporation Act 1981*, and must have at least one relevant licensee (as defined in section 173NB) amongst its membership. Before recommending that a regulation prescribing a safe night precinct and/or a local board be made, the Minister must be satisfied that the regulation is necessary to achieve the purpose of part 6AB.

Section 173ND is a new provision that requires the Commissioner to provide relevant licensees with a notice that a safe night precinct local board has been established. The notice must be issued within 14 days after the regulation prescribing the local board has been made. This is to ensure that relevant licensees are aware of their obligation to join the local board association.

Section 173NE is a new provision that applies the new Division 3 of Part 6AB to a safe night precinct only if there is a local board.

Section 173NF provides that, where a local board has been prescribed for a safe night precinct, a relevant licensee (as defined in section 173NB) must be a member of the local board. Subsection (2) provides exemptions to the requirement that licensees must be members of the local board. These exemptions provide for circumstances in which a relevant licensee may be in the process of seeking membership of the local board, and other circumstances in which failure to hold membership in the local board is beyond the licensee's control. Specifically, the section requires that relevant licensees are not required to join the local board prior to the Commissioner's issue of a notice under section 173ND(2), or within 28 days of the date the Commissioner gave the licensee the notice. Additionally, relevant licensees are not required to join the local board until 28 days after they became relevant licensees (for example, as the result of the issue of a liquor licence or liquor licence transfer to the licensee in respect of premises located in the safe night precinct, or as the result of a licence variation or trading hours approval that rendered the licensee a relevant licensee under section 173NB). The licensee is also not required to be a member of the local board during the period between the lodgement of the licensee's application to the local board and the date on which the local board makes a decision, in accordance with its rules (having regard to section 173NL), about the application. If the relevant licensee was previously a member of the board but the board terminated the licensee's membership, the licensee is exempt from the requirement to be a member of the board provided that the licensee made all reasonable efforts to continue to be a member of the local board. Finally, if the relevant licensee's application to join the board is refused (see section 173NL), the licensee is not required to be a member of the board.

Section 173NG is a new provision that provides the Commissioner with the ability to require an exempt licensee (see section 173NB) to join a local board. The Commissioner may use this ability if it is considered in the public interest to do so, or if it is necessary to ensure the safety of the community in, or the amenity of, the precinct.

Section 173NH is a new provision to provide for the establishment of a public safety consultative committee. The committee is intended to be the vehicle by which government officials liaise with and assist the local board and its management committee. The consultative committee's membership may include police, officers of the Department that administers the Liquor Act, officers of the department that administers the *Transport Operations (Passenger Transport) Act 1994*, officers of the local council responsible for the area in which the precinct is located, and representatives of community organisations that provide services in the precinct. The section requires that the Commissioner, or a member of the committee, must advise the local board association of the committee's membership as soon as practicable after the committee is established, or when membership changes. In acknowledgement of the individual perspectives and expertise of consultative committee members, and to heighten the consultative committee's ability to freely advise and assist the local board, the consultative committee is intended to be a committee in name only. This is reflected at subsection 4, which provides that the members of the consultative committee need not meet other than when attending a meeting of the local board or its management committee, and also at section 173NP(4), which provides that each member of the consultative committee may act independently of the other members of the consultative committee at meetings of the local board or the local board's management committee.

Section 173NI is a new provision that provides that the rules of the local boards for the safe night precinct are of no effect to the extent the rules are inconsistent with Division 4 of Part 6AB.

Section 173NJ is a new provision that provides for the objectives of a local board association. The objectives of the association must include the matters provided in the section. This is to ensure that the local board association formed for the precinct is formed for the purposes envisaged by the Safe Night Out Strategy.

Section 173NK is a new provision that requires the rules of the local board for a safe night precinct to limit eligibility for membership to a licensee, the owner or operator of other businesses located in the precinct, an association that represents the interests of businesses located in the precinct (for example, a chamber of commerce), a community organisation that provides relevant services in the precinct, and another class of person prescribed in a regulation. These limitations are intended to ensure the board operates fairly and that the association is not over-represented with associates of a particular member.

Section 173NL is a new provision that requires the local board must provide for the admission of relevant licensees. To ensure that licensees are generally able to fulfil their obligations to join the board, the section requires that the board must admit a relevant licensee to the board. The provision allows an exception in circumstances where the applicant for membership was previously a member of the local board, and had their membership terminated by the local board. In these circumstances, the local board must consider the grounds for the prior termination and any undertakings given by the licensee. Any rules adopted by the local board which are contrary to these provisions are of no effect pursuant to section 173NI. Relevant licensees who join the board are defined as 'licensee members' for subsequent sections.

Section 173NM provides a clarification that, despite the limits to eligibility at section 173NK and the requirement that relevant licensees must be admitted at 173NL, rules of a local board may provide other rules about membership that provide for application requirements and membership fees.

Section 173NN requires the secretary of the local board to advise the Commissioner at least once per quarter, or on the written request of the Commissioner, of the licensee members of the board, and of applicants for membership who, if approved, will be licensee members of the local board. This is to assist in ensuring compliance with the requirement that relevant licensees must join the local board.

Section 173NO requires that the management committee of a local board may terminate the membership of a licensee member only if the licensee is convicted of an indictable offence, has membership fees in arrears for at least 2 months, or acts in a way that is contrary to the interests of the board. The management committee must, by written notice, give the member a notice asking the member to show, within a stated reasonable period, why membership should not be cancelled. The management committee must consider representations made by the licensee member, and if membership is terminated, advise the member of the decision in writing. Any rules adopted by the local board which are contrary to these provisions are of no effect pursuant to section 173NI. These requirements do not prevent the rules of the local board providing for a licensee member's resignation from the board, the ability of a licensee member to appeal to the board, or a general meeting of the local board to decide an appeal.

