

COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

Objectives of the Bill

The objectives of the Bill are:

- To provide a framework for the establishment under legislation of community justice groups in Aboriginal and Torres Strait Islander community areas.
- To provide legislative powers for community justice groups to declare dry places within their community areas, as a mechanism for local decision-making to control the possession and consumption of alcohol.
- To consolidate the existing legislative provisions for the Aurukun Alcohol Law Council under the *Local Government (Aboriginal Lands) Act 1978* into the new community justice group framework provided under the amendments to the *Community Services (Aborigines) Act 2002*.
- To provide for a clearly defined process for Aboriginal and Island Councils to make by-laws, including the capacity to quickly adopt model by-laws and to make subordinate by-laws, based on a modified version of the local law process under the *Local Government Act 1993*.

Reasons for the Bill

The Bill is part of the Government's response to the Cape York Justice Study report, which was submitted to Government by former Justice Tony Fitzgerald in November 2001. The Bill is part of a package of reforms to address the prevalence of alcohol abuse and violence in Indigenous communities in Cape York and other parts of Queensland. It complements the *Indigenous Communities Liquor Licences Bill 2002*.

Community justice groups have existed in a number of Aboriginal and Torres Strait Islander communities in Queensland since 1993. The groups are funded under the Government's Local Justice Initiatives Program. They provide a means for members of Indigenous communities to plan and implement effective strategies to address local crime and justice issues. They generally consist of elders or persons with traditional authority or respect in the community. They are leaders of change in their communities and are critical to addressing issues such as endemic alcohol abuse and violence. The Bill will provide a statutory basis for community justice groups along with specific legislative powers to assist the groups to implement strategies to address alcohol abuse and violence. The empowerment of community justice groups in this way implements Justice Fitzgerald's recommendation that the Government empower and work with local communities to take action to address alcohol abuse.

The Aurukun Alcohol Law Council was established in 1995 under Part 6 of the *Local Government (Aboriginal Lands) Act 1978*. The Alcohol Law Council has power to declare dry places and controlled places under that legislation. The Alcohol Law Council and the Aurukun community justice group have been meeting together as one group for some time.

The original legislation for the Aurukun Alcohol Law Council will be repealed, and the Law Council will be re-established as the community justice group under the new provisions in the *Community Services (Aborigines) Act 1984*. This will give the Aurukun Community Justice Group the same legislative basis as the community justice groups in Aboriginal Council areas. This consolidation is necessary to bring the Aurukun situation into line with the new model for community decision-making around alcohol control set out in the Bill and the *Indigenous Communities Liquor Licences Bill 2002*.

The current process under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* for Councils to make by-laws is not well-defined. It also results in significant delays for Councils because it requires that even model by-laws produced by the Government must be approved by the Governor in Council after being adopted by a Council. The local law making process for mainstream local governments under the *Local Government Act 1993* provides a template for an improved process for the adoption of by-laws, model by-laws and subordinate by-laws. The adaptation of this process in the Bill for the purposes of Aboriginal and Island Councils will improve the capacity for Councils to respond quickly to the need for community by-laws dealing with law and order and other priority issues. This also implements a recommendation of the Cape York Justice Study.

Estimated Cost of Government Implementation

Community justice groups are already funded in the majority of mainland Aboriginal and Torres Strait Islander communities under the Government's Local Justice Initiatives Program. The Bill will simply provide a legislative basis for these groups. The Government has allocated additional funding in the 2002/2003 budget to provide for the establishment of new groups in communities that do not already have one, and to provide additional support for community justice groups in taking on their new legislative functions. The Government has also provided additional resources to the Department of Aboriginal and Torres Strait Islander Policy to assist communities to translate the community justice groups to a statutory footing through the passage of the necessary regulations establishing the groups under the legislation.

There are no additional costs associated with implementing the new provisions regarding by-laws. In fact, the new process for adoption of model by-laws will result in savings to the Government in the cost of approval and gazettal of model by-laws for each community.

Consistency with Fundamental Legislative Principles

Criminal history checks for community justice group members

Clause 10 inserts a new section 45F to provide that a criminal history check can be conducted where a regulation requires this to occur for deciding a person's suitability for membership of a community justice group. Given the nature of the responsibilities of community justice groups, it may be necessary to exclude persons with a particular criminal record. The provisions for disclosure include safeguards to prohibit the use of the information for any other purpose and to ensure that the information is destroyed as soon as practicable after it is no longer needed for its purpose.

Dissolution of Aurukun Alcohol Law Council without compensation

Clause 38 of the Bill omits part 6 of the *Local Government (Aboriginal Lands) Act 1978*, which provides the legislative framework for the Aurukun Alcohol Law Council. Transitional provisions included in the Bill provide that on the repeal of part 6, the Aurukun Alcohol Law Council is dissolved. The Bill does not make provision for compensation for the loss of office for members of the Law Council. Aurukun Shire Council has instituted payment of meeting fees for the Law Council. However, this is not a requirement under the legislation. Members of the Law Council receive a

\$30 meeting fee for each meeting of the Law Council attended. As the Law Council only meets two or three times a year, the financial detriment to members will be minimal.

Transitional regulation-making power for Aurukun Alcohol Law Council

Clause 39 inserts new section 120, which provides a transitional regulation-making power to facilitate the transition from the operation of the Aurukun Alcohol Law Council under the repealed part 6, *Local Government (Aboriginal Lands) Act 1978*, to the operation of a community justice group under parts 3A and 3B of the *Community Services (Aborigines) Act 1984*. Section 120 specifies a range of matters in respect of which a transitional regulation may be made. A transitional regulation can also deal with any other matter not sufficiently provided for in the transitional provisions. This power is considered necessary to provide the flexibility that may be needed following the repeal of part 6. A transitional regulation may also apply retrospectively but only to a day not earlier than the repeal of part 6. Also, a transitional regulation expires one year after the repeal of part 6.

Consultation

The legislative proposals forming part of the Government's response to the Cape York Justice Study were the result of extensive consultations involving almost 700 people in remote Indigenous communities in late 2001 and early 2002.

The document setting out the legislative proposals, *Meeting Challenges, Making Choices*, was widely distributed to Indigenous communities following its release in April 2002.

Workshops with representatives of community justice groups were convened in Cairns on April 2002 and June 2002 to discuss the legislative proposals.

In July 2002, a summary of the Bill was provided to all Aboriginal and Island Councils (including Aurukun and Mornington Shire Councils), the Aboriginal Coordinating Council, the Island Coordinating Council, the Torres Strait Regional Authority and the Aboriginal and Torres Strait Islander Commission.

The Aurukun and Mornington Shire Councils have been directly consulted regarding the changes to the *Local Government (Aboriginal Lands) Act 1978*.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 provides for the short title of the Act.

Clause 2 provides for the commencement on proclamation of provisions relating to the repeal of the existing provisions for the Aurukun Alcohol Law Council under Part 6 of the *Local Government (Aboriginal Lands) Act 1978*, along with transitional provisions from that Act. The intention is that these provisions will not be commenced until—

- (a) the Aurukun community justice group has been established under a regulation made pursuant to the new Part 3A; and
- (b) new carriage of alcohol restrictions are in place under the new restricted area provisions of the *Liquor Act 1992* (sections 168B, 173G and 173H), as amended by the *Indigenous Communities Liquor Licences Act 2002*.

PART 2—AMENDMENT OF COMMUNITY SERVICES (ABORIGINES) ACT 1984

Clause 3 provides that the *Community Services (Aborigines) Act 1984* is amended in this part and in the schedule.

