

# **Safe Night Out Legislation Amendment Bill 2014**

**Report No. 70**

**Legal Affairs and Community Safety Committee**

**August 2014**

## Legal Affairs and Community Safety Committee

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### Acknowledgements

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## Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
BAQ	Bar Association of Queensland
BCLA	Brisbane City Licensees Association
Bill	Safe Night Out Legislation Amendment Bill 2014
CCTV	Closed-Circuit Television
Committee	Legal Affairs and Community Safety Committee
Criminal Code	<i>Criminal Code Act 1899</i>
CSPLA	Caxton Street Precinct Liquor Association
DAAR	Drug and Alcohol Assessment Referral program
Department	Department of the Premier and Cabinet
Drugs Misuse Act	<i>Drugs Misuse Act 1986</i>
LAQ	Legal Aid Queensland
OLGR	Office of Liquor and Gaming Regulation
Penalty unit/PU	One Penalty Unit = \$113.85 <sup>1</sup>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PSA	<i>Penalties and Sentences Act 1992</i>
Premier	Honourable Campbell Newman MP, Premier of Queensland
QCAA	Queensland Coalition for Action on Alcohol
QCCL	Queensland Council for Civil Liberties
QH	Queensland Health
QIDDI	Queensland Illicit Drug Diversion Initiative
QLS	Queensland Law Society
QNADA	Queensland Network of Alcohol and Other Drug Agencies
R&CA	Restaurant & Catering Industry Association
RAMP	Risk-Assessed Management Plan
Road Use Management Act	<i>Transport Operations (Road Use Management) Act 1995</i>
RSA	Responsible Service of Alcohol

<sup>1</sup> SL No. 44 of 2014 was tabled 6 May 2014 with a disallowance date of 27 August 2014 and sets an increase in value of a penalty unit from \$110.00 to \$113.85 as at 1 July 2014.

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SNPs	Safe Night Precincts
SPAAL	Security Providers Association of Australia Ltd.
SPER	State Penalties Enforcement Registry
VLA	Valley Liquor Accord



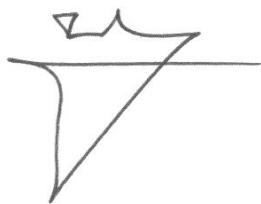
## Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Safe Night Out Legislation Amendment Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Department of the Premier and Cabinet.

I commend this Report to the House.



Ian Berry MP

**Chair**

## Recommendations

### Recommendation 1

3

The Committee recommends the Safe Night Out Legislation Amendment Bill 2014 be passed.

### Point of Clarification

24

The Committee requests the Premier clarify how many health professionals are intended to be on duty in Sober Safe Centres at any one time.

### Recommendation 2

27

The Committee recommends the Premier confirm in his second reading speech (a) that the evaluation framework for the trial will be developed prior to the commencement of the trial and (b) that the results of the evaluation will be provided to the Legislative Assembly for further consideration.

### Point of Clarification

37

The Committee requests the Premier clarify for the benefit of the Legislative Assembly how the provisions relating to the Drug and Alcohol Assessment and Referral courses will operate for people in rural or remote communities given the mandatory nature of the bail condition and the difficulties such persons may have in complying with the condition of bail.

### Point of Clarification

64

The Committee requests the Premier clarify how the ID scanning policy will operate for Hotels within a Safe Night Precinct and confirm the process for seeking an exemption from, or apply for individual conditions so as not to be subjected to, the ID scanning requirements.

### Recommendation 3

64

The Committee recommends the Bill and/or appropriate regulation be amended to:

- a) ensure ID scanning must commence for regulated premises no later than 10pm;
- b) enable flexibility for individual regulated premises to commence ID scanning at an earlier time if they wish; and
- c) empower local board associations to set a compulsory earlier commencement time for ID scanning for all regulated premises within their precinct, from time to time, to assist with maintenance of safety and security at specific events.

### Point of Clarification

84

The Committee requests the Premier clarify the correct reference in section 602W(1) and make appropriate amendments to the Bill, if necessary.



## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>2</sup>

The Committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service; and
- Fire and Emergency Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Safe Night Out Legislation Amendment Bill 2014 (Bill) was introduced into the House and referred to the Committee on 6 June 2014. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 18 August 2014.

### 1.2 Inquiry process

On 6 June 2014, the Committee wrote to the Department of the Premier and Cabinet (the Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advice from the Department and received 28 submissions (see **Appendix A**). On 17 July 2014 and 14 August 2014, the Committee received written advice from the Department in response to matters raised in submissions.

On 24 July 2014, the Committee held a public hearing where the Committee took evidence from a number of invited stakeholders. A copy of the public hearing transcript is available on the Committee's website.

### 1.3 Policy objectives of the Safe Night Out Legislation Amendment Bill 2014

The objectives of the Bill are to:

- reduce alcohol and drug related violence in Queensland's nightlife;
- make Queensland's nightlife safer for all through the reduction of alcohol and drug related violence; and
- 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.<sup>3</sup>

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<sup>2</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

## 1.4 Consultation on the Bill

In his Introductory Speech, the Honourable Campbell Newman MP, Premier of Queensland (Premier) stated:

*The Government has consulted the community extensively in developing the initiatives that form this bill. The message was clear: the community wanted something done about the violence and the culture that creates it.*<sup>4</sup>

Further details regarding the consultation process were provided in the Explanatory Notes:

*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 1,816 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'.*

*Consultation on the Bill has also occurred within Government.*<sup>5</sup>

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<sup>3</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 1.

<sup>4</sup> Record of Proceedings (Hansard), Honourable Campbell Newman MP, Premier of Queensland, 6 June 2014, page 2234.

<sup>5</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, pages 8-9.

**1.5 Should the Bill be passed?**

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the Department and from submitters, the Committee considers the Bill will have a significant impact on reducing alcohol and drug related violence which currently occurs throughout the State.

Alcohol related violence should not and will not be tolerated. This Bill contains the right steps to ensure that such behaviour is stamped out in the State's entertainment precincts. The Committee considers the reforms contained in this Bill set the platform for the cultural change that is needed in Queensland and accordingly recommends the Bill be passed.

**Recommendation 1**

The Committee recommends the Safe Night Out Legislation Amendment Bill 2014 be passed.

## 2. Examination of the Safe Night Out Legislation Amendment Bill 2014

The Bill forms part of the Government's Safe Night Out Strategy which is a "comprehensive action plan to tackle alcohol and drug fuelled violence in Queensland".<sup>6</sup> The following is a timeline summarising the background to the formulation of the Safe Night Out Strategy and the Bill:

February 2014	The Government conducted an online survey on alcohol and drug related violence that received over 12,000 responses
February 2014	The Government released the summary of the results of its alcohol related violence survey
March 2014	The Government released the draft Safe Night Out Strategy and sought submissions
April 2014	Just under 2,000 responses were received, including over 100 written submissions
June 2014	Release of the Safe Night Out Strategy

The Bill deals with the initiatives of the Safe Night Out Strategy that require legislative change. The initiatives which are administrative in nature do not require legislative change and are being implemented separately by the Government.<sup>7</sup>

The Bill involves amendments to a number of different acts, including the:

- *Criminal Code Act 1899*;
- *Penalties and Sentences Act 1992*;
- *Police Powers and Responsibilities Act 2000*;
- *Bail Act 1980*;
- *Drugs Misuse Act 1986* and the *Drugs Misuse Regulation 1987*; and
- *Liquor Act 1992*.

This section discusses the main issues raised during the Committee's examination of the Bill. These issues are set out in the order appearing in the Explanatory Notes.

### 2.1 Amendments to the *Criminal Code Act 1899*

#### Overview

The Bill proposes to make three main changes to the *Criminal Code Act 1899* (Criminal Code):

1. creating the new offence of unlawful striking causing death (the coward punch);

<sup>6</sup> *Record of Proceedings (Hansard)*, Honourable Campbell Newman MP, Premier of Queensland, 6 June 2014, page 2234.

<sup>7</sup> *Record of Proceedings (Hansard)*, Honourable Campbell Newman MP, Premier of Queensland, 6 June 2014, page 2234.

2. amending 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; and
3. inserting a new Chapter 35A to provide where a person, charged with certain serious offences of violence committed in a public place and while adversely affected, is 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 offending. New Chapter 35A is relevant to the new mandatory community service orders regime introduced in the Bill.<sup>8</sup>

### 2.1.1 New offence of unlawful striking causing death

#### Current law

In his Introductory Speech, the Premier stated:

*Fresh measures are called for to counter the dangerous trend of innocent people falling victim to senseless violence at the hands of people who are drunk or high on illicit drugs.*<sup>9</sup>

Currently, in Queensland, when a person kills another person in the circumstances of a fatal ‘coward-punch’, the only available offences are murder (section 305 of the Criminal Code), or manslaughter (section 310 of the Criminal Code). However, as noted in the Bill’s Explanatory Notes, “*in the absence of overt evidence that the offender intended to kill the victim, a conviction of murder is difficult to secure*”.<sup>10</sup>

Additionally, it is difficult to secure a conviction for manslaughter due to the operation of section 23(1)(b) of the Criminal Code. Section 23(1)(b) of the Criminal Code provides that a person is not criminally responsible for an event that the person does not intend or foresee as a possible consequence and an ordinary person would not reasonably foresee as a possible consequence. Accordingly, as highlighted in the Explanatory Notes:

*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.*<sup>11</sup>

#### Proposal under the Bill

Clause 14 of the Bill proposes the introduction of new section 302A to the Criminal Code which will provide that a person who unlawfully strikes another person to the head or neck, causing the death of the other person, is guilty of a crime.<sup>12</sup>

<sup>8</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 1.

<sup>9</sup> Record of Proceedings (Hansard), Honourable Campbell Newman MP, Premier of Queensland, 6 June 2014, page 2234.

<sup>10</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 4.

<sup>11</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 4.

<sup>12</sup> The following research is useful background information in relation to unlawful striking causing death: Liam Burke, ‘[One punch can start moral panic: An analysis of news items about fatal assaults in Queensland between 23 September 2006 and 28 February 2009](#)’, (2010) 10(1) *Law and Justice Journal* 87; Damien Carrick, ‘[Legal reforms in NSW](#)’, *ABC Radio National Law Report* (11 February 2014); Sue Erikson, ‘[“One Punch” legislation commenced in the Northern Territory](#)’, (2013) 38(1) *Alternative Law Journal* 58; Alexandra Lane, ‘[Coward punch: One-punch killing and law reform](#)’, (2014) 56 (Autumn) *Law Institute of Victoria Young Lawyers Journal*; and Julia Quilter, ‘[One-punch Laws, Mandatory Minimums and ‘Alcohol-](#)

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

It is anticipated 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'.<sup>13</sup>*

There are a number of key aspects to the new offence of 'unlawful striking causing death':

- 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 the new offence.
- 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.
- 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*".<sup>14</sup>

### Other Jurisdictions

Provisions similar to the unlawful striking causing death offence in the Bill are in force in:

- New South Wales;<sup>15</sup>
- Western Australia;<sup>16</sup> and the
- Northern Territory.<sup>17</sup>

Victoria, South Australia, Tasmania, the Australian Capital Territory and New Zealand do not have similar provisions. However, Victoria does have measures applying where a punch amounts to 'gross violence' but the victim has not died.<sup>18</sup>

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[Fueled' as an Aggravating Factor: Implications for NSW Criminal Law'](#), (2014) 3(1) *International Journal for Crime, Justice and Social Democracy*, 81.

<sup>13</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 5.

<sup>14</sup> Safe Night Out Legislation Amendment Bill 2014, clause 14 (inserting section 302A).

<sup>15</sup> *Crimes Act 1900* (NSW), section 25A.

<sup>16</sup> *Criminal Code Act Compilation Act 1913* (WA), section 281.

<sup>17</sup> *Criminal Code Act* (NT), section 161A.

<sup>18</sup> *Crimes Act 1958* (VIC), sections 15A and 15B (sentencing provisions set out under the *Sentencing and Penalties Act 1991* (VIC), section 10).

In the jurisdictions that have a similar offence, the penalties are as follows:

- In New South Wales, a maximum of 20 years imprisonment.<sup>19</sup> A maximum of 25 years imprisonment applies if the person is intoxicated when they commit the offence, with a minimum of eight years imprisonment and a mandatory non-parole period of eight years.<sup>20</sup>
- In Western Australia, maximum 10 years imprisonment.<sup>21</sup>
- In the Northern Territory, maximum 16 years imprisonment.<sup>22</sup>

### Submissions

Submissions reveal general support for increased penalties for unacceptable behaviour in and around licensed premises from key hospitality and entertainment industry stakeholders (e.g. including Cabaret Queensland, various Liquor Accords, and others).

The Valley Liquor Accord (VLA), in affirming its support for the new provisions, even called for an extension of the new offence of ‘unlawful striking causing death’ so as to also cover incidents of unlawful striking causing serious injury, as *“it is sheer chance that determines whether one of these attacks results in a death, or simply in injury”*; and *“in the case of injury the victim could be left with horrendous lifelong injuries”*. The VLA noted:

*It is our view that the severity of the punishment should be triggered by the act itself and not simply its outcome.*<sup>23</sup>

Despite the broad industry support for the new offence and/or its stated objectives, concerns were raised regarding certain aspects of the new offence of ‘unlawful striking causing death’ and its application.

These concerns were highlighted in submissions by Legal Aid Queensland (LAQ), the Bar Association of Queensland (BAQ), the Queensland Law Society (QLS), the Queensland Coalition for Action on Alcohol (QCAA), and the Queensland Council for Civil Liberties (QCCL). A number of these submitters expressed a view that the establishment of the new offence is unnecessary and is not supported by research evidence.

More specifically, LAQ, the BAQ, the QLS and the QCCL all contended the current provisions of the Criminal Code offer appropriate mechanisms for dealing with ‘coward punches’ under the offences of murder and manslaughter; and/or that the introduction of the new offence and the accompanying removal of certain defences may lead to *“unintended consequences”* or *“unjust outcomes”*, or be subject to other issues.

Submitters also expressed concern about the specification of a mandatory sentence requirement outlined in the Bill, which requires that a person sentenced to imprisonment for the new offence must not be released from imprisonment until they have served the lesser of 80 per cent of their term of imprisonment, or 15 years (Clause 14(5)).

### Necessity of the new offence and evidentiary support

The QLS submitted the proposed offence is already appropriately covered by the offence of manslaughter, as section 310 of the Criminal Code provides that any person who commits the crime of manslaughter is liable to imprisonment for life:

<sup>19</sup> *Crimes Act 1900* (NSW), section 25A.

<sup>20</sup> *Crimes Act 1900* (NSW), section 25B.

<sup>21</sup> *Criminal Code Act Compilation Act 1913* (WA), section 281.

<sup>22</sup> *Criminal Code Act* (NT), section 161A.

<sup>23</sup> Valley Liquor Accord, Submission No. 15, page 2.

*Both offences carry the same maximum penalty of life imprisonment and propose to cover the same conduct. Therefore, the proposed offence is otiose.<sup>24</sup>*

The QCAA considered the inclusion of the new offence was not supported by research evidence, stating:

*Appropriate penalties are required to enforce the laws in place to manage public order and mitigate harms. Penalties are most effective if they are swift and certain, rather than severe. Penalties should be administered immediately and in a consistent manner, so people perceive a high likelihood of punishment.<sup>25</sup>*

The QCAA considered there was at best only marginal evidence to support the effectiveness of harsher penalties and mandatory sentencing in preventing or reducing alcohol-related crime.<sup>26</sup>

#### *Defences and the exclusion of defences*

The offence 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 reasonable or otherwise) in the circumstances.<sup>27</sup>

However, section 302A(4) of the Bill does provide an exception if the act of striking the other person was done as part of a socially acceptable function or activity; and was reasonable in the circumstances.

The BAQ argued despite the effect of section 302A(4):

*... the provision in its current form may well lead to convictions in circumstances where the defences of accident, prevention of repetition of insult and provocation would otherwise have operated to exculpate an accused person. It is easy to envisage circumstances in which the application of some minor force by one person to another might cause the death of the other person, however unintended or unforeseeable. It would be unjust for a person charged under this section not to be able to rely on the defences of accident, prevention of repetition of insult and provocation in appropriate circumstances. The risk of unjust consequences for defendants charged under the new offence provision would be mitigated by allowing defendants to rely on those defences.<sup>28</sup>*

LAQ<sup>29</sup> and the QLS<sup>30</sup> raised similar objections to the exclusion of defences, with the QLS setting out the following example:

*A woman may receive repeated verbal insults and/or unwanted attention from a man in a bar. The woman may react by slapping that man in order to prevent repetition of the insult. Not expecting the slap, the man may fall backward, hit his head on a hard surface and die.*

*Under the current law, the woman might argue that she did not intend that her slap cause the death of the man. It may be argued that an ordinary person would not reasonably foresee death as a possible consequence of the slap. Under proposed section 302A, the*

<sup>24</sup> Queensland Law Society, Submission No. 21, page 3.

<sup>25</sup> Queensland Coalition for Action on Alcohol, Submission No. 18, pages 12-13.

<sup>26</sup> Queensland Coalition for Action on Alcohol, Submission No. 18, pages 12-13.

<sup>27</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 13.

<sup>28</sup> Bar Association of Queensland, Submission No. 26, page 2.

<sup>29</sup> Legal Aid Queensland, Submission No. 11, page 2.

<sup>30</sup> Queensland Law Society, Submission No. 21, page 4.



*woman would not be able to rely on the defence of accident, may be found guilty of the offence of unlawful striking causing death and may face life imprisonment.*<sup>31</sup>

The QLS considered the above example could lead to what could be considered an unjust outcome and re-iterated its concerns the new offence was not required. In relation to the exclusion of existing defences, the QLS went on to state:

*Furthermore, proposed section 302A(3) states, 'assault is not an element of an offence'. This means that the defence of provocation under sections 268 and 269 of the Criminal Code do not apply to the new offence ... the Society considers that the removal of the defence of provocation may lead to serious miscarriages of justice.*

*Proposed section 302A(4)(7) states 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.' In our view, the defences discussed above would be more appropriate in dealing with whether an action was, 'reasonable in the circumstances'.*<sup>32</sup>

LAQ observed that similar offences in other jurisdictions were not dealt with in a similar manner to what is proposed in the Bill:

*We note that the Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014 (NSW), introduced by the New South Wales Government to deal with single punches causing death, defines the offence as an 'assault' and does not exclude any defences to assault other than possibly accident in the limited circumstances of a person dying from injuries received from hitting the ground as a consequence of the assault.*<sup>33</sup>

The QCCL noted its objection to the offence on philosophical grounds, as it argues that in line with the 'subjectivist theory' of criminal law, moral guilt and hence criminal liability "should be imposed only on people who can be said to have chosen to behave in a certain way or to cause or risk causing certain consequences".<sup>34</sup> The QCCL further stated:

*In cases where a single punch or push has fatal consequences which could not reasonably have been foreseen, although the initial act is clearly antisocial and deserving of some punishment, prosecuting for manslaughter amounts to holding people responsible for bad luck.*

*The proposed clause 14 by providing that section 23 (1) (b) and 270 of the Criminal Code will not apply to the offence clearly violate the principles enunciated above. We remain of the view that the law was correctly stated in the Queensland Court of Appeal as approved by the High Court in the case of Van den Bemd. However, having regard to community concerns about this issue the QCCL has endorsed the proposal of the Irish Law Reform Commission for an offence of assault causing death and of the English Law Reform Commission that the penalty for such an offence should be a maximum of three years that remains our position.*<sup>35</sup>

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<sup>31</sup> Queensland Law Society, Submission No. 21, page 4.

<sup>32</sup> Queensland Law Society, Submission No. 21, page 4.

<sup>33</sup> Legal Aid Queensland, Submission No. 11, page 2.

<sup>34</sup> Queensland Council for Civil Liberties, Submission No. 19, page 2.

<sup>35</sup> Queensland Council for Civil Liberties, Submission No. 19, page 2.

### Interpretation and sentencing

With respect to the application of the new offence and how it was to be interpreted by the courts, LAQ submitted:

*We are also concerned that the defence to unlawful striking causing death in the proposed new section 302A(4) may be so widely defined as to be problematic for both judges and juries, particularly given that no other defence in the Criminal Code requires a jury to consider the meaning of the phrase 'socially acceptable'.*

*In relation to the sentencing provisions in the proposed new section 302(5), we submit that it would be sufficient to include unlawful striking causing death as a serious violent offence in Schedule 1 of the Penalties and Sentences Act 1992. This would communicate to the courts an intention by the legislature that the offence is to be regarded with a high level of seriousness but still allow some discretion in exceptional cases, so that unjust consequences can be avoided. It would also avoid the situation where a defendant against whom the Crown chooses to charge with manslaughter receiving a more lenient sentence than one against whom the Crown chooses to charge with unlawful striking causing death.<sup>36</sup>*

Similar concerns were raised by the QLS,<sup>37</sup> the QCCL,<sup>38</sup> and the BAQ.<sup>39</sup> In relation to the 'mandatory' aspects of the sentencing regime for the new offence the BAQ stated:

*The Association is also concerned that, when a person is sentenced for an offence under section 302A of the Code, they will be required to serve the lesser of either 80% of the sentence or 15 years before they become eligible for parole.*

*The rationale underpinning the Bill is the aim of making Queensland's nightlife safer for all through the reduction of alcohol and drug related violence. However, it is unclear what research suggests mandatory sentencing will achieve this outcome, and the Association notes that research shows that mandatory sentencing fails to prevent or deter offending.*

*The Association's position and submission is that sentencing Judges must be equipped with an appropriately flexible discretion so as to avoid unjust outcomes. It is of vital importance to the avoidance of such injustice that sentencing judges be permitted to approach the sentencing task in a way that reflects not only the circumstances of the offending but also factors personal to each offender.*

*In certain cases, it will be unjust for a person convicted under section 302A of the Code to be required to serve 80% of their sentence, or 15 years, before becoming eligible for parole.<sup>40</sup>*

Liquor & Gaming Specialists, on behalf of Brisbane City Licensees Association (BCLA) submitted some of its members did not feel the offence went far enough, and that harsher penalties should apply, regardless of whether the offence caused the death of the victim, stating "*the style of attack should incur the increased penalty regardless of the outcome*".<sup>41</sup>

The BCLA also remained concerned that "*the exercise of a discretion by police or DPP to prosecute is not an appropriate way of filtering unintended consequences*".<sup>42</sup>

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<sup>36</sup> Legal Aid Queensland, Submission No. 11, page 2.

<sup>37</sup> Queensland Law Society, Submission No. 21, pages 4-5.

<sup>38</sup> Queensland Council for Civil Liberties, Submission No. 19, pages 1-2.

<sup>39</sup> Bar Association of Queensland, Submission No. 26, page 2.

<sup>40</sup> Bar Association of Queensland, Submission No. 26, page 2.

<sup>41</sup> Brisbane City Licensees Association, Submission No. 28, page 2.

<sup>42</sup> Brisbane City Licensees Association, Submission No. 28, page 2.

### Departmental response

In response to the concerns raised by submitters, the Department referred to one punch laws that have been enacted in a number of Australian jurisdictions highlighting the common feature that the offences had no mental element (subjective or objective) in relation to the consequences of the death because of the accident.

The Department confirmed the proposed offence for Queensland was drafted to ensure that where a person causes the death of another by a willed strike to the head or neck of the victim, the person will be held criminally responsible for that death; even if the death was not a foreseeable consequence of the willed strike and even if the victim consented to the strike or gave the offender provocation for the strike.<sup>43</sup> At the public hearing the Departmental officers confirmed it was essential for crafting such an offence to exclude the excuse of accident:

*The policy behind the offence is that if it is a willed application of force and death results then it does not matter whether you foresaw death, it does not matter whether an ordinary person would have foreseen death, you are criminally responsible for the resulting death. That is really the essence behind crafting the offence.*<sup>44</sup>

The Department also confirmed the offence of manslaughter, like the new offence, excluded the application of provocation as a defence.<sup>45</sup>

With regard to the exercise of the discretion to prosecute, the Department confirmed the Director of Public Prosecution's Guidelines provides a two tiered test: is there sufficient evidence; and does the public interest require a prosecution. While submissions suggested this prosecutorial discretion will not guard against unintended consequences, it is clear that the new offence is drafted to ensure that where a person causes the death of another by a willed strike to the head or neck of the victim, the person will be held criminally responsible for that death; even if the death was not a foreseeable consequence of the willed strike and even if the victim consented to the strike or gave the offender provocation for the strike.<sup>46</sup>

In relation to the mandatory aspects of the sentencing regime, the Department, while confirming the decision to have a maximum penalty of life was a policy decision of the Government, explained that the 80 per cent rule – "*does not dictate to the sentencing court the head sentence it imposes or what sentence it imposes but what it does say is that if the court does impose a period of actual imprisonment then that 80 per cent minimum non-parole period applies*".<sup>47</sup>

It was also confirmed that while provocation could not be raised as an absolute defence, like other similar offences, a court could take into account provocative conduct as a mitigating circumstance, if raised by a defendant when determining a suitable penalty.<sup>48</sup>

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<sup>43</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 29.