Section 173NP provides that the management committee of the local board must invite the members of the public safety consultative committee to each meeting of the local board or its management committee. This is to ensure that the consultative committee is available to provide advice and assistance to the board. To ensure that members of the consultative committee are able to freely interact with the board for the purpose of providing advice and assistance, subsection 4 provides that each member of the consultative committee acts independently of the other members of the consultative committee during meetings of the local board or its management committee.

Section 173NQ is a new provision which provides that a regulation may prescribe rules for a local board for a safe night precinct. The Minister must be satisfied the rules are necessary to achieve the purpose of Part 6AB. Any rules adopted by the local board which are contrary to the prescribed rules are of no effect pursuant to subsection (3).

Clause 76 omits Parts 6B and 6C. Part 6B relates to Drink Safe Precincts which will be replaced by new Safe Night Precincts. Part 6C relates to Civil Banning Orders which will be replaced by a new police banning regime under the *Police Powers and Responsibilities Act 2000*.

Clause 77 amends section 174 to omit the current requirement for production of an investigator's identification prior to the exercise of the investigator's powers.

Clause 78 inserts section 174AA relating to the production or display of an investigator's identity card, and includes provisions which will enable an investigator to exercise certain powers under the Act, without production of their identity card, during covert investigations.

Clause 79 amends section 178 to remove any ambiguity about an investigator's powers including the power to make an audio recording.

Clause 80 amends section 235 to provide that, where the Act empowers a regulation to prescribe a class of licensee, licensee, licensed premises, permit, permittee or premises to which a permit relates, the regulation may prescribe a class by reference to the type of licence or permit, the times at which liquor may be sold, the principal activity of the business, or other appropriate matter.

Clause 81 inserts a new Part 12, Division 16, containing transitional provisions which:

- Provide that any application made to the chief executive prior to the commencement of the moratorium on extended trading hours under Part 4, Division 8, that was undecided at the commencement of the moratorium (as referred to in section 91) lapse at the commencement of this provision. Any application fee will be refunded but no compensation is payable for the lapsing of the application. Licensees whose applications lapse are free to reapply under the new provisions. The initial intention when the moratorium was imposed was for it to be in place for 12 months (or a little longer by extension under section 95). However, the moratorium has since been extended so that it has now been in place for more than four years. Changes to the local communities and licensed premises themselves mean that applications made over four years ago have little relevance to the current period. Therefore, there is a need for applications to lapse.

- Provide that the protections under the repealed section 94 in relation to decisions on extended trading hours applications and other related proceedings will continue to apply to the matters to which it applied before the repeal.
- Provide that a subsidiary on-premises licence (entertainment) will continue in force as a nightclub licence from commencement. It will also provide that, if a licensed premises does not have the toilet facilities required under the nightclub licence, the licensee will have 6 months, or longer if allowed by the Commissioner, to install the facilities.
- Provide that, for a subsidiary on-premises licence (meals) with approval for extended trading hours beyond 1a.m., this approval will not authorise trading for a period after 1a.m. after 1 July 2015.
- Provide that any civil banning orders or proceedings that have commenced prior to the repeal of the Part 6C will end.

Part 8 Amendment of the Penalties and Sentences Act 1992

Clause 82 states that this Part amends the *Penalties and Sentences Act 1992*.

Clause 83 amends section 4 (Definitions) to insert a new definition of ‘*prescribed offence*’ and to amend the existing definition of ‘*public place*’ consequential to the establishment of the new mandatory community service order regime under the Bill which applies to prescribed offences of violence committed in a public place and while adversely affected by an intoxicating substance.

Clause 84 amends section 9 (Sentencing guidelines) to insert new subsection (9A) to make it clear that voluntary intoxication by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing an offender.

New subsection (9A) enshrines but also strengthens the existing judicial sentencing principle in Queensland that ordinarily intoxication will not mitigate penalty (*R v Rosenberger; ex parte Attorney-General [1995] 1 QdR 677*).

Clause 85 amends section 43G (Definitions for pt 3B) to insert a definition for police banning notice consequential to the new provisions in the *Police Powers and Responsibilities Act 2000* introduced by the Bill.

Clause 86 amends section 43I (What is a banning order) to remove the current fetter on the sentencing court’s discretion as to the length of a banning order. The amendment ensures that a sentencing court can make a banning order of any duration, including up to a life-time ban where considered appropriate in all of the circumstances.

Clause 87 amends section 43J (Making a banning order) consequential to the repeal of the civil banning order regime in the *Liquor Act 1992* and the insertion of a new police banning notice regime into the *Police Powers and Responsibilities Act 2000* under the Bill.

New subsection (4) empowers the court to order that an offender report to a police station within 48 hours after the banning order is made to be photographed for an image to distribute to relevant persons under the *Police Powers and Responsibilities Act 2000*.

New subsections (4A) to (4C) apply where there is a current police banning notice in effect.

Clause 88 amends section 43N (Commissioner may give copy of banning order to licensee) consequential to the introduction of the ID scanning system inserted into the *Liquor Act 1992* by the Bill.

Clause 89 inserts a new subdivision heading into Part 5 (Intermediate orders), Division 2 (Community service orders), consequential to the establishment of the new mandatory community service regime for offenders convicted of prescribed offences of violence.