Clause 4 inserts new definitions in section 6.

“Aboriginal police officer” refers to appointment under section 39.

“advertised proposed by-law” relates to the by-law that is put on notice pursuant to the consultation process in section 45ZK.

“alcohol” refers to the definition of “liquor” in the *Liquor Act 1992*. The term “alcohol” is seen as more clearly understood in Indigenous communities.

“amended proposed by-law” relates to the by-law put on notice in section 45ZK with any amendments that arise from the consultation process.

“appealable decision” relates to a community justice group’s decision that can be appealed under division 4 of part 3B.

“approved form” refers to the power of the chief executive to approve a form under section 81A.

“canteen” refers to the definition in the *Indigenous Communities Liquor Licences Act 2002*.

“certified copy” is defined for the purposes of section 45ZQ(5).

“closing day for objections and submissions” is defined for the purposes of the notification process for dry place declarations.

“community area” relates back to the existing definition of council area and adds the Shires of Aurukun and Mornington. This is necessary because the provisions for community justice groups and dry place declarations in the new Parts 3A and 3B apply to Aboriginal council areas and the Shires, whereas the other provisions in the Act apply only to Aboriginal council areas.

“community council” relates back to the existing definition of Aboriginal council and adds the council of the Shires of Aurukun and Mornington. This is also necessary for the purpose of widening the application of Parts 3A and 3B to Aurukun and Mornington Shires.

“community justice group” refers to the establishment of a group under Part 3A.

“consultation period” is defined for the purposes of section 45ZK and section 45ZT.

“coordinator” refers to the appointment of the coordinator under section 45G.

“drafting certificate” is defined for the purposes of section 45ZJ(2).

“dry place” is defined for the purposes of division 2.

“entity” is defined for the purposes of the definition of “private place”.

“liquor provision” refers to the offences relating to a dry place in section 45T and the *Liquor Act 1992* offences relating to restricted areas and sly grogging. This definition is necessary for the purposes of clause 9, which amends section 40 to give Aboriginal police powers to enforce these offences.

“model by-law” is defined in section 45ZF(1).

“police officer in charge” is defined for the purposes of clause 9.

“possess” is defined for the purposes of the offence in section 45T.

“private place” is defined for the purposes of the power to make dry place declarations in section 45M. Places occupied by a person or group of persons would include houses within the township area. Places occupied by the State or a community council are excluded, as these are considered public places. These would include the council offices, the school and the hospital in a community area. A place to which a person or group of persons have the authority to control access under Aboriginal tradition would include outstations outside the township area.

“proposed authorising law” is defined in section 45ZY(1) and is relevant in relation to subordinate by-laws.

“proposed by-law” relates to a model by-law or another by-law that a Council proposes to adopt by resolution under section 45ZI.

“public place” is defined for the purposes of the power to make declarations in section 45M and is linked to the definition of “private place”.

“required number” is defined for the purposes of section 45ZQ(5).

“State interest” is defined for the purposes of part 3C. One of the steps involved in the making of by-laws is a check for State interests. The definition is also relevant to existing section 13D, dealing with overruling by-laws.

“subordinate by-law” is defined under section 45ZG.

Clause 5 amends existing section 13D to omit the definition of “State interests”, as clause 4 inserts a definition for this in existing section 6.

Clause 6 amends section 25, relating to the functions and powers of Aboriginal councils. It clarifies that councils can still make by-laws for the purposes of regulating and controlling the possession or consumption of alcohol in the council area, as long as they are not inconsistent with the new part 3B, which provides for dry place declarations by community justice groups. The amendment also enables the council to make by-laws conferring functions on the community justice group. The establishment of a community justice group under legislation with an accountable structure provides an opportunity to vest them with further legal powers under council by-laws, particularly in the area of law and order.

Clause 7 omits sections 26 and 27, which provide the process for making by-laws. The process for making by-laws will now be set out under new part 3C.

Clause 8 inserts a new section 32AA, which provides for special accounting provisions in relation to canteen profits paid to a council by a community liquor licence board established under the *Indigenous Communities Liquor Licences Act 2002*. The council must keep separate accounting records for these profits and they must only be used for funding programs and services for the benefit of residents of the area. The exception is that the profits can be used for payment against a council's liabilities relating to the canteen if permitted by an implementation regulation under the *Indigenous Communities Liquor Licences Act 2002*. This provision may be necessary to enable the council to repay a business loan or a loan for the canteen premises once the canteen licence has been transferred to the community liquor licence board.

Clause 9 amends section 40 to expand the powers of Aboriginal police. Under the amendments, Aboriginal police will have the power to enforce dry place declarations under section 45T as well as restricted area and sly grog offences under the *Liquor Act 1992*. These offences can only be enforced within the community area. In order to enforce the provisions, Aboriginal police will have the powers of an investigator under the *Liquor Act 1992*. This gives Aboriginal police a range of powers of investigation and seizure and forfeiture, including some new powers created under the amendments to the *Liquor Act 1992* contained in the *Indigenous Communities Liquor Licences Act 2002*. To enforce the liquor offences, Aboriginal police will also have the new powers to stop and search vehicles contained in the *Police Powers and Responsibilities Act 2000*. These new powers are also created by amendments to the *Indigenous Communities Liquor Licences Act 2002*. Aboriginal police will only be able to enforce the liquor offences and exercise this range of powers if they are authorised by the police officer in charge for the area. This will ensure that Aboriginal police are supervised by State police in the exercise of these powers. They may not be authorised to exercise a power until they have received adequate training in the use of the power.

Clause 10 inserts a new part 3A—Community justice groups.

'PART 3A—COMMUNITY JUSTICE GROUPS'

Section 45C provides that a community justice group for a community area may be established under a regulation, which must state the group's name. Community area includes both Aboriginal council areas and the Shires of Aurukun and Mornington.

Section 45D sets out the functions of the community justice group. These are to—

- (a) regulate the possession and consumption of alcohol in the area – This relates to the power to declare dry places under part 3B.
- (b) carry out local strategies to address justice issues affecting members of the community in the area – This acknowledges the broad role of existing community justice groups. Additional functions relating to justice may be conferred on community justice groups under council by-laws pursuant to the new section 25(2A)(b) or, in the case of Mornington Island and Aurukun, under local laws made pursuant to the *Local Government Act 1993*.
- (c) make recommendations to the community liquor licence board established under the *Indigenous Communities Liquor Licences Act 2002* about the operation of the canteen – This will enable the community justice group to make recommendations relating to matters such as the hours of trading, the type of alcohol sold and restrictions on takeaway of alcohol. Under section 8 of the *Indigenous Communities Liquor Licences Act 2002*, the community liquor licence board has certain obligations to implement these recommendations insofar as they relate to responsible practices relating to the service, supply or promotion of liquor. This function is consistent with the function of regulating alcohol in paragraph (a). However, section 45D(2) clarifies that the community justice group cannot make recommendations about the employment of canteen staff, such as the appointment of the canteen manager. This is not a matter that is relevant to the community justice group’s role in advising on the socially responsible supply of alcohol through the canteen.
- (d) make recommendations to the Minister administering the *Liquor Act 1992* about declarations of restricted areas and prescribed quantities of alcohol that cannot be exceeded in those areas – This is also consistent with the function of regulating alcohol in paragraph (a). Under the new section 173HA of the *Liquor Act 1992*, as amended by the *Indigenous Communities Liquor Licences Act 2002*, the Minister must consult with community justice groups before making these declarations and must consider recommendations of the community justice group, including subsequent recommendations to change declarations already made.

