

# Liquor and Other Legislation Amendment Bill 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Liquor and Other Legislation Amendment Bill 2017.

### Policy objectives and the reasons for them

The main objective of the Liquor and Other Legislation Amendment Bill 2017 (the Bill) is to address the findings of the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016* (TAFV Act) interim evaluation report.

To address continued concerns regarding alcohol-fuelled violence, the Government developed the *Tackling Alcohol-Fuelled Violence Policy* (TAFV Policy), a comprehensive and multi-faceted framework of initiatives to change the culture around drinking, promote responsible drinking practices and ensure a safer environment. The TAFV Act, which received assent on 4 March 2016, gave effect to the legislative component of the TAFV Policy by, among other things, reducing the supply of liquor during the high-risk late-night liquor service period.

On 1 July 2016, the TAFV Act reduced liquor service hours in Queensland to 2a.m. State-wide and 3a.m. in existing safe night precincts (SNPs). Amendments also introduced a process for SNPs to be declared as 3a.m. SNPs. The 3a.m. SNP model provided an opportunity for SNPs to choose their preferred operating model from 1 February 2017. Declaration as a 3a.m. SNP meant approved licensees within the declared SNP would continue to be able to serve liquor until 3a.m. after 1 February 2017 with a 1a.m. lock out.

The TAFV Act amended the *Liquor Act 1992* (Liquor Act) to insert section 338A, which requires for the operation and effectiveness of measures introduced by the TAFV Act to be independently reviewed. The appointed independent researchers delivered an interim evaluation report (the Interim Report) in January 2017, which examined the impact of the changes introduced by the TAFV Act between 1 July 2016 and 31 December 2016.

The Interim Report found that there has been a lack of fidelity to “last drinks” at 3a.m. in SNPs across Queensland due to systematic and widespread use of temporary late-night extended hours permits. In this regard, since 1 July 2016, there has not been a single weekend night where all venues in Fortitude Valley ceased liquor service at 3a.m.

The Interim Report also found that there has been no change to the positive trends that were occurring before the commencement of the reduced trading hours scheme in particular, that there was a continuing downward trend in common and serious assaults State-wide. However, the Interim Report concluded that, due to the limited data available after six months, and the extensive use of temporary late-night extended trading hour permits in SNPs,

it was too early to conclude whether the continued downward trends can be attributed to the policy, or whether these are statistically significant.

The Interim Report also found that current research evidence suggests that the introduction of lock outs is not likely to significantly change current trends.

While no formal recommendations were offered, the Interim Report suggested that modifications to current temporary late-night extended hours permits are necessary. The Interim Report also stated that the lack of change in alcohol-related harms during late-night hours indicates that measures used to reduce harm earlier in the night such as ID scanners and banning orders for repeat offenders continue to be warranted.

At the time the Interim Report findings were released on 24 January 2017, certain initiatives in the TAFV Act had not yet commenced. A new Part 5, Division 5 commenced in the Liquor Act on 1 February 2017, which imposed a 1a.m. lock out for all licensed premises located in a 3a.m. SNP where there is approval to serve liquor beyond 1a.m. on a regular basis. Also, provisions that commenced on 1 February 2017 wound back liquor service hours of any SNP not declared as a 3a.m. SNP to 2a.m. with no lock out, in line with the rest of the State.

The Government is committed to an evidence-based approach to addressing alcohol-fuelled violence. Therefore, the changes introduced by the Bill address the Interim Report findings and enhance the Government's response to tackling alcohol-fuelled violence, by retrospectively repealing the lock out, and the 3a.m. SNP model. The Bill also increases the rigour around the granting of temporary late-night extended hours permits, and makes certain clarifying amendments.

Alcohol and drug-related harm, in and around licensed premises, is also addressed through amendments to the *Penalties and Sentences Act 1992* (Penalties and Sentences Act).

## **Achievement of policy objectives**

The Bill will achieve its policy objectives to address the findings of the TAFV Act Interim Report and enhance the Government's response to tackling alcohol-fuelled violence by making the following amendments:

### **Repeal of the lock out**

The Bill will repeal the lock out retrospectively from 1 February 2017. The retrospective application of the repeal will prevent affected licensees from having to comply with the lock out between 1 February 2017 and the commencement of amendments repealing the lock out.

It is acknowledged that notwithstanding the retrospective provisions, the lock out provisions were legally in force from 1 February 2017. However, the Government made an announcement of the proposed amendments to repeal the lock out provisions and that the lock out provisions will not be enforced during the period prior to the amendments being enacted.

It is intended that the Commissioner for Liquor and Gaming (Commissioner) will continue to have the power to impose a lock out in respect of an individual premise, via a licence or permit condition, where considered necessary.

