



Queensland

Liquor and Other Legislation Amendment Act 2010

Act No. 51 of 2010



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Queensland

Liquor and Other Legislation Amendment Act 2010

Act No. 51 of 2010

An Act to amend the Adult Proof of Age Card Act 2008, the Bail Act 1980, the Gaming Machine Act 1991, the Liquor Act 1992, the Liquor Regulation 2002 and the Penalties and Sentences Act 1992 for particular purposes and to make consequential amendments of the Police Service Administration Act 1990 and the Public Service Act 2008

[Assented to 1 December 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Liquor and Other Legislation Amendment Act 2010*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 4;
- (b) section 20, but only to the extent that section 20 inserts the definitions *commission* and *decision of significant community impact* in the *Liquor Act 1992*, section 4;
- (c) sections 22 to 25;
- (d) section 27(2), (3) and (4);
- (e) sections 28 and 30;
- (f) section 34(4), but only to the extent that section 34(4) inserts new section 116(6) in the *Liquor Act 1992*;
- (g) sections 37, 38(3), 39, 42 to 46;
- (h) section 48, but only to the extent that section 48 inserts new sections 299 to 304 in the *Liquor Act 1992*;
- (i) schedule, amendments of the *Public Service Act 2008*.

Part 2 **Amendment of Adult Proof of Age Card Act 2008**

3 **Act amended**

This part amends the *Adult Proof of Age Card Act 2008*.

4 **Amendment of s 7 (Eligibility for card)**

(1) Section 7, ‘for the issue of’—

omit, insert—

‘to apply for’.

(2) Section 7(b)—

omit, insert—

‘(b) is at least 17 years and 11 months of age.’.

5 **Amendment of s 8 (Application for card)**

Section 8(1), ‘the issue of’—

omit.

6 **Amendment of s 12 (Issue of card)**

(1) Section 12(2)—

renumber as section 12(3).

(2) Section 12—

insert—

‘(2) However, if the applicant is under 18 years of age, the chief executive must not issue an adult proof of age card to the applicant until the applicant is at least 18 years of age.’.

-
- (c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.
- ‘(2AB) A court or a police officer authorised by this Act to grant bail for the release of a person must consider the imposition of a special condition mentioned in subsection (3) if—
- (a) the alleged offence to which the bail relates involved the use, threatened use or attempted use of unlawful violence to another person or property; and
- (b) having regard to the evidence available to the court or the police officer, the court or the police officer is satisfied that the alleged offence was committed in licensed premises or in a public place in the vicinity of licensed premises.’.
- (2) Section 11(3B), ‘subsection (3)’—
omit, insert—
‘subsection (6)’.
- (3) Section 11(4), note, ‘subsection (4)’—
omit, insert—
‘subsection (9)’.
- (4) Section 11(1) to (4)—
renumber as section 11(1) to (9).

9 Amendment of s 20 (Undertaking as to bail)

Section 20(3)(b)(i) and (3A)(b)(i), ‘in accordance with section 11(2), (3) or (4)’—

omit, insert—

‘under section 11(2), (3), (6) or (9)’.

10 Amendment of ss 29, 29A and 30

Sections 29(2)(c), 29A(3) and 30(6), ‘section 11(4)’—

[s 11]

omit, insert—
'section 11(9)'.

11 Insertion of new s 34F

After section 34E—

insert—

'34F Commissioner may give information about special condition of bail to licensee under Liquor Act 1992

'(1) The commissioner may give information about a special condition mentioned in section 11(3) to—

- (a) the licensee of any licensed premises stated in the special condition; or
- (b) the licensee of any licensed premises within a class of licensed premises stated in the special condition; or
- (c) the holder of a licence or permit to sell liquor at an event stated in the special condition; or
- (d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c).

'(2) In this section—

approved manager means a person holding an approval as an approved manager under the *Liquor Act 1992*.

commissioner means the commissioner of the Queensland Police Service under the *Police Service Administration Act 1990*.

licence see the *Liquor Act 1992*, section 4.

licensed premises see the *Liquor Act 1992*, section 4.

licensee see the *Liquor Act 1992*, section 4.

permit see the *Liquor Act 1992*, section 4.'

12 Insertion of new s 41

After section 40—

insert—

**‘41 Transitional provision for Liquor and Other
Legislation Amendment Act 2010**

- ‘(1) Section 11(3) and (4), as inserted by the *Liquor and Other Legislation Amendment Act 2010*, section 8 applies in relation to the release of a person on bail for an offence only if proceedings for the offence were started after the commencement of this section.
- ‘(2) For subsection (1), it is irrelevant whether the act or omission constituting the offence happened before or after the commencement.’.

**Part 4 Amendment of Gaming
Machine Act 1991**

13 Act amended

This part amends the *Gaming Machine Act 1991*.

14 Amendment of s 15 (Establishment of commission)

Section 15(1)—

omit, insert—

- ‘(1) The entity previously established as the Queensland Machine Gaming Commission and continued in existence under this Act under the name Queensland Gaming Commission is continued in existence under the name Queensland Liquor and Gaming Commission.’.

[s 15]

15 Insertion of new pt 12, div 15

Part 12—

insert—

**‘Division 15 Transitional provision for Liquor
and Other Legislation Amendment
Act 2010**

‘459 References to commission by its former name

‘(1) In a document, a reference to the commission by its former name may, if the context permits, be taken to be a reference to the commission.

‘(2) In this section—

former name means the Queensland Gaming Commission.’.

16 Amendment of sch 2 (Dictionary)

Schedule 2, definition *commission*—

omit, insert—

‘*commission* means the Queensland Liquor and Gaming Commission continued in existence under section 15.’.

Part 5 Amendment of Liquor Act 1992

17 Act amended

This part amends the *Liquor Act 1992*.

18 Amendment of s 3 (Act’s objects)

(1) Section 3, heading—

omit, insert—

‘3 Main purposes of Act’.

(2) Section 3, ‘This Act’s objects are—’—

omit, insert—

‘The main purposes of this Act are—’.

(3) Section 3(a)—

omit, insert—

‘(a) to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with—

- (i) minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and

Examples of harm—

- adverse effects on a person’s health
- personal injury
- property damage

- (ii) minimising adverse effects on the health or safety of members of the public; and

- (iii) minimising adverse effects on the amenity of the community; and’.

(4) Section 3(g), ‘objects’—

omit, insert—

‘main purposes’.

19 Amendment of s 3A (Principle underlying this Act for facilitating and regulating the liquor industry)

Section 3A(4), ‘this Act’s object’—

omit, insert—

‘the main purpose of this Act’.

[s 20]

20 Amendment of s 4 (Definitions)

Section 4—

insert—

‘**amenity**, of a community or locality, means—

- (a) the atmosphere, ambience, character and pleasantness of the community or locality; and
- (b) the comfort or enjoyment derived from the community or locality by persons who live in, work in or visit the community or locality.

authorised person, for part 6C, see section 173Q.

civil banning order, for part 6C, see section 173S(1).

commission means the Queensland Liquor and Gaming Commission continued in existence under the *Gaming Machine Act 1991*, section 15.

decision of significant community impact, for part 5, division 7, see section 142AO(1).

drink safe precinct, for parts 6B and 6C, see section 173O.

interim civil banning order, for part 6C, see section 173Y(2).

respondent, for part 6C, see section 173S(1).

take-away liquor means liquor that is sold on licensed premises to be consumed off the licensed premises.’.

21 Amendment of s 9 (Ordinary trading hours)

- (1) Section 9(1A)—

insert—

‘(d) premises to which a commercial hotel licence, community club licence or commercial special facility licence relates, for the sale of take-away liquor.’.

- (2) After section 9(1B)—

insert—

‘(1C) Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, ordinary trading hours of premises to which a commercial hotel licence, community club licence or commercial special facility licence relates, for the sale of take-away liquor, are between 10a.m. and 10p.m.’.

(3) Section 9(12), ‘licence relates’—

omit, insert—

‘licence, community club licence or commercial special facility licence relates’.

22 Amendment of s 21 (Jurisdiction and powers of tribunal)

(1) Section 21—

insert—

‘(1A) The tribunal may also review the decisions made under this Act by the commission.