<sup>44</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 52.

<sup>45</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 52.

<sup>46</sup> Letter from the Department of the Premier and Cabinet, 14 August 2014, pages 3-5.

<sup>47</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 52.

<sup>48</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

The Department advised the Committee:

*It is correct to say that the court will take into account aggravating and mitigating circumstances of the offence. Certainly the defendant would seek to ask the court to take into account if there was some provocative conduct on the part of the victim.*

*The other thing also that is worth noting is that there is some jurisprudence around how the courts approach sentencing when they are sentencing within a serious violent offender regime. As you would know, that is the regime that has the 80 per cent minimum non-parole period. There is some jurisprudence around that, that says when the court is looking at the relevant sentencing range—and, as you know, there is usually a range. If, for example, the serious violent offender regime is in play in that sentencing, the court is entitled to look at the range and sentence towards the lower end of the range. I would anticipate that a court sentencing under this new offence would take a similar approach.<sup>49</sup>*

### Committee Comment

The Committee notes the concerns raised by submitters in relation to the new offence of unlawful striking causing death, however considers that the inclusion of the new offence into the Criminal Code is warranted.

Unfortunately, as the Premier stated in his introductory speech, alcohol and drug fuelled violence is not a new phenomenon in Queensland or around Australia. The words 'one punch can kill' are widely recognised, yet offences continue to occur. The Committee considers this new offence makes it clear that these words are not simply rhetoric, and that actions of this type are not just unacceptable, but they are in fact a crime.

The Committee accepts the construction of the offence is necessary to ensure the provision operates as intended and does not consider that the relevant exclusion of defences will have the dire consequences set out in submissions.

In relation to the sentencing regime for the new offence, the Committee does not accept as highlighted in submissions, that it improperly fetters the discretion of the sentencing judge. As explained by the Department, a judge still has a wide range of sentencing options available, however if a term of imprisonment is determined to be the appropriate penalty, then the offender must serve the bulk of the sentence before being eligible for parole. The non-parole period may be taken into account by the sentencing authority and is consistent with the penalties available for other offences of this nature which appear in the Criminal Code.

In relation to the VLA's suggestion that the severity of the punishment should be triggered by the act itself and not its outcome, the Committee notes this new offence is intended to plug a legislative gap, where the *death* of the victim occurs from cowardly acts of violence. That being said, the Committee shares the concerns that a similar act of violence could occur but does not result with the death of the victim, but leaves them hospitalised or with otherwise extremely serious injuries.

The Committee does not consider the proposed offence should be amended but considers the Government should continue to monitor the occurrence of such incidents, to determine if any further 'single punch' amendments to the Criminal Code are required.

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<sup>49</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

## 2.1.2 Increased penalty for serious assaults on public officers and aggravation for particular offences

### Current law

Currently, section 340 of the Criminal Code deals with serious assaults. Within this section, subsection 340(2AA) deals with the unlawful assault, resistance or wilful obstruction of a public officer while or because a public officer is performing a function of the public officer's office.<sup>50</sup>

Such actions are considered to be a crime with a maximum penalty of seven years imprisonment.

### Proposals under the Bill

The Bill proposes to insert a new circumstance of aggravation to increase the maximum penalty from seven years to 14 years where the offender assaults a public officer in any of the following circumstances:

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

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.<sup>51</sup>

This amendment makes assaults on public officers consistent with the current aggravated offence of serious assault of a police officer under section 340(1)(b), penalty paragraph (a) of the Criminal Code.

The Explanatory Notes state:

*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.*<sup>52</sup>

The Bill also proposes to insert a new Chapter 35A (circumstance of aggravation for particular offences), such that certain offences would be considered aggravated if committed in a public place and while adversely affected by an intoxicating substance. The offences include:

- section 320 (grievous bodily harm);
- section 323 (wounding);
- section 340(1)(b) (serious assault – police officer); and
- section 340(2AA) (serious assault - public officer).

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<sup>50</sup> The following research is useful background information in relation to assaults on public officers: Tony Collins, '[Officer Safety](#)', *Queensland Police Union Journal* No 12 (November 2010); Dr Nicole French, '[Assessing the Hazards: Assaults on NSW Police Officers 2005-2010](#)', (2 June 2012); Claire Mayhew, '[Occupational Health and Safety Risks Faced by Police Officers](#)', *Australian Institute of Criminology trends & issues* No 196 (February 2001); '[Challenges faced by first-response officers when performing single person patrols: A literature review](#)', *Australian Institute of Criminology technical and background paper series* No 49 (2012).

<sup>51</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 14.

<sup>52</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 5

The Explanatory Notes provide the following background information on the proposed new Chapter 35A of the Criminal Code:

*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.<sup>53</sup>*

#### Other Jurisdictions

Offences in relation to assaults on public officers are in force in most Australian jurisdictions.

The maximum penalty in each relevant Australian jurisdiction and New Zealand is as follows (in ascending order):

- Six months imprisonment in New Zealand and under a new proposal in Tasmania;<sup>54</sup>
- Five years in Victoria;<sup>55</sup>
- 13 years imprisonment for the Commonwealth;<sup>56</sup>
- 14 years imprisonment under the Queensland proposal and in New South Wales;<sup>57</sup>
- 15 years imprisonment in the Australian Capital Territory;<sup>58</sup> and
- 16 years in the Northern Territory.<sup>59</sup>

The Australian Capital Territory does not include a specific offence of assault against a public officer. However, higher penalties apply to the commission of specified intentional and unlawful acts committed with the intention of preventing or hindering a police officer from lawfully investigating a matter.<sup>60</sup>

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<sup>53</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 14.*

<sup>54</sup> *Summary Offences Act 1981 (NZ), section 10; Sentencing Amendment (Assaults on Police Officers) Bill 2014 (TAS), section 31.*

<sup>55</sup> *Crimes Act 1958 (VIC), section 31.*

<sup>56</sup> *Criminal Code Act 1995 (CTH) sections 147.1, 147.2.*

<sup>57</sup> Clause 16 of the Bill; *Crimes Act 1900 (NSW), sections 60 and 60A.*

<sup>58</sup> *Crimes Act 1900 (ACT), section 27(3)(4).*

<sup>59</sup> *Criminal Code Act (NT), section 189A.*

<sup>60</sup> *Crimes Act 1900 (ACT), section 27(3)(4).*

## Submissions

### *Overview*

Responses to the proposed increase in the maximum penalty for serious assaults on police and other officials have ranged from objections to the unnecessary and *'incongruous'* nature of the measure, to calls from industry stakeholders for the new provisions to apply also to anyone who works in a recognised official capacity within a Safe Night Out Precinct; including security providers, taxi drivers and supervisors, rest and recovery community workers, and local government staff.

### *Appropriateness of penalties*

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) raised concerns about the potential for unfairly punitive outcomes under the increased penalty regime:

*The proposed new section increases the maximum penalty if an assault or obstruction of a police officer occurs on a licenced premises or indeed, (and somewhat problematically), within the "vicinity" of licensed premises.*

*Whilst we do not condone unlawful violence of any nature – whether against the police (who have a very difficult and challenging function to fulfil) or against anyone else ... It seems incongruous to hold an intoxicated person up to a higher measuring stick than someone who assaults a police officer whilst sober and in full control of their faculties.<sup>61</sup>*

In contrast, Cabarets Queensland and the VLA both noted their support for the increase in penalties for aggravated serious assaults on public officers, as did a number of other industry groups. Cabarets Queensland further submitted:

*The increased penalties for aggravated serious assaults on public officers should also apply in the event of a serious aggravated assault on anyone who works in a recognised official capacity within a Safe Night Out Precinct (e.g. security providers, taxi drivers and supervisors, rest and recovery community workers, Local Government staff).*

*The experience in trial Drink Safe Precincts has been that these people working in recognised official capacities work alongside public officers. They are often on the scene of an incident before a public officer and are the ones that request assistance from a public officer. At other times they are the ones that resolve the incident without the need for assistance from a public officer, thereby leaving scarce public resources to be available to respond to more urgent matters.*

*The level of risk is the same, if not greater for these people working in recognised official capacities within the precincts. Cabarets Queensland believes that assaulting anyone who works in a recognised official capacity within a Safe Night Out Precinct (e.g. security providers, taxi drivers and supervisors, rest and recovery community workers, Local Government staff) should be treated with the same significance as assaulting a public officer. This will give a clear message that anyone in a position of authority/responsibility within a Safe Night Out Precinct must be respected at all times.<sup>62</sup>*

In line with this, the VLA similarly submitted:

*We think there is an opportunity here to expand the catchment of this offence to include anyone working in an official capacity in and around licensed premises and within the Safe Night Precincts (SNPs). Staff and security of licensed premises are authorised under section*

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<sup>61</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, page 8.

<sup>62</sup> Cabarets Queensland (Brisbane), Submission No. 16, pages 4-5.

*165 of the Liquor Act to perform duties, which if not followed, are an offence. Performing these duties can put staff at risk similar to Police who are also performing legislated duties.*

*Recent changes to the Liquor Act (Division 5) require staff and security to now put themselves at additional risk in managing members of declared criminal organisations who may wish to enter or are found on premises. Staff and security working at licensed premises should enjoy the protection of the law in the same way as other public officers.*

*VLA is also of the view that the government should consider extending this type of protection to other essential service providers within the SNPs such as taxi drivers, taxi rank supervisors, bus drivers, Council workers, and community support services such as ChaplainWatch.<sup>63</sup>*

In its response to submissions, the Department noted that “Queensland’s Criminal Code includes a range of offences to protect taxi drivers and others in the community from assaults and other acts of violence ...”.<sup>64</sup>

Submitters also highlighted three key lines of objection in relation to the proposed new Chapter 35A:

- i) that current provisions are adequate and that the circumstance of aggravation is unjust;
- ii) that the exclusion of defences is unwarranted; and
- iii) the reversal of the onus of proof regarding intoxication and associated provisions.

#### *Necessity and appropriateness of the circumstance of aggravation*

The QLS submitted the current Criminal Code punishment regime is sufficient.<sup>65</sup> AT SILS also considered the current regime was adequate, noting further:

*Whilst we applaud and support any initiatives aimed at curbing alcohol or drug fuelled violence – we would question the fairness to a sentencing regime which in effect states that an assault committed by someone whilst in a sober state, with malice and premeditation – should be viewed less seriously than someone who commits a similar assault whilst their better judgment is impaired by the consumption of excessive alcohol.<sup>66</sup>*

#### *Exclusion of defences*

Similar to its objections to the coward punch provision referred to earlier in this report, the QLS took issue with the exclusion of certain defences:

*Proposed new section 365B (application of defences) specifically removes the application of the defence of mistake of fact as detailed in section 24 of the Criminal Code. The Society does not support the removal of defences. The defence of mistake is a long established one that has stood the test of time. It is by no means an ‘easy out’ for someone accused of an offence, particularly one of violence. For the defence to apply, the accused’s mistaken belief must be one that was held on reasonable grounds. The objective nature of the defence means that it will only apply in limited circumstances. The Society strongly argues against the removal of the defence as proposed.<sup>67</sup>*

<sup>63</sup> Valley Liquor Accord, Submission No. 15, page 2.

<sup>64</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 31.

<sup>65</sup> Queensland Law Society, Submission No. 21, page 5.

<sup>66</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, page 5.

<sup>67</sup> Queensland Law Society, Submission No. 21, page 5.



The QCCL also submitted:

*Section 24 prescribes one of the fundamental requirements for criminal liability. In 1902 Sir Samuel Griffith as Chief Justice of Queensland described the section as a rule of common sense as much as a rule of law. It is a principle to be found also in the common law. ... [w]e see no justification in departing from this principle.<sup>68</sup>*

#### *Reversal of the onus of proof regarding intoxication and associated provisions*

The QLS did not support proposed new section 365C (Proof of being adversely affected by an intoxicating substance) stating:

*This shift in the onus of proof is not justified in the Explanatory Notes and therefore runs contrary to section 4(3)(d) of the Legislative Standards Act 1992 which mandates that legislation should 'not reverse the onus of proof in criminal proceedings without adequate justification.' In the Society's view, the onus of proof to prove that an offender is adversely affected by an intoxicating substance should remain with the State.*

*In relation to the evidence that may be relied upon to determine the level of an individual's intoxication, the Explanatory Notes state:*

*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 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.*

*The Society objects to the intended reliance on this type of evidence. Reliance on, 'witness testimony as to any indicia of intoxication shown by the person' is extremely subjective and potentially prone to abuse and one can imagine a situation where an individual may provide inaccurate testimony. Given the proposal to shift the onus of proof and the severe penalties that an accused may face, we submit that there be no reliance on this type of evidence. In conclusion, the Society does not support this provision. In our view, the reversal of the onus of proof is objectionable and the intended reliance on the factors outlined above is unreliable and fraught with danger.<sup>69</sup>*

The Department responded to the QLS's objections noting the current law where a witness, for example, an arresting police officer, may give direct evidence on issues such as: the detection of the smell of alcohol on the breath of the offender; slurred speech; impaired balance etc. The Department noted it was of course a matter for the arbiter of fact to determine whether the offender was in fact intoxicated and not simply the police officer providing the evidence.<sup>70</sup>

#### Committee Comment

The Committee is satisfied that the proposed increased maximum penalty for certain assaults on public officers, and the new Chapter 35A (Circumstance of aggravation for particular offences), are reasonable and appropriate amendments to the Criminal Code in light of the Government's policy to address alcohol and drug-related violence in Queensland.

<sup>68</sup> Queensland Law Society, Submission No. 21, page 6.

<sup>69</sup> Queensland Law Society, Submission No. 21, page 6.

<sup>70</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 38.

The Committee agrees with the statement of the Department that the creation of the new circumstance of aggravation does not provide that acts committed by clear minded offenders are less serious but rather creates a scheme to reduce the occurrence of violent offenders committing offences in public and while intoxicated. The safety of everyone within our society is vitally important, however the protection of Queensland's front line officers from the dangers inherent in their duties is even more so important. The Committee accepts that in achieving the desired policy, there are some impingements on the rights and liberties of individuals. These are addressed in section 3 of this report.

## 2.2 Amendments to the *Penalties and Sentences Act 1992*

The Bill proposes to make three main amendments to the *Penalties and Sentences Act 1992*, namely:

- a) requiring a 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;
- b) ensuring that voluntary intoxication cannot be relied upon at sentence to mitigate an offender's sentence; and
- c) extending 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.

It also makes various consequential amendments including amending schedule 2 (Qualifying offences) to insert new section 302A (Unlawful striking causing death) of the Criminal Code as inserted by the Bill; and amending section 171 (Review – periodic) consequential to new section 302A of the Criminal Code.<sup>71</sup>

Transitional provisions for the commencement of these measures are outlined in clause 100 with regards to each of section 9 (sentencing guidelines), section 43I (What is a banning order), and section 108B (When community service orders must be made) under the Bill.<sup>72</sup>

### Mandatory community service orders in relation to intoxicating substances

Clause 92 of the Bill inserts a new Part 5, Division 2, Subdivision 2, which establishes a mandatory community service order regime for violent offences where the offence is committed in a public place while intoxicated (circumstance of aggravation).<sup>73</sup>

Specifically, the new subdivision's section 108B (When a community service order must be made) states that a community service order must be made "*if a court convicts an offender of a prescribed offence committed in a public place while the offender was adversely affected by the intoxicating substance*"; where 'prescribed offence' is defined in new section 108A and consequential amendments under clause 83, as:

- i) any of the following offences of violence in the Criminal Code:
  - o section 72 (Affray);
  - o section 320 (Grievous bodily harm);
  - o section 323 (Wounding);

<sup>71</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, pages 27-30.

<sup>72</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 30.

<sup>73</sup> Letter from the Department of the Premier and Cabinet, 18 June 2014, page 8.

- o section 335 (Common assault);
  - o section 339 (Assaults occasioning bodily harm); and
  - o section 340 (1)(b) or (2AA) (Serious assault of a police officer or public officer); or
- ii) section 790 of the *Police Powers and Responsibilities Act 2000* (Offence to assault or obstruct police officer).

The only exception to this mandatory sentencing requirement is a provision for a limited court discretion not to impose the order (section 108B) or alternatively, to revoke an imposed order (new section 120A), where the said court is satisfied that the offender is not capable of complying with the order “because of any physical, intellectual or psychiatric disability of the offender”.<sup>74</sup> In addition, where an order has been revoked or contravened, or a court is otherwise required to re-sentence an offender for their offence; the Bill provides that the court “need not, but may” make another community service order.<sup>75</sup>

Other key operational requirements outlined in the new subdivision include specified procedures for dealing with instances in which an offender is subject to one or more other community service orders or graffiti removal orders (existing orders); and where an offender is detained on remand or serving a term of imprisonment. That is, whilst acknowledging the mandatory nature of the community service orders imposed under section 108B, the subdivision’s new section 108C effectively recognises legislative limits regarding the number of hours of unperformed unpaid service that an offender can be subject to at any one time (i.e. 240 hours), and sets out the arrangements by which unpaid service hours in excess of this amount are to be completed. New section 108D, in turn, identifies that where an offender is detained on remand or imprisoned, community service orders imposed under section 108B are to be suspended for the period of detention or imprisonment, with the set period for performance of those hours accordingly extended. As a result, as the Explanatory Notes state:

*Incarceration is no barrier to the successful performance of the mandatory community service order imposed under section 108B.*<sup>76</sup>

Clause 90 also 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 for orders made under the new section 108B.

#### *No reliance on voluntary intoxication to mitigate sentence*

New section (9A) of the *Penalties and Sentences Act 1992* enshrines and also strengthens the existing judicial sentencing principle in Queensland that ordinary intoxication will not mitigate penalty (*R v Rosenberger; ex parte Attorney-General [1995] 1 Qd 677*):

*(9A) Voluntary intoxication of an offender by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing the offender.*<sup>77</sup>

#### Court banning orders

Under the *Penalties and Sentences Act 1992*, courts can impose banning orders upon an offender’s conviction that prohibit that person from entering or remaining in and around stated licensed premises, during stated hours and/or at stated events. Currently, a banning order can be made for a

<sup>74</sup> Safe Night Out Legislation Amendment Bill 2014, section 108B, section 120A.

<sup>75</sup> Safe Night Out Legislation Amendment Bill 2014, sections 121, 125, 126.

<sup>76</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 29.

<sup>77</sup> Safe Night Out Legislation Amendment Bill 2014, section 9.

term of up to 12 months. A breach of a court issued ban has a penalty of a fine up to 40 penalty units or up to two years imprisonment.<sup>78</sup>

Clause 86 of the Bill amends section 43I (What is a banning order) to remove the current fetter on the sentencing court's discretion as to the length of the banning order, such that courts will be able to make banning orders of any duration, including a life-time ban where considered appropriate in all the circumstances.<sup>79</sup>

Additional amendments under clause 87 specify that where an offender is subject to either a banning notice imposed by a court as a condition of bail, or a notice under the new police banning notice regime to be inserted into the *Police Powers and Responsibilities Act 2000* (PPRA); the court may also impose any conditions it deems necessary on an order, including a requirement that the offender report to a police station within 48 hours after the banning order is made to be photographed for an image to distribute to police for purposes of enforcement of the order.<sup>80</sup>

In support of the new banning notice regime and extended court banning order powers, clauses 85 and 88 respectively:

- insert a new definition for police banning notice consequential to the new provisions in the PPRA introduced by the Bill; and
- amend section 43N (Commissioner may give a copy of banning order to licensee) consequential to the introduction of the ID scanning system inserted into the *Liquor Act 1992*, by the Bill.

### Submissions

LAQ's submission recommended the effect of proposed new section 108B be clarified. LAQ also proposed that consideration be given to the implications for offenders with other legal obligations or restrictions.<sup>81</sup>

In response, the Department stated:

*The Bill provides for mandatory community service orders for a range of violent offences where the offender is intoxicated and the offence is committed in a public place.*

*[T]he policy intention is that the mandatory community service order will be imposed in addition to any other order the court may make under the Penalties and Sentences Act or another Act.*

*Mandatory community service orders would operate alongside any other types of penalties, orders or reporting requirements, such as the Child Protection (Offender Reporting) Act 2005, without any specific provisions.*<sup>82</sup>

Both the QLS and ATSILS raised concerns about the mandatory nature of community service orders (clause 92).<sup>83</sup> The Department addressed these concerns by stating:

*The policy justification for these amendments is outlined in the Explanatory Notes. In particular, it is noted that mandatory community service orders will be imposed as part of*

<sup>78</sup> Queensland Police, [Banning persons from licensed premises](#), 29 Oct 2012; *Bail Act 1990*, section 29.

<sup>79</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 27.

<sup>80</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 27.

<sup>81</sup> Legal Aid Queensland, Submission No. 11.

<sup>82</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 16-17.

<sup>83</sup> Queensland Law Society, Submission No. 21, pages 6-7; Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, pages 7-8.

*the sentence determined by the court and the court retains discretion to otherwise structure the sentence as appropriate.*

*The court also retains 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.*

*Queensland Corrective Services currently works with communities and local councils, including in remote areas, to identify community service sites and this will continue.<sup>84</sup>*

### Committee Comment

The Committee notes concerns raised by submitters regarding the mandatory nature of community service orders, however considers the court's discretion to structure sentences as appropriate, and its discretion to not impose a mandatory order if the offender is not capable of complying with the order, address these concerns. Further, the Committee is satisfied these measures will assist in realising the vitally important policy intent of the Bill.

## **2.3 Amendments to the *Police Powers and Responsibilities Act 2000***

### **Overview**

The Bill proposes to amend the *Police Powers and Responsibilities Act 2000* (PPRA) to:

- a) Introduce a trial of a Sober Safe Centre in the Brisbane CBD to enable the police to detain a person (for up to eight hours) 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;
- b) empower police 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; and
- c) the introduction of 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, together with procedures for the photographing and distributing of images for police banning notices.

### **2.3.1 Establishing a trial Sober Safe Centre in the Brisbane CBD**

#### Background

Sobering up centres have already been in operation in Queensland and throughout Australia for some decades. For example, South Australia introduced sobering up centres at around the time that public drunkenness was decriminalised in that state in 1984.<sup>85</sup> In 1991, the Royal Commission into Aboriginal Deaths in Custody released their final report and many other states in Australia also established sobering up centres as a result of the Commission's recommendations and findings. A report published in 1996,<sup>86</sup> gives an overview of the sobering up or diversionary centres that were established in Queensland at that time, in response to the Royal Commission:

<sup>84</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 17.

<sup>85</sup> Jonathan Tuncks, [Decriminalisation of Drunkenness](#), South Australia Police Department Adelaide, South Australia (2001).

<sup>86</sup> Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, [Indigenous Deaths in Custody 1989 – 1996](#), Aboriginal and Torres Strait Islander Commission (1996).

*Of five sobering-up shelters promised for Queensland, the Mount Isa facility has been properly established, but Brisbane and Cairns are operating in temporary facilities – the Cairns shelter doubles as medical visit accommodation and student hostel. The Rockhampton and Townsville shelters are yet to be built, apparently because of resident and council opposition.<sup>87</sup>*

Currently, there are legislative provisions in Queensland which give police some discretion to deliver an intoxicated person to an alternative location. For example, section 378 (1)(b) of the PPRA allows police to discontinue an arrest if:

*... a police officer is satisfied it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of being drunk (a place of safety).*

Examples of a place of safety are given in the Act and include:

*A place other than a hospital that provides care for persons who are drunk may be a place of safety.*

### Proposal under the Bill

The new amendments giving police powers to take an intoxicated person to a sober safe centre are inserted into the legislation as an 'Additional case when arrest may be discontinued to take person to sober safe centre (section 378A)'.<sup>88</sup> The Explanatory Notes explain the application of the new section as:

*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.<sup>89</sup>*

The Bill also aims to establish a trial sober safe centre in the Brisbane CBD. More specifically, the Bill proposes to amend the PPRA to enable 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.<sup>90</sup>*

The Explanatory Notes further provide:

*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.<sup>91</sup>*

<sup>87</sup> Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, [Indigenous Deaths in Custody 1989 – 1996](#), Aboriginal and Torres Strait Islander Commission (1996).

<sup>88</sup> Safe Night Out Legislation Amendment Bill 2014, clause 111.

<sup>89</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 32.

<sup>90</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 32.

<sup>91</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, pages 6-7.