Clause 90 amends section 106 (Offender to agree to making or amending order) to make it clear that the consent of the offender to the making or amendment of a community service order or their agreement to comply with that order is not required where the community service order is mandatory under new section 108B (When community service order must be made).

Clause 91 amends section 107 (Multiple offences) consequential to the insertion of the new mandatory community service order regime for prescribed offences of violence.

Clause 92 inserts new subdivision 2 (Community service orders mandatory for particular offences) into Part 5 (Intermediate orders), Division 2 (Community Service Orders).

New subdivision 2 establishes a mandatory community service order regime for offenders convicted of a prescribed offence of violence committed in a public place and while adversely affected by an intoxicating substance.

New section 108A (Definitions for sdiv 2) defines ‘prescribed offence’ and ‘public place’ for the purpose of the mandatory community service order regime.

The following Criminal Code offences constitute a ‘prescribed offence’: section 72 (Affray), section 320 (Grievous bodily harm), section 323 (Wounding), section 335 (Common Assault), section 339 (Assault occasioning bodily harm), sections 340(1)(b) and 340(2AA) (Serious Assault); and also section 790 (Offence to assault or obstruct police officer) of the *Police Powers and Responsibilities Act 2000*.

The term ‘public place’ means a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

New section 108B (When community service order must be made) provides that if a court convicts an offender of a prescribed offence committed in a public place while the offender was adversely affected by an intoxicating substance, the court must make a community service order for the offender. The court retains a limited discretion not to impose the mandatory order if satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

New section 108C (Effect if offender is also subject to other orders) provides for the situation where the offender is subject to successive orders to perform unpaid service. The intention underpinning new section 108C is to recognise the legislative limits regarding the number of hours of unperformed unpaid service that an offender can be subject to at any one time (that

is, not more than 240 hours of unpaid service yet to be performed at any one time; and specifically, not more than 40 hours of graffiti removal service yet to be performed); whilst acknowledging the mandatory nature of the order under new section 108B.

Section 108C provides that where the offender is sentenced to a mandatory community service order under this new regime and is already subject to one or more other community service orders or graffiti removal orders; and the total number of unperformed hours of unpaid service is already at 240 hours or the imposition of the new order means that the total hours unperformed will exceed 240 hours, the excess hours are to be performed concurrently with the unperformed community service under the existing orders.

New section 108D (Effect if offender is detained on remand or imprisoned) provides that where the offender is detained in custody on remand or serving a term of imprisonment in a corrective services facility during the timeframe within which the offender is to complete the mandatory community service order, the community service order is suspended while the offender is detained or imprisoned; and the timeframe within which to complete the community service order is extended by the period of time the offender was detained or imprisoned. Therefore, incarceration is no barrier to the successful performance of the mandatory community service order imposed under section 108B.

Clause 93 amends section 120 (Amendment and revocation of community based order other than a graffiti removal order) consequential to the insertion of new subdivision 2 (Community service order mandatory for particular offences) into Part 5, Division 2.

Subclause (1) amends the heading to section 120 by omitting the words 'other than a graffiti removal order' and inserting the words 'community based orders generally' at the end of the heading.

Subclause (2) omits the reference to 'graffiti removal order' and inserts a more general reference to 'an order to which section 120A applies'.

Clause 94 omits and replaces section 120A (Amendment and revocation of graffiti removal order) consequential to the insertion of new section 108B under the Bill.

Amended section 120A provides that a mandatory community service order imposed under new section 108B or a mandatory graffiti removal order (under Part 5A of the *Penalties and Sentences Act 1992*) may only be amended or revoked if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

Clause 95 inserts new subsection (4) into section 121 (Offender may be re-sentenced on revocation of order), in recognition of the mandatory nature of an order made under section 108B. Subsection (4) makes it clear that where the revoked community based order is a community service order imposed under section 108B, the court is not required, upon re-sentencing the offender for the original offence, to make another community service order. The court, however, is not precluded from doing so.

Clause 96 inserts new subsection (8) into section 125 (Powers of Magistrate Court that convicts offender of offence against s123(1)) consequential to the insertion of section 108B under the Bill. In recognition of the mandatory nature of an order made under section 108B,

if the offence mentioned in subsection (1) of section 125 relates to a community service order imposed under section 108B, the court in re-sentencing the offender for the original offence is not required to make another community service order. The court, however, is not precluded from doing so.

Clause 97 inserts new subsection (6B) into section 126 (Powers of Supreme Court or District Court to deal with offender) consequential to the insertion of section 108B under the Bill. In recognition of the mandatory nature of an order made under section 108B, if the community based order mentioned in subsection (1) of section 126 is a community service order imposed under section 108B, the court in re-sentencing the offender for the original offence is not required to make another community service order. The court, however, is not precluded from doing so.

Clause 98 amends section 160A (Application of ss160B-160D) consequential to the creation of the new Criminal Code offence of Unlawful striking causing death (section 302A) under the Bill. Section 302A of the Criminal Code provides that the sentencing court cannot impose a minimum non-parole period that is less than 80 percent of the term of imprisonment imposed for a prisoner serving a term of imprisonment for the offence of Unlawful striking causing death.

Clause 99 amends section 171 (Review – periodic) consequential to new section 302A of the Criminal Code as inserted by the Bill.

Clause 100 – inserts new Division 11 (Transitional provisions for Safe Night Out Legislation Amendment Act 2014) into Part 14 to provide for the transitional application of the amendments to section 9 (Sentencing guidelines), section 43I (What is a banning orders) and section 108B (When community service orders must be made) under the Bill.

New section 236 (Sentencing guidelines) provides that section 9(9A) applies to the sentencing of an offender if the offender is convicted of the offence after commencement, even if the offence was committed, or the offender was charged with the offence, before commencement.