Note—

See section 142AO (Decisions to be made by commission).’.

(2) Section 21(2), after ‘chief executive’—

insert—

‘or the commission’.

(3) Section 21(2), ‘appeal’—

omit, insert—

‘review’.

(4) Section 21(1) to (2)—

renumber as section 21(1) to (3).

23 Amendment of s 30 (Who may apply for review of decisions)

Section 30—

insert—

[s 24]

‘(3) In this section—

objection includes an objection made by the Minister under section 119A.’.

24 Amendment of ss 30, 31, 33 and 34

Sections 30(1), 31(2), 33 and 34, after ‘chief executive’—

insert—

‘or the commission’.

25 Amendment of s 32 (Notification of review to interested person)

(1) Section 32(3)—

insert—

‘(ba) if the review relates to a decision of the commission—the commission;’.

(2) Section 32(3)(a) to (c)—

renumber as section 32(3)(a) to (d).

(3) Section 32—

insert—

‘(4) In this section—

objection includes an objection made by the Minister under section 119A.’.

26 Insertion of new s 58A

Part 4, division 1—

insert—

‘58A Licences subject to conditions imposed under regulation

‘(1) A licence granted and held under this Act is subject to the conditions prescribed under a regulation.

-
- ‘(2) To remove any doubt, it is declared that any condition that may be imposed on a licence by the chief executive or the commission may be prescribed under a regulation.
 - ‘(3) If a condition is prescribed under a regulation for all licences, the condition applies to all licenses, whether issued before or after the commencement of the regulation.
 - ‘(4) If a condition is prescribed under a regulation for a particular class of licence, the condition applies to all licences of that class, whether issued before or after the commencement of the regulation.
 - ‘(5) Subsections (3) and (4) apply subject to a contrary intention stated in the regulation.’.

27 Amendment of s 86 (Hours to which application may relate etc.)

- (1) After section 86(2)—
insert—
- ‘(2A) An application may be made for an extended trading hours approval for a commercial hotel licence, community club licence or commercial special facility licence, for the sale of take-away liquor, that, if granted, would extend trading hours on a regular basis to include trading—
 - (a) between 9a.m. and 10a.m.; or
 - (b) between 10p.m. and midnight.’.
- (2) Section 86(3), from ‘subsection’ to ‘executive’—
omit, insert—
‘subsection (2) or (2A) must satisfy the commission’.
- (3) Section 86(5)(a), ‘chief executive’—
omit, insert—
‘commission’.
- (4) Section 86—
insert—

[s 28]

- ‘(7) For subsections (3) and (5)(a), the commission may be satisfied that there is a demonstrated community need for the application to be granted, only if the applicant demonstrates to the commission—
- (a) a level of demand for liquor within the community that justifies the extended trading hours sought in the application; and
 - (b) the reasons for the level of demand mentioned in paragraph (a), including, for example—
 - (i) that the premises to which the licence relates are situated in an area that is popular with tourists or for dining; or
 - (ii) that there has been a significant increase in population in the area in which the premises to which the licence relates are situated.
- ‘(8) Subsection (7) does not limit the matters the commission may consider in deciding whether there is a demonstrated community need for the application to be granted.’.

28 Amendment of s 87 (Restriction on grant of extended trading hours approval)

Section 87, ‘chief executive’—

omit, insert—

‘commission’.

29 Amendment of s 89 (Definitions for div 8)

Section 89, definition *moratorium period*, paragraph (a), ‘15 September 2010’—

omit, insert—

‘31 December 2013’.

30 Amendment of s 94 (Protection from liability)

Section 94—

insert—

‘(4) In this section—

chief executive includes the commission.’.

31 Amendment of s 95 (Minister may extend moratorium period)

Section 95, from ‘this Act’s’—

omit, insert—

‘the main purpose of this Act mentioned in section 3(a).’.

32 Amendment of s 97 (When all or part of licensed premises must be classified as high risk)

Section 97(1)(b), from ‘this Act’s’—

omit, insert—

‘the main purpose of this Act mentioned in section 3(a).’.

33 Amendment of s 107C (Chief executive may impose conditions on licences and permits)

Section 107C(1)(c)—

omit, insert—

‘(c) to give effect to the main purpose of this Act mentioned in section 3(a); or’.

34 Amendment of s 116 (When community impact statement to be given to chief executive)

(1) Section 116(1)(a) and (2)(a), ‘community club licence or’—

omit.

(2) Section 116(3), from ‘the impact’ to ‘is granted’—

[s 34]

omit, insert—

‘granting the application may be inconsistent with the main purpose of this Act mentioned in section 3(a)’.

(3) After section 116(3)—

insert—

‘(3A) However, the chief executive need not require the applicant to give the chief executive a community impact statement in relation to the application if the chief executive is satisfied a community impact statement is not necessary—

- (a) because the application does not involve a significant change to the licensed premises or the nature or extent of the business carried on from the licensed premises; or
- (b) because of the remote location of the premises; or
- (c) because the purpose of the community impact statement has been, or can be, achieved by other means; or
- (d) because of other special circumstances.’.

(4) Section 116(5)—

omit, insert—

‘(5) The purpose of a community impact statement is to help the chief executive assess the impact on the community concerned if the application were granted, having regard to the main purpose of this Act mentioned in section 3(a).

‘(5A) However, if, under section 142AO, the application is to be decided by the commission, the purpose of a community impact statement is—

- (a) to help the chief executive, for making a recommendation to the commission under section 142AP, assess the impact on the community concerned if the application were granted, having regard to the main purpose of this Act mentioned in section 3(a); and
- (b) to help the commission, for making a decision about the application, assess the impact on the community concerned if the application were granted, having regard

to the main purpose of this Act mentioned in section 3(a).’.

- (5) Section 116(1) to (7)—
renumber as section 116(1) to (9).

35 Amendment of s 118 (Advertisement of applications)

Section 118(1)(b)—

omit, insert—

‘(b) an approval of a detached bottle shop;’.

36 Amendment of s 119 (Objection to grant of applications)

- (1) Section 119, heading—

omit, insert—

‘119 Objection by member of public to grant of applications’.

- (2) Section 119(3) and (4)—

omit, insert—

- ‘(3) The grounds on which an objection about an application, other than an application for an adult entertainment permit, may be made are that, if the application were granted, 1 or more of the following may happen—
- (a) undue offence, annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality concerned, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school;
 - (b) harm from alcohol abuse and misuse and associated violence;
 - (c) an adverse effect on the health or safety of members of the public;
 - (d) an adverse effect on the amenity of the community.

[s 37]

- ‘(4) The grounds on which an objection about an application for an adult entertainment permit may be made are that, if the application were granted, 1 or more of the following may happen—
- (a) undue annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality concerned, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital, school, or other facility or place regularly frequented by children for cultural or recreational activities;
 - (b) harm from alcohol abuse and misuse and associated violence;
 - (c) an adverse effect on the health or safety of members of the public;
 - (d) an adverse effect on the amenity of the community.’.

37 Insertion of new s 119A

After section 119—

insert—

‘119A Objection by Minister to grant of applications having significant community impact

- ‘(1) This section applies if—
- (a) notice of an application for either of the following is advertised under section 118—
 - (i) a licence or variation of a licence;
 - (ii) an extended trading hours approval or variation of an extended trading hours approval; and
 - (b) the commission is required, under section 142AO, to make the decision whether to grant the application.
- ‘(2) The Minister may object to the grant of the application, by writing filed with the chief executive on or before the last day for filing of objections as stated in the notice.

- ‘(3) The grounds on which an objection about an application may be made are that, if the application were granted, 1 or more of the following may happen—
- (a) undue offence, annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality concerned, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school;
 - (b) harm from alcohol abuse and misuse and associated violence;
 - (c) an adverse effect on the health or safety of members of the public;
 - (d) an adverse effect on the amenity of the community.’.

38 Amendment of s 121 (Matters the chief executive must have regard to)

- (1) Section 121(a)(ii)(A)—

omit, insert—

‘(A) the main purpose of this Act mentioned in section 3(a); or’.