### **Repeal of the 3a.m. SNP model**

Without a lock out in place, there remains no practical reason to distinguish between SNPs and 3a.m. SNPs in the manner originally contemplated by the TAFV Act amendments. Accordingly, the Bill will retrospectively repeal the 3a.m. SNP model from 1 February 2017. This will provide for consistency in the availability of 3a.m. liquor service hours with no lock out across all 15 SNPs in Queensland. This approach aligns with the Government's aim to promote a vibrant night-time economy throughout Queensland, while recognising that SNPs are best equipped to deal with an additional hour of liquor service given the enhanced safety measures in place in these areas.

From 1 February 2017, the provisions providing for the wind back of liquor service hours to 2a.m. in any SNP that was not declared as a 3a.m. SNP commenced. All SNPs, apart from the Inner West Brisbane SNP, were declared as 3a.m. SNPs on 1 February 2017. Therefore, liquor service hours in these declared 3a.m. precincts were not affected. Given the Government's announced changes to the TAFV Policy, and to ensure consistency in the treatment of SNP licensees, the Office of Liquor and Gaming Regulation advised relevant licensees located within the Inner West Brisbane SNP that licensees with an existing approval to serve liquor until 3a.m. could continue to do so from 1 February 2017 until the commencement of this Bill.

### **Wind back of trading hours for licensees removed from an SNP due to a boundary change**

The Bill will make a technical amendment to ensure that licensed premises that are no longer located within an SNP, as a result of a future boundary change, will have their liquor service hours automatically wound back to 2a.m.

### **Tightening of the temporary late-night extended hours permit regime**

*Restrict the frequency in respect of which temporary late-night extended hours permits can be issued*

Section 103I(1) of the Liquor Act provides that a licensee may apply for an extended hours permit, which would temporarily extend liquor trading hours on a particular day to include trading between 12a.m. and 5a.m. Section 103J(1) provides that the Commissioner may issue a maximum of 12 temporary late-night extended hours permits, for a particular licensed premises, within a 1-year period.

Consistent with the Interim Report's findings, the Bill restricts the number of temporary late-night extended hours permits that may be granted for licensed premises to six permits, per calendar year State-wide.

Further, the Bill provides that the Commissioner must not grant a temporary late-night extended hours permit relating to licensed premises if it would result in an extension of a licensee's liquor service hours on:

- more than one day in a calendar month; or
- two or more consecutive days.

However, the Commissioner may grant consecutive permits, or more than one permit for a month, if the permits relate to a single special occasion that occurs over multiple days.

To increase operational efficiency of the Liquor Act, the Bill amends the time period within which the maximum allowable number of temporary late-night extended hours permits can be issued to a “calendar year” (i.e. 1 January to 31 December), rather than a “1-year period”.

To align with the change to a “calendar year”, the Bill inserts a new section which reduces, on a pro-rata basis, the maximum number of temporary late-night extended hours permits that may be granted to new licensees issued a liquor licence, depending on the month the licence is issued.

The Bill also includes transitional provisions relating to the treatment of temporary late-night extended hours permits and applications. In effect, these provisions will: retrospectively apply a maximum number of six temporary late-night extended hours permits per venue for the 2017 calendar year; include temporary late-night extended hours permits granted for dates from 1 January 2017 to commencement as part of the maximum of six permits; cancel all temporary late-night extended hours permits granted prior to commencement for dates occurring on, or after, commencement; provide that all applications made, but not yet decided at commencement, be assessed with respect to the new criteria; and provide that legal proceedings started, but not decided prior to commencement, are decided with respect to Part 4A, division 4 as in force before the commencement.

#### *Enhance the rigour of the temporary late-night extended hours permit framework*

Consistent with the Interim Report’s conclusion that the modification of the temporary late-night extended hours permit framework is necessary to increase the effectiveness of the TAFV Policy, the Bill amends the Liquor Act to provide additional rigour around eligibility for, and assessment of, applications. These amendments will apply to temporary late-night extended hours permits for licensed premises both inside and outside of SNPs.

The Bill inserts criteria which the Commissioner must have regard to when considering an application for a temporary late-night extended hours permit. It is intended that these amendments will ensure that licensees will only be able to be granted a temporary late-night extended trading hours permit to coincide with a special occasion, and not as part of “business as usual” late-night trading.

Under the new criteria, the Commissioner may only grant a temporary late-night extended hours permit if it is to sell liquor on a “special occasion” that persons independent of the licensees, and of the owner or occupier of the licensed premises, wish to celebrate on the licensed premises.

An occasion is a “special occasion” if: the occasion is a “special public event”; or a wedding, birthday or other private occasion being celebrated at a function that is not open to the public. “Special public event” is further defined as a unique or infrequent event of local, State or national significance.

Examples of events that may be considered of local, State or national significance might include: a televised international sporting event involving an Australian team; or a local music festival occurring over a weekend.

To provide guidance and certainty for licensees, the Bill provides a head of power for the relevant Minister to also prescribe in a regulation an event, or class of events, which would, or would not, be considered a “special public event”.

To further enhance the rigour of the temporary late-night extended hours permit framework, the Bill also specifies that the hours that may be granted under a temporary late-night extended hours permit must be linked to the duration of the “special occasion” for which the permit is sought. It is intended that the Commissioner must only grant an extended hours permit for the time the “special occasion” is happening, and a reasonable time, before and/or after this, if the Commissioner considers it appropriate to ensure the maintenance of a safe environment in and around the licensed premises.