New section 237 (Banning orders) provides that a court may make a banning order under amended section 43I if the offender is convicted of the offence after commencement, even if the offence was committed or the offender was charged with the offence, before commencement.

New section 238 (Community service orders required under s108B) puts beyond doubt that the new mandatory community service order under section 108B applies prospectively; that is, to offences committed post commencement.

Clause 101 amends schedule 2 (Qualifying offences) to insert new section 302A (Unlawful striking causing death) of the Criminal Code as inserted by the Bill. Schedule 2 relates to the indefinite sentences regime under Part 10 of the *Penalties and Sentences Act 1992*.

Part 9 Amendment of Police Powers and Responsibilities Act 2000

Clause 102 states this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 103 amends section 34 (Definitions for pt 3), by omitting the definition of ‘licensed premises’. The definition of ‘licensed premises’ will be provided in schedule 6 of the Act.

Clause 104 amends section 41 (Prescribed circumstances for requiring name and address) by adding two further prescribed circumstances in which a police officer may require a person to state their correct name and address. Firstly where a police officer is detaining a person for transport or admission to a sober safe centre, or a person has been admitted to, and is in custody at, a sober safe centre. Secondly when a police officer is about to give or is giving a person a police banning notice.

Clause 105 amends section 42 (Power for age-related offences and for particular motor vehicle related purposes) by adding two further instances where a police officer may require a person to state their correct date of birth, regardless of whether or not the police officer is also requiring the person to state their correct name and address. Those instances are where police are detaining a person for transport or admission to a sober safe centre and when giving a person a police banning notice.

Clause 106 amends section 44 (Application of pt 5) to include ‘a public place in a safe night precinct’ as a place to which part 5 applies.

Clause 107 amends section 46 (When power applies to behaviour) of part 5.

Subclause 1 amends section 46(2) by excluding a public place in a safe night precinct from the operation of that section.

Subclause 2 inserts new section 46(2A) to clarify if a regulated place is a public place in a safe night precinct, a police officer may exercise a power under section 48 where the person is at or near the public place, only if their behaviour has or has had any of the effects mentioned in subsections 46(1)(a), (b), (c) or (d) in any public place located in the safe night precinct. For example, a person may behave in a manner that constitutes disorderly, indecent or threatening behaviour, which is reported to police. When police arrive the person has already moved on to different licensed premises within the safe night precinct. This will not prevent police from issuing a move-on direction to leave the safe night precinct.

Clause 108 amends section 47 (When power applies to a person’s presence) of part 5.

Subclause 1 amends section 47(2) by excluding a public place in a safe night precinct from the operation of that section.

Subclause 2 inserts new section 47(2A) to clarify if a regulated place is a public place in a safe night precinct, a police officer may exercise a power under section 48 where the person is at or near the public place, only if their presence has or has had any of the effects mentioned in subsections 47(1)(a), (b) or (c) in any public place located in the safe night precinct.

Clause 109 amends section 53BC (What is out-of-control conduct) by replacing the word ‘drunk’ in subsection (1) with the word ‘intoxicated’.

Clause 110 amends section 378 (Additional case when arrest for being drunk in a public place may be discontinued).

Subclause 1 amends the heading and content of section 378 by replacing the word ‘drunk’ with the word ‘intoxicated’ throughout.

Under subsection 378(2) of the Act where a police officer decides to discontinue an arrest for being drunk in a public place it is the duty of a police officer at the earliest reasonable opportunity to take the person to a place of safety and release the person at the place of safety.

Subclause 2 inserts new subsection 378(3)(c) providing that subsection 378(2) of the Act does not apply if the police officer is satisfied section 390E applies in relation to the circumstances of the person’s arrest and the person should be detained and transported to a sober safe centre.

Clause 111 inserts new section 378A providing circumstances when a police officer may discontinue an arrest to take a person to a sober safe centre. The section will apply where a person is arrested for being intoxicated in a public place or for a nuisance offence, a police officer is satisfied the person is an adult, and it is more appropriate for the person to be detained and transported to a sober safe centre. If satisfied of those criteria the police officer may discontinue the arrest to transport the person to a sober safe centre.

Clause 112 inserts the division 1 heading ‘General provisions’ after chapter 14, part 5, heading, ‘Alternative to arrest’ and before section 382.

Clause 113 inserts new chapter 14, part 5, division 2, subdivisions 1-6.

This part introduces the Sober Safe Centre Trial.

New section 390A provides a number of definitions for the division. These include definitions for ‘centre officer’, ‘health care professional’, ‘manager’, ‘prescribed safe night precinct’ and ‘responsible person’.

New section 390B prescribes that powers of a police officer or watch house officer under the division are additional to, and not limited by, the powers the officer otherwise has under the Act or another Act.

New section 390C explains the particular watch-house provisions under chapter 21, part 1 of the Act that have application to sober safe centres.

New section 390D clarifies the division only applies to an adult.

New subdivision 2 provides police officers with the necessary powers to take an intoxicated person to a sober safe centre.

New section 390E provides police with the power to detain and transport a person they reasonably suspect is intoxicated and reasonably suspect is behaving in a way that constitutes a ‘nuisance offence’ or could pose a risk of physical harm to themselves or another person. Further the behaviour has occurred in a public place located in a prescribed safe night precinct for a sober safe centre.

Subsection (3) clarifies that section 390E does not apply if a police officer reasonably suspects the behaviour of the person constitutes an offence other than a 'nuisance offence' or the offence of 'Being intoxicated in a public place' under section 10 of the *Summary Offences Act 2005*.