A new Chapter 14, Part 5 is therefore inserted into the PPRA, which will regulate the operation of sober safe centres. Notable features of the proposal include:

- police having discretion to decide whether it is appropriate for a person to be admitted to a sober safe centre;<sup>92</sup>
- the requirement for a person to be assessed by a health care professional before being admitted to the centre,<sup>93</sup> and again after four hours at the centre;<sup>94</sup>
- the person being able to be detained for a maximum of eight hours;<sup>95</sup>
- the person being released if eight hours has elapsed since the person was admitted; if the manager of the centre decides the person is no longer intoxicated after considering an assessment of the person made by a health care professional at least four hours after the person is admitted to the centre; or if the manager decides to release the person to a responsible person to take the person to a place of safety;<sup>96</sup>
- the person and the person's belongings able to be searched;<sup>97</sup>
- the person's belongings able to be seized and kept in safe custody while the person is detained;<sup>98</sup>
- the person being required to pay a cost recovery charge for being detained in the centre; and<sup>99</sup>
- the manager of a sober safe centre being required ensure the health and wellbeing of each person in custody at the centre is regularly monitored.<sup>100</sup>

#### Other jurisdictions

Currently, most jurisdictions in Australia have legislative provisions which give police some discretion to deliver an intoxicated person to an alternative location. For example, in New South Wales, the *Intoxicated Persons (Sobering Up Centres Trial) Act 2013* (NSW), establishes a trial of sobering up centres in New South Wales and draws a distinction between mandatory police-run centres and voluntary centres. The New South Wales Sobering Up Centres Factsheet states:

*People will be forcibly held in the police-run mandatory centre for continuing to pose a risk to safety after police have asked them to move on. However, people must agree to being admitted to a non-mandatory centre.*<sup>101</sup>

#### Submissions

A number of issues were raised in submission relating to the Sober Safe Centres including:

- the standard of care for detained persons and nurses;
- the fees associated with the sober safe centre;

<sup>92</sup> Proposed amendments to the *Police Powers and Responsibilities Act 2000*, s378A, s378 (3) and s390E.

<sup>93</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(b).

<sup>94</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390I(1).

<sup>95</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(c).

<sup>96</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(d).

<sup>97</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(c).

<sup>98</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(c).

<sup>99</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390F(c).

<sup>100</sup> Proposed amendment to the *Police Powers and Responsibilities Act 2000*, s390K(1).

<sup>101</sup> NSW Police Force, [Sobering Up Centres](#), Factsheet (2013).

- the evaluation of the sober safe centre trial; and
- police powers relating to sober safe centres.

*The standard of care for detained persons and the safety of nurses in the Sober Safe Centre*

The Queensland Network of Alcohol and Other Drug Agencies (QNADA) was concerned that the Bill does not provide sufficient protection for those taken into custody, as a health care professional does not have to be permanently present. Additionally, concerns were raised that the Bill does not provide sufficient guidance regarding the standard of care that should be provided to the intoxicated person while in the Sober Safe Centre. It was suggested that the New South Wales legislation be looked to as a guide for best practice for the Sobering Up Centres trial.<sup>102</sup>

The Department clarified the following points in its response to submissions:

*A health care professional is required to be present the entire time the Sober Safe Centre is operational. This is evidenced when Chapter 14, Part 5, Division 2 is read in its entirety.*

*The Intoxicated Persons (Sobering Up Centres Trial) Act 2013 (NSW) (the NSW Act) is a stand-alone Act. Clause 113 inserts the Queensland Sober Safe Centre Trial into the Police Powers and Responsibilities Act 2000 (PPRA) and is therefore subject to the responsibilities and safeguards provided by the PPRA.<sup>103</sup>*

In terms of the concerns raised by the Queensland Nurses' Union that health care professionals would be at risk while working in a Sober Safe Centre, and that there should always be at least two health care professionals on duty at any time given the quasi-custodial role they are expected to perform;<sup>104</sup> the Department responded as follows:

*The Sober Safe Centre trial will be subject to workplace health and safety and other relevant industrial relations legislation and agreements. The role undertaken by health care professionals will only require a single health care professional to be in attendance at the centre. The custodial duties will be performed by the police and civilian officers.<sup>105</sup>*

However, this issue was also discussed at the public hearing, where the Department advised the budgeting for the Safe Night Out Centres was for two nurses at the same time.<sup>106</sup>

Given the ambiguity in the advice in the letter from the Department and the evidence provided at the public hearing, the Committee considers this matter should be addressed in the Premier's second reading speech to clarify exactly what the correct position is.

**Point of Clarification**

The Committee requests the Premier clarify how many health professionals are intended to be on duty in Sober Safe Centres at any one time.

<sup>102</sup> Queensland Network of Alcohol and Other Drug Agencies, Submission No. 8, page 3.

<sup>103</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 21.

<sup>104</sup> Queensland Nurses' Union, Submission No. 10, page 21.

<sup>105</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 21-22.

<sup>106</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 55.



In relation to the role of health care professionals, the Department provided:

*The role of the health care professional is really there from a welfare perspective. It is to provide advice to the sober safe centre manager, who will always be a police officer. He is the one with ultimate responsibility about the person being in detention; he has the ultimate responsibility for care. The healthcare professional provides advice for taking on board by the sober safe manager. That is their role. The reason we had the part put in about the use of force is that if someone is not quite with it and moving around a bit, the nurse may put their hand on their side and say, 'Just lay down. Just take it easy', there is an application of force and that is technically an assault. That was about protecting them. In the sober safe centres there will always be two police officers and a civilian watch-house officer as well as in the trial centre in Brisbane. They are the people who are doing the detaining. They are the ones who will manage any behaviour. The nurses are there for his or her opinion as to whether the person is affected by alcohol or it could be a medical condition.<sup>107</sup>*

Further, the Department confirmed that blood tests would be conducted in a hospital, not a Safe Night Out Centre, and that the purpose of a Safe Night Out Centre was not to hold individuals for the purpose of blood testing:

*There are two types of centres. You have places of safety, which are all voluntary, compared to the one where you have the mandatory detention and they are treated as distinctly different. Again, if someone is simply a little over-intoxicated, you use more of the care service. This is more designed about those persons who may be a little bit obnoxious and you can see that they are going to end up in trouble or cause trouble to themselves if they are not encouraged to sleep it off.<sup>108</sup>*

The Department also confirmed the health care professional could be a doctor, a nurse or a paramedic, and that “[m]ore so the care is not so much the care for someone who is in need of hospital care. If that is the case, ambulances are called and they are moved out of there.”<sup>109</sup>

#### *Fees associated with the Sober Safe Centre*

A number of submissions raised concerns about the liability of cost placed on the detainees who may already be financially disadvantaged persons;<sup>110</sup> the increasing nature of the charges;<sup>111</sup> and the fact that the charge appears to be more in the nature of a penalty than a cost recovery mechanism.<sup>112</sup>

The Department commented on the above points in its response:

*The increasing nature of the cost recovery charge is similar to that provided by the NSW Act. The increasing scale provides a clear message of deterrence and encourages a change in the drinking culture of the community.<sup>113</sup>*

<sup>107</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 55.

<sup>108</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 55.

<sup>109</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 56.

<sup>110</sup> Legal Aid Queensland, Submission No. 11, page 4.

<sup>111</sup> Queensland Law Society, Submission No. 21, page 7.

<sup>112</sup> Queensland Network of Alcohol and Other Drug Agencies, Submission No. 8, pages 3-4.

<sup>113</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 23.

*The evaluation of the Sober Safe Centre trial*

The Queensland Nurses' Union and QCAA both included concerns in their submissions about how the Sober Safe Centre trials were going to be evaluated. Specifically, they expressed concerns that no criteria had been specified or measures identified which would be used to evaluate the trial.

In response to these concerns, the Department noted:

*The Queensland Government Statistician's Office will be evaluating the trial and is developing an evaluation framework.*<sup>114</sup>

*Police powers relating to Sober Safe Centres*

Concerns were raised in a number of submissions about the additional police powers resulting from the Bill. For example, the QLS raised concerns about the subjective test set out in proposed section 390E:

*... which would allow a police officer to take an intoxicated person to a sober safe centre if they 'reasonably suspect a person is intoxicated or the person is behaving in a way the police officer reasonably suspects constitutes a 'nuisance offence' or poses a risk of physical harm to the person or another person'.*<sup>115</sup>

The QCCL also noted:

*We agree with the President of the Police Association of New South Wales Mr Scott Webber who has been quoted as describing a similar proposal in New South Wales as a 'band aid solution'. He is further quoted as saying 'Putting a large group of intoxicated people in one location is absolutely ridiculous and a huge drain on valuable police resources'.*

*It is a proposal which is likely to be abused by police. Clearly whenever the police are given a broad discretion such as for example the move on powers, it is the mentally ill, the homeless and indigenous persons who bear the brunt of the legislation. The problem of too many intoxicated people roaming the street would be better addressed by providing more adequate public transport so that they can get home.*

*That would be better than giving the police an uncontrolled discretion to detain people who have committed no offence and to put them in danger by locking them up with other drunks.*

*The discretion given to the police in these circumstances must be considered in the context where it is generally accepted that it is impossible to accurately measure someone's level of intoxication simply by looking at them let alone to determine their propensity to become angry or violent.*

*If the legislation is to proceed then the police power to detain people has to be prescribed very clearly to situations in which the persons involved are at a serious and imminent risk to their own safety or represent an imminent and serious threat to the safety of others.*<sup>116</sup>

The QCCL also raised the alternative proposal of the decriminalisation of public drunkenness, based on the reported findings and recommendations of the 1991 Commonwealth Royal Commission into Aboriginal Deaths in Custody and the Drugs and Crime Prevention Committee (Parliament of Victoria) Inquiry into Public Drunkenness.<sup>117</sup>

<sup>114</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 24.

<sup>115</sup> Queensland Law Society, Submission No. 21, page 7.

<sup>116</sup> Queensland Council for Civil Liberties, Submission No. 19, page 4.

<sup>117</sup> Queensland Council for Civil Liberties, Submission No. 19, page 4.

The Department's response included the following comments:

*Police will not have an uncontrolled discretion to detain persons who have committed no offence ... At a minimum, the person would have committed the offence of being intoxicated in a public place under section 10 of the Summary Offences Act 2005. It is anticipated that in the majority of incidents the person detained will also have committed offences of public nuisance under section 6 of the Summary Offences Act 2005 and contravening a move on direction given under Chapter 2, part 5 of the PPRA.<sup>118</sup>*

#### Committee Comment

The Committee is satisfied with the policy intent of the Sober Safe Centre trial and considers this will provide the police with a viable alternative to charging a person with a nuisance offence. Further, the Committee has no concerns with the proposal to charge a cost recovery fee for those that are admitted to the Sober Safe Centre.

In relation to the evaluation of the trial, the Committee notes the Department's response, however considers that further information is required than has been provided to date. Rigorous evaluation of the trial may prove to be just as important as the conduct of the trial itself. The Committee seeks assurances that an appropriate evaluation methodology will be adopted to ensure an effective evaluation is carried out, prior to the commencement of the trial. On that note, the Committee recommends the following.

#### **Recommendation 2**

The Committee recommends the Premier confirm in his second reading speech (a) that the evaluation framework for the trial will be developed prior to the commencement of the trial and (b) that the results of the evaluation will be provided to the Legislative Assembly for further consideration.

### **2.3.2 Drug and alcohol testing**

Under the Bill, police will be provided with powers to test an offender's breath, saliva, urine or blood to determine if the relevant offence was fuelled by alcohol or drugs. A positive result can trigger mandatory community service order requirements. The testing procedures for drugs and alcohol are those currently used under the *Transport Operations (Road Use Management) Act 1995* (Road Use Management Act).

The Bill seeks to amend the Criminal Code to create a new circumstance of aggravation which will apply to a range of offences of violence and result in mandatory community service orders.<sup>119</sup> 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.

Clause 117 of the Bill inserts new Chapter 18A, Parts 1 to 3 into the PPRA. The proposed provisions introduce powers for the police to require, take and test breath, saliva, blood and urine of persons suspected of committing relevant assault offences.

*A 'relevant assault offence' is, for Chapter 18A, 1 or more of the following offences under the Criminal Code –*

<sup>118</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 25.

<sup>119</sup> Safe Night Out Legislation Amendment Bill 2014.

- (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.<sup>120</sup>*

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.

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.

#### Other jurisdictions

Currently, other than Queensland, there appears to be only one jurisdiction in Australia that has legislative provisions which give police powers in relation to drug and alcohol testing.

In New South Wales, the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* inserted a new Part 10, Division 4 (sections 138D-138H) into the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) to give police powers to conduct drug and alcohol tests for the purposes of the new violent assault provisions under section 25A of the *Crimes Act 1900*. The testing provisions 'call up' the relevant testing provisions regarding drug or drunk driving under Schedule 3 to the *Road Transport Act 2013* (NSW). Police officers also have the power in New South Wales 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. New South Wales police may also require blood and urine samples for analysis of the presence of alcohol or drugs.

#### Submissions

The Committee notes the QCAA was supportive of mandatory drug and alcohol testing as an avenue to collect data and to support the formation of future alcohol related policies. The QCAA also recommended that data, with identities removed, should be made publicly available.<sup>121</sup> The Department noted in its response that "*existing frameworks are in place for the availability of data to inform approved research*".<sup>122</sup>

However, the QCCL opposed mandatory breath testing in relation to assaults on police and other officials where the person has not been charged with an offence. The QCCL also made the following suggestion:

*Where the accused does not give consent to be tested an independent authority such as a Magistrate should be approached for an Order permitting the test.<sup>123</sup>*

The Department responded as follows:

*The proposed section 548C of the PPRA is to allow a police officer, who reasonably suspects a person has committed a relevant assault offence within the last three hours and*

<sup>120</sup> Safe Night Out Legislation Amendment Bill 2014, Clause 117.

<sup>121</sup> Queensland Coalition for Action on Alcohol, Submission No. 18, page 3.

<sup>122</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 39.

<sup>123</sup> Queensland Council for Civil Liberties, Submission No. 19, page 5.

*reasonably believes the person is intoxicated and that the relevant assault offence occurred in a public place, to require the person to be tested.*

*The proof of the circumstance of aggravation is part of the investigation process. The three hour time limit for making the requirement for drug and alcohol testing necessitates the need for police to be able to detain the person early in the investigation to undertake the drug and alcohol testing to identify if the person was adversely affected by an intoxicating substance at the time of the commission of the offence.<sup>124</sup>*

#### Committee Comment

The Committee is satisfied with the proposal and considers the provisions are necessary to support the amendments to the Criminal Code.

### **2.3.3 Introduction of new police banning notices**

#### Background

Currently in Queensland, the *Bail Act 1980* gives police officers and the courts authority to issue banning notices on persons as a special bail condition, prohibiting that person from entering a specified licenced premises and its vicinity. This action occurs if their offence involves the use or threatened use of violence to people or property in or close to licensed premises. A breach of a ban made through bail conditions has a penalty of a fine up to 40 penalty units or up to two years imprisonment.<sup>125</sup>

#### Proposal under the Bill

The Bill proposes to authorise police to issue on the spot banning notices to any persons who are behaving unacceptably in the area of licensed premises. As noted in the Explanatory Notes:

*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.<sup>126</sup>*

The proposed new power would be inserted in the PPRA under clause 118 which inserts new Part 5A and new Part 5B into Chapter 19 (Other powers). A police banning notice will be a written notice prohibiting a person from attending places such as a specified licensed premises or a safe night precinct until a stated date and time. 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 initial notice (for no longer than ten days), and a senior sergeant is required to approve an extended police banning notice (up to three months). The police banning notices will not prohibit the person from accessing an area if the person lives or works in the area. The proposed penalty of contravening a police issued banning notice is a maximum of 60 penalty units.

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<sup>124</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 39-40.

<sup>125</sup> *Bail Act 1990*, section 11(3); Queensland Police, [Banning persons from licensed premises](#), 29 October 2012.

<sup>126</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 2.

### Submissions

The QCCL opposed the grant to the police of the power to ban person from being in or around licensed venues, arguing that “[t]he [existing] move on power is entirely adequate”.<sup>127</sup> The QCCL also note its concerns regarding an apparent trend in Australia and overseas towards restricting public places by seeking to remove the “noisy and inconvenient” from them.<sup>128</sup>

The Department responded:

*The inclusion of the police banning notices is an additional tool for police to utilise in response to alcohol and drug related violence. The legislation contains a number of safeguards in relation to police banning notices.*<sup>129</sup>

The BAQ indicated a concern that the banning notices will operate prior to any independent due process or finding of guilt. Similarly to the QCCL, the BAQ queried why move-on powers or Liquor Act offences are not considered sufficient. Both submitters also raised concerns about review options being insufficient, suggesting the inclusion of a review provision to allow a Magistrate to have a banning notice revoked within a nominated period of time.<sup>130</sup>

In relation to the question of review, the Department provided the following response:

*Proposed section 602N provides for the respondent to make an application to the Commissioner for amendment or cancellation of the police banning notice including but not limited to the grounds that the notice will cause undue hardship to the respondent or a member of the respondent’s family. If the respondent is unhappy with the Commissioner’s decision, the respondent can apply to QCAT for a review of the Commissioner’s decision.*<sup>131</sup>

The BAQ and QCCL also raised concerns regarding the power under the police banning order provisions to photograph a person and distribute that photograph for the purpose of a banning notice. The concern is that this would result in an encroachment on a person’s privacy and dignity and, as noted above, under the Bill this power is able to be exercised prior to any due process or finding of guilt.<sup>132</sup>

In relation to the proposed dissemination of photographs under the police banning notices, the Department provided the following response:

*Pursuant to proposed section 602U of the PPRA, a police officer can only distribute an imaged order to specified persons of the licensed premises, class of licensed premises or event for the purposes of preventing the entry of the person named in the order to the places stated in the order.*<sup>133</sup>

ATSILS suggested that an amendment be made to state that a banning order cannot operate to exclude a person from being able to access basic goods or services, or meeting reasonable cultural or family obligations.<sup>134</sup>

<sup>127</sup> Queensland Council for Civil Liberties, Submission No. 19, page 5.

<sup>128</sup> Queensland Council for Civil Liberties, Submission No. 19, page 5.

<sup>129</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 32.

<sup>130</sup> Bar Association of Queensland, Submission No. 26, page 3; Queensland Council for Civil Liberties, Submission No. 19, pages 5-6.

<sup>131</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 34.

<sup>132</sup> Bar Association of Queensland, Submission No. 26; Queensland Council for Civil Liberties, Submission No. 19.

<sup>133</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 34-5.

<sup>134</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25.

### Committee Comment

The Committee considers the new provisions relating to the issuing of police banning notices are a reasonable and appropriate means to achieve the government's intended objectives of reducing alcohol related violence in safe night precincts. The Committee considers the ability to issue on the spot notices will complement the police move on powers and will be a useful tool for police to ensure the ongoing safety of the public.

## **2.4 Amendments to the *Bail Act 1980***

### Overview

The Bill inserts new subsections into section 11 (Conditions of release on bail) of the *Bail Act 1980*, which require the court to impose a Drug and Alcohol Assessment and Referral (DAAR) as a condition of bail to be completed by a stated date, where *"a person is charged with a prescribed offence and it is alleged the offence was committed in a public place while the person was adversely affected by an intoxicating substance"*.<sup>135</sup>

For the purpose of the new section 11AB, a 'prescribed offence' for which the DAAR course applies as a mandatory condition of bail, is defined as including:

- i) the following Criminal Code offences:
  - o section 72 (Affray);
  - o section 320 (Grievous bodily harm);
  - o section 322 (Wounding); section 335 (Common assault);
  - o section 339 (Assault occasioning bodily harm);
  - o sections 340(1)(b) and 340(2AA)(Serious assault); and
- ii) section 790 (Offence to assault or obstruct police officer) of the *Police Powers and Responsibilities Act 2000*.

This mandatory referral requirement does not apply, however, if the person is less than 18 years old; if the person has already completed two DAAR courses within the previous five years; or if section 11A (Release of a person with impairment of the mind) applies.<sup>136</sup>

New subsection 11AB defines a 'DAAR course' as a course provided to a person by an approved provider (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.<sup>137</sup>

Failure to complete a DAAR course by the stated date amounts to a breach of bail, which is an offence under the Act.<sup>138</sup>

In addition to these conditions, new subsection 4AA also provides that if a police officer or the court imposes a bail condition under section 11(3) of the Act banning the person from a licensed premises or stated area, then, as the Explanatory Notes state:

*... the police officer may detain and photograph the person; or the court may require the person to report to a police station within 48 hours to be photographed. The photograph is attached to relevant documentation and distributed to relevant persons.*<sup>139</sup>

<sup>135</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 4.*

<sup>136</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 12.*

<sup>137</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 11.*

<sup>138</sup> Letter from the Department of the Premier and Cabinet, 18 June 2014, page 8.

Further, consequential to the establishment of the new ID scanning system under the *Liquor Act 1992*, clause 6 amends section 34F (Commissioner may give information about special condition of bail to licensee under *Liquor Act 1992*); and clause 7 inserts a new section 44 (Transitional provision for Safe Night Out Legislation Amendment Act 2014) to provide for the timing and management of the commencement of the new mandatory DAAR bail conditions.

There are no similar mandatory bail conditions for intervention programs in Australia, or for provisions relating to police taking a photograph of a person as part of a bail condition. However, there is a reference to including photographs of persons with a banning notice in the Northern Territory and Western Australian liquor control legislation.<sup>140</sup>

### Submissions

QNADA called for the mandatory bail referral requirement to be extended:

*We recommend that the amendment to the Bail Act 1980 be expanded, or the Bill include amendments to other legislation, to allow for referral to treatment for offences in addition to the current list that focuses on assault related offences. For example, alcohol has been found to be involved in 76% of public nuisance offences in Queensland. If police were empowered to refer these individuals to a brief intervention, assessment and referral session, similar to that provided through the Queensland Illicit Drug Diversion Initiative, individuals would be provided an opportunity to consider the adverse consequences of their alcohol use prior to their behaviour progressing to a situation where another person is harmed.*

*It is for this same reason that we recommend the Bill remove the current disqualification of those under the age of 18. If young people can be referred to a treatment program designed specifically for youth substance use, rather than being cautioned or charged with an offence then we may be able to decrease the number of young people continuing on a path of problematic substance use and all its attendant harms.<sup>141</sup>*

In contrast, ATSILS expressed a firm view that referrals should be conducted on a discretionary rather than mandatory basis:

*Proposed section 11 (9A) of the Bail Act makes it mandatory to impose a Drug and Alcohol Assessment Referral ('DAAR') in certain stipulated circumstances. We would be of the firm view that (for example), a homeless long term alcoholic (possibly with mental health issues) should be dealt with in a manner different to that of say an intoxicated middle-class youth out night clubbing. Justice (and indeed common sense) dictates that individual circumstances are integral to the equation of arriving at an appropriate sentence or diversionary option or bail condition. To that end, whilst we would be supportive of the underlying rationale giving rise to the DAAR measures, we would counsel against making such 'mandatory'. Such should be an optional measure – to be imposed subject to the common sense discretion of a police officer or judicial officer. Further, as a mandated requirement, such might in practice be impossible to fulfil due to a lack of resources in certain regions (especially remote regions) – another reason for 'discretion' over 'mandate'*  
...

<sup>139</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 11.*

<sup>140</sup> *Liquor Act (NT), sections 120K, 120X; Liquor Control Act 1988 (WA), section 115AA.*

<sup>141</sup> Queensland Network of Alcohol and Other Drug Agencies, Submission No. 8, page 3.



*For the reasons outlined above, we would submit that the word ‘must’ in proposed subsection 11AB (2), should be replaced with the word ‘may’.*<sup>142</sup>

ATSILS further submitted:

*We note that various amendments in the Bill have the effect of stipulating that where a person is charged with a prescribed offence, and it is alleged that it was committed in a public place while intoxicated, in granting Bail the Court or a police officer must impose a condition that the person complete a DAAR.*

*For many of our clients who are itinerant, it might simply be impractical or unfairly cumbersome to impose a mandatory condition that they attend a DAAR. For example, we have acted for numerous clients who come from rural communities to visit the city, and are charged with various offences whilst visiting. For many of those clients, if they were released on the requirement that they attend a DAAR, they would be faced with the option of either breaching their bail to return home, or staying in the city to attend the DAAR but in the meantime, having to live on the streets or without any money, and therefore possibly facing further encounters with the police.*

*We urge the Committee to consider recommendations amending the Bill to reflect that this condition should be (a highly valuable) option – but not be mandatory.*

*Further, we would counsel against including s790 PPRA offences (obstruct/assault police) in the list of ‘prescribed offences’. An ‘obstruct police’ charge for example has a very low threshold of activity to make out the charge. To include this type of offence in the list of ‘prescribed offences’ would negatively impact upon already disadvantaged cohorts – such as the homeless or mentally challenged. Further, this offence often arises in circumstances where prior to police involvement; no offence had even been committed.*

*Further, we would suggest that the definition of what constitutes a ‘public place’ (which appear at the end of this proposed new section), needs to be tightened up. For example: ‘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’ – could arguably include a private residence.*<sup>143</sup>

In response to these issues the Department provided that “[t]he threshold of activity for the commission of the offences of obstruct/assault police are not significantly different to the offence of common assault under section 335 of the Criminal Code”.<sup>144</sup>

Further, during the public hearing the Department canvassed options with regard to the location and nature of the proposed DAAR course, explaining that the DAAR is not an extended program, but rather is about creating a consequence in terms of a prevention element to treat the problem behaviour; in addition to the imposition of penalties.<sup>145</sup> The Department noted:

*It [the DAAR] is quite focused. It is not terribly long in terms of duration. It was about getting the message. In the end I think it was simply a balance of trying to put in place a measure which was going to work for the vast majority of people who would be the subject of these bail conditions.*<sup>146</sup>

<sup>142</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, page 2.