- (2) Section 121—

insert—

‘(h) any relevant conditions imposed on a development approval, given by a local government under the *Sustainable Planning Act 2009*, that relates to premises the subject of the application.’.

- (3) Section 121—

insert—

- ‘(2) In this section—

objection includes an objection made by the Minister under section 119A.’.

[s 39]

39 Amendment of s 122 (Procedure on receipt of objections)

Section 122—

insert—

‘(3) In this section—

objection includes an objection made by the Minister under section 119A.’.

40 Amendment of s 125 (Temporary authority)

Section 125(5)(b)—

omit, insert—

‘(b) to give effect to the main purpose of this Act mentioned in section 3(a); or’.

41 Amendment of s 131A (Decision by chief executive on application to continue trading in certain circumstances)

Section 131A(3)(b)—

omit, insert—

‘(b) to give effect to the main purpose of this Act mentioned in section 3(a); or’.

42 Amendment of s 137 (Procedure for taking disciplinary action in relation to licence)

Section 137(1), after ‘chief executive’, first mention—

insert—

‘, or the commission under section 142AO.’.

43 Amendment of s 137A (Decision about disciplinary action)

(1) Section 137A(1), after ‘chief executive’, first mention—

insert—

-
- ‘, or the commission under section 142AO,’.
- (2) Section 137A(1), after ‘chief executive’, second mention—
insert—
‘or the commission’.
- (3) Section 137A(2), after ‘chief executive’, first mention—
insert—
‘, or the commission under section 142AO,’.
- (4) Section 137A(2), ‘making the decision’—
omit, insert—
‘the decision is made’.
- (5) Section 137A(2)(a) and (c), after ‘chief executive’—
insert—
‘or the commission’.
- (6) Section 137A(4), after ‘chief executive’, first mention—
insert—
‘, or the commission under section 142AO,’.
- (7) Section 137A(4), after ‘chief executive’, second mention—
insert—
‘or the commission’.

44 Amendment of s 137B (Notice to be given about chief executive’s decision)

- (1) Section 137B, heading—
omit, insert—

‘137B Notice to be given about decision of chief executive or commission’.

- (2) Section 137B(1), after ‘chief executive’, first mention—
insert—

[s 45]

‘or the commission’.

(3) Section 137B(2)—

omit, insert—

‘(2) However, subsection (1) does not apply to a decision made under section 137A(1) if the chief executive or the commission decides to take disciplinary action other than the proposed action or part of the proposed action and the chief executive gives the licensee and each interested person a notice under section 137A(2).’.

(4) Section 137B(3), after ‘chief executive’—

insert—

‘or the commission’.

45 Amendment of s 137D (Amount payable as a debt due to the State)

(1) Section 137D(1), after ‘chief executive’—

insert—

‘or the commission’.

(2) Section 137D(2), ‘chief executive’s’—

omit.

46 Insertion of new pt 5, div 7

Part 5—

insert—

‘Division 7 Decisions of significant community impact to be made by commission

‘142AM Definition for div 7

‘In this division—

decision of significant community impact see section 142AO(1).

‘142AN Purpose of this division

‘The purpose of this division is to give the commission responsibility for making decisions of significant community impact.

‘142AO Decisions to be made by commission

- ‘(1) Despite anything else in this Act, each of the following decisions (each a *decision of significant community impact*) must be made by the commission and not the chief executive—
- (a) a decision whether to grant a commercial hotel licence;
 - (b) a decision whether to grant a subsidiary on-premises licence if the principal activity of the business to be conducted under the licence is the provision of entertainment on the licensed premises;
 - (c) a decision whether to grant a community club licence;
 - (d) a decision whether to grant or vary an extended trading hours approval;
 - (e) a decision, under section 107C, whether to impose a condition on—
 - (i) a commercial hotel licence; or
 - (ii) a subsidiary on-premises licence if the principal activity of the business to be conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence;
 - (f) a decision, under section 111, whether to vary—
 - (i) a commercial hotel licence; or

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- (ii) a subsidiary on-premises licence if the principal activity of the business conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence;
- (g) a decision, under section 123, whether to issue a provisional licence in relation to an application for—
 - (i) a commercial hotel licence; or
 - (ii) a subsidiary on-premises licence if the principal activity of the business to be conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence;
- (h) a decision, under section 123A, whether to grant provisionally an application for any of the following licences, and whether to grant a staged development approval under section 123A(2) in relation to the application—
 - (i) a commercial hotel licence;
 - (ii) a subsidiary on-premises licence if the principal activity of the business to be conducted under the licence is the provision of entertainment on the licensed premises;
 - (iii) a community club licence;
- (i) a decision whether to cancel—
 - (i) a commercial hotel licence; or
 - (ii) a subsidiary on-premises licence if the principal activity of the business conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence;
- (j) a decision whether to suspend, other than under section 137C—

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- (i) a commercial hotel licence; or
 - (ii) a subsidiary on-premises licence if the principal activity of the business conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence;
- (k) a decision whether, as disciplinary action, to vary—
- (i) a commercial hotel licence; or
 - (ii) a subsidiary on-premises licence if the principal activity of the business conducted under the licence is the provision of entertainment on the licensed premises; or
 - (iii) a community club licence.
- ‘(2) Subsection (1) does not apply to a licence for premises in a restricted area.
- ‘(3) In making a decision of significant community impact, the commission must have regard to a recommendation made by the chief executive, under section 142AP, about the decision.
- ‘(4) To remove any doubt, it is declared that the commission must make a decision mentioned in subsection (1)(e), (f), (i), (j) or (k) even if the licence in relation to which the commission must make the decision was originally granted by the chief executive.

‘142AP Recommendation by chief executive in relation to decision to be made by commission

- ‘(1) The chief executive must—
- (a) consider a decision required, under section 142AO, to be made by the commission; and
 - (b) make a recommendation to the commission about the decision.
- ‘(2) In considering the matter, the chief executive—

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- (a) must conduct investigations the chief executive considers are necessary and reasonable to help the chief executive make a recommendation; and
 - (b) may, by written notice given to the holder of, or the applicant for, the licence to which the decision relates, require the holder or applicant, within the reasonable time stated in the notice, to give the chief executive further information or a document that is necessary and reasonable to help the chief executive make a recommendation.
- ‘(3) In making a recommendation, the chief executive must have regard to—
- (a) if the decision relates to an application—any supporting material for the application; and
 - (b) any relevant guideline issued by the commission under section 142AR; and
 - (c) any other information the chief executive considers relevant.
- ‘(4) The chief executive must make a recommendation that the chief executive reasonably believes gives effect to the main purpose of this Act mentioned in section 3(a).
- ‘(5) A recommendation to make a decision may be subject to the reasonable conditions the chief executive considers appropriate.

‘142AQ Functions, limitations and protections of commission

- ‘(1) For the purpose of making a decision of significant community impact—
- (a) the commission has the same functions and powers that the chief executive would have had, under this Act, if section 142AO had not been enacted and the chief executive was required under this Act to make the decision; and

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- (b) the commission is subject to the same restrictions and limitations to which the chief executive would have been subject, under this Act, if section 142AO had not been enacted and the chief executive was required under this Act to make the decision; and
 - (c) the commission has the same protections that the chief executive would have had, under this Act, if section 142AO had not been enacted and the chief executive was required under this Act to make the decision.
- ‘(2) However, the commission does not have the following administrative functions of the chief executive—
- (a) notifying an applicant under section 31(1);
 - (b) giving notice under section 32(1), 79(1)(b)(ii), 112(1), 126(3), 137, 137A(2) or 137B(1);
 - (c) endorsing an approval on a licence under section 85(2);
 - (d) endorsing a licence under section 126(1).

‘142AR Commission may issue guidelines

- ‘(1) The commission may issue guidelines to inform persons about the attitude the commission is likely to adopt on a particular matter.
- ‘(2) A guideline may be replaced or amended by a later guideline issued under this section.
- ‘(3) The chief executive must—
 - (a) keep copies of the guidelines available for inspection, free of charge, by members of the public at—
 - (i) the department’s head office; and
 - (ii) other places the chief executive considers appropriate; and
 - (b) publish the guidelines on the department’s website on the internet.