New subdivision 3 outlines procedures for transporting and admitting a person to a sober safe centre.

New section 390F prescribes the information a police officer must tell a person as soon as reasonably practicable after detaining the person and prior to the person being admitted to the sober safe centre.

New section 390G stipulates when a person arrives at the sober safe centre, a health care professional must assess the person and give a recommendation to the manager of the centre about whether the person is intoxicated and if there are any health reasons why the person should not be admitted to the centre.

Subsection (2) provides the example that a health care professional may recommend the person should not be admitted to the centre because the person should receive urgent medical attention. This example is not intended to be exhaustive of the instances a health care professional may recommend a person not be admitted to a centre.

Subsection (3) stipulates the manager of a sober safe centre must, taking into consideration the recommendation from the health care professional, decide whether or not to admit the person to the sober safe centre.

Subsection (4) stipulates the manager of a sober safe centre must not admit the person if the manager reasonably suspects the person is not intoxicated.

New subdivision 4 outlines rules and procedures to be applied while a person is in custody at a sober safe centre.

New section 390H outlines some of the responsibilities of a sober safe centre manager and rights of a person upon admission to a sober safe centre.

Subsection (1) provides a person is in the custody of the manager from the time of admission until the person is released from custody under subdivision 4.

Subsection (2) stipulates the manager must give a person a reasonable opportunity to contact a responsible person as soon as practicable after the person is admitted to the centre.

New section 390I provides as soon as reasonably practicable after a person has been in a sober safe centre for 4 hours the manager of the centre must arrange for a health care professional to assess the person. This is in order to make a recommendation as to whether the person continues to be intoxicated and if the person may be released, either independently or into the care of a responsible person. The manager must, taking into account the recommendation, decide whether or not to release the person from custody either independently or, into the care of a responsible person to take the person being released to a place of safety.

New section 390J stipulates a person must not be held in custody at a sober safe centre for longer than 8 hours.

New section 390K explains monitoring requirements of persons admitted to sober safe centres.

Subsection (1) requires the manager of a sober safe centre to ensure the health and well being of each person in custody at the centre is regularly monitored.

Subsection (2) requires that if, at any time of a person's custody at a centre, a centre officer or health care professional reasonably believes the person requires urgent medical treatment, the professional or officer must arrange for the person to be transported to an appropriate medical facility.

New section 390L prescribes the conditions for a persons release from a sober safe centre.

New subdivision 5 outlines the liability of a person admitted to a sober safe centre.

New section 390M provides a cost recovery charge for a person who is admitted to a sober safe centre.

Subsection (1) states a person who is admitted to a sober safe centre is liable to pay the commissioner a cost recovery charge. On the first time a person has been admitted to a sober safe centre the person is liable to pay an amount equal to 2 penalty units. If the person has been admitted to a sober safe centre more than once the person is liable to pay an amount equal to 2 penalty units plus an amount equal to 1 penalty unit multiplied by the number of times the person has previously been admitted to a sober safe centre, up to a maximum of 6 times. The section provides the example of a person who is admitted to a sober safe centre for a third time. The person is liable to pay a cost recovery charge of 4 penalty units i.e. 2 penalty units (s 390M(b)(i)) + 2 penalty units for two previous admissions (s 390M(b)(ii)).

Subsection (2) provides subsection (1) applies regardless of the period of time a person has been held in custody at a sober safe centre.

Subsection (3) requires that before a person is released from the sober safe centre the manager of the centre must give the person a notice in the approved form.

Subsection (4) prescribes the notice must state the amount of the cost recovery charge and the charge must be paid within 28 days after the day the person was admitted to the sober safe centre.

New section 390N applies if a person who is given a notice under section 390M(4) does not pay the cost recovery charge to the commissioner within the period mentioned in the notice.

Subsection (2) provides the commissioner may give particulars of the unpaid amount of the cost recovery charge to the registrar under the *State Penalties Enforcement Act 1999* for registration under the Act as if the commissioner were the registrar of a court and the particulars were particulars of a fine imposed by a court, and the amount of the fine was unpaid after the time allowed by the court for payment.

Subsection (3) stipulates the registrar must register the particulars under section 34 of the *State Penalties Enforcement Act 1999*.

New subdivision 6 provides miscellaneous provisions in relation to sober safe centres.

New section 390O clarifies a health care professional or centre officer performing or attempting to perform a function under the division is not required to seek the consent of a person and may use reasonably necessary force against the person.

New section 390P provides protection from liability to those specified.

Subsection (1) provides a health care professional is not civilly liable for an act done or omission made honestly and without negligence under this division.

Subsection (2) provides in the event subsection (1) prevents civil liability attaching to an official, the liability attaches to the State instead.

Subsection (3) clarifies section 390P does not prevent the State or the health care professional from relying on another provision of an Act to limit civil liability.

Clause 114 amends section 394(2)(c) (Duty of police officer receiving custody of person arrested for offence), by replacing the word 'drunk' with the word 'intoxicated'.

Clause 115 amends section 415 (When does this part apply to a person) by clarifying that nothing in the part prevents a police officer exercising a power under chapter 18A, including under the Road Use Management Act, section 80, as it applies under the chapter.

Clause 116 amends section 442 (Application of ch 16), by enabling police to utilise the search powers under the chapter when a person is detained for transport to, or is admitted to a sober safe centre, or if a person is detained for the purpose of testing under chapter 18A.

Clause 117 inserts new chapter 18A, parts 1 to 3.