<sup>143</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, page 3.

<sup>144</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 8.

<sup>145</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

<sup>146</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

The Department also added that “under the Bail Act 11(9), a bail granting authority can impose conditions aimed at the rehabilitation treatment of an accused who is yet to be convicted”.<sup>147</sup>

LAQ indicated its concern about the potentially premature nature of the mandatory condition; particularly given that the person in question has not yet been convicted of an offence:

*LAQ supports compulsory attendance of offenders at Drug and Alcohol Assessment (DAAR) courses as a condition of a non-custodial sentence for offenders who have been convicted of offences because of drug or alcohol addiction. However, we are concerned about amendment of the Bail Act 1980 to require the compulsory imposition of a requirement that a person attend a DAAR course as a condition of bail for certain offences, given that the person has not yet been convicted of any offence, and may ultimately be acquitted. Potentially, a person charged with the relatively minor offence of obstructing police, where the police allege the offence occurred in a public place while the person was intoxicated, may be required to undertake the course even if they do not have any identifiable problem with alcohol or drugs, to obtain bail, including watch-house bail.*<sup>148</sup>

In response to concerns raised about the compulsory attendance at a DAAR course as a condition of bail, notwithstanding that the person has not yet been convicted of an offence, and therefore may ultimately be acquitted; the Department provided:

*The completion of a drug and alcohol assessment referral course will complement the existing treatment arrangements including interventions such as the Queensland Illicit Drug Diversion Initiative (QIDDI).*<sup>149</sup>

*The policy justification for the amendments in the Bill is outlined in the Explanatory Notes. The amendments do not interfere with the bail granting authority’s discretion about whether or not to release a person on bail taking into account all of the relevant circumstances or to otherwise impose other necessary conditions on the grant of bail.*<sup>150</sup>

In response to the QNADA submission, the Department noted “the cost implication of expanding the program to public nuisance offences would likely outweigh the expected benefits”; and “substance misuse issues experienced by children (offenders under 17 years) charged with offences are already able to be addressed through existing bail support initiatives”.<sup>151</sup>

The BAQ also questioned the appropriateness of clauses 4 and 5 which amend section 11 (conditions of release on bail) on the basis of their being more akin to a sentencing option, enabling police to impose conditions in the absence of due process. The BAQ suggest that such drug and alcohol assessment referrals should be left to the court’s discretion.<sup>152</sup>

In response to these concerns the Department stated:

*The Bill provides that where the charge alleges that the prescribed offence was committed in a public place and when intoxicated, a grant of bail must include a condition that the person completes a drug and alcohol assessment and referral program. The offences which are designated as a ‘prescribed offence’ are offences involving violence. The policy justification for the amendments in the Bill is outlined in the Explanatory Notes. The amendments do not interfere with the bail granting authority’s discretion about whether or*

<sup>147</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 54.

<sup>148</sup> Legal Aid Queensland, Submission No. 11, page 2-3.

<sup>149</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 5.

<sup>150</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 5-6.

<sup>151</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 6-7.

<sup>152</sup> Bar Association Queensland, Submission No. 26, page 1.

*not to release a person on bail taking into account all of the relevant circumstances or to otherwise impose conditions on bail considered necessary.*<sup>153</sup>

The Department's response also provided:

- (a) *Under the Bail Act 1980 a bail granting authority already has, and will continue to have, wide discretion to impose conditions on bail for other offenders where this is appropriate in the circumstances. Specifically section 11(9) already provides, without limiting a court's power to impose a condition that the defendant participate in a rehabilitation, treatment or other intervention program or course, after having regard to – the nature of the offence; and*
- (b) *the circumstances of the defendant, including any benefit the defendant may derive by participating in the program or course; and*
- (c) *the public interest.*

*New section 11AB(3)(b), which is inserted by clause 5 of the Bill, specifically provides that the mandatory bail condition does not apply to a person under 18 years.*

*Offenders under 18 and not caught by the Youth Justice Act 1992 will be subject to the current discretion of the court when granting bail as to the appropriate conditions to attach; including referral to available drug and alcohol programmes.*

*Substance misuse issues experienced by children (offenders under 17 years) charged with offences are already able to be addressed through existing bail support initiatives.*

*A number of bail support programs are available to children charged with offences and subject to proceedings under the Youth Justice Act 1992. These include the conditional bail program, operated by Youth Justice in the Department of Justice and Attorney-General, and a range of funded programs delivered by the non-government sector. The court may order that a child participate in a relevant program as a condition of their bail. A child granted bail by the police or a court may also participate voluntarily in one of the funded programs. A key goal of these programs is to support children to comply with the conditions of their bail, including conditions intended to prevent a child committing further offences while on bail.*

*Where the child experiences substance misuse issues, the program developed for that child would be expected to include elements to address these issues. Further, the court may order that a child participate in drug and alcohol counselling as a condition of their bail. Queensland Health offers a range of services for young people including: Outpatient treatment programs for young people aged 12-25 years, with alcohol and drug misuse. Young people may also be diverted via the Police Diversion Program and Illicit Drug Court Diversion Program to receive a standardised two hour assessment and education session.*<sup>154</sup>

At the public hearing the Committee raised concerns with the Department about the impact of the compulsory bail condition, needing to complete the DAAR course, for vulnerable individuals, citing homeless and Indigenous individuals, as those who reside out of Brisbane.<sup>155</sup>

<sup>153</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 8.

<sup>154</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 7-8.

<sup>155</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

In addressing these concerns the Department provided:

*[the DAAR] is about creating a consequence in terms of a prevention element in terms of trying to treat the behaviour on top of penalties. ... [i]n most instances, the thinking was that the vast majority [of individuals affected by the DAAR], would be the people who are not the Indigenous person with the really chronic problems.<sup>156</sup>*

...

*We think those services [DAAR] would be available in a number of ways. It could be done online because it is a short service or through videoconferencing. That may be one option. The services are also available in other parts of the state because we have other drug and alcohol counselling services.<sup>157</sup>*

Dr Bill Kingswell, Executive Director, Mental Health Alcohol and Other Drugs Branch, added:

*The way we intend to run this out was to attach the services required to the existing providers for the Queensland Police and court diversion services, the old QIDDI program, if you like, that allowed illicit drug users to be diverted into counselling services. We have recently gone to tender across the state for those services and we have four providers and one call centre. Those providers are stretched across the state. We are confident that we can provide services to anyone regardless of where they are located. ... [t]his is not as prescriptive as the old QIDDI program. It does not have to be done face-to-face. It can be done by videoconferencing services. We are in discussion with JAG around using videoconferencing facilities that are available in all of Queensland's courts.<sup>158</sup>*

#### Committee Comment

The Committee has carefully considered the concerns raised by submitters against the explanations provided in the Explanatory Notes and the Department's response to submissions. The Committee is satisfied with the policy proposal and considers the DAAR scheme to be valuable in changing the drinking culture that exists in some circles. However the Committee remains concerned about the mandatory nature of the DAAR course, especially in light of the concerns raised in submissions such as ATSILS.

The Committee notes the Department's response that the DAAR is 'quite focussed' and not terribly long in terms of duration and that it will work for the 'vast majority' of people. However as stated above, there is a section of the community including Indigenous persons and those from rural or remote communities where the Committee is not yet satisfied the policy will operate without unfairly disadvantaging them.

As pointed out in submissions, due to the mandatory nature of the bail condition, there is a real possibility of such a person described above being faced with the option of either breaching their bail to return home, or staying in the city to attend the DAAR but in the meantime, having to live on the streets or without any money, and therefore possibly facing further encounters with the police.

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<sup>156</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 53.

<sup>157</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 56.

<sup>158</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, page 56.

Given the mandatory nature of the provision, the Committee seeks further clarification on how the DAAR courses will be run, including the frequency, the location and by what means the course will be conducted, particularly with a focus on those persons from rural and remote communities - noting it is these persons that may not have regular access to videoconferencing facilities or the internet in the case of on-line courses which may be offered.

#### **Point of Clarification**

The Committee requests the Premier clarify for the benefit of the Legislative Assembly how the provisions relating to the Drug and Alcohol Assessment and Referral courses will operate for people in rural or remote communities given the mandatory nature of the bail condition and the difficulties such persons may have in complying with the condition of bail.

## **2.5 Amendments to the *Drugs Misuse Act 1986* and the *Drugs Misuse Regulation 1987***

### Overview

The Bill proposes to strengthen penalties for offences involving anabolic-androgenic steroids so that they are similar to those applying to other dangerous drugs, such as methamphetamines and ecstasy.<sup>159</sup>

In addition, it clarifies how the quantity of an anabolic-androgenic steroid is to be determined for the purposes of allocating a penalty. This is to be achieved through three key amendments to the *Drugs Misuse Act 1986* (Drugs Misuse Act) and the *Drugs Misuse Regulation 1987*:

1. Anabolic-androgenic steroids will be moved from the *Drugs Misuse Regulation's* Schedule 2 list of dangerous drugs to a new Part 2 in Schedule 1, for which a more stringent penalty regime applies.
2. Schedules 3 and 4 of the *Drugs Misuse Regulation* will be amended so that higher maximum penalties can be applied in relation to anabolic-androgenic steroids where the quantities of drugs involved in the offences are higher than a prescribed quantity. To date, Queensland has not established any trigger amounts above which higher penalties may be applied. However, the Bill would amend Schedule 3 so that in some circumstances dangerous drugs listed in Schedule 1, Part 2 (anabolic-androgenic steroids) would be given a specified quantity of 50.0g; and amendments to schedule 4 would ensure that in other circumstances Schedule 1, Part 2 drugs would have a specified quantity of 5000.0g.
3. Amendments to the *Drugs Misuse Act* would provide that for production and possession offences (sections 8 and 9 respectively), a reference to a quantity of an anabolic-androgenic steroid is a reference to the 'whole weight' of all Schedule 1 Part 2 drugs (whether of the same or different types); where the 'whole weight' is defined to include the total weight of any preparations, solutions, or admixtures in which the steroid or combination of steroids is contained. Specifically, the new definition provided in clause 19 of the Bill states:

*... whole weight, of a dangerous drug, means the total weight of the drug and any other substance with which it is mixed or in which it is contained.*

<sup>159</sup> Letter from the Department of the Premier and Cabinet, 18 June 2014, page 4.

In relation to the increase in penalties for steroid offences, the following table comparing the new and existing penalty regimes was provided by the Department.<sup>160</sup>

<b>Offence</b>	<b>Current penalty</b>	<b>New penalty</b>
Traffick in steroids (s.5)	20 years	25 years
Supply simpliciter (s.6)	15 years	20 years
Supply to minor aged 16 or over/intellectually impaired person/person in educational or correctional facility/person who does not know they are being supplied (s.6)	20 years	25 years
Supply to minor under 16 (s.6)	25 years	Life
Publishing/possessing instructions for production of steroids (s.8A)	20 years	25 years
Possess steroids or combination of steroids in a gross quantity over amount prescribed (very large amounts)	Does not exist	25 years
Possess steroids or combination of steroids in gross quantity less than amount prescribed in item above but above another gross quantity prescribed (large amounts)	Does not exist	20 or 25 years (dependent upon whether defendant satisfies court they were a drug dependent person at time of offence)
Otherwise possess steroids (s.9)	15 years	15 years
Produce steroids or combination of steroids in a gross quantity over amount prescribed (very large amounts)	Does not exist	25 years
Produce steroids or combination of steroids in gross quantity less than amount prescribed in item above but above another gross quantity prescribed (large amounts)	Does not exist	20 or 25 years (dependent upon whether defendant satisfies court they were a drug dependent person at time of offence)
Otherwise produce steroids (s.8)	15 years	20 years

<sup>160</sup> Letter from the Department of the Premier and Cabinet, 18 June 2014, pages 4-5.

### Other jurisdictions

The complex nature of legislation surrounding anabolic-androgenic steroids across Australian and New Zealand jurisdictions means that offences and related provisions are not easily or strictly comparable. For example, there is significant variance with regard to the use of technical names for steroids, their classification, the range of offences and penalties created, and the structure of many of the Acts more broadly.

In South Australia, steroids continue to be classed as prescription drugs which are not considered to be drugs of dependence, and accordingly have lower maximum penalties of \$10,000 or two years imprisonment for offences associated with their possession, manufacture and supply.<sup>161</sup> However, most jurisdictions have moved to recognise steroids in the same categories as methamphetamines, heroin and cocaine, making them subject to more onerous penalty regimes applicable to these types of 'prohibited drugs' (New South Wales), 'drugs of dependence' (Victoria), 'dangerous drugs' (Northern Territory), or other equivalent statutory groupings.

In addition, most states and territories also have some form of tiered penalty regime in place for steroid offences associated with identified 'small', 'large', 'traffickable', 'commercial' or other threshold quantities; as well as identifying other aggravated or staged penalties (including higher penalties for supply offences involving supply to a minor, and in the Northern Territory; higher maximum penalty amounts for some offences if the drug is supplied in an indigenous community).<sup>162</sup>

New South Wales has established penalties for indictable steroid offences ranging from 2,000 penalty units and/or 15 years imprisonment in relation to non-commercial quantities; to 4,200 penalty units or 25 years imprisonment in relation to commercial quantities and incidents of sale to a minor. Western Australia and the Northern Territory have also established maximum 25 year imprisonment penalties for certain steroid offences involving commercial-scale activities and operations,<sup>163</sup> while in Victoria, maximum penalties range from 600 penalty units or five years of imprisonment (or both) for possession offences; to 15 years imprisonment for trafficking, and 5000 penalty units, in addition to life imprisonment for trafficking of a 'large commercial quantity'.<sup>164</sup>

In the Australian Capital Territory, anabolic steroids are explicitly recognised and defined in the *Crime Act 1900*, which prescribes maximum penalties of 50 penalty units and/or six months imprisonment for possession or administering offences (sections 172 and 173) and 500 penalty units and/or five years imprisonment for the offence of prescribing and supplying anabolic steroids (section 171). Tasmania's *Misuse of Drugs Act 2001* specifies penalties ranging from 50 penalty units or two years imprisonment for possession and manufacturing offences; to 100 penalty units or four years for sale offences and 21 years imprisonment for trafficking offences.

In terms of defining punishable quantities involved, the new clause 19 definition of 'whole weight' is in keeping with section 4 (Admixtures) of the *NSW Drug Misuse and Trafficking Act 1985*. This section specifies that:

*... in this Act, a reference to a prohibited drug includes a reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug.*<sup>165</sup>

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<sup>161</sup> *Controlled Substances Act 1984* (SA), section 18.

<sup>162</sup> *Misuse of Drugs Act* (NT), section 5(2)(iv).

<sup>163</sup> *Drugs, Poisons and Controlled Substances Act 1981* (VIC), sections 71-73.

<sup>164</sup> *Drugs, Poisons and Controlled Substances Act 1981* (VIC), sections 71-73.

<sup>165</sup> *Drug Misuse and Trafficking Act 1985* (NSW), section 4.

The Victorian and the Northern Territory legislation also stipulate that the amount of a dangerous drug or drug of dependence is to be determined as if the entirety of the preparation or mixture within which the drug is mixed is included in the measurement of the quantity, subject to specific calculation procedures identified for traffickable and commercial threshold quantities respectively.

### Submissions

The VLA, in its submission, commended the addition of ‘steroids and their analogues’ to the highest schedule of illegal substance in the Act by way of clauses 23 and 24:

*The VLA applauds government for adding Steroids and their analogues to the highest schedule of illegal substances in the Act. These drugs are an insidious thing which adds to a poor culture in the youth of Australia, a culture which is not welcome in our precinct.*<sup>166</sup>

However, some concerns were raised by the ATSILS in relation to the application of new definition of the ‘whole weight’ of a dangerous drug, and its potential to deliver “*incongruous outcomes*”. Specifically, ATSILS noted that this definition would suggest that the same penalty applicable for a quantity of a pure drug would apply “*if a minute quality of drug were mixed with a large quality of non-drug substance (e.g. water or sugar)*”. The submission further stated:

*We assume that this cannot be the intention. In our submission the definition of ‘whole weight’ needs to be amended.*<sup>167</sup>

In response to these concerns, the Department noted:

*Queensland Health (QH) does not currently quantify pure amounts of steroids (unlike other current schedule 1 dangerous drugs such as heroin. Gross amounts can be analysed by QH without significant cost implications to that agency.*

*Accordingly, gross amounts (i.e. the whole weight of the drug/s and any admixture or substance in which it is contained) are specified for steroids in schedules 3 and 4 of the Drugs Misuse Regulation 1987 (DMR). However, the amounts prescribed are significantly higher than the pure amounts prescribed for other schedule one drugs (which will be contained in the new part 1 of schedules 3 and 4).*

*If a person unlawfully possesses a steroid in a quantity that is less than the quantity specified in schedule 3, the offender will be liable to a maximum penalty of 15 years imprisonment (the current maximum penalty for possession of steroids).*<sup>168</sup>

### Committee Comment

The Committee considers the strengthened penalties outlined above are appropriate and will assist with the Government’s intention to make Queensland a safer place. The Committee is satisfied anabolic-androgenic steroids should be treated that same as other dangerous drugs such as methamphetamines and ecstasy.

## **2.6 Amendments to the *Liquor Act 1992***

### **Overview**

The Bill proposes to make significant changes to the *Liquor Act 1992* (Liquor Act). A summary of the proposed changes to the Liquor Act provided in Clauses 27 to 81 of the Bill is set out in the

<sup>166</sup> Valley Liquor Accord, Submission No. 15, page 3.

<sup>167</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 25, pages 5-6.

<sup>168</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 41-42.



Explanatory Notes.<sup>169</sup> Given the numerous changes the Committee does not propose to discuss each of the changes but will focus on the main points of focus or concern identified during the Inquiry into the Bill.

In this regard, the report comments on the following main changes to the Liquor Act:

- amending the meaning of ‘unduly intoxicated’ 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;
- providing a new power to prohibit licensees from engaging in promotional practices that encourage rapid or excessive consumption of alcohol;
- allowing an investigator to conduct covert filming, audio recording, photographing or similar activities in public areas or licensed premises without having to identify themselves;
- ensuring that all licensees state-wide required to have CCTV must meet certain requirements in the operation and storage of equipment and data;
- the establishment of a mechanism to declare Safe Night Precincts across Queensland;
- the removal of the current moratorium on extended trading hours applications; and
- the introduction of the requirement of networked ID scanners throughout each precinct area.

### 2.6.1 Amending the definition of ‘unduly intoxicated’

#### Current law

Section 156 of the Liquor Act provides:

*156(1) A person must not, on premises to which a licence or permit relates—*

- (a) supply liquor to; or*
  - (b) permit or allow liquor to be supplied to; or*
  - (c) allow liquor to be consumed by;*
- a person who—*
- (d) is a minor; or*
  - (e) is unduly intoxicated or disorderly.*

The maximum penalty is 500 penalty units.

Section 4 of the Liquor Act currently provides for the definition of ‘unduly intoxicated’.

***unduly intoxicated*** means a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.

#### Proposal under the Bill

Clause 30 amends the meaning of ‘unduly intoxicated’ under the Liquor Act 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.<sup>170</sup>

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<sup>169</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, pages 2-3 and pages 16-27.

The new definition of ‘unduly intoxicated’ will be contained in new section 9A into the Act which provides details of the circumstances when a person may be taken to be unduly intoxicated. Proposed Section 9A states:

**9A When a person may be taken to be unduly intoxicated**

*For this Act, a person may be taken to be unduly intoxicated if—*

- (a) the person’s speech, balance, coordination or behaviour is noticeably affected; and*
- (b) there are reasonable grounds for believing the affected speech, balance, coordination or behaviour is the result of the consumption of liquor, drugs or another intoxicating substance.*

In its written briefing to the Committee, the Department explained:

*The current definition of ‘unduly intoxicated’ under the Liquor Act 1992 applies only to alcohol and is quite subjective. The proposed amendments to the definition are intended 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. The amendments include clear indicia to guide assessment of whether or not a person is intoxicated and capture other intoxicating substances such as illicit drugs.<sup>171</sup>*

Submissions

The introduction of the new clause received support from the QCAA, which suggested the definition is an improvement on previous provisions, and in keeping with definitions engaged in the ACT’s *Liquor Act 2010*.<sup>172</sup>

At the same time, however, a number of industry stakeholders identified a need for further clarification of the definition, including what may be considered ‘reasonable grounds’ in making assessments of undue intoxication. The QCAA submission also suggested the meaning could be elaborated upon within the Liquor Regulation and Guidelines. Particular concerns were also raised regarding the inclusion of drug intoxication in the offence, and resulting expanded assessment burden for licensees.

The VLA,<sup>173</sup> Broadbeach Licenced Venues Association,<sup>174</sup> CBD Townsville Liquor Accord,<sup>175</sup> and Brisbane City Licensees Association<sup>176</sup> all raised issues with the proposed new definition.

The VLA considered further detail was required outlining what were the ‘reasonable grounds’ referred to in section 9A(b) to prove the belief that the stated effects had resulted from drug consumption, suggesting:

*This might include sobriety tests or blood and urine tests. It is sometimes difficult for staff and management to determine ‘undue intoxication’, as patrons do tend to show a different side of themselves when purchasing drinks as opposed to when with their friends away from supervision.<sup>177</sup>*

<sup>170</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 2.*

<sup>171</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 13.

<sup>172</sup> Queensland Coalition for Action on Alcohol, Submission No. 18, page 18.

<sup>173</sup> Valley Liquor Accord, Submission No. 15, page 3.

<sup>174</sup> Broadbeach Licensed Venues Association, Submission No. 5, page 2.

<sup>175</sup> CBD Townsville Liquor Accord, Submission No. 2, pages 2-3.

<sup>176</sup> Brisbane City Licensees Association, Submission No. 28, pages 2-3.

<sup>177</sup> Valley Liquor Accord, Submission No. 15, page 3.

The Brisbane City Licensees Association considered the definition was not specific enough and would be likely to capture anyone who showed signs of intoxication at all:

*In this sense the definition is of 'intoxicated' rather than 'unduly intoxicated'. One respondent commented:*

*It cannot be construed that a person is Unduly Intoxicated simply because they are having fun, being animated, or indeed singing karaoke. The meaning of Unduly should be in the context of being a danger to themselves or others.*

*Again, it was not considered appropriate to rely on enforcement agencies not taking action for low-end intoxication cases. Nor was it considered that the change in the definition was justifiable on the basis that it would assist in successfully prosecuting high-end intoxication cases.*

*The concept of 'noticeably affected' in the definition was regarded as being too vague, and therefore too open to interpretation to be helpful.*

*It is recommended that the committee consider adjustments to the definition to more realistically reflect the prevailing good standards of behaviour in licensed premises.<sup>178</sup>*

In relation to the inclusion of drug intoxication in the definition and accompanying issues, Clubs Queensland raised the following objection:

*This proposal is problematic at several levels in a licensed environment because it places a punitive obligation on employees to refuse liquor service to those patrons who may be affected by a substance, other than alcohol, such as illegal drugs. Employees are not trained in this area and it is doubtful if they can ever be equipped with specialised knowledge and skills to adequately perform this critical role. There was a similar argument in the past for gaming employees to also assist in offering gaming counselling to patrons and the Government rejected this approach for the reason mentioned above. Importantly, by linking alcohol (which is a legal product) to illegal drugs, there is a blurring of the duty of care obligations, which in turn significantly undermines the current harm minimisation framework.<sup>179</sup>*

Submissions indicated these concerns were of added significance given recent amendments to the Liquor Act commencing on 1 July 2013, which removed "the ongoing training requirement in Queensland for staff involved with the serve or supply of liquor" such that staff now only have to complete a national accreditation in Responsible Service of Alcohol (RSA) once in a lifetime, as opposed to once every three years. The Security Providers Association of Australia Limited (SPAA) submitted:

*Our association can only stress that the lack of knowledge relating to responsible service practices is a critical issue for Queensland. The Safe Night Out Legislation Amendment Bill 2014 contains a large range of legislative responsibility specific to Queensland that national courses in our submission may not cover. Further, the Safe Night Out Legislation Amendment Bill 2014 proposes to change a large number of core RSA principles, including but not limited to the definition of Undue Intoxication.*

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<sup>178</sup> Brisbane City Licensees Association, Submission No. 28, pages 2-3.