### **Extension of banning order sentencing regime to prescribed drug offences**

The Bill amends the Penalties and Sentences Act to allow a sentencing court to impose a banning order on offenders convicted of a prescribed drug offence, where the offence was committed in, or in a public place in the vicinity of, licensed premises. These amendments recognise the harm posed by this cohort of drug offenders in terms of the potential drug-related violence that may occur consequential to the sale or supply of drugs to persons in and around licensed premises.

The existing banning order regime under the Penalties and Sentences Act applies to persons convicted of offences that involve the use, threatened use or attempted use of unlawful violence to a person or property. The court must also be satisfied that the offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and that if the order is not made, the offender poses an unacceptable risk to the good order of the licensed premises and areas in the vicinity thereof and/or the safety and welfare of persons attending the premises or in that area.

The Bill extends the existing framework to apply to an offender who is convicted of an offence against sections 5 (Trafficking in dangerous drugs) or 6 (Supplying dangerous drugs) of the *Drugs Misuse Act 1986*. Consistent with the existing approach to offences of violence, the court must also be satisfied that the dangerous drug offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and the offender poses an unacceptable risk to the good order of the licensed premises and areas in the vicinity thereof, or the safety and welfare of persons attending the premises or in that area, if the banning order is not made.

### **ID Scanners**

While not directly related to the Interim Report’s findings, in order to support the effective operation of provisions relating to ID scanning, the Bill will make amendments to clarify that licensees of “regulated premises”, with approved regular extended trading hours beyond midnight, must continue to scan patron IDs if serving liquor beyond their usual hours under a temporary late-night extended hours permit.

It should be noted that licensees who are not approved for regular extended trading hours post-midnight, are not required to scan patron IDs when serving liquor post-midnight under a temporary late-night extended hours permit.

## **Alternative ways of achieving policy objectives**

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

## **Estimated cost for government implementation**

Implementation costs associated with the changes to the temporary late-night extended trading hours permit regime are expected to be met from existing resources of the administering agency. The future allocation of resources will be determined through normal budgetary processes.

No additional cost for Government is anticipated with respect to the amendments to the Penalties and Sentences Act to broaden the application of the existing banning order sentencing regime to include prescribed drug offenders.

## **Consistency with fundamental legislative principles**

Most of the amendments are generally consistent with fundamental legislative principles (FLPs) provided in the *Legislative Standards Act 1992* (Legislative Standards Act), as they have sufficient regard for the rights and liberties of individuals and the authority of Parliament. However, the following potential breaches of FLPs are noted:

### **Retrospective repeal of the lock out**

Clause 8, in addition to other clauses, retrospectively repeals the lock out, which may be a breach of FLPs (section 4(3)(g) of the Legislative Standards Act). However, it is considered that retrospective repeal is justified on the basis that the Government informed the public and stakeholders prior to 1 February 2017 that the lock out provisions would not be enforced and would be repealed. The Government has determined that existing 3a.m. liquor service without a lock out is to continue in all SNPs and the proposed retrospective operation of the amendments will provide for consistency of the current operational requirements. If the relevant amendments did not commence retrospectively, licensees would be subject to a lock out for a temporary period.

### **Retrospective repeal of the 3a.m. SNP model**

Clause 11, in addition to other clauses, retrospectively repeals the 3a.m. SNP model, which may breach section 4(3)(g) of the Legislative Standards Act by adversely affecting rights and liberties, or imposing obligations, retrospectively. However, this is considered justified as all licensees who were afforded 3a.m. liquor service hours from 1 February 2017 by virtue of being in a prescribed 3a.m. SNP will retain these hours following the repeal of the model, essentially meaning that no rights are lost.

In conjunction with the retrospective repeal of the 3a.m. SNP model, the Bill will retrospectively sanction the continuation of 3a.m. liquor service in all SNPs from 1 February 2017. While the retrospective operation of this may breach FLPs, it is considered justified on the basis that it legitimises the intention of allowing 3a.m. liquor service hours in all SNPs State-wide from 1 February 2017.

### **Temporary late-night extended hours permits**

*Head of power for the Minister to prescribe an event, or class of events, which would, or would not, be considered special public events*

Clause 15 provides a head of power for the relevant Minister to also prescribe in a regulation an event, or class of events, which would, or would not, be considered a “special public event” in relation to the new criteria under which temporary late-night extended hours permits can be granted. Although no events, or class of events, are being prescribed at this time, the provision may still breach provisions of section 4(4)(c) of the Legislative Standards Act as it authorises the amendment of an Act by a regulation.

However, this is considered justified on the grounds of public interest. If harm is occurring, or has the potential to occur, it allows the relevant Minister to quickly prescribe an event, or class of events, that is problematic and for which temporary late-night extended hours permits should not be granted.