- (e) carry out other functions given to it under this or another Act – Functions given to a community justice group under this Act would include functions given to it under by-laws made pursuant to section 25(2A)(b) or, in the case of Mornington Island and Aurukun, under local laws made pursuant to the *Local Government Act 1993*. Functions under other Acts include the functions that community justice groups have regarding the provision of sentencing advice under special provisions of the *Penalties and Sentences Act 1992* and the *Juvenile Justice Act 1994*.

Section 45E(1) provides that a regulation prescribes the number of members for a community justice group. There is a wide variation in the number of members of existing community justice groups. The creation of these groups under regulations will need to be flexible to accommodate this diversity.

Section 45E(2) provides that a regulation may provide for the eligibility of community justice group members, the nomination process, and the terms and period of membership. Some of these matters will differ for each community justice group. The intention is that each community and its existing community justice group, if any, will be consulted to determine a model of representation for the community justice group that is appropriate to the circumstances and cultural makeup of that community.

Section 45E(3) qualifies subsection (2) by requiring that a regulation must include at least one representative of the main indigenous social groupings in the area. “Indigenous social groupings” is defined in subsection (5) and includes a wide range of possible bases of social affiliation. In a traditional community, this is likely to lead to a model of representation based on traditional owner or language groups, such as that provided for under the *Local Government (Aboriginal Lands) Act 1978* in respect of the Aurukun Alcohol Law Council. In other communities, representation will typically also include families with an historical and not a traditional land ownership association with the community area. The provision sets this as a minimum standard, and therefore does not exclude membership on a community justice group of other groupings in a community, such as young people, or particular community organisations.

Section 45E(4) provides that members of community justice groups must be of good standing in the community. This requirement will be further defined by the establishment of eligibility criteria under a regulation pursuant to subsection (2).

Section 45F enables a criminal history check to be carried out if a regulation requires this for deciding a person's suitability to be a member. For example, a regulation may exclude persons with a particular criminal record (such as offences of violence or alcohol related offences) from membership of a community justice group. The provision provides safeguards as to the use of the information.

Section 45G(1) provides for the appointment by a community justice group of a coordinator. This would include the appointment of an acting coordinator where the regular coordinator is not available.

Section 45G(2) permits a regulation to provide for eligibility of persons to be appointed as a coordinator.

Section 45G(3) sets out the functions of the coordinator.

Section 45H provides for authentication of documents made by the community justice group through the signature of the coordinator. This provides certainty to third parties.

Section 45I protects members of the group from civil liability and provides for indemnity by the State for acts or omissions that were done honestly and without negligence.

Section 45J requires the community justice group to report in the approved form to the chief executive on its activities within 90 days of the end of each reporting period. The reporting period is a quarter, unless another period is prescribed by a regulation. This reflects the current reporting arrangements for community justice groups under the Local Justice Initiatives Program, which provides their funding.

Clause 11 inserts a new Part 3B – Control of possession and consumption of alcohol in community areas.

'PART 3B—CONTROL OF POSSESSION AND CONSUMPTION OF ALCOHOL IN COMMUNITY AREAS'

Section 45K provides that the purpose of the new part is to prevent harm in community areas caused by alcohol abuse and misuse and associated violence.

Section 45L sets out the definitions for Part 3B.

“appealable decision” relates to a community justice group's decision that can be appealed under division 4.

“closing day for objections and submissions” is defined for the purposes of the notification process for dry place declarations.

“dry place” is defined for the purposes of division 2.

“entity” is defined for the purposes of the definition of “private place”.

“possess” is defined for the purposes of the offence in section 45T.

“private place” is defined for the purposes of the power to make dry place declarations in section 45M. Places occupied by a person or group of persons would include houses within the township area. Places occupied by the State or a community council are excluded, as these are considered public places. These would include the council offices, the school and the hospital in a community area. A place to which a person or group of persons have the authority to control access under Aboriginal tradition would include outstations outside the township area.

“public place” is defined for the purposes of the power to make declarations in section 45M and is linked to the definition of “private place”.

Section 45M(1) provides for a community justice group to declare dry places in the community area or amend or revoke such declarations.

It may declare any public place as a dry area on its own initiative. In addition, the community council or the chief executive of a Government department could apply for a public place (for example, the council chambers, school or hospital) to be declared a dry place.

The community justice group can only declare a private place as a dry place on written or personal application of the occupier or the person or group of persons with authority to control access under Aboriginal tradition.

Section 45M(2) provides that the community justice group may invite such an application. The ability of the community justice group to invite applications is designed to give flexibility in circumstances where the occupier or traditional owners may be reluctant to make an application for a declaration. However, the final decision as to whether to make an application rests with the relevant occupier or traditional group.

Section 45M(3) requires the community justice group to consider applications made to it as soon as reasonably practical.

Section 45M(4) enables the community justice group to make a declaration for a limited time or subject to conditions. This enables it to declare dry places for a trial period or for a particular event such as a festival or football carnival.

Section 45M(5) also allows the community justice group to revoke, on its own initiative, a declaration made over a private place if it is satisfied it is necessary to do so because the occupier or traditional owners have acted in a way that hinders the enforcement of the declaration. It may, for example, be necessary to revoke a place declared dry where there is evidence the occupier has selectively allowed drinking in the dry place and only makes a complaint to the police when a disturbance occurs in the place. Application of the declaration in this way is inconsistent with the objective of the legislation to prevent harm caused by alcohol abuse and misuse and associated violence.

Section 45M(6) provides for the community justice group to ensure a person is given assistance to make a written application if the assistance is requested.

Section 45N provides for the community to be notified of any proposal to declare a dry place. Once an application is received by the community justice group or it decides to initiate an application about a public place, the details of the proposal must be put in a notice and displayed in a prominent place in the town and if possible at the place where the declaration is proposed.

Section 45N(2) specifies the information that the notice must include.

Section 45N(3) provides for a notice of a proposal to declare a dry place to be displayed for at least 14 days immediately before the closing day for making objections or supporting submissions about the proposal.

Section 45N(4) requires the community justice group to consult with the community in others ways if it considers it necessary. For example, it may call a community meeting before proposing to declare a dry place.

Section 45N(5) provides for the same process to be used when it is proposed to amend or revoke a declaration. This ensures that notice is given and feedback is invited in these circumstances.

Section 45O(1) provides for a person whose interests are affected by a proposed declaration to make an objection or supporting submission about a proposal to declare a public place.

Section 45O(2) provides for certain people to make a submission objecting to or supporting a proposed declaration about a private place. The submissions about a private place may be made by—

- (a) a person or members of a group that has authority to control access under Aboriginal tradition; or

- (b) the occupier, person or group who use the place or neighbouring place.

The term “neighbouring” has a common dictionary meaning. It is considered more appropriate for a person with a particular interest in a place to make a submission about the declaration of a place rather than allowing the whole of the community to make a submission.

Section 45O(3) provides for submissions to be expressed in writing to the coordinator of the community justice group on or before the closing day for receipt of submissions or by requesting a personal appearance before the community justice group.

Section 45O(4) requires the community justice group to consider all objections and supporting submissions properly made to it. This means the community justice group is not required to consider objections and submissions received after the closing day for objections and submissions. It also means it is not obliged to consider submissions made about a private place if it considers the person does not have a particular interest in the place as specified under 45O(2).

Section 45O(5) provides that a person who has requested an opportunity to express their view personally to the community justice group and does not appear after being given a reasonable opportunity to do so, loses their right to have their views considered about the relevant declaration.