<sup>179</sup> Clubs Queensland, Submission No. 7, page 3.

*At present, over half of all Queensland licensed premises can be managed by a person with nothing more than a certificate in responsible service of alcohol that the Safe Night Out Legislation Amendment Bill 2014 makes obsolete through comprehensive change.*<sup>180</sup>

Consequently, SPAA recommended the reintroduction of mandatory training of managers and staff as “a necessary building block in minimising the harmful effects of liquor consumption and a major oversight by Government in the Safe Night Out Legislation Amendment Bill 2014 which must be corrected”.<sup>181</sup>

#### Departmental response

In its response to submissions, the Department confirmed “the indicia adopted are consistent with those used across a number of jurisdictions, including New South Wales (NSW), Victoria, South Australian and the Australian Capital Territory”.<sup>182</sup>

In addition, clause 33 of the Bill allows for the Commissioner to produce guidelines to inform determinations of intoxication. The Department stated:

*It is not appropriate to prescribe what will constitute ‘reasonable grounds’, as this will be dependent on what a reasonable person would believe in the circumstances, taking into account the relevant knowledge and facts presented.*<sup>183</sup>

With regards to concerns about the inclusion of drug intoxication in the definition and its implications, the Department advised:

*The amendment to the definition is a direct response to the issue of drug-affected patrons that has been raised by industry as a concern for licensees and employees. The new definition empowers licensees and employees to take action to refuse service of liquor to patrons without the need to determine whether the behaviour is solely affected by alcohol, providing a safer environment for staff and patrons. The changes also simplify the indicators of undue intoxication to the patrons’ speech, balance and coordination or behaviour.*<sup>184</sup>

#### Committee Comment

The Committee has examined the proposed amendments to the definition of ‘unduly intoxicated’ in light of the various submissions, the situation in other Australian jurisdictions and the Department’s response. On balance, the Committee is satisfied the proposed amendments are appropriate and workable. The Committee considers the use of guidelines by the Commissioner will be a useful addition to inform determinations of intoxication and will be a suitable mechanism to assist industry in complying with the provisions in the Act.

### **2.6.2 Prohibiting certain promotional practices and encouraging maintenance of a safe environment and community amenity**

#### Current law

Section 148A(2) of the Liquor Act provides:

*The licensee or permittee must not engage in a practice or promotion that may encourage rapid or excessive consumption of liquor.*

<sup>180</sup> Security Providers Association of Australia Limited, Submission No. 24, Page 2.

<sup>181</sup> Security Providers Association of Australia Limited, Submission 24, Page 2.

<sup>182</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 2.

<sup>183</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 2.

<sup>184</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 2.

*Maximum penalty—100 penalty units.*

Section 148B prevents certain advertising things, including:

*148B(2)(c) a promotion that is likely to indicate to an ordinary person the availability of liquor, for consumption on the advertised premises, at a price less than that normally charged for the liquor.*

*Examples of promotions for paragraph (c)—*

- *‘happy hours’*
- *‘all you can drink’*
- *‘toss the boss’*

*Maximum penalty—100 penalty units.*

### Proposal under the Bill

Under the Bill, clause 66 seeks to insert a new Part 6 Division 1AAA setting out new provisions regarding responsible service, supply and promotion of liquor. The current sections 148A and 148B will be omitted as the content of these provisions will be incorporated into the proposed sections below.

Proposed section 142ZZ(1) states:

*142ZZ(1) 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.*

*Maximum penalty—100 penalty units.*

Proposed section 142ZZ(2) sets out the types of practices and promotions that are an “*unacceptable practice or promotion*” in paragraphs (a)-(g). For example:

- Proposed section 142ZZ(2)(a): a practice or promotion that may encourage the irresponsible consumption of liquor.

In addition:

- Proposed section 142ZZA states that a licensee/permittee must engage in practices or promotions that encourage responsible consumption (e.g. advertising low alcohol beer).
- Proposed section 142ZZB introduces a new offence and penalties that apply if a licensee/permittee fails to take all reasonable steps to ensure safety of persons around/in premises and to minimise adverse effects on amenity of community;
- Proposed section 142ZZC prohibits the licensee/permittee from advertising certain practices or promotions; and
- Proposed section 142ZZD allows the Commissioner to issue a compliance notice regarding contravention of sections 142ZZ or 142ZZC.

In its written briefing to the Committee, the Department stated:

*The Bill proposes a new power to stop or restrict licensees from engaging in particular promotional practices at licensed premises that are identified as encouraging the irresponsible consumption of alcohol. This will enable quick action to be taken to prevent these practices. An amendment will also be made permitting the prescription of*

*irresponsible promotions or practices in regulation, facilitating a statewide ban where considered necessary.*<sup>185</sup>

Further:

*Proposed amendments ... will place greater emphasis on a licensee being required to ensure the amenity of the locality, including safety of patrons, in and around their licensed premises. The amendments include increased powers to impose conditions on licences and take disciplinary action where there is a sustained detrimental impact on the community or unacceptable violent or anti-social behaviour in the vicinity of the licensed premises. Licensees will also be required to take reasonable steps to maintain safety at licensed premises*<sup>186</sup>

### Other jurisdictions

Most jurisdictions have legislative provisions and/or guidelines in place regarding the responsible promotion and advertising of alcohol and are similar in the types of promotion and advertising that are restricted or prohibited. There appears to be an underlying notion of requiring any promotion and advertising of alcohol as not being of a type that undermines responsible service of alcohol and not encouraging excessive, irresponsible, or rapid consumption. In some cases, promotion and advertising can be restricted if it is in the public interest to do so.<sup>187</sup>

### Submissions

The QCAA noted its support of those provisions “that prohibit the harmful discounting and promotion of alcohol products” and “the inclusion in the Liquor Act of the unacceptable practices relating to the promotion of alcohol at on-licence premises”.<sup>188</sup> However, the QCAA called for the provisions to also be extended to apply to off-licensed premises, so that they are similarly “discouraged from supplying free or discounted alcohol”; as well as pushing for accompanying measures to control the availability of alcohol.<sup>189</sup>

The majority of industry submitters, however, expressed concerns about the onerous nature of some of the some of the new provisions and their associated restrictions and extended licensee obligations and liability.

For example, the Queensland Hotels Association (QHA) commented that the move to introduce a new offence and penalties in proposed section 14ZZZB (Providing a safe environment and preserving amenity) in particular:

*... is well meaning but contains serious and unintended consequences for licensees and others. In particular, the reference to the obligation of the licensee to maintain a safe environment ‘in and around the relevant premises’ is vexatious, a long-standing bone of contention between the regulator and licensees, and contains heavy and insoluble legal implications. Under the law, a licensee is responsible for maintaining a safe environment within the boundaries of a licensed premises – this is fair and reasonable. However, to include the above re-definition of ‘in and around’ the licensed premises is extremely problematic and not achievable unless the term ‘around’ is subject to widespread consultation, legal advice, and careful definition.*

<sup>185</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 13.

<sup>186</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 12.

<sup>187</sup> See Tasmanian Department of Treasury and Finance, *Liquor and Gaming Branch, Review of the Liquor Licensing Act 1990 – Discussion Paper*, September 2015, page 37.

<sup>188</sup> Queensland Coalition for Action on Alcohol, Submission No.18, page ii.

<sup>189</sup> Queensland Coalition for Action on Alcohol, Submission No.18, page ii.

*One practical limitation with the proposed definition is insurance application.*

*Currently, coverage of liability insurance for employees of a licensed premises is limited to work undertaken on the licensed business. This means that if a venue's staff member, including security staff, go to the aid of a person in the street or otherwise away from the licensed premises, then that employee is not covered by the venue's liability insurance. So, for example, a security officer who left his post to go to the aid of a person crossing the road and was himself hit by a car and injured would not be covered by the venue's liability insurance. This is just one example of how the proposed policy would create a legal, litigation, insurance and practical nightmare for licensees and business owners.<sup>190</sup>*

Accordingly, QHA recommended:

*... [d]raft section 14ZZZB be removed ... unless and until such time as the definition of 'around' is clarified, and subject to close legal advice and consultation with industry.<sup>191</sup>*

Similarly, the Restaurant & Catering Industry Association (R&CA) noted of the section:

*R&CA understands the government's intention of increasing provisions to ensure the safety of patrons in and around licensed premises. However ... [w]hile this requirement may be appropriate for large high-risk venues where crowd management is required and the provision of security guards is available, this requirement places considerable onus on low-risk licensees to 'police' patron behaviour above and beyond what is safe for them or their staff to do so. With exception of asking quarrelsome patrons to leave, ensuring they vacate the location safely, or notifying police of the potential commission of an offence, R&CA strongly objects to licence holders having to 'stop' or intervene in situations to prevent the commission of an offence. A majority of low-risk license holders will not be appropriately trained or equipped to handle such a situation. This requirement would also have significant insurance implications for business operators to ensure that they, their staff, and their business are appropriately protected should an incident occur.<sup>192</sup>*

Potential insurance implications aside, the VLA and Cabaret's Queensland also sought to emphasise their concerns about the practicability of the provisions and their application with the VLA noting:

*Part of this clause places an expectation on a licensee to take reasonable steps to prevent offences being committed around the premises. We fully accept the responsibility on our premises, but the vague notion of 'around' our premises is too broad to be effectively applied. Furthermore, how can a business be expected to police the public space? They have no authority to do so under law, and it would place their staff under great risk to do this, whilst also making them vulnerable to myriad civil lawsuits.*

*This section of the draft bill should be omitted until further consultation with the legal fraternity, the insurance industry, and other knowledgeable stakeholders is undertaken to determine the workability of these requirements in the real world. The importance of getting this part of the legislation right is paramount to both give certainty to business and insurers, and to inculcate government for legal challenge further down the road.<sup>193</sup>*

<sup>190</sup> Queensland Hotels Association, Submission No. 9, pages 17-18. See also Cabarets Queensland (Brisbane), Submission No. 16; Barlink Mackay, Submission No. 20.

<sup>191</sup> Queensland Hotels Association, Submission No. 9, page 18.

<sup>192</sup> Restaurant & Catering Industry Association, Submission No. 13, pages 3-4.

<sup>193</sup> Valley Liquor Accord, Submission No. 15, page 4.

These concerns were also echoed by the Security Providers Association of Australia Limited (SPAAL) in the context of its members performing crowd control duties:

*Whilst this proposed change places the obligation on the licensee to take reasonable steps to stop or prevent offences in or around the premises, it has come to our attention that many licensees see reasonable steps as placing additional contractual obligations onto our members. Security providers in Queensland have little to no powers to give effect to section 142ZZB(4) or control the actions of others around the licensed premises which is our grounds for concerns.*

*The insurance implications of these sections of the Safe Night Out Legislation Amendment Bill 2014 are dramatic and may lead to unsustainable rises in insurance risks and even loss of insurance cover for many late night trading premises and security firms throughout Queensland.<sup>194</sup>*

SPAAL noted it had received written advice from an underwriter that if these proposed changes make it into law in Queensland, insurance will be withdrawn from all clients operating late night trading venues.<sup>195</sup>

#### Departmental response

The Department confirmed in its response to submissions that under the Bill, the scope has not increased in relation to where a licensee is responsible for maintaining a safe environment:

*The current section 148A(4) requires licensees to maintain a safe environment in and around their licensed premises and this is continued in the new section 142ZZB (inserted by clause 66 of the Bill). The section further clarifies what a licensee needs to do to ensure a safe environment. Under the same section, the licensee must take all reasonable steps to ensure the amenity of the area is not adversely affected, and stop or prevent the commission of an offence. The new provisions clearly state that the licensee is to take reasonable steps. This is an appropriate test as it requires the licensee to act in a manner that would generally be considered reasonable in ensuring the local area is not disturbed and to prevent offences.<sup>196</sup>*

The Department also specifically responded to concerns regarding the term 'in and around':

*The use of the term 'in and around' licensed premises reflects current wording in the Liquor Act, including the requirement to maintain a safe environment under section 148A and in relation to matters that are addressed in a risk assessed management plan under section 54.*

*The term 'around' is therefore deemed appropriate as it is consistent with the current terminology of the Liquor Act to ensure licensees must have regard to the impact of their patrons outside of the premises. Further definition (such as specifying a distinct distance from the premises) would be overly prescriptive and potentially either too onerous or generous depending on any determined prescribed limit. As is currently the case, the assessment of incidents and where they occur will form part of any consideration of action to be taken to ascertain whether patron behaviour is linked to the operation of the licensed premises.<sup>197</sup>*

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<sup>194</sup> Security Providers Association of Australia Limited, Submission No. 24, page 2.

<sup>195</sup> Security Providers Association of Australia Limited, Submission No. 24, page 2.

<sup>196</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 19.

<sup>197</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 18-19.



### Committee Comment

The Committee is satisfied the proposals relating to new provisions on responsible service, supply and promotion of liquor are appropriate and reasonable in the circumstances.

The Committee notes the concerns about the use of the term '*in and around*' licenced premises and considers that to assist with concerns that certain acts of employees *around* the premises, but not *within* the premises would not be covered by insurance policies; or were beyond the scope of the licensees' authority – there may be some scope to include details of what a licensee considers to be around the premises in the licensee's Risk-Assessed Management Plan or RAMP.

The Committee notes the purpose of a RAMP is to outline how the licensee or permittee will manage the premises in accordance with the first object of the Liquor Act – "*to minimise harm caused by alcohol abuse and misuse*".<sup>198</sup>

As a RAMP must contain information including: details of responsible service of alcohol initiatives; details of security (how many, when, for how long etc); and the level of staff training, it appears there should be an opportunity for a licensee or a permittee to set out in their RAMP – what steps they consider are reasonable to maintain a safe environment in and around their premises. As the RAMP is required to be approved by the Commissioner, this should go some way in alleviating concerns that a licensee is not going far enough in complying with their obligations under the Liquor Act.

Alternatively, there may be scope for the Commissioner to issue guidelines to assist industry on what is expected in maintaining a safe environment. The Committee encourages industry to engage in further discussions with the Office of Liquor and Gaming Regulation to assist with this important objective of the reforms.

### **2.6.3 Allowing an investigator to conduct covert filming, audio recording, photographing or similar activities in public areas or licensed premises without having to identify themselves**

Section 178(1) of the Liquor Act currently provides investigators with a number of powers upon entry to a place, which include the power to:

...

*(b) inspect, measure, test, examine, photograph or film anything in or on the place;*<sup>199</sup>

...

*(d) take a sample of or from a thing at the place for analysis to find out whether or not the thing is liquor;*

*(e) take into or onto the place such persons, equipment and materials as the investigator reasonably requires for the purpose of exercising any powers in relation to the place.*

However, under the current law, these activities may only be conducted subject to the investigator producing their identification for inspection.

That is, existing section 174(5) specifies:

*174(5) The investigator is not entitled to exercise powers under this Act in relation to another person unless the investigator first produces the investigator's identity card for inspection by the person.*

<sup>198</sup> <http://www.olgr.qld.gov.au/liquor/liquor-licences-and-permits/new-licence-applications/ramp>

<sup>199</sup> The Bill seeks to insert a power to 'record' into section 178(1)(b).

### Proposal under the Bill

Clause 77 of the Bill seeks to omit section 174(5) of the Liquor Act and clause 78 inserts a new section 174AA. While the proposed new section 174AA will continue to require the production or display of an investigator's identity card generally, proposed section 174AA(4) will enable an investigator to exercise certain powers without production or display of their identity card during covert investigations in public places.

### Other jurisdictions

The legislation in all Australian jurisdictions provides liquor licensing enforcement powers, the undertaking of which is backed up by specified powers to enter places of business and certain other public areas (generally with the occupier's consent or under warrant) and exercise a range of functions such as searching, asking questions, taking copies and samples of things etc. that may evidence non-compliance with the licence or the law.

The extent of such powers varies among jurisdictions, as does the official upon whom such powers are bestowed. In jurisdictions where the relevant powers are bestowed upon police officers, the types of powers conferred tend to be more extensive than where the powers are exercisable by inspectors or other similarly titled officials appointed by the head of the relevant government department. Few jurisdictions, apart from the proposal under the Bill in Queensland, appear to expressly provide powers for covert filming, audio recording, photographing or similar activities in public areas or licensed premises. The Australian Capital Territory legislation allows filming of things in a place but identification must be produced to obtain entry to the place, if requested.

The production of an identity card or similar form of identification by inspectors when seeking to enter premises is common among jurisdictions but does not appear to be required in New Zealand. The need to produce identification would seem to suggest that undertaking any covert filming or associated activities could not be conducted covertly.

### Submissions

A number of submissions included objections to the overall strategy to develop an undercover system for surveillance of venues and compliance generally.

For example, the QHA raised the following concerns:

*The Strategy flags an intention to develop an undercover system involving 'secret shoppers' for surveilling and checking on RSA compliance in venues. Naturally, the licensed industry is not supportive of such an approach which it sees as being furtive, sneaky, not 'upfront', not justified by the current level of industry compliance, and subject to abuse by over-zealous or philosophically aligned enforcement officers. Given strong industry support for Queensland's existing universal and mandatory RSA regime, industry offers that the proposal for 'undercover' RSA marshals or officers who might imitate the behaviour of an unduly intoxicated patron amounts to the potential for an official entrapment regime, where officers are more concerned about their acting and undercover skills, than they are in enforcing the existing RSA laws and working with licensees to further improve the existing system of compliance. Such a regime has clear potential to strain relations between the regulator and the industry, and to weaken industry support for the existing universal RSA system.*

*Should it be determined that such a process will be introduced, it should be subject to strict controls and standards, and deployed only in those licensed venues which have a demonstrated record of non-compliance with RSA laws.<sup>200</sup>*

In this regard, QHA recommended that an undercover 'secret shopper' regime for checking RSA compliance within an entrapment scenario not be pursued.<sup>201</sup>

Cabarets Queensland also raised concerns about the proposed 'mystery shopper' provisions:

*Cabarets Queensland believes that there are currently sufficient avenues for providing feedback to licensees about their serving practices. The collaborative working relationships that have been established between licensees and Police and OLGR Officers, through Liquor Accords and the trial Drink Safe Precincts, have facilitated open and constructive discussion about the challenges of monitoring drinking rates and strategies for improving the management of intoxicated patrons.*

*Cabarets Queensland believes the introduction of a 'mystery shopper' strategy is a backward step. It has the potential to be misused and misinterpreted, particularly by patrons and the general community.*

*Cabarets Queensland would support increased covert operations by trained police to assist with ensuring that drugs are not taken or trafficked on premises. The industry has been very open about this as one of our greatest challenges. No licensee condones drug use or wants it on premises. The use of additional public monies to stamp out this scourge on our community would be welcomed by all licensees.<sup>202</sup>*

### Departmental Response

In regard to the specific 'mystery shopper' concerns, the Department responded:

*The Mystery Shopper concept is a compliance strategy and does not form part of the legislative provisions contained in the Bill. The mystery shopper style tests will be used to assess responsible service practices, with feedback provided to staff and licensees to inform improvement, not for the purpose of taking punitive action.<sup>203</sup>*

### Committee Comment

The Committee notes that in addition to the proposal under Clause 77 of the Bill there is also a compliance strategy involving a 'mystery shopper' concept. Overall, the Committee is satisfied the proposed legislative amendments and the mystery shopper compliance strategy concept are appropriate measures to monitor licensee compliance.

#### **2.6.4 Ensuring that all licensees state-wide required to have CCTV must meet certain requirements in the operation and storage of equipment and data**

Section 142AH of the Liquor Act provides that licensees in the Brisbane City Council area must have closed-circuit television (CCTV) equipment at each entrance and exit of the licensed premises that provides access for patrons of the premises during the trading period.

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<sup>200</sup> Queensland Hotels Association, Submission No. 9, page 15.

<sup>201</sup> Queensland Hotels Association, Submission No. 9, page 16.

<sup>202</sup> Cabarets Queensland (Brisbane), Submission No. 16, page 4.

<sup>203</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 43.

The provision also sets out the equipment requirements; operating requirements (who may operate it); storage of recordings to maintain security; persons who may view the recordings (investigators, approved manager, licensee); inspection and viewing by an investigator; and destruction after a certain period.

#### Proposal under the Bill

Clause 64 of the Bill seeks to amend section 142AH of the Liquor Act to provide that the licensee must comply with any requirements prescribed by the Liquor Act regulations about maintaining the equipment. It also seeks to replace the current section 142AH(f) with a new section 142AH(f) and (fa) to require that recordings must be stored in a secure place in compliance with any requirements prescribed by regulation; and be available for inspection and viewing by an investigator until certain events occur.

Clause 68 seeks to insert a new section 148AA to ensure that licensees to whom section 142AH does not apply but are, nevertheless, subject to a CCTV requirement as a condition of their licence; will be subject to the same requirements as those provided by the amended section 142AH regarding maintenance, operation, secure storage, inspection and viewing by investigators.

If the amendments to section 142AH take effect, there will also be requirements regarding maintenance and storage which will be prescribed by regulation.

#### Other jurisdictions

Apart from Queensland, few jurisdictions contain specific CCTV requirements in their liquor legislation. New South Wales legislation specifically provides for the installation and operation of CCTV for certain licensed premises in the Kings Cross precinct. The Victorian legislation also enables conditions to be imposed on licences requiring the use of 'security cameras'. However, while not themselves mandating CCTV, the relevant legislation in most jurisdictions appears to enable licence conditions which require the taking of security measures such as the installation and operation of CCTV. The relevant government licensing authorities for all Australian jurisdictions have guidelines for premises that are required or wish to adopt CCTV measures.

New South Wales and Northern Territory legislation envisage that certain liquor accords and licensed premises of particular types and/or in particular precincts can require adoption of security measures such as CCTV. In South Australia, a Code of Practice requires specific premises to install and operate CCTV. The Australian Capital Territory also requires most licence applicants to have a Risk Assessment Management Plan which must, among other matters, address security issues such as the use of CCTV.

#### Submissions

A number of submissions raised concerns about this proposal. For example, the VLA commented:

*The VLA questions the efficacy of these changes. We feel it will be an additional burden on Police or OLGR resources to have to advise a licensee that a recording is viewable. We find it unlikely that investigators will advise licensees if a recording is viewable, simply due to the time required to do this. It would make more sense to simply require a licensee to maintain a copy of the recording for a period of 1 year, similar to other requirements in the Act.<sup>204</sup>*

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<sup>204</sup> Valley Liquor Accord, Submission No. 15, pages 3-4.

The QCCL noted:

*The CCTV guidelines accessed from the Office of Liquor and Gaming website on 4 July 2014 show that CCTV must be deleted after 30 days, unless an incident is reported. There is no definition of 'incident'. In the event our view is that 30 days is too long a period and 48 hours would be more appropriate.*<sup>205</sup>

#### Departmental response

In response to the concerns raised, the Department stated:

*Currently the Liquor Act 1992 requires that a CCTV recording, in the Brisbane City Council Area, be held for 28 days unless it is a recording of an incident required to be entered in a licensee's incident register, and then it must be held for one year. The amendments will make this requirement apply to all licensees that have a CCTV condition on their licence. Requiring them to hold all recordings, even when there is no incident recorded, for one year, is considered unnecessary regulatory burden.*

*Section 142AH provides that the recording must be held for 28 days but no longer than 30 days, unless it records an incident that is required to be placed on the incident register under section 142AI, when the recording must be held for one year. The Bill does not seek to change the existing 28 and 30 day requirements in the legislation, therefore the comment is not strictly related to amendments within the Bill, but rather existing legislation. Existing timeframes are considered appropriate.*<sup>206</sup>

#### Committee Comment

The Committee has reviewed the proposed new requirements on licensees regarding the operation and storage of equipment and data from CCTV. The Committee has also considered the submissions in this regard and the Department's response. The Committee is satisfied that the proposed changes are reasonable and will have the desired effect.

#### **2.6.5 The establishment of a mechanism to declare Safe Night Precincts across Queensland**

The Bill proposes to establish 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 with its rules complying with the Act and regulations. It will be responsible for coordinating initiatives to address alcohol-related violence.<sup>207</sup>

In its written briefing, the Department provided the following additional information:

*The Bill proposes that relevant licensees with venues in the precinct must join their local board association. Other eligible members include the owner or operator of other businesses located in the precinct, an association that represents the interests of business 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.*<sup>208</sup>

<sup>205</sup> Queensland Council for Civil Liberties, Submission No. 19, page 2.

<sup>206</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 32.

<sup>207</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 3.

<sup>208</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 14.