The chapter introduces police powers to require, take and test breath, saliva, blood and urine of persons suspected of committing particular assault offences.

New part 1 provides for preliminary matters.

New section 548A outlines the purposes of the chapter are to allow, by applying section 80 of the *Transport Operations (Road Use Management) Act 1995* (the Road Use Management Act) to the extent provided for in this chapter; the taking of specimens of breath, saliva, blood and urine from persons suspected of committing a relevant assault offence; and the testing of the specimens; and the production of certificates for use as evidence in proceedings for relevant assault offences.

New section 548B defines 'relevant assault offence' for chapter 18A to mean 1 or more of the following offences under the Criminal Code- (a) grievous bodily harm, section 320; (b) wounding, section 323; (c) serious assault of a police officer, section 340(1)(b) where a circumstance of aggravation increases the maximum penalty to 14 years imprisonment; (d)

serious assault of a public officer, section 340(2AA) where a circumstance of aggravation increases the maximum penalty to 14 years imprisonment.

Subsection (2) clarifies a reference in the chapter to section 80, or a subsection of section 80, is a reference to section 80 of the Road Use Management Act, or a subsection of that section.

Subsection (3) clarifies words and expressions used in this chapter, to the extent the context permits, have the same meaning as they have for section 80.

New part 2 further outlines the application of section 80 of the Road Use Management Act to chapter 18A of the Act.

New section 548C provides for the application of section 80 of the Road Use Management Act when a police officer reasonably suspects a person of committing a relevant assault offence.

Subsection (2) specifies a police officer may make a requirement under section 80(2) in relation to the person as if they were a person to whom section 80(2) applies.

New section 548D provides for the application of section 80 of the Road Use Management Act when a police officer has arrested a person for a relevant assault offence.

Subsection (2) specifies a police officer may make a requirement under section 80(8) in relation to the person as if they were a person to whom section 80(8) applies.

New section 548E(1) prescribes that provisions of section 80 of the Road Use Management Act apply to section 548C (Person suspected of committing relevant assault offence) and section 548D (Person arrested for relevant assault offence) other than the subsections listed which do not have application.

New subsection 548(2) prescribes further instruction on applying section 80 of the Road Use Management Act.

Subsection (2)(e) states a requirement in section 80(10C) of the Road Use Management Act to give a specimen to a person as soon as practicable is taken, for the purposes of chapter 18A, to be a requirement to give the specimen to a police officer, to give to the person as soon as practicable.

Subsection (2)(f) states a requirement in section 80(20A) of the Road Use Management Act for a health care professional to give a specimen to a person is taken, for the purposes of chapter 18A, to be a requirement to give the specimen to a police officer, to give to the person as soon as practicable.

Subsections (2)(e) and (2)(f) require the specimen first be given to a police officer as it is not practical or safe to give a person a specimen while the person is still detained or in custody.

New part 3 provides a miscellaneous matter for chapter 18A.

New section 548F clarifies the powers a police officer has under section 80, as applied under chapter 18A, are additional to, and are not limited by, the powers the officer otherwise has under this Act or another Act.

Clause 118 inserts new part 5A, divisions 1-6 and new part 5B, divisions 1-3, into chapter 19 Other powers.

The parts introduce police banning notices and procedures for the photographing and distributing of images for police banning notices.

New division 1 provides for preliminary matters in regard to police banning notices.

New section 602A inserts definitions for part 5A. This includes inserting definitions for 'ending time', 'extended police banning notice', 'initial police banning notice', 'police banning notice', 'relevant public place', 'respondent', and 'starting time'.

New section 602B explains a police banning notice is a written notice that prohibits a stated person until a stated date and time, from doing, or attempting to do any of the matters prescribed.

Subsection (2) clarifies a police banning notice may prohibit a person from doing a thing mentioned in subsection (1) during stated days or at stated times.

New division 2 outlines procedures in relation to an initial police banning notice.

New section 602C provides a police officer may give an initial police banning notice to an adult.

Subsection (2) requires before the police officer can give the initial police banning notice the police officer must obtain the approval of a police officer of at least the rank of sergeant, unless the police officer giving the notice has that rank.

Subsection (3) requires the police officer giving or approving the initial police banning notice to be reasonably satisfied the initial police banning notice is necessary because of the fulfilment of the factors listed.

Subsection (4) clarifies the approval mentioned in subsection (2) may be sought and given verbally, including, for example, in person or by telephone, radio, internet or other similar facility.

New section 602D clarifies the duration of an initial police banning notice.

New section 602E outlines the matters a police officer must explain, or cause to be explained, to the respondent before giving an initial police banning notice.

New division 3 provides for the extension or cancellation of an initial police banning notice.

New section 602F applies if an initial police banning notice has been given to the respondent for the notice.

Subsection (2) provides an officer of at least the rank of senior sergeant may decide, on the officer's own initiative, to make 1 or more changes mentioned in subsection (3) to the initial police banning notice by giving the respondent a new police banning notice (an extended police banning notice).

Subsection (3) lists the changes for subsection (2) that may be made.

Subsection (4) requires that before making a decision under subsection (2) the police officer must be reasonably satisfied the extended police banning notice is necessary after consideration of the matters listed in subsection (4).

Subsection (5) clarifies the police officer may decide to give an extended police banning notice only if the decision is made at least 3 days before the ending time for the initial police banning notice.

Subsection (6) requires that when a police officer gives the respondent the extended police banning notice the officer must also give written notice of the officer's reasons for the decision. The written notice is a brief summary of the officer's reasons, for example a précis of matters revealed on consideration of subsection (4).

New section 602G provides for the cancellation of initial police banning notices.