Section 45O(6) provides that no fee is required to be paid by a person making a submission.

Section 45O(7) provides that the process used to make a submission applies to the amendment or revocation of a declaration.

Section 45P(1) requires the community justice group, once it makes a decision to declare a place dry, to provide a notice of the declaration to be displayed in a prominent place in the town and if practical at the place which is declared dry. The notice must be displayed for as long as the declaration is in force.

Section 45P(2) specifies the information that a notice must include. The notice must state the provisions of section 45T which provide that it is an offence to possess or consume alcohol or to be drunk in a dry place.

Section 45P(3) provides that the notification process also applies to the amendment or revocation of a declaration. However, section 45P(4) clarifies that a notice of revocation need only be displayed for one month and need not state the provisions of section 45T.

Section 45Q(1) provides that the community justice group may suspend the dry place declaration on written application by any person for a period up to 7 days. This provision would allow a person to hold a one-off function where alcohol is permitted. For example, the declaration of the council chambers as a dry place might be suspended during a civic reception. The suspension is limited to a maximum of 7 days, because any longer period of suspension would be contrary to the spirit of the original dry place declaration. For a longer period, the revocation provisions should be used. Seven days is considered long enough to cover most events or festivals.

Section 45Q(2) requires an applicant to state the purpose and the period of the suspension sought, to aid the community justice group's decision-making.

Section 45Q(3) requires the community justice group to consider the application as soon as possible.

Section 45Q(4) provides that the community justice group should only suspend the declaration if it is satisfied it is in the best interests of the residents of the area. This will require the community justice group to consider the harm that might arise from the consumption of alcohol in the dry place.

Section 45Q(5) allows the community justice group to specify the type of alcohol that the suspension applies to.

Section 45Q(6) allows the group to state reasonable conditions for a suspension.

Section 45Q(7) requires that the notification and submission processes set out in sections 45N to 45P apply to a suspension.

Section 45Q(8) provides that a notice advising the community of the suspension of a declaration does not have to set out the offence provision of section 45T, as this would be superfluous.

Section 45R clarifies that a dry place declaration made by a community justice group prevails over a declaration made under the new provisions of the *Liquor Act 1992* to limit the amount and type of alcohol that can be carried or possessed in a restricted area. For example, if a declaration under the *Liquor Act 1992* limited the possession of alcohol in a community area to one carton of beer, the limit on possession of alcohol for a dry place declared by the community justice group would still be zero.

Section 45S creates an offence to obstruct or improperly influence a member of a community justice group in performing the member's

functions under the Act. This is necessary to protect members of community justice groups from reprisals in making potentially controversial declarations affecting residents' right to drink or possess alcohol in certain areas.

Section 45T(1) creates the offence of possessing or consuming alcohol in a dry place. This enables the enforcement of the declaration of a dry place under section 45M.

Section 45T(2) creates the offence of being drunk in a dry place. While being drunk in a public place within the area is already an offence under the *Liquor Act 1992*, whether the place is declared dry or not, this provision would extend this to private places declared dry. It is expected that an occupier of a private place such as a house who requests the community justice group to declare the place dry desires not only that persons be prohibited from drinking or bringing alcohol to that place, but also that persons who are drunk do not enter that place. This offence enables the protection of residents of the community who are subjected to repeated disturbances and even violence as a result of drunken individuals. It may have particular application in domestic violence situations.

Section 45U creates an offence for making false or misleading statements to a community justice group. This offence prevents persons from misleading the community justice group when objecting to or supporting dry place declarations, amendments or revocations or applying for a suspension of a declaration.

Section 45V creates an offence for giving false or misleading documents to the community justice group. This offence prevents persons from misleading the community justice group when objecting to or supporting dry place declarations, amendments or revocations or applying for a suspension of a declaration. The section provides a safeguard for a person who gives a false or misleading document but tells the group how it is false or misleading and gives any correct information the person has or can reasonably obtain.

Section 45W enables a person whose interests are affected by an appealable decision of the community justice group to appeal to a Magistrates Court. "Appealable decision" is defined in section 45L.

Section 45X(1) provides for the appeal to be started by filing a notice of appeal with the clerk of the nearest Magistrates Court and giving a copy of the notice to the community justice group within 7 days of filing it.

Section 45X(2) requires appeals to be filed within 28 days of the appellant becoming aware of the decision.

Section 45X(3) allows the court to extend the period for filing the notice of appeal. This might be done if the appellant demonstrates that circumstances beyond his or her control prevented him or her from filing in time.

Section 45X(4) requires the notice to state the grounds of the appeal and the facts relied on. This assists the court in adjudicating and the community justice group in responding.

Section 45Y enables the court to put on hold the community justice group's decision to secure the effectiveness of the appeal. This will require the appellant to make a case to the court why the decision must be put on hold to protect the interests that are the basis of the appellant's appeal.

Section 45Z(1) gives the Magistrates Court all the powers of the community justice group and provides that the court is not bound by the rules of evidence, but must comply with natural justice.

Section 45Z(2) provides that the court is required to rehear the decision based on the material before the group at the time it made the decision, plus any further evidence allowed by the court.

Section 45Z(3) gives the court the power to confirm the decision, set it aside and substitute another decision, or set it aside and return the issue to the community justice group with the directions the court considers appropriate.

Section 45ZA requires the court to be constituted by a magistrate when deciding an appeal. Therefore, the court may not be constituted by justices of the peace.

Section 45ZB confirms that a decision substituted by the court is taken to be the community justice group's decision.

Section 45ZC allows an appeal to the District Court from the Magistrates Court on a question of law only. Therefore, the District Court will not be able to rehear the merits of a decision.

Section 45ZD requires applications under the part to be made to the community justice group's coordinator. This provision refers to applications to the community justice group to make, amend or revoke a dry place declaration under section 45M, and applications for a suspension of a declaration under section 45Q.

Clause 12 inserts a new part 3C—Provisions about making by-laws and subordinate by-laws.

‘PART 3C—PROVISIONS ABOUT MAKING BY-LAWS AND SUBORDINATE BY-LAWS’

Section 45ZE sets out the definitions for the part.

“advertised proposed by-law” relates to the by-law that is put on notice pursuant to the consultation process in section 45ZK.

“amended proposed by-law” relates to the by-law put on notice in section 45ZK with any amendments that arise from the consultation process.

“certified copy” is defined for the purposes of section 45ZQ(5).

“consultation period” is defined for the purposes of section 45ZK and section 45ZT.

“drafting certificate” is defined for the purposes of section 45ZJ(2).

“model by-law” is defined in section 45ZF(1).

“proposed authorising law” is defined in section 45ZY(1) and is relevant in relation to subordinate by-laws.

“proposed by-law” relates to a model by-law or another by-law that a Council proposes to adopt by resolution under section 45ZI.

“required number” is defined for the purposes of section 45ZQ(5).

“subordinate by-law” is defined under section 45ZG.

Section 45ZF(1) provides for the Minister to publish a model by-law in the gazette as suitable for adoption by an Aboriginal council. The requirement that it is suitable for adoption means, amongst other things, it must comply with State interests and not be contrary to State legislation. The provision also requires that it must be about a matter within the functions of an Aboriginal council. Functions of an Aboriginal council are defined in section 25 of the Act.

Section 45ZF(2) provides that the Minister must publish a notice at the same time as the model by-law stating whether steps 3 to 7 of division 3 apply for making the by-law. These provisions relate to the consultation on the proposed by-law.