## Submissions

A number of issues were raised in the submissions about the establishment of a mechanism to declare Safe Night Precincts across Queensland and aspects related to this proposal:

### *Boundaries of Safe Night Precincts*

Issues concerning the determination of the boundaries of Safe Night Precincts were raised in submissions. For example, the Caxton Street Precinct Liquor Accord noted that Caxton Street is unique and includes a mix of entertainment values within the identified boundaries which require close attention in order to preclude implementation of inappropriately standardised procedures and legal requirements.<sup>209</sup> Cabarets Queensland argued that the boundaries of Safe Night Precincts should be determined by the board in consultation with key stakeholders.<sup>210</sup>

The Department responded:

*The boundaries of Safe Night Precincts will be determined where appropriate by the local board in consultation with stakeholders.*<sup>211</sup>

### *Staged Roll Out of Boards / Safe Night Precincts*

A number of submissions suggested that the Safe Night Precincts should be introduced in a staged sequence. The submission from the QHA recommended commencing with locations that have a liquor accord already in place.<sup>212</sup> The submission from ID-Tect Pty Ltd stated that a staggered approach would allow procedures to be developed in line with the local environment.<sup>213</sup>

In relation to these suggestions, the Department responded:

*The Safe Night Precinct local boards are proposed to be implemented in a staged roll out. The necessary time will be taken in establishing each of the local boards to ensure there is appropriate representation, and the legislation allows sufficient flexibility on membership to address these issues.*<sup>214</sup>

### *Board Composition and Operation*

A number of submissions queried various aspects of the proposed local board associations, including membership, exemptions and structure.<sup>215</sup>

The Department provided the following by way of background information as to how the local boards will work:

*Arrangements as incorporated associations are not intended to be overly onerous. Liquor accord members, who are licensees in the precinct, will be eligible to be members of the board. The exact split of representation is yet to be determined.*

*The government will consult with stakeholders about the boundaries and operations of individual precincts. It is intended, however, that precincts be defined as such given the concentration of late-trading venues, regardless of the days of operation of such venues.*

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<sup>209</sup> Caxton Street Precinct Liquor Accord, Submission No. 4.

<sup>210</sup> Cabarets Queensland (Brisbane), Submission No. 16.

<sup>211</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 4.

<sup>212</sup> Queensland Hotels Association, Submission No. 9.

<sup>213</sup> ID-Tect Pty Ltd, Submission No. 22, page 3.

<sup>214</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 4.

<sup>215</sup> See for example: Broadbeach Licensed Venues Association, Submission No. 5; Restaurant and Catering Industry Association, Submission No. 13; Queensland Hotels Association, Submission No. 9.

*Establishing a precinct and related local board will allow for the planning and management of an area of late night trading to address community safety issues including transport, patron flow, lighting, public facilities and CCTV.*

*It is the Government's preference that each precinct will be managed by a local board comprised of liquor licensees and other non-Government stakeholders. Where a local board is established and prescribed for a Safe Night Precinct, the liquor licenses of any venue within the prescribed precinct boundaries will be required to join the local board association unless they are exempted under a regulation.*

*This exemption provision provides the flexibility to appropriately deal with the range of businesses that operate in the precincts. The Government will consider exempting restaurants that do not trade beyond midnight from the requirement to join the local board association. These restaurants will still be able to join the board voluntarily if they wish.<sup>216</sup>*

BCLA suggested there should be incentives for establishing and remaining part of a Safe Night Precinct. They also raised concerns about the board structure, its powers and functions, and the potential for variations between the administration of different precincts.<sup>217</sup>

In response the Department provided:

*Establishing a precinct and related local board will allow for the planning and management of an area of late night trading to address community safety issues including transport, patron flow, lighting, public facilities and CCTV.*

*It is the Government's preference that each precinct will be managed by a local board comprised of liquor licensees and other non-Government stakeholders. Where a local board is established and prescribed for a Safe Night Precinct, the liquor licensee of any venue within the prescribed precinct boundaries will be required to join the local board association, unless they are exempted under a regulation. This exemption provision provides the flexibility to appropriately deal with the range of businesses that operate in the precincts. The Government will consider exempting restaurants that do not trade beyond midnight from the requirement to join the local board association. These restaurants will still be able to join the board voluntarily if they wish.*

*Under the provisions contained in the Bill, licensees who are required to join the board must be admitted to the association on application. However, these licensees can have their memberships cancelled in specific circumstances. Licensees whose membership is terminated under those circumstances are not required to be members of the association, provided they have taken all reasonable steps to remain in the association.*

*Boards must be incorporated under the Associations Incorporations Act 1981 and will be able to conduct fundraising activities and seek grants. The Government will work closely with the local boards via the public safety consultative committees established at proposed section 173NH.*

*Safe Night Precincts can be prescribed regardless of whether a local board exists. The ability to apply for funding (as an incorporated association) to improve the amenity and safety of the precinct, and the ability to provide input into the management of the precinct, are incentives to establishing and remaining in the local board.*

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<sup>216</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, pages 3-4.

<sup>217</sup> Brisbane City Licensees Association, Submission No. 28, page 6.

*Though the rules adopted by local board associations may vary from precinct to precinct, the core rules will be provided for in the Act (with additional rules to be prescribed in a regulation). This will ensure some consistency in the administration of the precincts.<sup>218</sup>*

### Committee Comment

Overall, the Committee is supportive of the establishment of the Safe Night Precincts.

The Committee realises there are still some details regarding the establishment of the Safe Night Precincts across Queensland which are yet to be finalised, but anticipates that the details will become clear in due course when the associated regulations are prepared. These regulations will come before the Committee in its general review of all subordinate legislation within its portfolio area of responsibility.

This process provides the Committee with the opportunity to assess the appropriateness and reasonableness of these regulations at that time.

### **2.6.6 Removal of current moratorium on extended trading hours applications**

#### Background

As noted by the Premier in his Introductory Speech, another important change to the liquor licensing framework is that:

*... the current moratorium on extended trading hours applications will be removed from 31 August 2014. After this date, applications for extended trading hours after midnight will be able to be considered.<sup>219</sup>*

#### Submissions

A number of submissions raised concerns about this proposed change and trading hours generally.

For example, R&CA made the following comments:

*R&CA understands proposed legislative changes will mean a subsidiary on-premise licence (meals) with approval to trade beyond 1am will not be authorised to trade after this time from 1 July 2015. R&CA also understands that under Clause 45, Section 86 will be amended so that an application to extend regular trading hours for a subsidiary on-premise licence (meals) will only include the hours between 12am - 1am. While R&CA is not opposed to the amendment for this license type, the association believes additional conditions extended to high-risk venues that trade between 12am-1am (ID scanners for example) should not be extended to low-risk venues, nor should such an approval attract an additional risk-based loading fee.*

*Legislative changes in New South Wales saw the introduction of a \$2,500 fee for licensees operating between 12am - 1.30am. This is a substantial impost to small businesses that use the extended trading hours permit to provide operational flexibility particularly during the warmer months, Christmas trading period, or for special functions and corporate hospitality where extended trading may be required. R&CA would not wish to see a similar fee structure introduced in Queensland, which significantly reduces the flexibility and viability of small restaurant operators who may occasionally choose to trade past midnight.*

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<sup>218</sup> Letter from the Department of the Premier and Cabinet, 14 August 2014, pages 14-15.

<sup>219</sup> *Record of Proceedings (Hansard)*, 6 June 2014, page 2236.



*Recommendation:*

- *Where low-risk establishments such as a subsidiary on-premises licence (meals) apply for an extended hour trading permit to trade until 1am, no additional conditions or risk-based fees should apply.*<sup>220</sup>

Similarly, the QCAA raised submitted:

*QCAA disagrees that in order to curb alcohol-related harms, 'promoting responsible service of alcohol practices, instead of winding back trading hours' is best practice. This is completely counter to the international and Australian evidence on trading hours, which demonstrates that reducing trading hours is one of the most effective measures to reduce alcohol-related harms. Research on the relationship between the trading hours of licensed premises and alcohol-related harms consistently demonstrates that increased trading hours are associated with increased harms. Restrictions introduced in the New South Wales city of Newcastle in 2008 demonstrate that even modest reductions in the trading hours of licensed venues can result in sustained reductions in alcohol-related harms. A recently published evaluation of the Newcastle trading hour restrictions found a sustained reduction in assaults. This equated to a 21% decline in assaults per hour restricted. This effect was present five years after the restrictions were introduced.*

*... QCAA's Five Point Plan includes the recommendation 'Wind back late trading hours and continue the moratorium on late night trading'. More specifically, it specifies that the Queensland Government legislate to introduce a 12 month state-wide trial of the reduction of trading hours based on the Newcastle alcohol restrictions, including:*

- *Introducing a closing time of no later than 3am for licensees with extended trading permits;*
- *Introducing lockouts at all extended trading permits from 1:00am (currently it is 3am); and*
- *Continuing the moratorium on all late night trading across Queensland beyond the current expiry date of 31 August 2014.*<sup>221</sup>

Conversely, there were submissions that recommended that there be no lock out,<sup>222</sup> or a 5am lock out.<sup>223</sup>

The BCLA submitted that these changes are unnecessary, and that existing rules, if properly enforced, are sufficient. They also submitted that there is a risk the change will have no effect.<sup>224</sup>

Departmental Response

On the topic of trading hours, the Department made the following comments:

*The issue of trading hours is sensitive and there are many competing views in the community about how trading hours should be regulated in Queensland. The Government wants to ensure that any changes to trading hours do not adversely affect small businesses, while also taking into considering concerns about public safety.*<sup>225</sup>

<sup>220</sup> Restaurant and Catering Industry Association, Submission No. 13, page 3.

<sup>221</sup> Queensland Coalition for Action on Alcohol, Submission No 18, page 22.

<sup>222</sup> No Curfew, Submission No. 23.

<sup>223</sup> Edward Fricker, Submission No. 1.

<sup>224</sup> Brisbane City Licensees Association, Submission No. 28, page 3.

<sup>225</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 16.

In response to concerns raised by the BCLA, the Department stated:

*The amendments are proposed to make Queensland's licensing system more responsive to concerns about community safety. In particular, 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. The changes surrounding subsidiary on-premises licences (principal activity of meals) are being made in response to community concerns raised regarding restaurants trading as bars or entertainment venues. Significant consideration was given as to how best to address the issue, and it was determined that the existing rules were required to be supplemented by both enhanced licensing and compliance measures.*

*The new licensing rules are being implemented in conjunction with an enhanced compliance regime. Therefore, it is considered that, in combination, these measures will be effective in addressing the issues surrounding restaurants trading as bars or entertainment venues.<sup>226</sup>*

### Committee Comment

The Committee notes that the Bill proposes to remove the current moratorium on extended trading hours applications from 31 August 2014. The impact of these changes will be that after this date all applications for extended trading hours after midnight will be able to be considered.

The Committee has reviewed the stakeholder comments and the Department policy in this regard and while the Committee acknowledges this is a controversial aspect of the Bill, on balance, the Committee is comfortable this change is appropriate as sufficient 'checks and balances' have been included in the review of applications.

### **2.6.7 Introduce the requirement of networked ID scanners throughout each precinct area**

#### Proposal under the Bill

Clause 74 inserts a new Part 6AA to the Liquor Act to provide for the use of approved ID scanners in particular licensed premises and the approval of ID scanner systems and operators. A clause by clause description of how each relevant clause is anticipated to operate was included in the Explanatory Notes.<sup>227</sup>

In his Introductory Speech, the Premier provided the following information on the ID scanning proposal:

*A significant part of the management of the safe night precincts is the use of networked ID scanners to manage violent or disorderly patrons. The bill will amend the Liquor Act to require liquor licensed venues approved to trade past 12 midnight in a safe night precinct to operate an ID scanner that is networked to a broader ID scanner system from 8 pm until close of trade each day.*

*Licences considered low risk will be exempt from this mandatory requirement unless otherwise conditioned by the Commissioner for Liquor and Gaming. The Commissioner for Liquor and Gaming will also be able to require other licensed venues to operate networked ID scanners in the interests of managing community safety. Although there are many benefits to the use of ID scanners, there are also important privacy issues to consider and*

<sup>226</sup> Letter from the Department of the Premier and Cabinet, 14 August 2014, pages 7-8.

<sup>227</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, pages 22-23.

*the bill incorporates important safeguards to ensure personal information is adequately protected.*

The Committee notes that the proposed introduction of requirements for the operation of networked ID scanners throughout each precinct area was an area of significant concern among submitters. In its response to submissions, the Department acknowledged these concerns and provided the following additional information:

*The liquor industry, while supporting the Strategy in general, questioned the need for an increased compliance focus (on the basis that they were complying already). Their most particular concern was the way in which ID scanners would operate, including costs imposed upon them, and possible administrative burdens of the scheme. It is proposed that local boards for Safe Night Out Precincts could apply to the Government grant funding pool for assistance in funding the networkable ID scanners. Other administrative issues raised can be addressed in the implementation arrangements of the scheme. The legislative requirements for ID scanners are intended to be flexible to ensure the best possible arrangements can be put in place, following further consideration during implementation.*<sup>228</sup>

#### Submissions and the Department's response

The main concerns raised in submissions, together with the Department's response to the identified issues, are highlighted below.

#### *Suitability of ID scanners for particular venues*

The Caxton Hotel and the Caxton Street Precinct Liquor Accord (CSPLA) both raised a number of concerns regarding the suitability of the proposed scanning regime for the Caxton Street precinct, given its uniqueness in terms of its proximity to Suncorp Stadium and the burdensome nature of the proposal for venues which operate as restaurants.<sup>229</sup>

The CSPLA submission noted:

*For instance, customers dining at The Caxton Hotel for a steak on a Monday, 2-4-1 meals at Casablanças on Tuesday, or a pizza at Brewski on Wednesday, at 8.30pm need to be ID scanned to eat a meal. I can't think of any restaurant where this condition applies. Families and Diners are not the target of the Safe Night Out Strategy. Dining customers aside, many older customers do not even carry ID. Are they to be turned away at the doors of venues on Caxton Street because they cannot be scanned? Is this not discriminatory and just plain wrong?*<sup>230</sup>

The VLA and QHA also recommended an exemption from the mandatory ID scanning regime for accommodation providers located in Safe Night Precincts. The QHA noted:

*These businesses do not cater for, and are not part of, the night economy. However, they do remain open late into the night to cater for late arrivals such as flight crew, and to provide around-the-clock services demanded of the hotel industry's star rating system. It is noted that Reference G makes provision for 'exempt licensees' with regards the mandatory ID scanning regime inside SNPs.*

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<sup>228</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 16.

<sup>229</sup> See: The Caxton Hotel, Submission No. 3; Caxton Street Precinct Liquor Accord, Submission No. 4.

<sup>230</sup> Caxton Street Precinct Liquor Accord, Submission No. 4, page 1.

*It is therefore recommended that liaison with industry take place to identify a foolproof categorisation system for enabling such businesses to self-identify, and that such businesses be exempt from the proposed SNP trading conditions as they apply to ID scanning.<sup>231</sup>*

The Department responded:

*The government considers that an ID scanner system in a Safe Night Precinct is an appropriate and proportionate response to addressing alcohol and drug-related violence. The government further recognises the need to develop, and will consult stakeholders about, a workable and practical framework for the implementation of a networkable ID scanner system. In this regard, the technical specifications of the system are currently being developed and will be made available for industry comment at the earliest opportunity.*

*It is intended that under proposed s173EF a licensed premises located in a precinct would not be subject to the ID scanning obligation if the licence is of an exempt class and under proposed s173EG is not subject to a condition declaring the licenced premises to be regulated premises for the purpose of ID scanning obligations.<sup>232</sup>*

#### *Timing consideration for ID scanners*

A number of submitters suggested that mandatory ID scanning should only apply on those days that venues actually open and trade after midnight, as opposed to those days when the venue maybe be licensed to trade past midnight but chooses not to.<sup>233</sup> The QHA submitted that the requirement to scan from 8pm would be commercially harmful to some businesses – particularly including those premises with multiple entrances and exits which are open in the early part of the evening and are not currently manned by staff, as this will result in having to create only one entrance point which may lead to long lines causing disruption to pedestrian traffic, and potentially discouraging prospective patrons.<sup>234</sup>

In response to these concerns, the Department stated:

*The scanning of IDs will be mandatory for those licensed venues in Safe Night Precincts that are approved to trade beyond midnight regardless of whether they actually trade beyond that time as it would be difficult to police which venues may decide to close before midnight and which venues may exercise their discretion to remain open past midnight.<sup>235</sup>*

A number of submitters also suggested that instead of an 8pm start time for ID scanning that there be a 10pm or 11pm commencement instead. This proposal was raised and considered further during the public hearing. In this regard, Mr O'Connor, the Chief Executive Officer of the QHA commented:

*In relation to my concern about the 8pm commencement time, our industry position is that the young people coming out really do not come out until 10 o'clock. Places like the Valley, central Surfers Paradise, the Mooloolaba waterfront, the Cairns waterfront and so forth do not kick up until about 11 o'clock at night so it is really a cost-benefit position. We would not want to require a family who is going out to dine in a hotel at 8 pm to go through a scanning regime. From a selfish point of view, the longer you are required to maintain that regime the more extensive it is for your venue. For example, you have to close off every*

<sup>231</sup> Queensland Hotels Association, Submission No. 9, page 17

<sup>232</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 9.

<sup>233</sup> For example: The Caxton Hotel, Submission No. 3; Caxton Street Precinct Liquor Accord, Submission No. 4; Queensland Hotels Association, Submission No. 9; Valley Liquor Accord, Submission No. 15; Cabarets Queensland, Submission No. 16.

<sup>234</sup> Queensland Hotels Association, Submission No. 9, page 10. See also, ID-Tect Pty Ltd, Submission No. 22.

<sup>235</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 9.

*entry and exit point except for the ones that have ID scanning technology and it requires two staff members to run an effective ID scanning point. Having said that, if, say, a mandatory regime kicked in in the declared safe night out precincts from 10 pm, you would still find many licensed businesses operating the scanning systems prior to that because they make their own assessment of risk.*

*I would add finally that, were we to pick a later time—say, 10 pm—there would be mechanisms available to the industry and the regulator to make sure that people would not slip in under the net. For example, you might have a sweep of the premises at the designated time, at 10 pm, and those people who are looking suspicious, who are known to the venue or who are in the right demographic would be required to go through a scanning environment. The 80-year-old grandmother who was out at 10 o'clock on a Saturday night probably would be left away from the regime.<sup>236</sup>*

#### *Technical considerations for ID scanners*

Submissions highlighted some potential issues regarding the technical specifications and operation of ID scanners. This included concerns regarding:

- Potential costs to licensees who have already purchased this technology and will be forced to purchase new or different systems;<sup>237</sup> and
- Potential technological errors in the reading of an ID scan (i.e., wear and tear of an ID surface and variations in names).<sup>238</sup>

The Department noted these concerns and advised:

*The implementation of the networked ID Scanners is a process that will be managed by the Commissioner for Liquor and Gaming, in consultation with key stakeholders. The technical specifications of the ID scanning system are currently being developed.<sup>239</sup>*

#### *Privacy considerations for ID scanners*

Concerns about privacy in relation to the operation of ID scanners emerged as one of the key issues raised in submissions. The Office of the Information Commissioner noted the importance of determining whether the proposed scanning regime includes adequate privacy safeguards, especially in relation to:

- the value and sensitivity of personal information collected by ID scanners;
- the vulnerability of the information to breaches of the Australian privacy principles;
- the possibility that the personal information may be misused for criminal purposes – such as identity theft, fraud, blackmail or finding out addresses of persons that are not publicly available (for example, in domestic violence or witness protection contexts);
- whether the scanned images of the IDs will be ‘read only’ or will they be recorded; and
- whether there will be adequate approval checks on operators and staff.<sup>240</sup>

<sup>236</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, pages 38-39. See also the Queensland Hotels Association, Submission No. 9.

<sup>237</sup> Valley Liquor Accord, Submission No. 15.

<sup>238</sup> Scantek Solutions Pty Limited, Submission No. 17.

<sup>239</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 11.

<sup>240</sup> Office of the Information Commissioner, Submission No. 6. See also the concerns and issues raised by: No Curfew, Submission No. 23; Security Providers Association of Australia Ltd, Submission No. 24.

The Department addressed these concerns as follows:

*The Government has recognised the need for privacy considerations to be addressed within a workable and practical framework for the implementation of the networkable ID scanner system.*

*In order to achieve this, the Government's intention in the Bill is that both regulated premises and approved operators be subject to the obligations and responsibilities already provided for under the Privacy Act 1988 (Cth) (the Privacy Act).*

*It will be the regulated licensee's and approved operator's responsibility to ensure that their respective internal controls and procedures, including staff training, are consistent with the objectives of the Privacy Act.<sup>241</sup>*

In relation to the privacy concerns relating to the technical specifications of the ID scanning system, the Department noted:

*The technical specifications of the ID scanning system are currently being developed. In this regard, the government acknowledges that the Office of the Information Commissioner has offered detailed input on privacy issues related to ID scanners and system requirements and will consult with the Commissioner's Office as part of the implementation of the technical requirements for ID scanner systems.<sup>242</sup>*

*At the outset, the technical specifications will consider the need for the protection of data. In this regard, once an ID has been scanned and details confirmed as accurate/amended, it is currently intended that the venue will be unable to access scanned ID information. However, a banned person's details (name, date of birth, photo) may be accessible to venues in a contingency arrangement if parts of the system are not responsive/offline. At the venue, data will be stored in formats that protect the security of the data so that it is not readable to unauthorised people or systems.<sup>243</sup>*

#### *Access to ID scanners for venues located outside Safe Night Precincts*

The issue of the unintended consequences that arise from encouraging banned patrons to attend venues outside of the Safe Night Precinct area, which are not subject to the scanning requirements, was raised by a number of submitters.<sup>244</sup> Accordingly, some submitters suggested that late trading venues outside of the Safe Night Out Precincts be permitted to apply to join the networked ID scanner regime and get access to the list of police and court banning orders<sup>245</sup> and grants.<sup>246</sup>

In this context, the Department responded:

*The government considers that an ID scanner system in a Safe Night Precinct is an appropriate and proportionate response to addressing alcohol and drug-related violence. The government further recognises the need to develop, and will consult stakeholders about, a workable and practical framework for the implementation of a networkable ID scanner system. In this regard, the technical specifications of the system are currently being developed and will be made available for industry comment at the earliest opportunity.*

<sup>241</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 12.

<sup>242</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 12.

<sup>243</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 13-15.

<sup>244</sup> See for example: Clubs Queensland, Submission No. 7; Scantek Solutions Pty Limited, Submission No. 17; iD-tect, Submission No. 22.

<sup>245</sup> Queensland Hotels Association, Submission No. 9.

<sup>246</sup> Cabarets Queensland, Submission No. 16.

*The proposed s173EG provides for a licence to include a condition declaring a licensed premises to be regulated premises for the purpose of ID scanning obligations, including in regard to the non-entry of persons subject to banning orders. Venues located outside of a Safe Night Precinct may therefore be conditioned to be regulated premises.<sup>247</sup>*

#### *Other considerations for ID scanners*

A number of submissions commented that further and more detailed consultation with industry and police stakeholders is necessary to refine and agree on the requirements for mandatory ID scanning times and locations, as well as conditions specified for ID scanning and networking requirements.<sup>248</sup>

The Broadbeach Licensed Venues Association sought clarification on whether funding will be available to set up the ID Scanners.<sup>249</sup> In response, the Department noted:

*Each Safe Night Precinct will be able to apply for funding out of the pool of funds set aside to fund initiatives to address alcohol related violence. These funds may be used to assist with the purchase of ID scanners depending on local need.<sup>250</sup>*

The QCAA commented in its submission that a study examining the effectiveness of ID scanners in Geelong found that there was little connection between the introduction of the scanners and alcohol related assaults.<sup>251</sup>

#### Committee Comment

The Committee is firmly of the view that the proposed changes to the Liquor Act will contribute significantly to a reduction in alcohol and drug related violence and that the introduction of the ID scanners is a not simply a step in the right direction, but is an appropriate and proportionate response to addressing alcohol and drug-related violence.

However, the Committee notes a number of issues were raised by stakeholders concerning the practicality of some aspects of the ID scanning proposal which either need to be clarified or be worked through in greater detail, prior to the commencement of the scheme.

One of the difficulties in implementing the policy is the very different nature of some of the licenced premises within a safe night precinct. The Committee recognises there are a number of licenced premises that have multiple facilities which perhaps only a part or parts of the venue should be subjected to the scanning regime. A 'one size fits all' application of the policy will not be acceptable and may require further consideration. In this regard, the Committee is concerned with how the policy will apply to venues such as hotels and restaurants which are situate within a safe night precinct.