Subsection (1) provides a police officer of at least the rank of senior sergeant may decide, at any time and on the officer's own initiative, to cancel an initial police banning notice.

Subsection (2) clarifies that before making a decision under subsection (1), the police officer must be reasonably satisfied, having regard to the circumstances in which the initial police banning notice was given that the notice should not have been given to the respondent or the notice is causing or will cause undue hardship to the respondent or a member of their family.

New division 4 provides general provisions about notices.

New section 602H outlines a police banning notice must be in the approved form and state the matters listed in the section.

New section 602I requires a senior police officer who approves the giving of an initial police banning notice or gives an extended banning notice must make a written record of their decision to approve or give the police banning notice, the reasons for and date and time of the decisions made and the officer's name, rank, registered number and station.

Subsection (3) provides a police banning notice is not invalid merely because the approval is not in writing, as long as the written record is made at the first reasonable opportunity after the notice is given.

New section 602J provides that despite section 602B (What is a police banning notice), a police banning notice does not prohibit the respondent for the notice from entering or remaining in the respondent's residence, place of employment or place of education.

New section 602K requires a police banning notice be amended or cancelled accordingly upon a court banning order being made.

Subsection (1) applies if the commissioner receives a court banning order- (a) for a person who is the respondent named in a police banning notice; and (b) that states the court's decision about the cancellation or amendment of the notice.

Subsection (2) requires the commissioner to ensure that, as soon as practicable, but not more than 2 business days after receiving the banning order, the police banning notice- (a) is cancelled; or (b) amended in the way decided by the court.

Subsection (3) requires the commissioner to give a written notice to the respondent stating the police banning notice has been amended or cancelled.

Subsection (4) defines 'court banning order'.

New section 602L outlines the procedure for amending or cancelling a police banning notice. The section applies if the commissioner (the 'decision-maker') or a police officer (also the 'decision-maker') decides to amend or cancel a police banning notice under the part.

Subsection (2) requires that the decision-maker must, as soon as reasonably practicable, give the respondent named in the police banning notice- (a) if the decision-maker decides to amend the notice- a new police banning notice that includes the changes decided by the decision-maker; and (b) if the decision-maker decides to cancel the notice- a written statement stating the notice has been cancelled and the day and time of the cancellation.

Subsection (3) prescribes that subsection (4) applies if a police banning notice amended or cancelled has, before the amendment or cancellation, been distributed to a person by a police officer under section 602U.

Subsection (4) requires the decision maker to ensure each person who has been given the police banning notice is notified of the cancellation or amendment of the police banning notice.

New section 602M clarifies that a police banning notice cancelled by the commissioner or a police officer has no effect immediately after it is cancelled.

New division 5 provides for the review of police banning notices.

New section 602N provides an internal review process for police banning notices.

Subsection (1) provides a respondent for a police banning notice may apply, in the approved form, to the commissioner to amend a condition of, or cancel, the notice- (a) if the application relates to an initial police banning notice- within 5 days after the starting time of the notice; or (b) otherwise- at any time.

Subsection (2) provides that without limiting subsection (1), the respondent may apply to the commissioner on the ground that the police banning notice- (a) prevents the respondent from entering, remaining in, or using a mode of transport to travel to, the respondent's residence, place of employment or place of education; or (b) is causing, or will cause, undue hardship to the respondent or a member of the respondent's family.

Subsection (3) requires the respondent to give the commissioner sufficient information with the application to enable the commissioner to decide the application.

New section 602O requires the commissioner to decide an application made under section 602N- (a) as soon as reasonably practicable; and (b) if the application relates to an extended police banning notice—no later than 5 business days after receiving the application.

Subsection (2) states if the application relates to an extended police banning notice, the commissioner must give the respondent for the notice a QCAT information notice for the commissioner's decision on the application.

Subsection (3) defines 'QCAT information notice' to mean a notice complying with the QCAT Act, section 157(2).

New subsection 602P explains a person given, or entitled to be given, a QCAT information notice under section 602O(2) for a police banning notice may apply, as provided under the QCAT Act, to QCAT for review of the notice.

New division 6 provides an offence for part 5A.

New section 602Q provides it is an offence to contravene notice. Where a person named in a police banning notice, without reasonable excuse, contravene the notice. The maximum penalty is 60 penalty units.

New part 5B outlines the photographing and distributing of images for banning purposes.

New division 1 provides for preliminary matters.

New section 602R provides definitions for part 5B. This includes definitions for 'approved operator for an approved ID scanning system', 'banning order', 'destroy', 'distribute', 'image', 'imaged order' and 'photograph'.

New division 2 provides police with the power to photograph a person and distribute images.

New section 602S provides a police officer with the power to detain and photograph the following persons at a police vehicle, watch-house or police station- (a) a respondent for a police banning notice; (b) a person whose bail is subject to a special condition mentioned in the *Bail Act 1980*, section 11(4A)(b); (c) a person who has been ordered by a court to attend a police station under the *Penalties and Sentences Act 1992*, section 43J(4).

Subsection (2) clarifies that a police officer may detain the person under this section only for the time reasonably necessary to photograph the person and may photograph the person's face, neck and hair.

New section 602T allows the image of a person taken under this part to be attached to a banning order for the person.

Subsection (2) defines 'imaged order' as a banning order to which an image has been attached.

Subsection (3) to remove any doubt, declares that an image of a person taken for a particular banning order may be attached to a different banning order for the person. For example, an image of a respondent for a police banning notice may be later attached to a banning order made under part 3B of the *Penalties and Sentences Act 1992*.