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- ‘(4) Also, the chief executive must, if asked by a person, give the person a copy of a guideline, or an extract from a guideline, free of charge.

‘142AS Delegation

- ‘(1) The commission may delegate a function or power of the commission under this Act to the chief executive.
- ‘(2) The chief executive may subdelegate a function or power delegated to the chief executive under subsection (1) to an appropriately qualified public service employee.
- ‘(3) In this section—
appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

for a public service employee, the employee’s position in a department’.

47 Insertion of new pts 6B and 6C

After part 6A—

insert—

‘Part 6B Drink safe precincts

‘173O Purpose of pt 6B

‘The purpose of this part is to provide for the prescribing of areas (each a *drink safe precinct*) for the purpose of—

- (a) minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and
- (b) minimising alcohol-related disturbances, or public disorder, in a locality.

‘173P Drink safe precinct may be prescribed under regulation

- ‘(1) A regulation may prescribe an area to be a drink safe precinct.
- ‘(2) Without limiting subsection (1), any or all of the following may be prescribed to be a drink safe precinct—
 - (a) a single licensed premises;
 - (b) multiple licensed premises;
 - (c) an area in the vicinity of licensed premises or multiple licensed premises.
- ‘(3) In recommending that the Governor in Council make the regulation, the Minister must be satisfied the declaration is necessary to achieve the purpose of this part.

‘Part 6C Civil banning orders

‘Division 1 Preliminary

‘173Q Definitions for pt 6C

‘In this part—

authorised person means—

- (a) the chief executive; or
- (b) a police officer.

civil banning order see section 173S(1).

drink safe precinct see section 173O.

interim civil banning order see section 173Y(2).

respondent see section 173S(1).

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‘173R Purpose of pt 6C

‘The purpose of this part is to provide for the making of civil banning orders to minimise—

- (a) harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and
- (b) alcohol-related disturbances, or public disorder, in drink safe precincts.

‘Division 2 Orders

‘173S What is a *civil banning order*

‘(1) A *civil banning order* is an order made in relation to a person who is an adult (the *respondent*) that prohibits the respondent, until a stated date, from doing, or attempting to do, any of the following—

- (a) entering or remaining in stated licensed premises, or a stated class of licensed premises, located within a drink safe precinct;
- (b) entering or remaining in, during stated hours, a stated area that is—
 - (i) designated by its distance from, or location in relation to, the stated licensed premises or stated class of licensed premises mentioned in an order made under paragraph (a); and
 - (ii) located within a drink safe precinct;

Examples of orders for paragraph (b)—

- an order that prohibits a person from entering or remaining in, between the hours of 10p.m. and 6a.m., an area that is within 10m of stated licensed premises mentioned in an order made under paragraph (a)
- an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., a stated street, or an area abutting several stated streets, that is located near stated licensed premises mentioned in an order made under paragraph (a)

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- (c) entering or remaining in, during stated hours, a drink safe precinct;
 - (d) attending or remaining at a stated event, to be held in a public place located within a drink safe precinct, at which liquor will be sold for consumption.
- ‘(2) The stated date in the civil banning order must be a date no later than 12 months after—
- (a) if an interim civil banning order is made—the day on which the interim civil banning order is made; or
 - (b) otherwise—the day on which the civil banning order is made.
- ‘(3) A civil banning order takes effect—
- (a) if the respondent or a legal or other representative of the respondent is present at the hearing of the application—when it is made; or
 - (b) otherwise—when the order is served on the respondent.

‘173T Who may apply for a civil banning order

‘An authorised person may apply to a Magistrates Court for a civil banning order to be made in relation to a respondent.

‘173U Application for a civil banning order

- ‘(1) An application for a civil banning order in relation to a respondent must state the following—
- (a) the name of the respondent;
 - (b) the details of the order sought;
 - (c) the information necessary to satisfy the court of the matters mentioned in section 173X(1);
 - (d) the details of any previous application for a civil banning order for the respondent and the outcome of the application;

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- (e) that affidavits in response to the application may be filed under section 173V;
 - (f) that the application may, under section 173W(2), be decided in the respondent's absence.
- ‘(2) The application must be accompanied by any affidavit the authorised person intends to rely on at the hearing of the application.
- ‘(3) The application, with any accompanying affidavit, must—
- (a) be filed in the court; and
 - (b) after being filed, be served on the respondent within 10 business days after the filing.

‘173V Response by respondent

- ‘(1) The respondent may file affidavits to be relied on by the respondent for the hearing of the application.
- ‘(2) The respondent must file the affidavits within 28 business days after the day the application is filed.

‘173W Hearing of application

- ‘(1) If a respondent appears before the court that is to hear and decide an application for a civil banning order, the court may—
 - (a) hear and decide the application; or
 - (b) adjourn the application, whether or not it makes an interim civil banning order; or
 - (c) dismiss the application.
- ‘(2) If a respondent fails to appear before the court that is to hear and decide the application for a civil banning order and the court is satisfied that a copy of the application has been served on the respondent, the court may—
 - (a) proceed to hear and decide the application in the absence of the respondent; or

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- (b) adjourn the application, whether or not it makes an interim civil banning order; or
 - (c) dismiss the application.

'173X Making a civil banning order

- '(1) The court may make a civil banning order for a respondent if satisfied that—
 - (a) the respondent committed an act of violence, against another person or property, of such a nature that the act of violence would cause a person in the vicinity to reasonably fear bodily harm to any person or damage to property; and
 - (b) the act of violence was committed within 12 months before the day the application was filed; and
 - (c) the act of violence was committed in licensed premises, or in an area in the vicinity of licensed premises, located within a drink safe precinct; and
 - (d) the respondent did not have a reasonable excuse for committing the act of violence; and
 - (e) unless the order is made, the respondent would pose an unacceptable risk to—
 - (i) the good order of licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct; or
 - (ii) the safety and welfare of persons attending licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct.
- '(2) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including, for example, the following—
 - (a) whether the respondent is, or has been, subject to another civil banning order;

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- (b) whether the respondent is, or has been, subject to—
 - (i) a special condition mentioned in the *Bail Act 1980*, section 11(3); or
 - (ii) a banning order imposed under the *Penalties and Sentences Act 1992*, section 43J;
 - (c) whether the respondent, or any other person, was charged with an offence arising out of the act of violence mentioned in subsection (1)(a) and the result of any proceeding in relation to the charge;
 - (d) the respondent's criminal history;
 - (e) the respondent's personal circumstances and the likely effect of the order on those circumstances;
 - (f) anything else the court considers relevant.
- ‘(3) The court may impose any conditions it considers necessary on a civil banning order.
- ‘(4) A civil banning order does not stop the respondent from—
- (a) entering or remaining in any of the following—
 - (i) the respondent's residence;
 - (ii) the respondent's place of employment;
 - (iii) a place at which the respondent is receiving formal education;
 - (iv) a mode of transport required to be used by the respondent;
 - (v) any other place that the court considers necessary in order to prevent undue hardship to the respondent or a member of the respondent's family; or
 - (b) entering any place that it is reasonably necessary for the respondent to enter for the purpose of entering or remaining in a place or mode of transport mentioned in paragraph (a).

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- ‘(5) If a place mentioned in subsection (4) is located within the drink safe precinct to which the civil banning order applies, the civil banning order must—
- (a) describe the place in sufficient detail to identify the place; and
 - (b) state that the respondent is not stopped from entering or remaining in the place.

Example for subsection (5)—

If a respondent’s residence is located within the drink safe precinct, the civil banning order must state the address of the residence and state that the respondent is not stopped from entering or remaining in the residence.

- ‘(6) If a mode of transport mentioned in subsection (4) operates within the drink safe precinct to which the civil banning order applies, the civil banning order must—
- (a) describe the mode of transport in sufficient detail to identify the mode of transport; and
 - (b) state that the respondent is not stopped from entering or remaining in the mode of transport.

Example for subsection (6)—

If a bus route required to be used by the respondent operates within the drink safe precinct, the civil banning order must describe the bus route and state that the respondent is not stopped from entering or remaining in a bus on that route.