*Cancellation of temporary late-night extended hours permits granted, but not yet occurred*

Clause 22 provides that, as a transitional arrangement, on commencement, any temporary late-night extended hours permits which have been granted for dates that have not yet occurred, are to be cancelled by force of that section.

The cancellation of temporary late-night extended hours permits which have already been granted may breach FLPs due to not having sufficient regard to the rights and liberties of individuals as per section 4(2)(a) of the Legislative Standards Act. However, this potential breach is considered justifiable on the grounds of public interest, due to the harm-minimisation benefits of limiting late-night liquor trading.

It is also noted that, as soon as practicable following commencement, licensees will receive a refund of the application fee. A licensee may then reapply for a new temporary late-night extended hours permit under the new criteria.

*Retrospectively reducing the maximum number of temporary late-night extended hours permits that may be granted*

Clause 15 reduces the maximum number of temporary late-night extended hours permits that may be granted from 12 to six, in a calendar year. Further, clause 22, as a transitional arrangement, provides that any temporary late-night extended hours permits granted for dates before the commencement, are taken to count towards the maximum number of temporary extended hours permits that may be granted for the 2017 calendar year.

In effect, these provisions retrospectively apply the reduced number of six temporary late-night extended hours permits, which may breach provisions of section 4(3)(g) of the Legislative Standards Act. Specifically, that it could adversely affect rights and liberties, or impose obligations, retrospectively. However, this potential breach is considered justifiable on the grounds of public interest, due to the harm-minimisation benefits of limiting late-night liquor trading.

### *Transitional provisions relating to legal proceedings*

Clause 22 contains a transitional provision in relation to temporary late-night extended hours permits to declare that a legal proceeding started before the commencement must be decided under the Liquor Act as in force before the commencement. The Bill also contains transitional provisions to provide that the retrospective amendments arising from the repeal of the lock out and 3a.m. SNP model apply in respect of legal proceedings not decided before commencement, or started after commencement. These provisions may breach FLPs, due to perceived interference with the exercise of judicial power.

It is considered that this potential breach is justifiable on the grounds of public interest, due to the harm-minimisation benefits of limiting late-night liquor service. The provisions will also provide legislative clarity to the courts and tribunals as to the intended operation of the Government's policy going forward.

### **No compensation provisions**

Clause 22 provides that, with regards to the transitional amendments, and the amendment with regard to changing the area of SNPs in new section 173NCA, no compensation is payable to any persons because of the operation of the Bill affecting the rights and liberties of individuals. This may potentially breach FLPs. This is considered justified as the sale of liquor is a regulated industry, given the potentially harmful nature of the product. Businesses operate within this regulated environment and are aware that conditions around trading may be subject to change.

At times, business trading conditions are required to be changed in order to minimise harm to the community, which is one of the objects of the Liquor Act. Commercial business interests must be balanced against health, safety and amenity considerations, and it would not be feasible or appropriate to provide compensation to businesses each time a new measure is introduced to limit the harm associated with the supply of alcohol in licensed premises.

### **Extension of court issued banning orders to certain drug offences**

Clause 28 provides that a sentencing court may impose a banning order on an offender convicted of a prescribed drug offence after commencement, irrespective of whether the offence was committed or the offender was charged with the offence, prior to commencement. The amendment may breach section 4(3)(b) of the Legislative Standards Act, which requires legislation to have sufficient regard to rights and liberties of individuals due to the partial retrospective nature of the amendment.

However, the sentencing court retains complete discretion as to whether or not to include a banning order as part of the sanction imposed. The amendment is focused on drug traffickers and drug suppliers; that is, objectively the more serious drug offenders, and who, by virtue of the nature of their offending, pose a threat to the safety and good order of licensed premises and the surrounding areas. Additionally, the existing banning order framework contains a number of safeguards, including that a banning order cannot prevent an offender from entering or remaining in their residence or place of employment or formal education. The existing framework also provides for an appropriate avenue to apply to a court to amend or revoke the banning order.

The retrospective application of this amendment is consistent with the transitional arrangements made when the banning order regime was inserted into the Penalties and Sentences Act in 2010 by the *Liquor and Other Legislation Amendment Act 2010*.

## **Consultation**

### *Amendments to the Liquor Act and Liquor Regulation 2002 (Liquor Regulation)*

The Attorney-General has met with a range of stakeholders, including representatives from the liquor industry, business interest groups, non-government service providers, health associations, and experts in the field of alcohol-related violence to discuss the development and implementation of TAFV Policy initiatives. In particular, the Attorney-General convened two stakeholder Round Tables in Brisbane on 6 August 2015 and in Cairns on 10 September 2015 to discuss a number of issues, including provisions for ID scanners and lock outs. On 6 April 2016, a third Round Table was held in Brisbane to discuss implementation of ID scanners, as well as other provisions of the TAFV Act. There were over 60 representatives present at the Brisbane meetings, and over 20 present in Cairns.

Consultation has been undertaken with respect to the changes to the temporary late-night extended hours permit framework. Given the finding of the evaluation report that such extended hours permits are impacting on the fidelity of 3a.m. “last drinks”, it is considered necessary to amend the temporary late-night extended hours permit regime as soon as possible.