Section 45ZF(3) provides that the Minister can only require the consultation under steps 3 to 7 if the Minister is satisfied it would serve a useful purpose. It is anticipated that if the model by-law is about a minor matter, or is simply an updated draft of an existing by-law of the council, the Minister will exempt the council from this consultation process, as it would serve no useful purpose. Another circumstance where this would

occur might be where the Minister has consulted widely with the community in developing the model by-law. A by-law that is substantially new for the community, will require consultation through steps 3 to 7 before making the by-law.

Section 45ZG provides the power for a council to make a subordinate by-law if a by-law expressly states the council can make a subordinate by-law about the matter. This provision requires the head of power for a subordinate by-law to be expressly contained in the principal by-law.

Section 45ZH(1) requires the process in division 3, which sets out nine steps, to be used for making a by-law. This includes a model by-law or another by-law.

Section 45ZH(2) qualifies subsection (1) by confirming that steps 3 to 7, relating to consultation, only apply for a model by-law if the Minister has required this under the notice in section 45ZF(1).

Section 45ZH(3) states that if a council purports to make a by-law in contravention of this section (in other words, without following the required steps in the division), the by-law is of no effect.

Section 45ZI provides for Step 1 in the process, where the council is required to pass a resolution to propose to make a by-law as the first step in making either a model by-law or another by-law.

Section 45ZJ provides for Step 2 in the process allowing the State Government to ensure that the proposed by-law satisfactorily deals with State interests. The section does not apply where the council is proposing to adopt a model by-law because the State interests have already been dealt with when the Minister drafts the by-law. The section requires that the council must give the Minister a copy of its proposed by-law, its drafting certificate and any other information about the proposal required by the Minister or prescribed by regulation. The council must receive an advice from the Minister confirming that it may proceed to Step 3 and setting out any conditions which the council must satisfy. In giving this advice, the Minister checks that State interests have been dealt with and that the proposed by-law is drafted in accordance with drafting standards prescribed under a regulation. The provision also allows the Minister to give an advice to a council that proposes to make a minor amendment to an existing by-law, that it may proceed to Step 8 without satisfying Steps 3 to 7. In other cases, the Minister may advise that the council can proceed without satisfying step 7, which is a further State interests check, if it agrees to satisfy particular conditions.

Section 45ZK provides for Step 3 in the process, which requires the council to make the proposed by-law known to the public by advertising in a newspaper or other publication and displaying a notice in the council's office and another prominent place in the area. The consultation period is a minimum of 14 days unless a longer period is fixed by a condition set by the Minister in step 2 or is prescribed by regulation. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed by-law and make written submissions. The notice that is displayed in the council office and the prominent place must attach an actual copy of the by-law. Both notices must state that a copy of the by-law is open to inspection or available free of charge from the council's office. In addition to the public notification, the section provides that a council may consult with its residents in any way it considers appropriate, and that if this consultation comprises an open meeting, the council's clerk must keep minutes.

Section 45ZL provides for Step 4 in the process allowing for public access to the proposed by-law and the availability of a free copy at the council office.

Section 45ZM provides for Step 5 in the process, which requires the council to properly consider each written submission properly made, plus submissions recorded in the minutes of an open meeting under section 45ZK(8).

Section 45ZN provides for Step 6 in the process, which requires the council to make a resolution as to whether to proceed with the by-law making process. The council may proceed with the by-law as advertised or with amendment. At this point, the council would be able to amend a proposed by-law which was a model by-law.

Section 45ZO provides for Step 7 in the process, which gives the Minister a further opportunity to ensure the proposed by-law satisfactorily deals with any State interest, if the by-law has been amended since the State interest check under step 2, or if the by-law is an amended model by-law. The provision requires the council to advise the Minister of the resolution made at Step 6 and include any other information required by the Minister or prescribed by regulation. If the council advises the Minister that it wishes to proceed with making the by-law, it must receive an advice from the Minister that it may proceed to the next Step, and this advice may be subject to conditions if the Minister considers them necessary to deal with State interests.

Section 45ZP provides for Step 8 in the process, which provides for the proposed by-law to be made by the council. Subsection (1) provides that a

model by-law is made if the council adopts the by-law by resolution, amends or repeals any inconsistent existing by-law by resolution, and the council's clerk certifies the required number of copies. Subsection (2) provides that another by-law is made if the council adopts it by resolution and the council's clerk certifies the required number of copies.

Section 45ZQ provides for Step 9 in the process, which requires a notice that a by-law has been made to be published in the Gazette and displayed at the council office and other prominent places in the council area as the council considers appropriate. The section lists the type of information which must be included in the notice. The section also specifies that a by-law be notified within one year of the date of the council's resolution otherwise the by-law making process must recommence. A copy of the notice and the required number of certified copies of the by-law must be given to the Minister as soon as practicable after the date of notification.

Section 45ZR requires the process in division 4, which sets out six steps, to be used for making a subordinate by-law. If a council purports to make a subordinate by-law in contravention of this section (in other words, without following the required steps in the division), the subordinate by-law is of no effect.

Section 45ZS provides for Step 1 in the process, where the council is required to pass a resolution to propose to make a subordinate by-law as the first step in making the subordinate by-law.

Section 45ZT provides for Step 2 in the process, which requires the council to make the proposed subordinate by-law known to the public by advertising in a newspaper or other publication and displaying a notice in the council's office and another prominent place in the area. The consultation period is a minimum of 14 days unless a longer period is prescribed by regulation. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed subordinate by-law and make written submissions. The notice that is displayed in the council office and the prominent place must attach an actual copy of the subordinate by-law. Both notices must state that a copy of the subordinate by-law is open to inspection or available free of charge from the council's office. In addition to the public notification, the section provides that a council may consult with its residents in any way it considers appropriate, and that if this consultation comprises an open meeting, the council's clerk must keep minutes.

Section 45ZU provides for Step 3 in the process allowing for public access to the proposed subordinate by-law and the availability of a free copy at the council office.

Section 45ZV provides for Step 4 in the process, which requires the council to properly consider each written submission properly made, plus submissions recorded in the minutes of an open meeting under section 45ZT(9).

Section 45ZW provides for Step 5 in the process, which provides for the subordinate by-law to be made by the council by resolution. It can be made with amendments, but if the amendments are substantial, before making the by-law the council must consult with residents again under Steps 2 to 4. The council's clerk must certify the required number of copies of the subordinate by-law.

Section 45ZX provides for Step 6 in the process, which requires a notice that a by-law has been made to be published in the Gazette and displayed at the council office and other prominent places in the council area as the council considers appropriate. The section lists the type of information which must be or may be included in the notice. The council must give the Minister a copy of the notice and the required number of certified copies of the by-law, and a drafting certificate for the subordinate by-law.

Section 45ZY sets out a process to enable the council to commence the process for consulting on a subordinate by-law even before the process for making the by-law that authorises the subordinate by-law is finished.

Section 45ZZ provides that a by-law or subordinate by-law commences on the day it is notified in the Gazette unless a later day or time is fixed in the by-law or subordinate by-law.

Section 45ZZA declares that a by-law has the force of law on commencement.

Section 45ZZB clarifies that a subordinate by-law is binding on the council and is binding on anyone else to the extent stated in the authorising by-law.

Section 45ZZC clarifies that a subordinate by-law ceases to have effect if the by-law that authorised it is repealed.

Section 45ZZD specifies that a certified copy of a by-law or subordinate by-law provides evidence of the content of the law, and that judicial notice shall be given to the certified copy in any proceedings. A copy of the Gazette, newspaper or publication containing a notice about the making of

the by-law or subordinate by-law is evidence of the matters stated in the notice and evidence that the law has been properly made.