- ‘(7) The respondent bears the onus of proving the following—
- (a) for subsection (4)(a)(i)—that a place is the respondent’s residence;
 - (b) for subsection (4)(a)(ii)—that a place is the respondent’s place of employment;
 - (c) for subsection (4)(a)(iii)—that the respondent is receiving formal education at a place;
 - (d) for subsection (4)(a)(iv)—that a mode of transport is required to be used by the respondent;

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- (e) for subsection (4)(a)(v)—that undue hardship would be caused to the respondent or a member of the respondent’s family if the respondent was prevented from entering or remaining in a place.
- ‘(8) The court may make a civil banning order whether or not the respondent has been charged with, convicted of, acquitted of, or sentenced for, an offence arising out of the act of violence mentioned in subsection (1)(a).
- ‘(9) In this section—
act of violence includes an attempted or threatened act of violence.

‘173Y Interim civil banning order

- ‘(1) This section applies if an authorised person has made an application, under section 173U, for a civil banning order for a respondent.
- ‘(2) The authorised person may apply to a Magistrates Court for an order (an *interim civil banning order*) for the respondent to be in force until—
 - (a) the court finally decides the application for the civil banning order; or
 - (b) the application for the interim civil banning order otherwise ends.
- ‘(3) The application for the interim civil banning order must state—
 - (a) the information necessary to satisfy the court of the matters mentioned in subsection (7); and
 - (b) that affidavits in response to the application may be filed under subsection (5); and
 - (c) that the application may, under subsection (8), be decided in the respondent’s absence.
- ‘(4) The application, with any accompanying affidavit, must—
 - (a) be filed in the court; and

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- (b) after being filed, be served on the respondent within 5 business days after the filing.
- ‘(5) The respondent may file affidavits to be relied on by the respondent for the hearing of the application.
- ‘(6) The respondent must file the affidavits within 15 business days after the day the application is filed.
- ‘(7) The court may make the interim civil banning order if the court is satisfied—
- (a) the application has been served on the respondent; and
- (b) there are reasonable grounds for believing there is sufficient basis to make a civil banning order.
- ‘(8) The interim civil banning order may be made whether or not the respondent appears before the court or makes submissions.
- ‘(9) An interim civil banning order may prohibit the respondent from doing, or attempting to do, anything that a person may be prohibited from doing by a civil banning order.
- ‘(10) An interim civil banning order takes effect—
- (a) if the respondent or a legal or other representative of the respondent is present at the hearing of the application—when it is made; or
- (b) otherwise—when the order is served on the respondent.

‘173Z Amending or revoking civil banning order

- ‘(1) The following persons may apply to a Magistrates Court to amend or revoke a civil banning order—
- (a) an authorised person;
- (b) the respondent.
- ‘(2) However, the respondent may not, without the leave of the court, apply to amend or revoke a civil banning order until at least 6 months after the order is made.
- ‘(3) The applicant must give a copy of the application to—

[s 47]

- (a) if the applicant is the respondent—the authorised person; or
 - (b) if the applicant is an authorised person—the respondent.
- ‘(4) The applicant must give the copy within 14 business days after the application is filed.
- ‘(5) The authorised person and respondent are each entitled to be heard at the hearing of the application.
- ‘(6) The court may amend or revoke a civil banning order only if satisfied there has been a material change in the circumstances of the respondent that justifies the amendment or revocation.
- ‘(7) In considering whether to make an order to amend or revoke a civil banning order, the court must have regard to—
- (a) whether the respondent, or any other person, was charged with an offence arising out of the act of violence on which the civil banning order was based; and
 - (b) the result of any proceeding in relation to the charge.

‘173ZA Court may make civil banning order by consent

- ‘(1) The Magistrates Court may make a civil banning order in a form agreed to by an authorised person and the respondent.
- ‘(2) The order may include only matters that may be dealt with under this part.

‘173ZB Orders must be explained

- ‘(1) Subsection (2) applies if a respondent appears before a court hearing an application for a civil banning order or an interim civil banning order for the respondent.
- ‘(2) Before making the order, the court must explain, or cause to be explained, to the respondent—
 - (a) the purpose and effect of the order; and
 - (b) the consequences of contravening the order; and

- (c) for a civil banning order—that the order may be amended or revoked on the application of the respondent or an authorised person.
- ‘(3) Subsection (4) applies if a respondent did not appear before a court when the court made a civil banning order or an interim civil banning order for the respondent.
- ‘(4) Before serving the order on the respondent, the person serving the order must explain, or cause to be explained, to the respondent—
 - (a) the purpose and effect of the order; and
 - (b) the consequences of contravening the order; and
 - (c) for a civil banning order—that the order may be amended or revoked on the application of the respondent or an authorised person.
- ‘(5) The explanation under subsection (2) or (4) must be made in language or in a way likely to be readily understood by the respondent.

‘173ZC No costs to be awarded

‘The Magistrates Court must not award costs on proceedings under this division unless the court dismisses the application as frivolous or vexatious or another abuse of process.

‘173ZD No filing fee is payable

‘A fee is not payable for making an application, or filing another document, under this part.

‘173ZE Standard of proof

‘A question of fact in proceedings under this part, other than proceedings for an offence, is to be decided on the balance of probabilities.

[s 47]

‘173ZF General application of rules of court

‘The *Uniform Civil Procedure Rules 1999* apply in relation to applications made to the court under this part to the extent the rules are consistent with this part.

‘173ZG Interaction with criminal proceedings

- ‘(1) An application under this part may be made, and a court may, as authorised by this Act, dispose of the application even if a person concerned in the application has been charged with an offence arising out of the act of violence on which the application is based.
- ‘(2) Subsection (4) applies if the person against whom—
- (a) a civil banning order has been made; or
 - (b) a court has refused to make a civil banning order; or
 - (c) proceedings are current in which a civil banning order is sought;
- is charged with an offence mentioned in subsection (1).
- ‘(3) Also, subsection (4) applies if the person is charged with an offence mentioned in subsection (1) and the court has done either of the following relating to a civil banning order naming the person as the respondent—
- (a) revoked, or refused to revoke, the civil banning order;
 - (b) amended, or refused to amend, the civil banning order, including the conditions imposed on the order.
- ‘(4) A reference to—
- (a) making, or refusing to make, the order, or a revocation or amendment; or
 - (b) the existence of current proceedings mentioned in subsection (2)(c); or
 - (c) the fact that evidence of a particular nature or content was given in—

-
- (i) the proceedings in which the order, revocation or amendment was made or refused; or
 - (ii) the current proceedings;

is inadmissible in the trial of the person for an offence arising out of the act of violence on which the application for the order, revocation, or amendment, or relevant to the current proceedings, is based.

- ‘(5) To remove any doubt, it is declared that, subject to this section, an application, proceeding or order under this part in relation to the conduct of the person does not affect any proceeding against the person for an offence arising out of the same conduct.
- ‘(6) The person may be punished for the offence mentioned in subsection (5) despite any order made against the person under this part.
- ‘(7) In this section—
civil banning order includes an interim civil banning order.

‘173ZH Contravention of civil banning order or interim civil banning order

‘A person must not, without reasonable excuse, contravene—

- (a) a civil banning order; or
- (b) an interim civil banning order.

Maximum penalty—40 penalty units or 6 months imprisonment.

‘Division 3 Appeals

‘173ZI Appeals

‘An authorised person or a respondent in relation to whom a decision of the Magistrates Court under this part has been made may appeal against the decision to the District Court.

[s 47]

‘173ZJ Time for appeal

- ‘(1) An appeal must be started within 1 month after the decision is made (the *appeal period*).
- ‘(2) On application, the District Court may extend the appeal period.

‘173ZK Starting appeal

- ‘(1) A person starts an appeal by filing a notice of appeal with the registrar.
- ‘(2) The notice must—
 - (a) be signed by the person or the person’s lawyer; and
 - (b) state, briefly and precisely, the grounds of the appeal.
- ‘(3) If the notice is not filed in the appeal period, the person must also file with the registrar a notice of application for extension of time for filing the notice.

‘173ZL Registrar to give respondent copies of particular documents

‘The registrar must give the respondent to an appeal copies of any of the following documents filed with the registrar for the appeal—

- (a) the notice of appeal;
- (b) a notice of application for extension of time for filing a notice mentioned in paragraph (a).