### *Amendments to the Penalties and Sentences Act*

On 6 April 2016, Government, legal and community stakeholders attended a roundtable discussion convened by the Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills, which included an opportunity to discuss the proposal to expand the banning order sentencing regime to offenders convicted of drug-related offences. Representatives who attended were from (but not limited to): Aboriginal and Torres Strait Islander Legal Service, the Queensland Police Service, the University of Queensland, the Queensland Network of Alcohol and Other Drug Agencies, the Queensland Hotels Association and various safe night precincts from throughout Queensland

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with legislation of the Commonwealth or another State.

In relation to extended hours permits, the definition of “special occasions” has been modelled on the concept of “special occasions” extended trading hours authorisation provided for in the New South Wales *Liquor Act 2007*, although differences between the New South Wales and Queensland legislative framework are noted.

## Notes on provisions

### Part 1 Preliminary

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

*Clause 2* sets out the commencement dates for the respective parts of the Act.

### Part 2 Amendment of Liquor Act 1992

*Clause 3* states that part 2 amends the *Liquor Act 1992*.

*Clause 4* amends section 4 (Definitions), which provides definitions for the Liquor Act. The clause omits the now irrelevant definitions for ‘3a.m. safe night precinct’, ‘lock out condition’ and ‘trading period’, insofar as the concepts relate to the lock out provisions of Part 5, Division 5. However, as the concept of ‘trading period’ is still relevant to provisions relating to Part 5, Division 6 (Certain provisions about conditions of licences for Brisbane City Council area), the clause inserts a definition for ‘trading period’ that references section 142AD.

*Clause 5* amends section 86 (Hours to which application may relate etc.) to replace the reference to ‘3a.m. safe’ in section 86(1)(b) with ‘safe’, in line with the repeal of the 3a.m. SNP framework. To allow for applications for extended trading hours approvals for liquor service between midnight and 3a.m. to be made in respect of licensed premises located in an SNP, it is necessary to remove the provision in section 86(1)(b) that would otherwise restrict 3a.m. liquor service to 3a.m. SNPs.

*Clause 6* amends section 103G (Authority of extended hours permit) to omit a note regarding the application of lock out conditions to an extended hours permit, as clause 8 repeals the lock out provisions contained in Part 5, Division 5.

*Clause 7* amends section 107C (Commissioner may impose conditions on licences and permits) to omit an obsolete example that refers to section 142AA(3), as that section is being repealed by Clause 8.

*Clause 8* repeals Part 5, Division 5 (Lock out provisions). The clause has the effect of repealing section 142AA, which outlines when the 1a.m. statutory lock out does and does not apply in respect of a licensed premises; and section 142AB, which contains the 1a.m. statutory lock out condition.

*Clause 9* amends section 155AD (Who must be present or reasonably available at licensed premises etc.) to replace references to ‘3a.m. safe’ in subsections (2)(b)(ii) and (3)(b)(ii) with references to ‘safe’, to clarify that relevant licensees in SNPs are subject to the harm minimisation requirement for an approved manager to be present between the hours of 12a.m. and 3a.m. at a licensed premises.

*Clause 10* amends section 165A (Refusing entry to premises) to omit the example from subsection (1)(e) that refers to section 142AB, as that section is being repealed by Clause 8.

*Clause 11* repeals Part 6AB, Division 5 (3a.m. safe night precincts) to repeal the 3a.m. SNP framework. This has the effect of repealing: section 173O, which provides for a licensee in a 3a.m. SNP to apply for and be granted an extended trading hours approval for 3a.m. liquor service; and sections 173P and 173Q, which provide for SNPs to be prescribed or revoked by regulation.

*Clause 12* amends section 338A(3) (Minister must review) to remove paragraph (b), which references Part 5, Division 5; and paragraph (d), which references Part 6AB, Division 5. These amendments remove the lock out provisions and 3a.m. SNP framework from the scope of ‘relevant provisions’ to be assessed as part of the independent evaluation of the TAFV Policy that is required under the legislation. The clause also renumbers paragraphs (c) and (e) as paragraphs (b) and (c).

*Clause 13* amends section 103G (Authority of extended hours permit) to omit “at the time, and subject to the conditions, stated in the permit” from the section, and insert a new subsection 2 that provides a more detailed explanation of the authority of the extended hours permit. Specifically, the clause clarifies that the granted permit authorises the sale of liquor during the stated time on a stated day; in the licensed premises or a stated part of the licensed premises; and subject to any stated conditions.

*Clause 14* replaces the heading of 103H (Restriction on grant of extended hours permit) with a new heading (Grant of permit for Good Friday, Christmas Day or Anzac Day) to reflect the scope of the section following amendments that reorganise provisions relating to extended hours permits available under the Liquor Act.