For example, will a hotel that has a piano bar within its lobby area be required to ID scan persons that enter that lobby to check into the hotel during required scanning hours, even though they intend to occupy their room only and not engage in the consumption of alcohol? Or will another hotel that has a licence to sell alcohol through its 24 hour mini-bar facilities be required to ID scan patrons who check in after hours during the mandatory scanning periods? The Committee seeks clarification on how the policy will apply to hotels and the processes which hoteliers will need to follow to apply for an exemption.

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<sup>247</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 15.

<sup>248</sup> For example: The Caxton Hotel, Submission No. 3; Caxton Street Precinct Liquor Accord, Submission No. 4; Broadbeach Licensed Venues Association, Submission No. 5.

<sup>249</sup> Broadbeach Licensed Venues Association, Submission No. 5.

<sup>250</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 16.

<sup>251</sup> Queensland Coalition for Action on Alcohol, Submission No. 18.

**Point of Clarification**

The Committee requests the Premier clarify how the ID scanning policy will operate for Hotels within a Safe Night Precinct and confirm the process for seeking an exemption from, or apply for individual conditions so as not to be subjected to, the ID scanning requirements.

The Committee also considers that stakeholder submissions which suggested a 10pm start rather than an 8pm start for ID scanning would be more appropriate and alleviate a number of concerns. It appears that a 10pm start will still achieve the desired policy objectives, but will not cause undue interference to those businesses that don't pick up until later in the night when the people to whom the policy is targeting are likely to come out.

That being said, the Committee considers that the policy should remain flexible enough that an individual premises may choose to turn on their ID scanner at an earlier time, but that it must be on by the commencement time of 10pm. Similarly, it may be considered appropriate for specific one-off events within a safe night out precinct to have the scanners turned on at an earlier time. The Committee considers that there should be scope for a local board to make a determination that the scanners must be turned on by a certain time to aid with maintaining a safe environment throughout the precinct.

**Recommendation 3**

The Committee recommends the Bill and/or appropriate regulation be amended to:

- a) ensure ID scanning must commence for regulated premises no later than 10pm;
- b) enable flexibility for individual regulated premises to commence ID scanning at an earlier time if they wish; and
- c) empower local board associations to set a compulsory earlier commencement time for ID scanning for all regulated premises within their precinct, from time to time, to assist with maintenance of safety and security at specific events.

**2.7 Amendments to the *Summary Offences Act 2005***

The Bill also proposes to make the changes to the *Summary Offences Act 2005*. Clauses 124 and 125 increase 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.

More specifically:

- where a person commits a public nuisance offence within or in the vicinity of licensed premises, they will face an aggravated penalty of up to 25 penalty units or 6 months imprisonment, compared to the standard maximum penalty of ten years; and
- where a person commits the offence of urinating in a public place within or in the vicinity of licensed premises, the offence will incur an increased penalty from 2 to 4 penalty units.



The Explanatory Notes provide:

*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.*<sup>252</sup>

Clause 126 also replaces the current offence of 'Being drunk in a public place' with a new section 10 which provides that "[a] person must not be intoxicated in a public place".<sup>253</sup> This altered definitional specification of 'intoxication' rather than drunkenness is intended to ensure the offence incorporates those adversely affected by drugs or other intoxicating substances.<sup>254</sup>

### Other jurisdictions

The majority of Australian jurisdictions have public nuisance or equivalent offences for disorderly conduct, including public urination. Like Queensland, Victoria, New South Wales and the Northern Territory have a Summary Offences Act. In Tasmania, such offences are contained within the *Police Offences Act 1935*. Western Australia and the Australian Capital Territory have repealed their summary offences acts and placed the provisions they wished to keep in the *Criminal Code 1913* and the *Crimes Act 1900* respectively.

No other jurisdictions have established specific aggravated penalties for public nuisance type offences (including public urination) in relation to licensed premises or precincts. However, section 47(8) of the Northern Territory's *Summary Offences Act*, which deals with various 'Obscenity' conduct offences, specifies that where the offending behaviour or noise is made in licensed premises within the meaning of the *Liquor Act*, and the Court is satisfied that the licensee might reasonably have taken action to prevent the commission of the offence; the licensee is also guilty of an offence.

Victoria has also essentially identified drunkenness as an aggravating factor in establishing a separate offence for 'persons found drunk and disorderly', which attracts a higher maximum penalty than those imposed for either 'persons found drunk' or 'disorderly conduct' offences.<sup>255</sup>

In addition, Victoria and Tasmania have staged penalty regimes which specify increasing maximum penalty units for second and subsequent offences; and the New South Wales Act includes an additional offence stipulating increased penalties for further offending after the issuing of a move-on direction from police.<sup>256</sup>

The new maximum penalties for public nuisance offences proposed in the Bill are generally in keeping with those imposed in these and other Australian states and territories.

Incidents of public urination are typically also prosecuted as public nuisance offences in the majority of Australian jurisdictions. However, South Australia and the Australian Capital Territory have, like Queensland, established specific offences for urinating in a public place.<sup>257</sup>

Most Australian jurisdictions, excluding Queensland<sup>258</sup> and Victoria,<sup>259</sup> have decriminalised public drunkenness. This has typically involved the removal of the offence and associated penalties, and the provision of powers for police to temporarily detain a drunk or intoxicated person for a set period;

<sup>252</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 8.

<sup>253</sup> Safe Night Out Legislation Amendment Bill 2014, clause 126.

<sup>254</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 43.

<sup>255</sup> *Summary Offences Act 1966* (VIC), sections 13-14, 17A.

<sup>256</sup> *Summary Offences Act 1988* (NSW), section 9.

<sup>257</sup> See *Summary Offences Act 1953* (SA), section 24 and *Crimes Act 1900* (ACT), section 393A.

<sup>258</sup> *Summary Offences Act 2005*, section 10.

<sup>259</sup> *Summary Offences Act 1966* (VIC), section 13.

and/or transfer them to the care of a responsible person, established treatment facility or support service in the interests of the safety of both the public and the affected individual.<sup>260</sup> In Queensland, an emphasis has been placed on police training to support use of discretionary offender management approaches that minimise adverse custodial consequences; including various practical measures and diversionary alternatives. Such discretionary powers are enshrined in the section 378 (1)(b) *Police Powers and Responsibilities Act 2000* provision that establishes a police duty to discontinue an arrest for public intoxication where a police officer is satisfied that it is more appropriate for the person to be taken to a place of safety 'other than a watch-house' to recover.

With respect to either public drunkenness offences or these various police powers and decriminalised procedures, the definitions of intoxication employed in the different Australian jurisdictions vary considerably. However, the proposed clause 126 amendment is largely in keeping with a shift in a number of states and territories towards the use of 'intoxicated' rather than 'drunk' to describe substance-related incapacity, as considered to better reflect and incorporate instances of drug and other substance use.

For example, New South Wales engages the following definition of intoxication in relation to section 9 of its Summary Offences Act (Continuation of intoxicated and disorderly behaviour following move on direction):<sup>261</sup>

*... a person is "intoxicated" if:*

*(a) the person's speech, balance, co-ordination or behaviour is noticeably affected; and (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug.*

The South Australian statute has more broadly identified procedures for dealing with a person "under the influence of a drug or alcohol",<sup>262</sup> and affirmed the breadth of their application by introducing specific regulations recognising substances declared to be drugs under the act (including petrol and volatile substances).<sup>263</sup> Western Australia's *Criminal Code Compilation Act* similarly makes reference to being intoxicated by liquor or an intoxicant, where "intoxicant means a drug, or volatile or other substance, capable of intoxicating a person";<sup>264</sup> while Tasmania's *Criminal Code* refers to intoxicated persons where "intoxicated means under the influence of alcohol, another drug or a combination of drugs".<sup>265</sup>

### Submissions

In relation to the proposed increase in penalties under clause 124, the QLS expressed its view that "the more than doubling of the current penalty... is inappropriate and arbitrary".<sup>266</sup> The QLS questioned the empirical basis for the change, citing research evidence that effective deterrence hinges more on perceptions of the likelihood of apprehension and subsequent penalisation, rather than any specific awareness of the magnitude of penalties imposed.<sup>267</sup> In addition, the QLS noted that the enforcement of the amendment would have a disproportionate impact on regular and

<sup>260</sup> See for example: section 206 of NSW's *Law Enforcement (Powers and Responsibilities) Act 2002*; section 4A of Tasmania's *Police Offences Act 1935*; South Australia's *Public Intoxication Act 1984*; etc.

<sup>261</sup> *Summary Offences Act 1988* (NSW), section 9(6).

<sup>262</sup> *Public Intoxication Act 1984* (SA).

<sup>263</sup> Public Intoxication Regulations 2004 under the *Public Intoxication Act 1984* (SA).

<sup>264</sup> *Criminal Code Compilation Act*, section 206(1).

<sup>265</sup> *Police Offences Act 1935* (TAS), section 4A.

<sup>266</sup> Queensland Law Society, Submission No. 21, page 7.

<sup>267</sup> *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 24 July 2014, pages 24-25.

visible users of public space, “including young people, people of Indigenous and Torres Strait Islander descent and people experiencing homelessness” who make up the majority of offenders in this category:

*In our view, the increase of fines will affect these vulnerable groups and in some cases, may result in increases State Penalty and Enforcement Registry (SPER) debts.*<sup>268</sup>

These concerns about the potentially disproportionate impact of increased penalties on vulnerable groups were also echoed in the submission of Mr Alistair McAdam.<sup>269</sup> In addition, Mr McAdam’s submission called for the incorporation of a reasonable excuse element in section 7 of the Act (public urination), so as to remove the reliance on police discretion to prevent persons being unfairly penalised when affected by a lack of access to public toilets, or various medical conditions or other unforeseen circumstances.

Further concerns were also raised with regards to the use of ‘in the vicinity of licensed premises’ in clauses 124 and 125 and its interpretation. In particular, the QLS suggested that the terminology might be further clarified through the provision of additional information in the Act or supplementary guidelines or materials.

In response to these concerns, the Department submitted that the increased penalties would:

*... provide for strong and immediate consequences for violent or antisocial behaviour in the vicinity of licensed premises ... and hold persons to account for their behaviour in an endeavour to promote a cultural change so that all members of the community can enjoy a safe night out.*<sup>270</sup>

Further, in response to Mr MacAdam’s submission the Department provided:

*The Bill increases the monetary penalty for the offence of ‘urinating in a public place’ when the offence is committed within licensed premises, it does not amend the nature of the offence as this is outside the scope of the Safe Night Out Strategy.*

*The increased fine 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 person who would compromise the safety or comfort of other patrons enjoying a night out.*<sup>271</sup>

The Explanatory Notes also reported that in an online survey conducted by the Department in February 2014, around 83% of respondents supported tougher penalties for drug and alcohol affected individuals engaging in anti-social and violent behaviour in and around licensed venues and public spaces.<sup>272</sup>

In addition, the Department noted that, with regard to the term ‘vicinity’:

*This term is used in various statutes including the Criminal Code, the Liquor Act 1992 and the Police Powers and Responsibilities Act 2000. The general meaning is applied and relates to the offence occurring near or within reasonable proximity of the licensed premises.*<sup>273</sup>

<sup>268</sup> Queensland Law Society, Submission No. 21, page 8.

<sup>269</sup> Alistair MacAdam, Submission 27, page 5.

<sup>270</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 40.

<sup>271</sup> Letter from the Department of the Premier and Cabinet, 14 August 2014, page 3.

<sup>272</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill, page 9.

<sup>273</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 40.

With regard to clause 126 and its amendment of section 10, the QLS also called for further clarity as to the interpretation of the phrase "*adversely affected by drugs or another intoxicating substance*".<sup>274</sup>

In response to QLS's submission, the Department noted:

*Due to the diverse effects the various intoxicating substances can have on a person, no strict interpretation is provided as it is a matter best left to the court to consider in the circumstances of each case, based on the evidence given, including indicia.*

*This is consistent with the current approach undertaken for the existing provisions for drunk in a public place under section 10 of the Summary Offences Act and adversely affected by an intoxicating substance in relation to dangerous driving under section 238A(2) of the Criminal Code.*<sup>275</sup>

#### Committee Comment

The Committee has considered stakeholder comments and the explanations provided in the Department's response to submissions, and is satisfied that the proposed amendments are appropriate and in accordance with the identified objectives of the legislation.

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<sup>274</sup> Queensland Law Society, Submission 21, page 8.

<sup>275</sup> Letter from the Department of the Premier and Cabinet, 18 July 2014, page 41.

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the “principles relating to legislation that underlie a parliamentary democracy based on the rule of law”. The principles include that legislation has sufficient regard to:

- the rights and co-liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

#### 3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. Accordingly, the Committee specifically considered the following clauses: 5, 6, 14, 16, 17 with 92, 19-21, 23-26, 72-73, 74, 113, 117, 118, 120, 121, 124, and 125.

##### Bail with mandatory drug and alcohol assessment

**Clause 5** inserts a new section 11AB into the *Bail Act 1980* which applies if a person is charged with a prescribed [violent] offence that is alleged to have been committed in a public place while the person was adversely affected by an intoxicating substance. Where that is the case, a court or police officer authorised to grant bail for the person’s release, must impose a condition on the release, that the person must complete a Drug and Alcohol Assessment Referral (DAAR) course by a stated day (section 11AB(2)); unless the person has already completed two such courses within the previous five years, or is under 18 years of age, or is released under section 11A due to an impairment of the mind.

##### Potential FLP issue

The imposition of a mandatory bail condition when certain threshold requirements are met removes the discretion of the bail granting authority to determine whether completion of a DAAR course is appropriate for, or likely to be beneficial to, the particular accused (given the particular circumstances of the case); or to hear submissions from the accused’s legal representatives as to why it might not be appropriate or necessary.

The Explanatory Notes advise:

*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.*<sup>276</sup>

##### Unlawful Striking Causing Death

The Bill creates a number of new offences which affect the rights and liberties of individuals who breach these offence provisions.

**Clause 14** inserts a new section 302A into the Criminal Code to create a new offence of ‘unlawful striking causing death’. Section 302A(1) makes a person who unlawfully strikes another person to the head or neck, causing [directly or indirectly] the death of the other person, guilty of a crime and subject to a maximum penalty of life imprisonment.

<sup>276</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 5.*

'Striking' involves the direct application of force to the person by punching, kicking or hitting with any part of the body, whether with or without the use of a dangerous or offensive weapon or instrument (section 302A(7)).

Section 302A(2) specifically provides the 'excuse' provisions in section 23(1)(b) and section 270 of the Criminal Code do not apply in respect of the offence of unlawful striking causing death. This means that a person accused of breaching section 302A(1) cannot rely on section 23(1)(b) to excuse them from criminal responsibility on the grounds that they did not intend the death, or did not foresee the death as a possible consequence and that an ordinary person would not reasonably foresee the death as a possible consequence of the striking.

Similarly, the exclusion of reliance of section 270 means it is no excuse for the accused to claim that they were provoked and used reasonable force to prevent the repetition of the act or insult, where the force used was not intended to, and was not likely to, cause death or grievous bodily harm.

Section 302A(3) expressly provides that 'assault' is not an element of an offence against subsection (1). This has the effect of preventing an accused from asserting a defence of provocation under sections 268 and 269 of the Criminal Code.

Not all instances of striking causing death will necessarily result in a penalty however, as, pursuant to section 302A(4), a person will not be held criminally responsible for an offence against subsection (1) if the act of striking the other person was done as part of a socially acceptable function or activity, and was reasonable in the circumstances. An example of a socially acceptable function or activity is a sporting event.

Concerns about this provision were noted in BAQ's submission on the Bill, including:

*The Association is concerned that (despite the effect of section 302A(4)) the provision in its current form may well lead to convictions in circumstances where the defences of accident, prevention of repetition of insult and provocation would otherwise have operated to exculpate an accused person. It is easy to envisage circumstances where the application of some minor force by one person to another might cause the death of the other person, however unintended or unforeseeable. It would be unjust for a person charged under this section not to be able to rely on the defences of accident, prevention of repetition of insult and provocation in appropriate circumstances. The risk of unjust consequences for defendants charged under the new offence provision would be militated by allowing defendants to rely on those defences.<sup>277</sup>*

Subsections (5) and (6) mandate that, where the person is sentenced to a term of imprisonment (other than life imprisonment or an indefinite sentence or where they are subject to an intensive correction order or their sentence is suspended), the person must serve at least the lesser of - 80% of the person's term of imprisonment for the offence, or 15 years.

#### Potential FLP issue

The creation of the new offence of 'unlawful striking causing death' is designed to address the 'coward-punch' homicide cases and to make perpetrators criminally responsible for the consequences of their actions. Arguably the offence of unlawful striking causing death where there is no element of intent (such as is required to sustain a murder charge) would be covered by the existing offence of 'manslaughter' under section 303 of the Criminal Code. Currently in Queensland the offences charged where there has been a fatal 'coward-punch' are murder and/or manslaughter.

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<sup>277</sup> Bar Association of Queensland, Submission No. 26, page 2.

The Explanatory Notes advise:

*[t]he operation of section 23(1)(b) of the Code can make it difficult to secure a conviction for manslaughter in 'coward-punch' cases because it exempts an accused from criminal responsibility for the consequences of their actions (example, death resulting from a punch), if that consequence was not intended or foreseen by the offender and would not reasonably have been foreseen by an ordinary person.<sup>278</sup>*

The creation of this new section 302A offence criminalises specific conduct which before may have been charged as manslaughter and have been able to have been defended by reliance on one of the now excluded (under section 302A) excuse/defence provisions of the Criminal Code. Criminalising that conduct and removing scope to excuse the conduct will affect the rights and liberties of individuals who are found guilty of breaching the offence provision as they will have a criminal record and be subject to a significant term of incarceration<sup>279</sup> with a lengthy non-parole period.

It may also be argued that mandating minimum incarceration times is a fetter on judicial discretion however it should be noted that here the court retains the discretion to set the original sentence and it is only the non-parole period of that sentence which is mandated by these amendments.

It should be noted that section 302A only applies to the most extreme eventuality from unlawful striking, being the death of the person struck. Accordingly, to reflect the gravity of that consequence, harsh penalties are appropriate and appear commensurate with the policy aims of the legislation, being protection of the broader community from the consequences of alcohol and drug fuelled violence and the deterrence of such conduct.

In respect of the fettering of judicial discretion, it is not unusual for legislation to set guidelines or sentencing parameters for the Courts, especially in relation to mandatory non-parole periods, and in this instance the judge will still retain the discretion to sentence the offender, including the option to fully or partially suspend the sentence if the individual circumstances of a case warrant that option in the interests of justice.

### **Serious assaults on public officers with a circumstance of aggravation**

**Clause 16** amends section 340 of the Criminal Code for serious assaults. Currently section 340(2AA) states that a person who unlawfully assaults, or resists or wilfully obstructs, a public officer while the officer is performing a function of their office; or who assaults a public officer because the officer has performed a function of their office; commits a crime and is subject to a maximum penalty of seven years imprisonment.

The amendment to section 340(2AA) proposed by this Bill provides for circumstances of aggravation for the offence which result in a doubling of the maximum penalty to 14 years imprisonment. This occurs (under the amendments) when an 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.

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<sup>278</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 4.*

<sup>279</sup> Unless the sentence is suspended.

**Clause 17** inserts new section 365A into the Criminal Code which means, under section 365A(1)(d), that where the aggravating circumstances immediately above (biting, spitting etc) are applicable to the offence, pursuant to section 365A(2), new Chapter 35A “*applies in relation to proof of the circumstance of aggravation that the offence was committed in a public place while the person was adversely affected by an intoxicating substance*”.

Where this is the case, other amendments in this Bill, to the *Penalties and Sentences Act 1992* made by **clause 92** [inserting sections 108A and 108B into the PSA] require a court, where it convicts an offender of a prescribed offence [including a breach of section 340(2AA)] committed in a public place while the offender was adversely affected by an intoxicating substance, to make a community service order for the offender unless a disability makes them incapable of complying.

#### Potential FLP issue

Doubling the maximum penalty for a breach of section 340(2AA) when there is one or more of the above circumstances of aggravation will affect the rights and liberties of individuals who are found guilty of the offence. Given the additional penalty could amount to an additional seven years imprisonment (from 7 to 14 years) this is a significant extra punishment.

It has also been argued that mandating community service orders fetters judicial discretion.

In respect of these issues, the Explanatory Notes offer the following justification:

*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 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.*

*... 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.<sup>280</sup>*

The Committee considered the doubling of the penalty, and the mandating of community service orders, and the justification offered by the Explanatory Notes against the rationale and policy objectives of the Bill, and is satisfied that potential breaches are justified.

#### **Production and Possession of Steroids**

**Clause 19** amends section 4 of the Drugs Misuse Act to insert a new definition of ‘whole weight’ in relation to a dangerous drug, whole weight meaning the total weight of the drug and any other substance with which it is mixed or in which it is contained.

**Clause 20** inserts new section 8(2) into the Drugs Misuse Act to provide that a reference to the quantity of steroids is a reference to the whole weight of all of the steroids (whether of the same or different types) that the person is convicted of unlawfully producing (i.e., the quantity is the total weight of liquid in which a steroid or combination of steroids is detected). **Clause 21** inserts a mirror provision, new section 9(2), into the Drugs Misuse Act in relation to weights of steroids unlawfully possessed.

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<sup>280</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 5.*



**Clauses 23-26** amend schedules 1-4 of the Drugs Misuse Regulation 1987 (DMR). **Clauses 23-24** move a list of steroid drugs from Schedule 2 to Schedule 1 (Dangerous Drugs), and **clauses 25-26** amend schedules 3 and 4 in relation to specified quantities of steroid drugs. **Clause 25** inserts a new Part 2 into Schedule 3 to provide that the 'specified [whole-weight] quantity for steroids is 50g'. **Clause 26** inserts a new Part 2 into Schedule 4 to provide that the [whole-weight] quantity for steroids is 5000g.

The net effect of moving steroids from Schedule 2 to Schedule 1 of the DMR is that the maximum penalty for trafficking (s.5 Drugs Misuse Act), supply (s.6 Drugs Misuse Act), producing (s.8 Drugs Misuse Act) and possessing (s.9 Drugs Misuse Act) moves from 15-20 years imprisonment (and in some limited cases 25 years) to 20-25 years (or in limited circumstances 15 years).

#### Potential FLP issue

The Drugs Misuse Act sets up a tiered regime of penalties which vary depending on the type and quantity of drug (Schedule 1 or Schedule 2 dangerous drug), the accused's personal drug dependency if applicable, and any circumstances of aggravation (eg. supply to a minor). Moving steroids from Schedule 2 to Schedule 1 will in most cases increase the maximum applicable sentence for an accused who possesses, produces, supplies or traffics in steroids, to the detriment of their liberty.

In respect of the changes, the Explanatory Notes advise:

*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.*<sup>281</sup>

The Committee accepts this justification.

#### **Doubling of certain penalties**

**Clauses 72 and 73** respectively double from 25 penalty units to 50 penalty units the maximum penalty for breaching sections 165(2) and (4) and sections 165A(2) and (4) of the *Liquor Act 1992*.

The offences which attract these doubled penalties are (section 165(2)) -failure to immediately leave premises when required to do so under section 165(1) [for being unduly intoxicated, disorderly, a non-exempt minor, creating a disturbance or for entering premises despite having been refused entry, refusal to present age ID on request]; (section 165(4)) – resisting authorised ejection efforts; (section 165A(2))- entering or attempting to enter premises to which the person has been refused entry; (section 165A(4))– resisting an authorised person who is preventing entry to premises to which the person has been refused entry.

#### Potential FLP issue

Doubling the maximum penalties for these offences will present a significant financial impost on persons who breach these sections.

It is noted that many of the criteria by which a person could fall foul of these provisions are arguably subjective and a 'judgement call' for non-medically trained bar staff who have to decide what 'unduly intoxicated'<sup>282</sup> looks like. Whilst bar staff are typically trained to look for warning signs of intoxication when they do Responsible Service of Alcohol training, it is not difficult to envisage a situation where a mildly intoxicated patron with a disability, or with a medical condition causing walking or talking

<sup>281</sup> *Explanatory Notes*, Safe Night Out Legislation Amendment Bill 2014, page 5.

<sup>282</sup> Amendments under this Bill to the *Liquor Act 1992* (clause 30 inserting new section 9A) and the Wine Industry Act co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing the affected speech, balance, co-ordination or behaviour is the result of the consumption or liquor, drugs or other intoxicating substance.

difficulties such as multiple sclerosis, could be asked to leave premises by bar/security staff who suspect them to be, or consider they appear to be, 'unduly intoxicated'.

The criteria for ejection under section 165(1) is that the person *is* unduly intoxicated; hence a person who was genuinely not unduly intoxicated (despite a contrary belief on the part of staff of the premises) could legitimately object to being ejected on that ground. Potentially, if a person verbally challenges the ejection request, that may be sufficient 'resistance' and therefore they could be considered to have breached section 165(4) as 'resist' is not defined under the *Liquor Act 1992*.