‘173ZM Stay of operation of decision

‘An appeal does not stay the operation of the decision.

‘173ZN District Court’s powers on appeal

- ‘(1) An appeal is by way of rehearing.
- ‘(2) The District Court—

-
- (a) has all the powers and duties of the court that made the decision appealed from; and
 - (b) may draw inferences of fact, not inconsistent with the findings of the court; and
 - (c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit or in another way; and
 - (d) may order that the matter be remitted for rehearing to the court in which the decision appealed from was made.
- ‘(3) Subsection (2)(a) does not limit the powers that the District Court has in its civil jurisdiction.
- ‘(4) The decision of the District Court upon an appeal is final and conclusive.

‘173ZO No costs on appeal

‘The District Court must not award costs on an appeal under this division unless the court dismisses the appeal as frivolous or vexatious or another abuse of process.

‘Division 4 Miscellaneous

‘173ZP Service of documents

- ‘(1) This section applies if a provision of this part requires a respondent to be served with a document.
- ‘(2) The document must be served personally on the respondent.
- ‘(3) However, if, despite reasonable attempts being made, a document is unable to be personally served on a respondent, an authorised person may apply to the Magistrates Court to authorise substituted service under subsection (4).
- ‘(4) If it appears to the court that it is not reasonably practicable to serve the document personally on the respondent, the court may authorise another way of serving it (*substituted service*).

[s 47]

Example of substituted service—

by personal service of the document on a relative, guardian or other person with whom the respondent is known to associate

- ‘(5) When serving a document that requires the appearance of a respondent in a court, the person serving the document must explain the contents of the document to the respondent in language likely to be understood by the respondent, having regard, for example, to the respondent’s age and cultural, educational and social background.

‘173ZQ Commissioner must provide information relevant to applications

- ‘(1) The chief executive may ask the commissioner to give the chief executive the information the chief executive requires to make, or to consider making, an application for a civil banning order in relation to a person.
- ‘(2) Without limiting subsection (1), the information may include the following—
- (a) the criminal history of the person;
 - (b) police statements in relation to any act of violence committed by the person;
 - (c) statements of witnesses or victims of any act of violence committed by the person;
 - (d) other evidentiary material relating to any act of violence committed by the person.
- ‘(3) Subject to subsection (4), the commissioner must provide the information requested.
- ‘(4) The obligation of the commissioner to comply with the chief executive’s request applies only to information in the possession of the commissioner or to which the commissioner has access.

‘173ZR Chief executive may give copy of order to commissioner

- ‘(1) This section applies if the chief executive, as an authorised person, obtains an order under this part.
- ‘(2) The chief executive may give a copy of the order to the commissioner.

‘173ZS Police officer may give copy of order to chief executive

- ‘(1) This section applies if a police officer, as an authorised person, obtains an order under this part.
- ‘(2) The police officer may give a copy of the order to the chief executive.

‘173ZT Authorised person may give copy of order to licensee

‘An authorised person may give a copy of an order made under this part to—

- (a) the licensee of any licensed premises stated in the order; or
- (b) the licensee of any licensed premises within a class of licensed premises stated in the order; or
- (c) the holder of a licence or permit to sell liquor at an event stated in the order; or
- (d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c).’

48 Insertion of new pt 12, div 11

Part 12—

insert—

[s 48]

‘Division 11 Transitional provisions for Liquor and Other Legislation Amendment Act 2010

‘299 Definitions for div 11

‘In this division—

licence means any of the following but does not include a licence for premises in a restricted area—

- (a) a commercial hotel licence;
- (b) a subsidiary on-premises licence if the principal activity of a business conducted under the licence is the provision of entertainment on the licensed premises;
- (c) a community club licence.

licensee means a person who holds 1 or more of the following licences—

- (a) a commercial hotel licence;
- (b) a subsidiary on-premises licence if the principal activity of a business conducted under the licence is the provision of entertainment on the licensed premises;
- (c) a community club licence.

‘300 Application for licence made before commencement

- ‘(1) This section applies to an application for a licence made but not decided at the commencement of this section.
- ‘(2) The chief executive must decide the application under this Act as in force immediately before the commencement.

‘301 Application for extended trading hours approval made before commencement

- ‘(1) This section applies to an application for an extended trading hours approval made but not decided at the commencement of this section.

- ‘(2) The chief executive must decide the application under this Act as in force immediately before the commencement.

‘302 Application for variation of licence made before commencement

- ‘(1) This section applies to an application, under section 111(1), to vary a licence made but not decided at the commencement of this section.
- ‘(2) The chief executive must decide the application under this Act as in force immediately before the commencement.

‘303 Variation of licence started but not dealt with at commencement

- ‘(1) This section applies if—
- (a) before the commencement of this section, the chief executive, under section 112(1)(a), caused written notice to be given to a licensee because the chief executive seeks to vary the licensee’s licence; and
 - (b) at the commencement, the chief executive has not decided whether to vary the licence.
- ‘(2) The chief executive must decide whether to vary the licence under this Act as in force immediately before the commencement.

‘304 Disciplinary action started but not dealt with at commencement

- ‘(1) This section applies if—
- (a) before the commencement of this section, the chief executive took steps to vary, suspend or cancel, as disciplinary action, a licence; and
 - (b) at the commencement, the chief executive has not decided whether to vary, suspend or cancel, as disciplinary action, the licence.

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- ‘(2) The chief executive must decide whether to vary, suspend or cancel, as disciplinary action, the licence under this Act as in force immediately before the commencement.

‘305 Extended trading hours already authorised

- ‘(1) This section applies if a prescribed licensee, at the commencement of this section, is authorised to sell take-away liquor between 9a.m. and 10a.m or between 10p.m. and midnight (the *authorised hours*).
- ‘(2) The prescribed licensee is taken to have been granted an extending trading hours approval, under section 86, for the authorised hours.
- ‘(3) In this section—
- prescribed licensee* means the holder of—
- (a) a commercial hotel licence; or
 - (b) a community club licence; or
 - (c) a commercial special facility licence.

‘306 Application of civil banning orders

‘Part 6C, as inserted by the *Liquor and Other Legislation Amendment Act 2010*, applies only in relation to an act of violence committed after the commencement of this section.

‘307 Amendment of regulation

‘The amendment of the *Liquor Regulation 2002* by the *Liquor and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

Part 6 Amendment of Liquor Regulation 2002

49 Regulation amended

This part amends the *Liquor Regulation 2002*.

50 Amendment of s 3 (Definitions)

Section 3, ‘schedule 12’—

omit, insert—

‘schedule 15’.

51 Insertion of new pt 1B

After part 1A—

insert—

‘Part 1B Drink safe precincts

‘3B Drink safe precincts—Act, s 173P(1)

‘(1) For the Act, section 173P(1), the following areas are prescribed as drink safe precincts—

- (a) the area shown by the crosshatching on the map of Fortitude Valley in schedule 12;
- (b) the area shown by the crosshatching on the map of Surfers Paradise in schedule 13;
- (c) the area shown by the crosshatching on the map of Townsville CBD in schedule 14.

‘(2) If a road or a section of a road forms part of the boundary of an area shown by crosshatching on a map in schedule 12, 13, or 14, the area prescribed under this section includes premises on both sides of the road or section of the road that forms part of the boundary.