*Clause 15* omits sections 103I (Hours to which application may relate etc.) and 103J (Restriction on number of extended hours permits for particular premises) and inserts sections that give effect to the new regulatory framework for temporary late-night extended hours permits. In this regard, the clause reorganises the sections of Part 4A, Division 4 (Extended hours permit) so that provisions relating to the same subject are grouped together in the same section.

The new section 103I (Hours to which applications may relate) prescribes the hours to which applications may relate.

The new section 103IA (Restrictions on grant of permit for trading between 12a.m. and 5a.m.) gives legislative effect to the framework for limiting the number, frequency and circumstances in which a temporary late-night extended hours permit may be granted to a licensed premises in Queensland. In respect of an application that would, if granted, allow for one-off liquor service at a licensed premises between 12a.m. and 5a.m. on a special occasion, the Commissioner:

- must be satisfied that persons independent of the licensee, owner or operator of the licensed premises wish to celebrate the special occasion for which the extended hours permit is sought;
- may only grant an extended hours permit for the time the special occasion is happening and for a reasonable time before or after the occasion is happening that the Commissioner considers appropriate to ensure the maintenance of a safe environment in and around licensed premises; and

- must not grant an extended hours permit application that would allow for extended liquor service hours on two or more consecutive days, or on more than one day in a calendar month, unless the permits relate to the same special occasion.

Definitions in the section provide that ‘celebrate’ includes ‘mark’ and ‘special occasion’ means the occasion of a ‘special public event’ or a wedding, birthday or other private occasion being celebrated at a function that is not open to the public. ‘Special public event’ is defined as a unique or infrequent event of local, State or national significance. The section also includes a regulation-making power to prescribe what is and is not a special public event. The intended effect of these provisions is to link the additional hours of late-night liquor service granted under a temporary late-night extended hours permit to a genuine special occasion and to the particular hours of the occasion, whilst allowing for the Commissioner to determine what constitutes a reasonable period of time for a permit to authorise extended trading hours, given safety considerations.

Section 103IB (Restrictions on grant of permit for trading between 7a.m. and 9a.m.) and section 103IC (Restrictions on grant of permit for trading between 9a.m. and 10a.m.) relocate provisions that were previously part of section 103I without changing the substantive provisions.

The new section 103J (Maximum number of permits that may be granted) reduces the number of temporary late-night extended hours permits authorising liquor sale on a day from 12 in a 1-year period, under the old section 103J, to six in a calendar year. The provision also clarifies that the cap of six permits relates to the number of permits that authorise days in the same calendar year, not the number of permit applications granted in that calendar year. Capping the number of temporary late-night extended hours permits that can be used for a licensed premises in a calendar year places all licensees on an equal footing in terms of the number of permits available and the relevant timeframe. It should also be noted that although the cap prevents the granting of more than six permits for days in the same calendar year, it does not provide for an entitlement or guarantee in relation to the granting of the maximum number of permits.

In this regard, to strengthen the fairness of the temporary late-night extended trading hours permit framework, the new section 103JA (Maximum number of late night permits that may be granted in first calendar year of a licence) provides for the cap to be reduced on a pro rata basis during the first year a licence applies to a premises, having regard to the proportion of months the licence is in effect. For example, if a premises is granted a licence in May 2018, the licence would be in effect for eight out of a possible 12 months. The number of temporary late-night extended trading hours permits available to premises for that year is calculated by dividing 8 by 12 and multiplying the quotient by 6 (the maximum permits available per year) to get the prorated cap of four permits. Where this calculation produces a number that is not a whole number, the section provides for the number to be rounded up to the nearest whole number.

*Clause 16* amends section 173EF (Licensed premises to which this division applies) to omit the reference to ‘this Act’ in subsection (1)(b) and insert ‘an extended trading hours approval’ in order to capture licensed premises that are permanently authorised for liquor service for any time between the hours of midnight and 3a.m. The clause also omits section 173EF(3), which provides that the division does not apply to licensed premises if the licensee holds a temporary late-night extended hours permit for the period between midnight and 5a.m. for the

premises under section 103I(1). These amendments, in conjunction with Clause 17 amendments to the definition of regulated hours in section 173EH(9)(b), clarify that an SNP licensed premises that ceases liquor service at or before midnight and does not hold a permanent extended trading hours approval, is not subject to ID scanning requirements contained in Part 6AA, Division 2, including when the premises operates under the authority of a temporary late-night extended trading hours permit for liquor service between midnight and 5a.m. This provision is an acknowledgement that it would be unfair to require licensees that do not trade liquor beyond midnight on a regular basis to obtain ID scanning equipment for the few occasions they are authorised to operate under a temporary late-night extended hours permit.

*Clause 17* amends section 173EH (Scanning obligations of licensees for regulated premises) to clarify that regulated hours for a regulated premises, under subsection (9)(b), means the period during which the licensed premises are open for business between 10p.m. on a day and 5a.m. on the following day, whether under the authority of a licence, extended hours permit or extended trading hours approval. These amendments, in conjunction with amendments to section 173EF made by Clause 16, ensure that an SNP licensee with a permanent extended trading hours approval for trading after midnight is subject to the ID scanning obligation for the entire period of the premises' regulated hours on a day, including when operating under a temporary late-night extended hours permit authorising liquor service beyond the permanent approved extended trading hours.