New section 602U provides the power for a police officer to distribute an imaged order.

Subsection (1) provides a police officer may distribute an imaged order for a person to the Commissioner for Liquor and Gaming, or an approved operator for an approved ID scanning system, for recording on the approved ID scanning system.

Subsection (2) provides a police officer may also distribute an imaged order to any 1 or more of the following persons for the purposes of preventing the entry of the person named in the order to the places stated in the order- (a) the licensee of any licensed premises stated in the order; (b) the licensee of any licensed premises included in a class of licensed premises stated in the order; (c) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or at an event to which the order applies; (d) if there is no approved manager working at an event stated in the order- the person responsible for the sale of liquor at the event.

Subsection (3) provides the distribution of the imaged order may be subject to reasonable conditions decided by the commissioner.

Subsection (4) defines ‘approved manager’ to mean a person holding an approval as an approved manager under the Liquor Act 1992. The section also defines ‘Commissioner for Liquor and Gaming’.

New division 3 provides for the destruction of photographs in order to protect privacy.

New section 602V requires the commissioner is to take reasonable steps to ensure that an image of a person taken for a banning order is destroyed as soon as reasonably practicable after the day the banning order no longer has effect.

Subsection (2) provides the exception that if a relevant proceeding has started in relation to the person, the image must be destroyed as soon as reasonably practicable after the end of the period for appeal of a decision from the proceeding.

Subsection (3) provides that subsection (1) does not prevent an image being attached to another banning order, if the image has not been destroyed under this section.

Subsection (4) defines the phrase ‘relevant proceeding’ for the subsection.

New section 602W outlines the obligations of persons given imaged orders to destroy the orders and provides offences for failure to do so.

Subsection (1) applies section 602W to a person to whom an imaged order has been distributed under section 602T, other than a person who is operating an approved ID scanning system or using an approved ID scanner.

Subsection (2) requires the person must destroy the imaged order as soon as practicable, and not later than 7 days after the day the banning order no longer has effect, unless the person has a reasonable excuse. The maximum penalty for failing to destroy the imaged notice is 40 penalty units.

Subsection (3) stipulates the person must not, without reasonable excuse- (a) use the imaged order in any way other than in a way that is reasonable for the purpose of preventing the entry of the person named in the order to a place stated in the order or (b) contravene a condition decided for the imaged order under section 602U(3). The penalty for contravening a condition decided for the imaged order is a maximum of 40 penalty units.

Clause 119 amends section 686 (Application of pt 3) to clarify the provisions of new chapter 18A do not apply to chapter 21, part 3 of the PPRA, 'Dealing with things in the possession of police service'.

Clause 120 amends section 790 (Offence to assault or obstruct police officer) to provide for a new penalty where a person assaults or obstructs a police officer within licensed premises or in the vicinity of licensed premises.

Clause 121 amends section 791 (Offence to contravene direction or requirement of police officer) to provide for a new penalty where a person contravenes a direction given under section 48 of the Act within licensed premises, or in a regulated place located in the vicinity of licensed premises; or where a person contravenes a direction given under section 48 of the Act in a public place located in a safe night precinct. The maximum penalty is 60 penalty units.

Clause 122 amends schedule 6 (Dictionary) of the Act by omitting, amending and inserting a number of definitions.

Subclause 1 omits the definitions of 'licensed premises' and 'photograph'.

Subclause 2 amends the schedule 6 Dictionary by inserting definitions for 'approved operator' 'Approved ID scanning system', 'banning order', 'centre officer' 'destroy', 'distribute', 'ending time', 'extended police banning notice', 'health care professional', 'image', 'imaged order', 'initial banning notice', 'intoxicated', 'licensed premises' 'manager', 'nuisance offence', 'photograph', 'police banning notice' 'prescribed safe night precinct', 'relevant assault offence', 'relevant public place', 'respondent', 'responsible person', 'safe night precinct', 'sober safe centre' and 'starting time'.

Part 10 Amendment of Summary Offences Act 2005

Clause 123 states this part amends the *Summary Offences Act 2005*.

Clause 124 amends section 6 (Public nuisance) to provide for an increased penalty where a person commits a public nuisance offence within licensed premises or in the vicinity of licensed premises.

Clause 125 amends section 7 (Urinating in a public place) to provide for an increased penalty where a person urinates within licensed premises or in the vicinity of licensed premises.

Clause 126 replaces section 10, (Being drunk in a public place) with new section 10, 'Being intoxicated in a public place'. A person must not be intoxicated in a public place. 'Intoxicated' is defined to mean drunk or adversely affected by an intoxicating substance.

Part 11 Amendment of Vicious Lawless Association Disestablishment Act 2013

Clause 127 states that this part amends the *Vicious Lawless Association Disestablishment Act 2013*.

Clause 128 amends Schedule 1 (Declared offences) to insert a reference to the new Criminal Code offence of Unlawful striking causing death (new section 302A).

Part 12 Amendment of Victim of Crime Assistance Act 2009

Clause 129 states that this Part amends the *Victim of Crime Assistance Act 2009*.

Clause 130 amends the existing definition of more serious offence of violence under Schedule 3 (Dictionary) to insert a reference to the new Criminal Code offence of Unlawful striking causing death (new section 302A); to be inserted after the offence of murder in the definition.

Part 13 Amendment of Wine Industry Act 1994

Clause 131 states that Part 13 amends the *Wine Industry Act 1994*.

Clause 132 amends section 36 to provide when a person may be taken to be unduly intoxicated for the section.

Clause 133 omits the definition of unduly intoxicated from the Schedule 2 dictionary.