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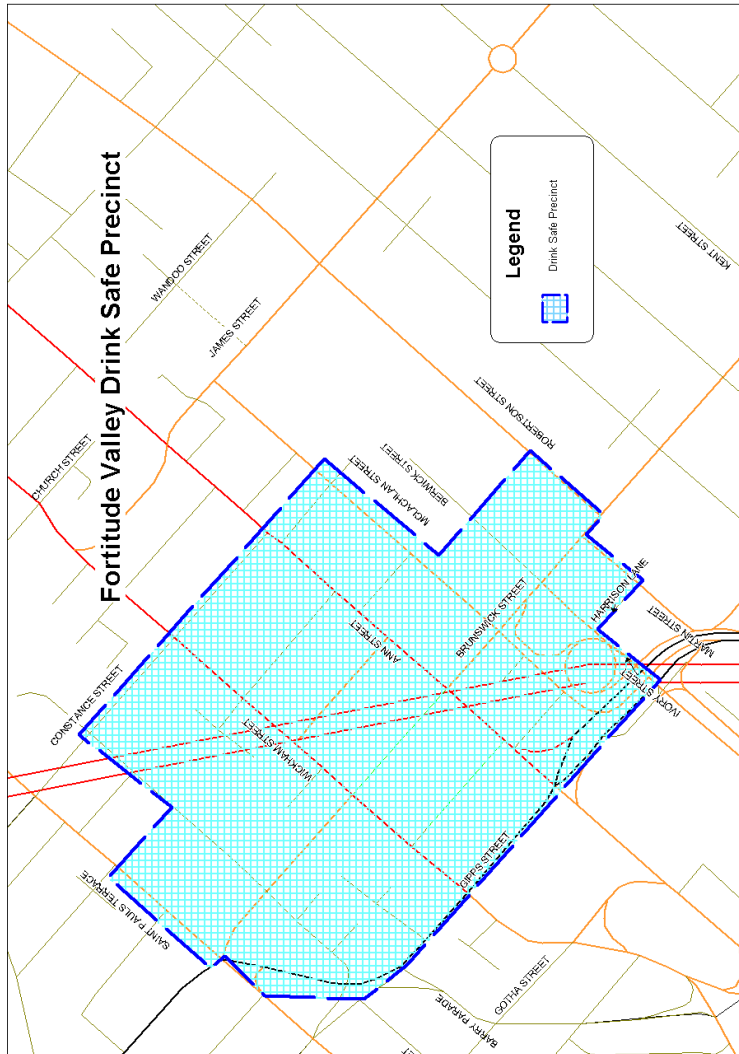
- ‘(3) In this section—
road see the *Land Act 1994*, section 93.’

52 Insertion of new schs 12–14

- (1) Schedule 12—
renumber as schedule 15.
- (2) After schedule 11—
insert—

'Schedule 12 Fortitude Valley

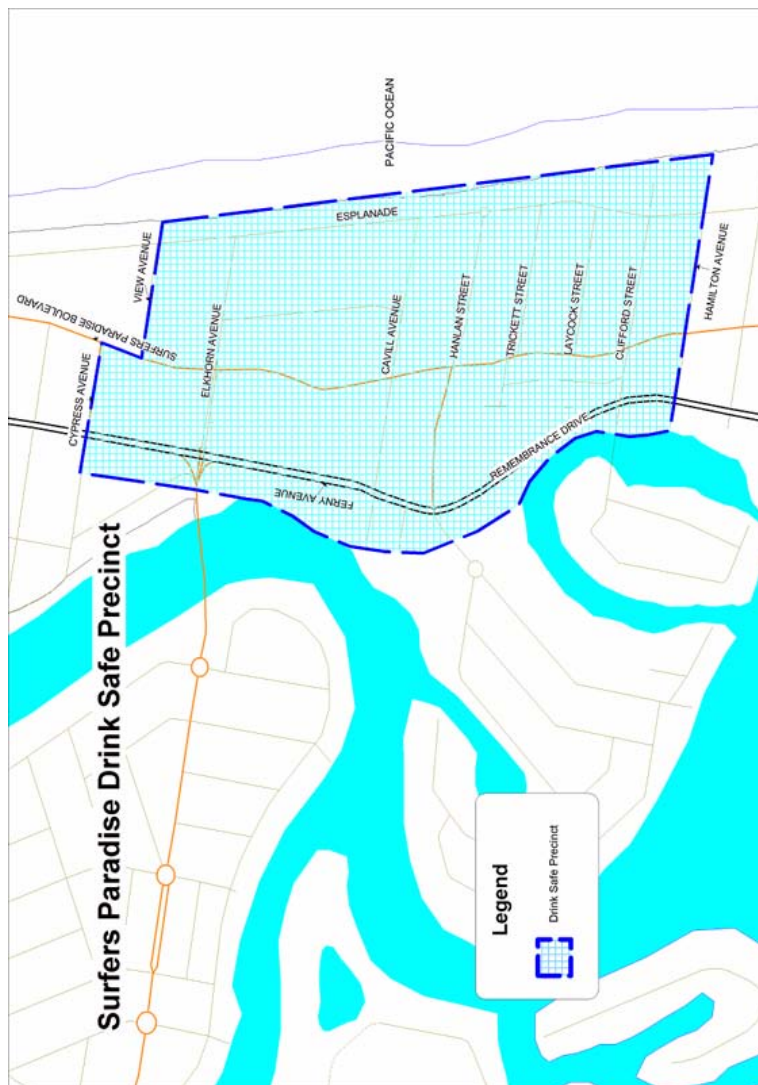
section 3B(1)(a)



[s 52]

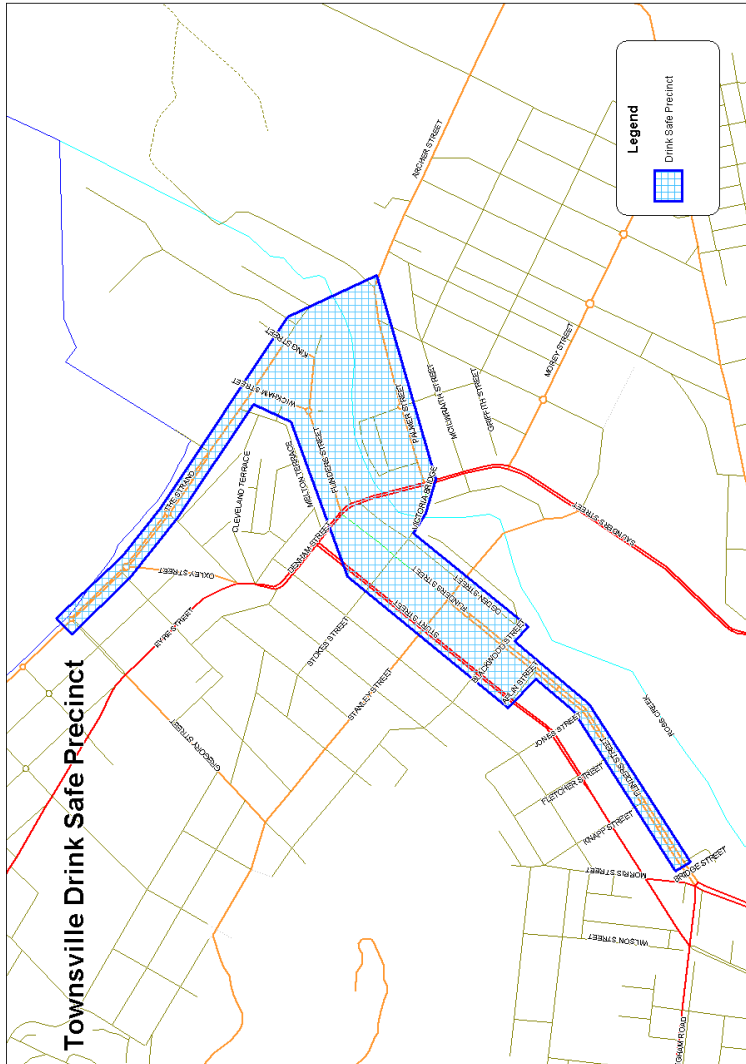
'Schedule 13 Surfers Paradise

section 3B(1)(b)



'Schedule 14 Townsville CBD

section 3B(1)(c)



licensee see the *Liquor Act 1992*, section 4.

public place see the *Liquor Act 1992*, section 11.

‘43H Record of conviction not required

‘A court may make a banning order whether or not it records a conviction.

‘43I What is a *banning order*

‘(1) A *banning order* is an order that prohibits an offender, until a stated date, from doing, or attempting to do, any of the following—

- (a) entering or remaining in stated licensed premises or a stated class of licensed premises;
- (b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, the stated licensed premises or stated class of licensed premises mentioned in an order made under paragraph (a);

Examples of orders for paragraph (b)—

- an order that prohibits a person from entering or remaining in, between the hours of 10p.m. and 6a.m., an area that is within 10m of stated licensed premises mentioned in an order made under paragraph (a)
 - an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., a stated street, or an area abutting several stated streets, that is located near stated licensed premises mentioned in an order made under paragraph (a)
 - an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., the drink safe precinct under the *Liquor Act 1992* in which the stated licensed premises mentioned in an order made under paragraph (a) are located
- (c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.