*Clause 18* inserts a new section 173NCA (Changing area of safe night precincts). Subsections (1) and (2) have the effect of reducing approved extended trading hours from 3a.m. to 2a.m. if a licensed premises ceases to be in an SNP as a result of changes to the precinct area. Subsection (3) clarifies that a wind back of trading hours from 3a.m. to 2a.m. does not affect any later amendment or revocation of the extended trading hours approval. Subsection (4) provides that a regulation containing an amendment to an SNP area must provide for the amendment to commence on a day no earlier than 7 days after the regulation is made. This will ensure that the Commissioner has an opportunity to notify affected licensees of the change to the SNP area under subsection (5) prior to the change taking effect.

Subsection (5) provides that, as soon as practicable after the regulation containing the amendment is made, the Commissioner must give an affected licensee written notice that when the amendment commences the licensed premises ceases to be in the SNP, and explain the effect on the licensees' extended trading hours approval under subsection (2). Subsection (6) clarifies that the failure of the Commissioner to give notice does not affect a reduction of extended trading hours under subsection (2). Subsection (7) provides that no compensation is payable to any person because of the operation of the section.

*Clause 19* amends section 336 (Applications for extended trading hours between 2a.m. and 5a.m) to insert a new subsection (5), which provides that "This section applies subject to section 351". Section 336 sets out transitional arrangements for dealing with applications for extended trading hours as a result of the TAFV Act. Given the retrospective repeal of the 3a.m. SNP model from 1 February 2017, section 351 will ensure that section 336 operates from 1 February 2017 as if the reference to "3a.m. safe night precinct" in section 336(4)(a) was a reference to a "safe night precinct". This will ensure that if an application for an extended trading hours approval in an SNP was lodged but not decided prior to 1 February 2017, extended trading hours to 3a.m. are able to be granted.

*Clause 20* amends section 337 (Existing extended trading hours approvals for trading between 2a.m. and 5a.m.) to insert a new subsection (5), which provides that “This section applies subject to section 351”. Section 337 sets out transitional arrangements for dealing with existing extended trading hours as a result of the TAFV Act. Given the retrospective repeal of the 3a.m. SNP model from 1 February 2017, section 351 will ensure that section 337 operates from 1 February 2017 as if the reference to “3a.m. safe night precinct” in section 337(4)(a) was a reference to a “safe night precinct”. This will ensure that an extended trading hours approval to trade between 2a.m. and 5a.m. in an SNP, that was in force for a licensed premises before 1 February 2017, has the effect of authorised trading between midnight and 3a.m. from 1 February 2017.

*Clause 21* amends section 338 (Effect of certain court or tribunal decisions relating to extended trading hours approvals) to insert a new subsection (5), which provides that “This section applies subject to section 351”. Section 338 sets out transitional arrangements for dealing with certain court or tribunal decisions relating to extended trading hours approvals as a result of the TAFV Act. Due to the retrospective repeal of the 3a.m. SNP model from 1 February 2017, section 351 will ensure that section 338 operates from 1 February 2017 as if the reference to “3a.m. safe night precinct” in section 338(4)(a) was a reference to a “safe night precinct”. This will ensure that if a court or tribunal proceeding relating to an extended trading hours approval in an SNP was started but not decided before 1 February 2017, despite anything in the decision that provides otherwise, on the day the decision takes effect, the extended trading hours approval has effect as if, and to the extent that, it authorised trading between midnight and 3a.m.

*Clause 22* inserts a new part 12, division 19 (Transitional and declaratory provisions for *Liquor and Other Legislation Amendment Act 2017*) to provide for certain transitional provisions to ensure the smooth operation of the new amendments. This includes the insertion of new sections 346-352.

New section 346 (Definitions for division) provides definitions for the division. Specifically, it provides that ‘2017 late night permit’ means an extended hours permit that extends trading hours, on a day in 2017, to include trading for all or part of the period between midnight and 5a.m. ‘Amending Act’ is defined as the *Liquor and Other Legislation Amendment Act 2017*.

New section 347 (Declaration about period between 1 February 2017 and commencement) has the effect of providing transitional arrangements that apply during the ‘relevant period’. Subsection (1) states the ‘relevant period’ is the period between the retrospective commencement of Part 2, Division 2 amendments that repeal the 1a.m. statutory lock out provisions and 3a.m. SNP framework on 1 February 2017, and the commencement of section 347 on assent.