Section 45ZZE clarifies a council's competence in respect of the making of a by-law or subordinate by-law.

Clause 13 inserts new subsections in section 81 as evidentiary aids for enforcing section 45T, which relates to possession or consumption of alcohol in a dry place. The provisions assist in proving that a fluid was alcohol.

Clause 14 inserts a new section 81A to enable the chief executive to approve forms for use under the Act.

Clause 15 amends section 82, to add a regulation-making power relating to the business and conduct of meetings of community justice groups, including times and places, the quorum, the presiding member, and disclosure of interests.

Clause 16 inserts a new section 85A as a transitional provision for the process of making by-laws. The old provisions for making by-laws (sections 26 and 27) continue to apply to the making of a by-law commenced under the process of those provisions at the time the new provisions come into force.

Clause 17 inserts a new Part 12—Provision for reprinting Act.

‘PART 12—PROVISION FOR REPRINTING ACT’

Section 87 provides for the Act to be numbered and renumbered in the next reprint of the Act.

PART 3—AMENDMENT OF COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

Clause 18 provides that the *Community Services (Torres Strait) Act 1984* is amended in this part and in the schedule.

Clause 19 inserts new definitions in section 6.

“advertised proposed by-law” relates to the by-law that is put on notice pursuant to the consultation process in section 43ZQ.

“alcohol” refers to the definition of “liquor” in the *Liquor Act 1992*. The term “alcohol” is seen as more clearly understood in Indigenous communities.

“amended proposed by-law” relates to the by-law put on notice in section 43ZN with any amendments that arise from the consultation process.

“appealable decision” relates to a community justice group’s decision that can be appealed under division 4 of part 3B.

“approved form” refers to the power of the chief executive to approve a form under section 80A.

“canteen” refers to the definition in the *Indigenous Communities Liquor Licences Act 2002*.

“certified copy” is defined for the purposes of section 43ZQ(5).

“closing day for objections and submissions” is defined for the purposes of the notification process for dry place declarations.

“community justice group” refers to the establishment of a group under Part 3A.

“consultation period” is defined for the purposes of section 43ZK and section 43ZT.

“coordinator” refers to the appointment of the coordinator under section 43G.

“drafting certificate” is defined for the purposes of section 43ZJ(2).

“dry place” is defined for the purposes of division 2.

“entity” is defined for the purposes of the definition of “private place”.

“Island police officer” refers to appointment under section 37.

“liquor provision” refers to the offences relating to a dry place in section 43T and the *Liquor Act 1992* offences relating to restricted areas and sly grogging. This definition is necessary for the purposes of clause 9, which amends section 40 to give Island police powers to enforce these offences.

“model by-law” is defined in section 43ZF(1).

“police officer in charge” is defined for the purposes of clause 9.

“possess” is defined for the purposes of the offence in section 43T.

“private place” is defined for the purposes of the power to make dry place declarations in section 43M. Places occupied by a person or group of

persons would include houses within the township area. Places occupied by the State or a community council are excluded, as these are considered public places. These would include the council offices, the school and the hospital in a council area. A place to which a person or group of persons have the authority to control access under Island custom would include traditional lands outside the township area.

“proposed authorising law” is defined in section 43ZY(1) and is relevant in relation to subordinate by-laws.

“proposed by-law” relates to a model by-law or another by-law that a Council proposes to adopt by resolution under section 43ZI.

“public place” is defined for the purposes of the power to make declarations in section 43M and is linked to the definition of “private place”.

“required number” is defined for the purposes of section 43ZQ(5).

“State interest” is defined for the purposes of part 3C. One of the steps involved in the making of by-laws is a check for State interests. The definition is also relevant to existing section 13D, dealing with overruling by-laws.

“subordinate by-law” is defined under section 43ZG.

Clause 20 amends existing section 13D to omit the definition of “State interests”, as clause 4 inserts a definition for this in existing section 6.

Clause 21 amends section 23, relating to the functions and powers of Island councils. It clarifies that councils can still make by-laws for the purposes of regulating and controlling the possession or consumption of alcohol in the council area, as long as they are not inconsistent with the new part 3B, which provides for dry place declarations by community justice groups. The amendment also enables the council to make by-laws conferring functions on the community justice group. The establishment of a community justice group under legislation with an accountable structure provides an opportunity to vest them with further legal powers under council by-laws, particularly in the area of law and order.

Clause 22 omits sections 24 and 25, which provide the process for making by-laws. The process for making by-laws will now be set out under new part 3C.

Clause 23 inserts a new section 30AA, which provides for special accounting provisions in relation to canteen profits paid to a council by a community liquor licence board established under the *Indigenous*

Communities Liquor Licences Act 2002. The council must keep separate accounting records for these profits and they must only be used for funding programs and services for the benefit of residents of the area. The exception is that the profits can be used for payment against a council's liabilities relating to the canteen if permitted by an implementation regulation under the *Indigenous Communities Liquor Licences Act 2002*. This provision may be necessary to enable the council to repay a business loan or a loan for the canteen premises once the canteen licence has been transferred to the community liquor licence board.

Clause 24 amends section 38 to expand the powers of Island police. Under the amendments, Island police will have the power to enforce dry place declarations under section 43T as well as restricted area and sly grog offences under the *Liquor Act 1992*. These offences can only be enforced within the council area. In order to enforce the provisions, Island police will have the powers of an investigator under the *Liquor Act 1992*. This gives Island police a range of powers of investigation and seizure and forfeiture, including some new powers created under the amendments to the *Liquor Act 1992* contained in the *Indigenous Communities Liquor Licences Act 2002*. To enforce the liquor offences, Island police will also have the new powers to stop and search vehicles contained in the *Police Powers and Responsibilities Act 2000*. These new powers are also created by amendments to the *Indigenous Communities Liquor Licences Act 2002*. Island police will only be able to enforce the liquor offences and exercise this range of powers if they are authorised by the police officer in charge for the area. This will ensure that Island police are supervised by State police in the exercise of these powers. They may not be authorised to exercise a power until they have received adequate training in the use of the power.

Clause 25 inserts a new part 3A—Community justice groups.

'PART 3A – COMMUNITY JUSTICE GROUPS'

Section 43C provides that a community justice group for a council area may be established under a regulation, which must state the group's name. Section 43D sets out the functions of the community justice group. These are to—

- (a) regulate the possession and consumption of alcohol in the area – This relates to the power to declare dry places under part 3B.
- (b) carry out local strategies to address justice issues affecting members of the community in the area – This acknowledges the broad role of existing community justice groups. Additional

functions relating to justice may be conferred on community justice groups under council by-laws pursuant to the new section 23(2A)(b).

- (c) make recommendations to the community liquor licence board established under the *Indigenous Communities Liquor Licences Act 2002* about the operation of the canteen – This will enable the community justice group to make recommendations relating to matters such as the hours of trading, the type of alcohol sold and restrictions on takeaway of alcohol. Under section 8 of the *Indigenous Communities Liquor Licences Act 2002*, the community liquor licence board has certain obligations to implement these recommendations insofar as they relate to responsible practices relating to the service, supply or promotion of liquor. This function is consistent with the function of regulating alcohol in paragraph (a). However, section 43D(2) clarifies that the community justice group cannot make recommendations about the employment of canteen staff, such as the appointment of the canteen manager. This is not a matter that is relevant to the community justice group’s role in advising on the socially responsible supply of alcohol through the canteen.
- (d) make recommendations to the Minister administering the *Liquor Act 1992* about declarations of restricted areas and prescribed quantities of alcohol that cannot be exceeded in those areas – This is also consistent with the function of regulating alcohol in paragraph (a). Under the new section 173HA of the *Liquor Act 1992*, as amended by the *Indigenous Communities Liquor Licences Act 2002*, the Minister must consult with community justice groups before making these declarations and must consider recommendations of the community justice group, including subsequent recommendations to change declarations already made.
- (e) carry out other functions given to it under this or another Act – Functions given to a community justice group under this Act would include functions given to it under by-laws made pursuant to section 23(2A)(b). Functions under other Acts include the functions that community justice groups have regarding the provision of sentencing advice under special provisions of the *Penalties and Sentences Act 1992* and the *Juvenile Justice Act 1994*.