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- ‘(2) The stated date in the order must be no later than—
- (a) if the offender is sentenced to a term of imprisonment for the offence and the sentence is not suspended—1 year after the day on which the term of imprisonment ends; or
 - (b) if the offender is sentenced to a term of imprisonment for the offence and the sentence is suspended under section 144(1)—1 year after the day on which the operational period of the term of imprisonment ends; or
 - (c) otherwise—1 year after the day on which the order is made.

‘43J Making a banning order

- ‘(1) A court may make a banning order for an offender if—
- (a) the offender has been convicted of an offence that involved the use, threatened use or attempted use of unlawful violence to a person or property; and
 - (b) having regard to the evidence available to the court, the court is satisfied that the offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and
 - (c) the court is satisfied that, unless the order is made, the offender would pose an unacceptable risk to—
 - (i) the good order of licensed premises and areas in the vicinity of licensed premises; or
 - (ii) the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.
- ‘(2) The order may be made in addition to any other order the court may make under this or another Act.
- ‘(3) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including, for example, the following—

-
- (a) whether the offender is, or has been, subject to another banning order;
 - (b) whether the offender is, or has been, subject to—
 - (i) a special condition mentioned in the *Bail Act 1980*, section 11(3); or
 - (ii) a civil banning order imposed under the *Liquor Act 1992*, section 173X;
 - (c) the offender’s criminal history;
 - (d) the offender’s personal circumstances and the likely effect of the order on those circumstances;
 - (e) anything else the court considers relevant.
- ‘(4) The court may impose any conditions it considers necessary on a banning order.
- ‘(5) A banning order does not stop the offender from—
- (a) entering or remaining in any of the following—
 - (i) the offender’s residence;
 - (ii) the offender’s place of employment;
 - (iii) a place at which the offender is receiving formal education;
 - (iv) a mode of transport required to be used by the offender;
 - (v) any other place that the court considers necessary in order to prevent undue hardship to the offender or a member of the offender’s family; or
 - (b) entering any place that it is reasonably necessary for the offender to enter for the purpose of entering or remaining in a place or mode of transport mentioned in paragraph (a).
- ‘(6) If a place mentioned in subsection (5) is located within the area to which the banning order applies, the banning order must—

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- (a) describe the place in sufficient detail to identify the place; and
- (b) state that the offender is not stopped from entering or remaining in the place.

Example for subsection (6)—

If an offender's residence is located within the area to which the banning order applies, the banning order must state the address of the residence and state that the offender is not stopped from entering or remaining in the residence.

'(7) If a mode of transport mentioned in subsection (5) operates within an area to which the banning order applies, the banning order must—

- (a) describe the mode of transport in sufficient detail to identify the mode of transport; and
- (b) state that the offender is not stopped from entering or remaining in the mode of transport.

Example for subsection (7)—

If a bus route required to be used by the offender operates within the area to which the banning order applies, the banning order must describe the bus route and state that the offender is not stopped from entering or remaining in a bus on that route.

'(8) The offender bears the onus of proving the following—

- (a) for subsection (5)(a)(i)—that a place is the offender's residence;
- (b) for subsection (5)(a)(ii)—that a place is the offender's place of employment;
- (c) for subsection (5)(a)(iii)—that the offender is receiving formal education at a place;
- (d) for subsection (5)(a)(iv)—that a mode of transport is required to be used by the offender;
- (e) for subsection (5)(a)(v)—that undue hardship would be caused to the offender or a member of the offender's family if the offender was prevented from entering or remaining in a place.

‘43K Banning order to be explained

- ‘(1) Before making a banning order, the court must explain, or cause to be explained, to the offender—
 - (a) the purpose and effect of the order; and
 - (b) the consequences of contravening the order; and
 - (c) that the order may be amended or revoked on the application of the offender or a prosecutor.
- ‘(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

‘43L Amending or revoking banning order

- ‘(1) The following persons may apply to the court, in the approved form, to amend or revoke a banning order—
 - (a) a prosecutor;
 - (b) the offender.
- ‘(2) However, the offender can not apply until at least 6 months after the order was made.
- ‘(3) The application may be made to a court of equivalent jurisdiction to the court in which the order was made.
- ‘(4) The applicant must give a copy of the application to—
 - (a) if the applicant is the offender—the prosecuting authority; or
 - (b) if the applicant is a prosecutor—the offender.
- ‘(5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.
- ‘(6) The prosecutor and offender are each entitled to be heard at the hearing of the application.
- ‘(7) A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the offender that justifies the amendment or revocation.
- ‘(8) In this section—

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prosecuting authority means—

- (a) if the prosecutor who appeared before the court when the banning order was made was a police officer—the commissioner of the police service or someone authorised to accept the application on the commissioner’s behalf; or
- (b) if the prosecutor who appeared before the court when the banning order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the application on the director’s behalf.

‘43M Banning order to be given to interested persons

- ‘(1) A proper officer of the court that makes, amends or revokes a banning order for an offender must immediately—
 - (a) reduce the order to writing in the approved form; and
 - (b) give a copy of the order to—
 - (i) if the prosecutor who appeared before the court when the banning order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the order on the director’s behalf; and
 - (ii) the offender; and
 - (iii) the chief executive (corrective services); and
 - (c) give a copy of the order to the commissioner of the police service, or someone authorised to accept the order on the commissioner’s behalf, by fax, email or a similar facility.
- ‘(2) Failure to comply with subsection (1) does not invalidate the order.

‘43N Commissioner may give copy of banning order to licensee

- ‘(1) The commissioner may give a copy of a banning order to—
- (a) the licensee of any licensed premises stated in the order; or
 - (b) the licensee of any licensed premises within a class of licensed premises stated in the order; or
 - (c) the holder of a licence or permit to sell liquor at an event stated in the order; or
 - (d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c).

- ‘(2) In this section—

approved manager means a person holding an approval as an approved manager under the *Liquor Act 1992*.

permit see the *Liquor Act 1992*, section 4.

‘43O Contravention of banning order

- ‘(1) A person must not, without reasonable excuse, contravene a banning order.

Maximum penalty—40 penalty units or 1 year’s imprisonment.

- ‘(2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person under subsection (1)—
- (a) if the banning order was made by a Magistrates Court—amend the order; or
 - (b) if the banning order was made by the Supreme or District Court (the *sentencing court*)—order the person to appear before the sentencing court.

- ‘(3) If an order is made under subsection (2)(b), the Magistrates Court must also make either of the following orders—

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- (a) an order committing the person into custody to be brought before the sentencing court;
 - (b) an order granting the person bail on the condition that the person appear before the sentencing court.
- ‘(4) If the Magistrates Court sentenced the person under subsection (1), the sentencing court may amend the order or decide no further action be taken.
- ‘(5) If the Magistrates Court did not sentence the person under subsection (1), the sentencing court may do any of the following—
- (a) sentence the person under subsection (1);
 - (b) in addition to or instead of sentencing the person under subsection (1), amend the order;
 - (c) decide no further action be taken.’.

56 Insertion of new s 220

After section 219—

insert—

‘220 Transitional provision for Liquor and Other Legislation Amendment Act 2010

- ‘(1) Part 3B, as inserted by the *Liquor and Other Legislation Amendment Act 2010*, section 55 applies in relation to an offence only if the offender was convicted for the offence after the commencement of this section.
- ‘(2) For subsection (1), it is irrelevant whether the act or omission constituting the offence happened before or after the commencement.’.

Part 8 Consequential amendments

57 Acts amended in schedule

The schedule amends the Acts it mentions.

Schedule Consequential amendments

section 57

Police Service Administration Act 1990

- 1 Section 10.2B(4), definition *diversion program*, ‘section 11(4)’—**
omit, insert—
‘section 11(9)’.

Public Service Act 2008

- 1 Schedule 2, entry for *Gaming Machine Act 1991*, ‘Queensland Gaming Commission’—**
omit, insert—
‘Queensland Liquor and Gaming Commission’.

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