To minimise the risk of disadvantaging licensees affected by the retrospective repeal of the statutory 1a.m. lock out provisions and 3a.m. SNP framework, subsection (2) clarifies that during the relevant period, no licence or permit is taken to have been subject to a lock out condition by force of section 142AB, which is being repealed. Further, during the relevant period, the granting of a permanent extended trading hours approval, and anything done in relation to such an approval, is taken to be as valid as it would have been if the reference to ‘3a.m. safe night precinct’ in section 86(1)(b) or section 155AD had been a reference to a ‘safe night precinct’. Additionally, subsection (3) clarifies that the rights and liabilities of all persons during the relevant period are declared to be the same as if the repealed 1a.m. lock

out provisions contained in section 142AB had never been in force and references to ‘3a.m. safe night precinct’ in sections 86(1)(b) or 155AD had been a reference to ‘safe night precinct’. Subsection (4) then provides that subsections (2) and (3) are not taken to apply for the purpose of a legal proceeding decided before the commencement, but they do apply in respect of all other purposes, including a legal proceeding that was either started, but not decided before the commencement, or started after the commencement.

To offset the negative implications of imposing offence provisions retrospectively, subsection (5) clarifies that an act or omission made during the relevant period in relation to requirements for an approved manager to be reasonably available or on the premises during certain hours is not an offence to the extent it would not have been an offence if section 9 of the Amending Act had not commenced to replace references to ‘3a.m. safe night precinct’ with ‘safe night precinct’. Subsection (6) provides that ‘lock out condition’ has the meaning given by repealed section 142AB and ‘repealed section 142AB’ means section 142AB inserted in the Liquor Act by section 38 of the TAFV Act. A note further clarifies that repealed section 142AB was repealed immediately after it commenced by section 8 of the Amending Act.

New section 348 (Cancellation of current 2017 late night permits) provides that on commencement, any temporary late-night extended hours permits which have been granted for dates that have not yet occurred, are to be cancelled by force of that section. As soon as practicable after the commencement, the Commissioner must: refund to the licensee the fee paid for the permit application, and give the licensee a written notice. The notice is to state that the permit is cancelled, and that the licensee may reapply for a new temporary late-night extended hours permit under the new criteria.

New section 349 (Counting 2017 late night permits for s 103J) provides that any temporary late-night extended hours permit granted for dates before the commencement are taken to count towards the maximum number of temporary late-night extended hours permits that may be granted for the 2017 calendar year. In effect, this provision retrospectively applies the reduced number of six temporary late-night extended hours permits to all licensed premises from 1 January 2017.

New section 350 (Current applications and legal proceedings relating to extended hours permits) provides that an application for a temporary late-night extended hours permit made, but not yet decided, before commencement, is to be decided under the Liquor Act as in force from the commencement i.e. any application for temporary late-night extended hours permits on hand at commencement will be considered under the new framework. This section also provides that, in relation to a legal proceeding for a temporary late-night extended hours permits started, but not decided, before commencement, the Liquor Act as in force before the commencement continues to apply.

New section 351 (Retrospective change to operation of ss 336-338) retrospectively changes the operation of certain transitional provisions to ensure that references to “3a.m. safe night precinct” are taken to be references to “safe night precinct”, due to the repeal of the 3a.m. SNP model. Subsection 351(4) provides that the rights and liabilities of all persons are declared to be, and to have been since 1 February 2017, for all purposes the same as if the references in these sections to a “3a.m. safe night precinct” were references to a “safe night precinct”.

New section 352 (No compensation) provides that no compensation is payable by the State to a person because of the operation of the Bill.

### **Part 3      Amendment of Liquor Regulation 2002**

*Clause 23* provides that Part 3 amends the *Liquor Regulation 2002*.

*Clause 24* omits section 3EA (3a.m. safe night precincts – Act, s 173P). This section provides that each SNP mentioned in schedule 16A of the Liquor Regulation is prescribed as a 3a.m. SNP (under the head of power in section 173P of the Liquor Act). Due to the repeal of the 3a.m. SNP model, this section is no longer required.

*Clause 25* omits schedule 16A (3a.m. safe night precincts) which listed the prescribed 3a.m. safe night precincts. Due to the repeal of the 3a.m. SNP model, this schedule is no longer required.

### **Part 4      Amendment of Penalties and Sentences Act 1992**

*Clause 26* provides that Part 4 amends the *Penalties and Sentences Act 1992*.

*Clause 27* omits and replaces section 43J (Making a banning order), subsection (1)(a) to expand the sentencing court's ability to make a banning order to include when an offender is convicted of certain drug offences. New section 43J(1)(a) provides that a court may make a banning order for an offender if the offender is convicted of either: an offence that involved the use, threatened use or attempted use of unlawful violence to a person or property (which replicates the language of the subsection immediately prior to amendment by the Bill); or an offence against section 5 (Trafficking in dangerous drugs) or section 6 (Supplying dangerous drugs) of the *Drugs Misuse Act 1986*. The court must also be satisfied of the existing criteria set out under subsections (b) and (c), which are unchanged by the Bill.

*Clause 28* inserts a new Part 14, division 19 (Transitional provision for Liquor and Other Legislation Amendment Act 2017). New section 254 (Banning Orders) enables a sentencing court to impose a banning order on an offender convicted of a prescribed drug offence after commencement of the Bill, irrespective of whether the offence was committed or the offender was charged with the offence, prior to commencement.