In essence these are quite substantial penalties for offences such as resisting ejection when (in some cases) the criteria that make up the elements of the offence are to be subjectively determined by persons with limited training to make that determination.

The Committee considers the Department's response to this issue, as discussed earlier, resolves this issue to the Committee's satisfaction.

### **ID scanning and privacy concerns**

**Clause 74** creates a new section 173EH in the *Liquor Act 1992* which imposes ID scanning obligations on licensees of regulated premises. Pursuant to clause 173EH, patrons seeking entry into certain late night trading venues will be required to have their identification scanned.

#### Potential FLP issue

Requiring particular premises to scan personal identification cards of their patrons is obviously an encroachment on the right to privacy of those patrons.

This issue is acknowledged by the Explanatory Notes which advise:

*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.<sup>283</sup>*

### **Sober Safe Centre Trial**

**Clause 113** of the Bill introduces new Chapter 14, Part 5, Division 2 into the PPRA which provides for a Sober Safe Centre Trial. Division 2, section 390E(2) will allow a police officer to detain and transport a person to a sober safe centre where the person is reasonably suspected of being intoxicated and is exhibiting nuisance behavior or posing a risk of physical harm to themselves or others, provided that behavior is in a public place located in a prescribed safe night precinct for a sober safe centre, and does not constitute an offence other than a nuisance offence or public drunkenness offence under section 10 of the *Summary Offences Act 2005*.

The person must be assessed by a health care professional before being admitted to the centre (section 390F(b)), but if admitted to the centre, the person may be detained for up to eight hours, their person and their belongings may be searched, their belongings may be seized and kept in safe custody while the person is detained, and the person must pay a (cost recovery) charge for being detained in the centre (section 390F(c)).

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<sup>283</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 6.*

The cost recovery charge is calculated under section 390M as being (for first time users of the centre) two penalty units or otherwise the sum of two penalty units + one penalty unit for each of number of times the person has previously been admitted to a sober safe centre, up to a maximum of six times. A person has 28 days to pay the charge (section 390M(4)(b)). If the amount is not paid or not paid in time, the fine/debt gets sent to the State Penalties Enforcement Registry (SPER) to initiate recovery proceedings.

#### Potential FLP issue

The processes involved with the Sober Safe Centre Trial inherently involve a significant encroachment on a person's rights and liberties, but especially the powers to detain, transport and conduct personal (body) searches.

In respect of these violations of personal integrity, the Explanatory Notes advise:

*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 wellbeing 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.<sup>284</sup>*

The Committee notes the policy intent behind encouraging individuals to take responsibility for their own behaviour, and to that end, accept the justification provided in the Explanatory Notes.

#### **Summary of provisions**

**Clause 117** inserts new Chapter 18A into the PPRA to provide for the taking and testing of specimens of breath, saliva, blood and urine from persons suspected of committing a relevant assault offence (grievous bodily harm/wounding/serious assault of a police or public officer) whilst apparently intoxicated by alcohol or drugs and in a public place. The powers used reflect those available to police officers under section 80 of the *Transport Operations (Road Use Management) Act 1995*.

#### Potential FLP issue

Any power to detain persons for the purposes of taking a breath, saliva, blood and/or urine sample is a *prima facie* encroachment on their right to free movement and personal liberty.

If it was only to apply to instances of suspected serious assaults it would arguably be justified in circumstances where testing was required to establish one of the elements of aggravation for an offence (eg. if an element of the offence was that the assault occurred whilst the accused was intoxicated and in a public place). In order to establish that element of the offence (intoxication) police officers would need the ability to test bodily intoxication levels.

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<sup>284</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 7.*

The 'relevant assault offences' under the Criminal Code to which new section 548C of the PPRA applies (as defined in section 548B) do not have, as an element of the offence, that the person was intoxicated. For example, charges of grievous bodily harm (GBH) under section 320, or wounding under section 323, can each be 'made-out' by establishing that such GBH or wounding occurred as a result of the accused's actions, regardless of whether or not they were intoxicated at the time of the assault.

The Explanatory Notes advise:

*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 purpose of triggering the mandatory community service order provisions.<sup>285</sup>*

*... 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.<sup>286</sup>*

As noted above, the Criminal Code offences of grievous bodily harm and wounding can be made out from the nature of the assault without regard to whether or not the person was intoxicated.

Accepting the justification provided in the Explanatory Notes, the Committee considers the 'triggering of the mandatory community service order provisions' as sufficient justification for the interference with personal liberty that occurs when a person is detained for the purposes of conducting a blood, saliva, urine or breath analysis.

### **Increased penalties for public nuisance and public urination**

Similarly, **clauses 124 and 125** make amendments to sections 6 and 7 of the *Summary Offences Act 2005* to increase the maximum penalties for certain offences under that Act when the offences are committed within licensed premises or in the vicinity of licensed premises. Currently the maximum fine for 'Public nuisance' is 10 penalty units which will increase to 25 penalty units or six months imprisonment when the offence occurs within licensed premises or within the vicinity of licensed premises (see section 6(1) of the *Summary Offences Act 2005*). The maximum fine for 'urinating in a public place' will increase from the default fine of 2 penalty units to 4 penalty units when the person urinates within (or in the vicinity of) licensed premises, see section 7(1) *Summary Offences Act 2005*.

#### Potential FLP issue

Given these public order offences may be committed by persons who are homeless or who have mental illnesses or chronic alcohol and/or drug dependency problems, there is potential that changes to these offence provisions will create similar problems to those outlined for sober safe centres, in that persons who offend these laws will lack, in many cases, the capacity to appreciate the nature of their offending conduct, and the capacity to rationally choose to offend or not offend.

The Committee considered these concerns, noting the role public nuisance offences play in contributing to the Safe Night Out strategy, and the overall aims and policy objectives of the Bill. Accordingly, the Committee agreed the penalty increases are justified.

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<sup>285</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 2.*

<sup>286</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 7.*

**Assorted infringements on the right to privacy**

**Clause 6** amending section 34F of the *Bail Act 1980* to authorise the Police Commissioner to (newly) give information about a special condition of bail to the Commissioner for Liquor and Gaming, or an approved operator under the *Liquor Act 1992* s.173EE;

**Clause 74** inserting sections 173EH(1) and (2) into the *Liquor Act 1992* to require a staff member of regulated licensed premises to scan the photo ID of an intended patron, using an approved ID scanner which is linked to an approved ID scanning system, which records the photo and other personal information contained in or on the photo ID;

**Clause 117** inserting new Chapter 18A into the PPRA to provide for the taking and testing of specimens of breath, saliva, blood and urine from persons suspected of committing a relevant assault offence (grievous bodily harm/wounding/serious assault of a police or public officer) whilst apparently intoxicated by alcohol or drugs and in a public place;

**Clause 118** inserting new Chapter 19 Part 5B into the PPRA which permits a photo of the subject of a police banning notice to be attached to the notice and distributed (see section 602H(i));

**Clause 118** in Part 5B (section 602U) allowing a police officer to distribute an imaged order (a banning order to which an image [photo] has been attached) to an approved operator for an approved ID scanning system for recording on that system. A police officer may also distribute an imaged order to a licensee of licensed premises stated in the order, or licensed premises of a class stated in the order, or to an approved manager working either at those premises or at an event to which the order applies (s.602U(2)).

Safeguards for the above

**Clause 74** inserting section 173EI of the *Liquor Act 1992* requires licensees for regulated premises to comply with the Commonwealth *Privacy Act 1988* in relation to the protection of personal information recorded by an ID scanner operated in the premises. In addition, if licensed premises stop being regulated premises or a licence for regulated premises ends under the *Liquor Act 1992*, it is an offence for the licensee or former licensee to (unless required by law) keep or disclose any personal information recorded by an ID scanner operated in the premises;

**Clause 74** inserting section 173EJ of the *Liquor Act 1992* limits the personal information that can be recorded about a person by an ID scanning system to the person's name, address, date of birth, photo, details of a banning order in force for the person, and details of a licensee ban imposed on the person. It is difficult however to envisage how such limits on the information able to be stored will be enforced if the scanner takes an image scan (eg. a laser 'scan' of a driver's licence will necessarily disclose more information than the above including organ donor status and licence conditions which can contain personal medical information). The information (other than information about a person subject to a banning order or licensee ban) cannot be held in the ID scanning system for more than 30 days after it is entered;

**Clause 74** inserting section 173EM of the *Liquor Act 1992* requires approved operators to ensure that personal information held in the approved ID scanning system is protected in compliance with the Commonwealth *Privacy Act 1988*. It is an offence for the approved operator to allow an ID scanner to be linked or continue to be linked to the ID scanning system if the operator knows the ID scanner is used other than in regulated premises. It also makes it an offence for a former approved operator to (unless required by law) keep or disclose any personal information that was held in the approved ID scanning system; and

**Clause 118** inserts section 602W into the PPRA which requires a person to whom an imaged order has been distributed (other than a person using an approved ID scanner or operating an approved ID scanning system) to destroy the imaged order as soon as practicable, and not later than seven days, after the day the banning order no longer has effect. It also prohibits the person from, without reasonable excuse, using 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.

#### Potential FLP issue

The above powers to take, retain and/or distribute personal information from potential patrons and other persons is arguably an infringement on their right to privacy. The safeguards outlined above do however go a considerable way towards trying to ensure that use of the information is restricted to particular defined purposes, and that any unauthorised use or retention of information is subject to strong penalties at law.

### **Proportionality—higher penalties for offences within or in the vicinity of licensed premises**

#### Summary of provisions

**Clause 120** amends section 790 of the PPRA with respect to the penalty for the existing offence of assaulting or obstructing a police officer. The current maximum penalty for assaulting or obstructing a police officer in the performance of the officer's duties is 40 penalty units or 6 months imprisonment. That penalty remains as the default penalty under the amendments to section 790(1) made by this Bill, but the Bill also imposes an alternate higher penalty if the assault or obstruction happens within, or in the vicinity of, licensed premises, being a maximum of 60 penalty units or 12 months imprisonment.

Similarly, **clause 121** amends section 791 of the PPRA with respect to the penalty for contravening a direction or requirement of a police officer. The current penalty continues to apply (default of 40 penalty units) but clause 121 inserts a new maximum penalty for contravening a direction given under section 48 (a 'move-on' direction). When that occurs within licensed premises, or in a regulated place in the vicinity of licensed premises, or where it occurs in a public place in a safe night precinct, the new maximum penalty under section 791(2)(a) will be 60 penalty units.

**Clauses 124 and 125** – as noted, these clauses amend sections 6 and 7 of the *Summary Offences Act 2005* with respect to creating a public nuisance or committing public urination and provide (as outlined above) for much steeper penalties when a relevant nuisance or urination offence occurs within, or in the vicinity of, licensed premises.

#### Potential FLP issue

The Committee observes that the penalty should be proportionate to the offence. The OQPC Notebook states, "*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other*".<sup>287</sup>

In considering these issues the Committee acknowledges the deliberate policy decision taken that offences committed in/around regulated/licensed premises or in a public place in a safe night precinct, will attract a harsher penalty than the same offence committed elsewhere.

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<sup>287</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 120.

**Administrative power - Section 4(3)(a) *Legislative Standards Act 1992***

Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Police Banning Notices

**Clause 118** inserts new Chapter 19, Parts 5A and 5B into the PPRA to provide for ‘police banning notices’.

Within Part 5A, section 602B defines a police banning notice as a written notice that prohibits a stated person from doing, or attempting to do, any of the following:

- Entering or remaining in stated licensed premises or a stated class of licensed premises;
- Entering or remaining in a public place located in a safe night precinct;
- Attending or remaining at a stated event, being held in a public place, at which liquor will be sold for consumption;
- Entering or remaining in a stated area that is designated by its reasonable distance from, or location in relation to - premises in (a), a public place in (b) or an event in (c).

The notice may prohibit a person from doing any of the above during stated days or times.

Potential FLP issue

The Committee accepts that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states, *“Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision”*.<sup>288</sup>

The Committee notes that the former Scrutiny of Legislation Committee took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.<sup>289</sup>

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states, *“Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review”*.<sup>290</sup>

Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department.

Accordingly, it is important to weigh the powers given to police officers under Parts 5A and 5B against the safeguards imposed by those Parts, to ensure police powers will be exercised responsibly in issuing banning notices and in capturing an ‘image’ of a person.

<sup>288</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 15.

<sup>289</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 15; cites Scrutiny Committee Annual Report 1998-1999, para. 3.10.

<sup>290</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 18.

### Part 5A Safeguards

- the officer giving an initial police banning notice must be of at least the rank of sergeant or must obtain the prior approval of an officer of at least that rank (section 602C(2));
- the officer giving or approving the notice must be reasonably satisfied that the notice is necessary because the respondent's behaviour at, or in the vicinity of, a relevant public place, is/was disorderly, offensive, threatening or violent, and their ongoing or imminent presence at the relevant public place and any other place stated in the notice poses an unacceptable risk of causing violence at the places, impacting on the safety of others at the places, or disrupting or interfering with the peaceful passage or reasonable enjoyment of others at the places. (section 602C(3));
- the notice does not start until it has been personally served on the respondent by a police officer (section 602D(a));
- if the notice applies to a stated event, it ceases to apply at the end of the event, or, otherwise, within 10 days of its service on the respondent (section 602D(b));
- the officer giving the notice must explain the duration and effect of the notice to the respondent, consequences of contravening the notice, that an extended police banning notice may be given or the initial notice cancelled, and that the respondent may apply to the Commissioner to have the notice amended or cancelled under Division 5 [*Review of Notices*] (section 602E);
- an officer of the rank of senior sergeant or above may, on their own initiative, cancel an initial police banning notice if reasonably satisfied that in the circumstances the notice should not have been given to the respondent, or that the notice is causing, or will cause, undue hardship to the respondent or a member of their family (section 602G);
- a respondent for a police banning notice may apply to the police Commissioner to amend or cancel the notice, including where the notice 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 because it will cause undue hardship to the respondent or a member of his/her family (section 602N). The Commissioner's decision is made under s.602O; and
- the respondent also has recourse to the Queensland Civil and Administrative Tribunal (QCAT) to review the Commissioner's decision under section 602O (see section 602P).

There are however a number of potential restrictions on the rights and liberties of persons who are issued with a police banning notice, being:

#### *Part 5A restrictions on rights and liberties*

- proposed section 602Q makes it an offence, subject to a maximum penalty of 60 penalty units (\$6,831), for a person named in a police banning notice to, without reasonable excuse, contravene that notice. The notice must advise of same (section 602H(g));
- an officer of at least the rank of senior sergeant can, subsequently, give the respondent an 'extended police banning notice'<sup>291</sup> to extend the duration of the initial police banning notice

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<sup>291</sup> The issuing of the extended police banning notice is contingent upon the officer considering the matters in section 602F(4) which includes such matters as the respondent's initial offending behaviour, any charges or fines in relation to that behaviour or similar behaviour or behaviour involving violence to persons or property, any relevant court banning orders or bail conditions, any previous police banning



up to a total of 3 months from the start time of the initial notice, or to state additional relevant public places from which the person is banned, or to state additional days or times during which a person is banned from doing certain things.

*Part 5B restrictions on rights and liberties*

- a police officer may detain and photograph the respondent (602H(h)) and an image of that respondent may be attached to the notice and distributed under Chapter 19 Part 5B (see section 602H(i)), impacting on that person's right to privacy;

In Part 5B (section 602U) a police officer may distribute an imaged order (a banning order to which an image [photo] has been attached) to an approved operator for an approved ID scanning system for recording on that system. A police officer may also distribute an imaged order to a licensee of licensed premises stated in the order or licensed premises of a class stated in the order, or to an approved manager working at those premises or at an event to which the order applies (s.602U(2)), impacting on that person's right to privacy.

*Part 5B safeguards*

Restrictions on the use of these images are imposed under sections 602V-W.

These provisions will impact on the rights and liberties of individuals (banning people from entering certain places, detaining them and taking their photo etc.).

The rationale for these measures is provided in the Explanatory Notes:

*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 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*

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notices they received, any previous detention in a sober safe centre, any relevant previous offence history, the respondent's personal circumstances, and the likely effect of the extended banning notice on those. Written notice of the reasons for extending the ban is required to be given with the extended notice. (see section 602F);

*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 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.<sup>292</sup>*

The Committee notes and accepts this rationale for the measures taken.

#### **Power to enter premises – Section 4(3)(e) Legislative Standards Act 1992**

Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?

**Clause 79** amends section 178 of the *Liquor Act 1992* to provide that, an investigator who enters or boards a place under Part 7 of that Act, may in addition to their existing powers, now also ‘record’ anything in or on the place (see section 178(1)(b)).

#### Potential FLP issue

The addition of the power to record anything in or on the place entered does extend the range of powers exercisable by a Liquor Act inspector, however the additional power is within the scope of powers already existing for inspectors (being that they can search any part of the place; inspect, measure, test, examine, photograph or film anything in or on the place; take extracts from, and make copies of, any documents in or on the place; and take a sample of or from a thing at the place for analysis to find out whether or not the thing is liquor). It is also not an unusual power for an inspector and is somewhat akin to the existing powers to photograph or film.

#### **Rights and liberties – Section 4(3)(g) Legislative Standards Act 1992**

Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

**Clause 2(1)** states that section 49 is ‘taken to have commenced on 6 June 2014’.

**Clause 49** inserts a new section 105B into the *Liquor Act 1992* to 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.

As noted in the Explanatory Notes:

*[t]his 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.<sup>293</sup>*

As clause 2 declares that section 49 is taken to have commenced on 6 June 2014 (before the passage and commencement of the rest of the Bill) it is inherently retrospective. The Explanatory Notes acknowledge this, stating:

*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*

<sup>292</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, pages 7-8.

<sup>293</sup> Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 6.

*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.<sup>294</sup>*

#### Potential FLP issue

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. By making section 49 operate retrospectively (from the post-6-June-2014 commencement of the rest of the Act) it removes any chance for persons to avoid the local council consent requirements. This has the potential to adversely affect all new applicants (an additional compliance hurdle even where consent is given, and a complete stopping of an application if consent is refused).

**Clause 2(2)** states that section 46 and section 81 (other than to the extent it inserts new sections 322-324) commence on 1 September 2014. If this Bill is not assented to prior to 1 September 2014, section 46 and 81 will also have retrospective commencement back to 1 September. Section 46 omits Part 4, Division 8 to remove the moratorium on extended trading hours applications which ends on 31 August 2014. Section 81 (other than to the extent it inserts new sections 322-324) makes transitional provisions for the Safe Night Out Act relevant to the extended trading hours applications.

The Committee acknowledges the retrospective nature of the commencement of these provisions, and is satisfied that the integrity and intent of these amendments need not be compromised to avoid retrospectivity in this instance.

#### **Immunity from proceedings – Section 4(3)(h) *Legislative Standards Act 1992***

Does the Bill confer immunity from proceeding or prosecution without adequate justification?

**Clause 113** inserts section 390P(1) into the PPRA to provide that a health care professional is not civilly liable for an act done, or omission made, honestly and without negligence under the Sober Safe Centre Trial Division of the Act. Where subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State (s.390P(2)).

#### Potential FLP issue

The Committee notes legislation should not confer immunity from proceeding or prosecution without adequate justification.<sup>295</sup> The OQPC Notebook states *“a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence ... and if liability is removed it is usually shifted to the State.”*<sup>296</sup>

<sup>294</sup> *Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014, page 6.*

<sup>295</sup> *Legislative Standards Act 1992, section 4(3)(h).*

<sup>296</sup> *Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, page 64.*

The Committee also notes that the former Scrutiny of Legislation Committee also acknowledged that conferral of immunity may be appropriate in certain situations.<sup>297</sup>

The Committee notes that whilst this provision confers limited immunity from prosecution (technically an FLP concern), it is a fairly standard provision designed to allow officers to undertake their statutory duties without fear of personal liability (absent dishonesty and negligence). Attaching civil liability to the State preserves an appropriate remedy for aggrieved persons.

### **Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992***

Is the Bill unambiguous and drafted in a sufficiently clear and precise way? The Committee considered the following clauses: 118, 120, 121, 124, and 125.

**Clause 118** inserts section 602W into the PPRA. Section 602W(1) states that *“This section applies to a person to whom an imaged order has been distributed under section 602T, other than a person operating an approved ID scanning system or using an approved ID scanner under the Liquor Act 1992.”*

It is possible that the reference in section 602W(1) to *‘distributed under section 602T’* should be to section 602U.

Section 602T permits a police officer to attach an image of a person taken under new Chapter 19, Part 5B of the PPRA to a banning order for that person. Section 602T does not expressly refer to, or expressly permit, distribution of an imaged order.

Section 602U does provide for *‘distribution of [an] imaged order’* to the Commissioner for Liquor and Gaming, or an approved operator for an approved ID scanning system (section 602U(1)) and also for distribution of an imaged order to the licensees of licensed premises stated in the order (particular premises or premises within a class of premises), to approved managers working at those premises or at an event to which the order applies, and where there is no such approved manager working at an event stated in the order, to the person responsible for the sale of liquor at the event.

It appears that the reference in section 602W(1) to section 602T, should instead refer to section 602U, it is further confused by the express exception in section 602W(1), being that it does not apply to *‘a person operating an approved ID scanning system or using an approved ID scanner’* which is one express category of permitted recipients of an imaged order under section 602U, although the other persons in section 602U (licensees, managers etc) may also fall within that category of being *‘a person operating an approved ID scanning system or using an approved ID scanner’*.

#### **Point of Clarification**

The Committee requests the Premier clarify the correct reference in section 602W(1) and make appropriate amendments to the Bill, if necessary.

### **3.2 Institution of Parliament**

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

<sup>297</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 64; Alert Digest 1998/1, page 5.

The Bill proposes to make significant amendments to a number of separate Acts. Bills of this nature, combining a number of amendments of various Acts within one piece of legislation are commonly referred to as 'omnibus bills'. They are typically used as a vehicle by which to facilitate convenient passage of a number of amendments, on this occasion all related to a common policy goal.

The general argument typically made against omnibus Bills is that members are required to vote for or against such a Bill in its entirety, containing as it does a number of amendments to different Acts, of varying significance, some of which they may agree with and others with which they may disagree. Arguably therefore omnibus Bills can be said to breach the fundamental legislative principle in ss.4(2)(b) of the *Legislative Standards Act 1992* because by forcing members to vote to support or oppose the Bill in its entirety, when they may not agree with all of the reforms, the Bill fails to have sufficient regard to the institution of Parliament.

The Committee notes this Bill amends several Acts. The Committee also notes that each amendment is related to a common policy goal, and therefore, sufficient regard has been had to the institution of Parliament.

**Appendix A – List of Submissions**

<b>Sub #</b>	<b>Submitter</b>
001	Edward Fricker
002	CBD Townsville Liquor Accord
003	The Caxton Hotel
004	Caxton Street Precinct Liquor Accord
005	Broadbeach Licensed Venues Association
006	Office of the Information Commissioner Queensland
007	Clubs Queensland
008	Queensland Network of Alcohol and Other Drug Agencies
009	Queensland Hotels Association
010	Queensland Nurses' Union
011	Legal Aid Queensland
012	Acting Chief Magistrate of Queensland
013	Restaurant and Catering Industry Association
014	Bruce Young MP, Member for Keppel
015	Valley Liquor Accord
016	Cabarets Queensland (Brisbane)
017	Scantek Solutions Pty Ltd
018	Queensland Coalition for Action on Alcohol
019	Queensland Council for Civil Liberties
020	Barlink Mackay
021	Queensland Law Society
022	ID-Tect Pty Ltd
023	No Curfew
024	Security Providers Association of Australia Ltd
025	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
026	Bar Association of Queensland
027	Alastair MacAdam
028	Brisbane City Licensees Association

# Statements of Reservation



## Peter Wellington MP

Member for Nicklin

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18<sup>th</sup> August 2014

Ian Berry  
Chairman  
Legal Affairs and Community Safety Committee

Dear Ian,

Re: Safe Night Out Legislation Amendment Bill 2014 report 70

In relation to the contents of the Safe Night Out Amendment Bill report number 70 please record this statement of reservation I have in relation to the proposed changes.

I believe the Bill should include winding back of the hours of operation of some venues including late nights and early morning entertainment precincts.

Yours sincerely

A handwritten signature in black ink that reads 'Peter Wellington'.

**Peter Wellington MP**  
**Member for Nicklin**



**BILL BYRNE MP**

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

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18 August 2014

Mr Brook Hastie  
Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Hastie

**Re: - *Safe Night Out Legislation Amendment Bill 2014* - Statement of reservation**

The Opposition wishes to notify the committee of its reservations about aspects of Report No. 70 of the Legal Affairs and Community Safety Committee into the *Safe Night Out Legislation Amendment Bill 2014*. We will detail the reasons for our concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be "Bill Byrne", with a long horizontal line extending to the right.

Bill Byrne MP  
**Member for Rockhampton**