Section 43E(1) provides that a regulation prescribes the number of members for a community justice group. There is a wide variation in the number of members of existing community justice groups. The creation of these groups under regulations will need to be flexible to accommodate this diversity.

Section 43E(2) provides that a regulation may provide for the eligibility of community justice group members, the nomination process, and the terms and period of membership. Some of these matters will differ for each community justice group. The intention is that each community and its existing community justice group, if any, will be consulted to determine a model of representation for the community justice group that is appropriate to the circumstances and cultural makeup of that community.

Section 43E(3) qualifies subsection (2) by requiring that a regulation must include at least one representative of the main indigenous social groupings in the area. “Indigenous social groupings” is defined in subsection (5) and includes a wide range of possible bases of social affiliation. In a traditional community, this is likely to lead to a model of representation based on traditional owner or language groups, such as that provided for under the *Local Government (Aboriginal Lands) Act 1978* in respect of the Aurukun Alcohol Law Council. In other communities, representation will typically also include families with an historical and not a traditional land ownership association with the council area. The provision sets this as a minimum standard, and therefore does not exclude membership on a community justice group of other groupings in a community, such as young people, or particular community organisations.

Section 43E(4) provides that members of community justice groups must be of good standing in the community. This requirement will be further defined by the establishment of eligibility criteria under a regulation pursuant to subsection (2).

Section 43F enables a criminal history check to be carried out if a regulation requires this for deciding a person’s suitability to be a member. For example, a regulation may exclude persons with a particular criminal record (such as offences of violence or alcohol related offences) from membership of a community justice group. The provision provides safeguards as to the use of the information.

Section 43G(1) provides for the appointment by a community justice group of a coordinator. This would include the appointment of an acting coordinator where the regular coordinator is not available.

Section 43G(2) permits a regulation to provide for eligibility of persons to be appointed as a coordinator.

Section 43G(3) sets out the functions of the coordinator.

Section 43H provides for authentication of documents made by the community justice group through the signature of the coordinator. This provides certainty to third parties.

Section 43I protects members of the group from civil liability and provides for indemnity by the State for acts or omissions that were done honestly and without negligence.

Section 43J requires the community justice group to report in the approved form to the chief executive on its activities within 90 days of the end of each reporting period. The reporting period is a quarter, unless another period is prescribed by a regulation. This reflects the current reporting arrangements for community justice groups under the Local Justice Initiatives Program, which provides their funding.

Clause 26 inserts a new Part 3B – Control of possession and consumption of alcohol in council areas.

‘PART 3B – CONTROL OF POSSESSION AND CONSUMPTION OF ALCOHOL IN COUNCIL AREAS’

Section 43K provides that the purpose of the new part is to prevent harm in council areas caused by alcohol abuse and misuse and associated violence.

Section 43L sets out the definitions for Part 3B.

“appealable decision” relates to a community justice group’s decision that can be appealed under division 4.

“closing day for objections and submissions” is defined for the purposes of the notification process for dry place declarations.

“dry place” is defined for the purposes of division 2.

“entity” is defined for the purposes of the definition of “private place”.

“possess” is defined for the purposes of the offence in section 43T.

“private place” is defined for the purposes of the power to make dry place declarations in section 43M. Places occupied by a person or group of persons would include houses within the township area. Places occupied by the State or a community council are excluded, as these are considered public places. These would include the council offices, the school and the hospital in a council area. A place to which a person or group of persons

have the authority to control access under Island custom would include traditional lands outside the township area.

“public place” is defined for the purposes of the power to make declarations in section 43M and is linked to the definition of “private place”.

Section 43M(1) provides for a community justice group to declare dry places in the council area or amend or revoke such declarations.

It may declare any public place as a dry area on its own initiative. In addition, the community council or the chief executive of a Government department could apply for a public place (for example, the council chambers, school or hospital) to be declared a dry place.

The community justice group can only declare a private place as a dry place on written or personal application of the occupier or the person or group of persons with authority to control access under Island custom.

Section 43M(2) provides that the community justice group may invite such an application. The ability of the community justice group to invite applications is designed to give flexibility in circumstances where the occupier or traditional owners may be reluctant to make an application for a declaration. However, the final decision as to whether to make an application rests with the relevant occupier or traditional group.

Section 43M(3) requires the community justice group to consider applications made to it as soon as reasonably practical.

Section 43M(4) enables the community justice group to make a declaration for a limited time or subject to conditions. This enables it to declare dry places for a trial period or for a particular event such as a festival or football carnival.

Section 43M(5) also allows the community justice group to revoke, on its own initiative, a declaration made over a private place if it is satisfied it is necessary to do so because the occupier or traditional owners have acted in a way that hinders the enforcement of the declaration. It may, for example, be necessary to revoke a place declared dry where there is evidence the occupier has selectively allowed drinking in the dry place and only makes a complaint to the police when a disturbance occurs in the place. Application of the declaration in this way is inconsistent with the objective of the legislation to prevent harm caused by alcohol abuse and misuse and associated violence.

Section 43M(6) provides for the community justice group to ensure a person is given assistance to make a written application if the assistance is requested.

Section 43N provides for the community to be notified of any proposal to declare a dry place. Once an application is received by the community justice group or it decides to initiate an application about a public place, the details of the proposal must be put in a notice and displayed in a prominent place in the town and if possible at the place where the declaration is proposed.

Section 43N(2) specifies the information that the notice must include.

Section 43N(3) provides for a notice of a proposal to declare a dry place to be displayed for at least 14 days immediately before the closing day for making objections or supporting submissions about the proposal.

Section 43N(4) requires the community justice group to consult with the community in others ways if it considers it necessary. For example, it may call a community meeting before proposing to declare a dry place.

Section 43N(5) provides for the same process to be used when it is proposed to amend or revoke a declaration. This ensures that notice is given and feedback is invited in these circumstances.

Section 43O(1) provides for a person whose interests are affected by a proposed declaration to make an objection or supporting submission about a proposal to declare a public place.

Section 43O(2) provides for certain people to make a submission objecting to or supporting a proposed declaration about a private place. The submissions about a private place may be made by—

- (a) a person or members of a group that has authority to control access under Island custom; or
- (b) the occupier, person or group who use the place or neighbouring place.

The term “neighbouring” has a common dictionary meaning. It is considered more appropriate for a person with a particular interest in a place to make a submission about the declaration of a place rather than allowing the whole of the community to make a submission.

Section 43O(3) provides for submissions to be expressed in writing to the coordinator of the community justice group on or before the closing day for receipt of submissions or by requesting a personal appearance before the community justice group.

Section 43O(4) requires the community justice group to consider all objections and supporting submissions properly made to it. This means the community justice group is not required to consider objections and submissions received after the closing day for objections and submissions. It also means it is not obliged to consider submissions made about a private place if it considers the person does not have a particular interest in the place as specified under 43O(2).

Section 43O(5) provides that a person who has requested an opportunity to express their view personally to the community justice group and does not appear after being given a reasonable opportunity to do so, loses their right to have their views considered about the relevant declaration.

Section 43O(6) provides that no fee is required to be paid by a person making a submission.

Section 43O(7) provides that the process used to make a submission applies to the amendment or revocation of a declaration.

Section 43P(1) requires the community justice group, once it makes a decision to declare a place dry, to provide a notice of the declaration to be displayed in a prominent place in the town and if practical at the place which is declared dry. The notice must be displayed for as long as the declaration is in force.

Section 43P(2) specifies the information that a notice must include. The notice must state the provisions of section 43T which provide that it is an offence to possess or consume alcohol or to be drunk in a dry place.

Section 43P(3) provides that the notification process also applies to the amendment or revocation of a declaration. However, section 43P(4) clarifies that a notice of revocation need only be displayed for one month and need not state the provisions of section 43T.

Section 43Q(1) provides that the community justice group may suspend the dry place declaration on written application by any person for a period up to 7 days. This provision would allow a person to hold a one-off function where alcohol is permitted. For example, the declaration of the council chambers as a dry place might be suspended during a civic reception. The suspension is limited to a maximum of 7 days, because any longer period of suspension would be contrary to the spirit of the original dry place declaration. For a longer period, the revocation provisions should be used. Seven days is considered long enough to cover most events or festivals.

Section 43Q(2) requires an applicant to state the purpose and the time of the suspension sought, to aid the community justice group's decision-making.

Section 43Q(3) requires the community justice group to consider the application as soon as possible.

Section 43Q(4) provides that the community justice group should only suspend the declaration if it is satisfied it is in the best interests of the residents of the area. This will require the community justice group to consider the harm that might arise from the consumption of alcohol in the dry place.

Section 43Q(5) allows the community justice group to specify the type of alcohol that the suspension applies to.

Section 43Q(6) allows the group to state reasonable conditions for the suspension.

Section 43Q(7) requires that the notification and submission processes set out in sections 43N to 43P apply to a suspension.

Section 43Q(8) provides that a notice advising the community of the suspension of a declaration does not have to set out the offence provision of section 43T, as this would be superfluous.

Section 43R clarifies that a dry place declaration made by a community justice group prevails over a declaration made under the new provisions of the *Liquor Act 1992* to limit the amount and type of alcohol that can be carried or possessed in a restricted area. For example, if a declaration under the *Liquor Act 1992* limited the possession of alcohol in a council area to one carton of beer, the limit on possession of alcohol for a dry place declared by the community justice group would still be zero.

Section 43S creates an offence to obstruct or improperly influence a member of a community justice group in performing the member's functions under the Act. This is necessary to protect members of community justice groups from reprisals in making potentially controversial declarations affecting residents' right to drink or possess alcohol in certain areas.

Section 43T(1) creates the offence of possessing or consuming alcohol in a dry place. This enables the enforcement of the declaration of a dry place under section 43M.

Section 43T(2) creates the offence of being drunk in a dry place. While being drunk in a public place within the area is already an offence under the

Liquor Act 1992, whether the place is declared dry or not, this provision would extend this to private places declared dry. It is expected that an occupier of a private place such as a house who requests the community justice group to declare the place dry desires not only that persons be prohibited from drinking or bringing alcohol to that place, but also that persons who are drunk do not enter that place. This offence enables the protection of residents of the community who are subjected to repeated disturbances and even violence as a result of drunken individuals. It may have particular application in domestic violence situations.

Section 43U creates an offence for making false or misleading statements to a community justice group. This offence prevents persons from misleading the community justice group when objecting to or supporting dry place declarations, amendments or revocations or applying for a suspension of a declaration.

Section 43V creates an offence for giving false or misleading documents to the community justice group. This offence prevents persons from misleading the community justice group when objecting to or supporting dry place declarations, amendments or revocations or applying for a suspension of a declaration. The section provides a safeguard for a person who gives a false or misleading document but tells the group how it is false or misleading and gives any correct information the person has or can reasonably obtain.

Section 43W enables a person whose interests are affected by an appealable decision of the community justice group to appeal to a Magistrates Court. "Appealable decision" is defined in section 43L.

Section 43X(1) provides for the appeal to be started by filing a notice of appeal with the clerk of the nearest Magistrates Court and giving a copy of the notice to the community justice group within 7 days of filing it.

Section 43X(2) requires appeals to be filed within 28 days of the appellant becoming aware of the decision.

Section 43X(3) allows the court to extend the period for filing the notice of appeal. This might be done if the appellant demonstrates that circumstances beyond his or her control prevented him or her from filing in time.

Section 43X(4) requires the notice to state the grounds of the appeal and the facts relied on. This assists the court in adjudicating and the community justice group in responding.

Section 43Y enables the court to put on hold the community justice group's decision to secure the effectiveness of the appeal. This will require the appellant to make a case to the court why the decision must be put on hold to protect the interests that are the basis of the appellant's appeal.

Section 43Z(1) gives the Magistrates Court all the powers of the community justice group and provides that the court is not bound by the rules of evidence, but must comply with natural justice.

Section 43Z(2) provides that the court is required to rehear the decision based on the material before the group at the time it made the decision, plus any further evidence allowed by the court.

Section 43Z(3) gives the court the power to confirm the decision, set it aside and substitute another decision, or set it aside and return the issue to the community justice group with the directions the court considers appropriate.

Section 43ZA requires the court to be constituted by a magistrate when deciding an appeal. Therefore, the court may not be constituted by justices of the peace.

Section 43ZB confirms that a decision substituted by the court is taken to be the community justice group's decision.

Section 43ZC allows an appeal to the District Court from the Magistrates Court on a question of law only. Therefore, the District Court will not be able to rehear the merits of a decision.

Section 43ZD requires applications under the part to be made to the community justice group's coordinator. This provision refers to applications to the community justice group to make, amend or revoke a dry place declaration under section 43M, and applications for a suspension of a declaration under section 43Q.

Clause 27 inserts a new part 3C—Provisions about making by-laws and subordinate by-laws.

'PART 3C—PROVISIONS ABOUT MAKING BY-LAWS AND SUBORDINATE BY-LAWS'

Section 43ZE sets out the definitions for the part.

“advertised proposed by-law” relates to the by-law that is put on notice pursuant to the consultation process in section 43ZK.

“amended proposed by-law” relates to the by-law put on notice in section 43ZK with any amendments that arise from the consultation process.

“certified copy” is defined for the purposes of section 43ZQ(5).

“consultation period” is defined for the purposes of section 43ZK and section 43ZT.

“drafting certificate” is defined for the purposes of section 43ZJ(2).

“model by-law” is defined in section 43ZF(1).

“proposed authorising law” is defined in section 43ZY(1) and is relevant in relation to subordinate by-laws.

“proposed by-law” relates to a model by-law or another by-law that a Council proposes to adopt by resolution under section 43ZI.

“required number” is defined for the purposes of section 43ZQ(5).

“subordinate by-law” is defined under section 43ZG.

Section 43ZF(1) provides for the Minister to publish a model by-law in the gazette as suitable for adoption by an Island council. The requirement that it is suitable for adoption means, amongst other things, it must comply with State interests and not be contrary to State legislation. The provision also requires that it must be about a matter within the functions of an Island council. Functions of an Island council are defined in section 23 of the Act.

Section 43ZF(2) provides that the Minister must publish a notice at the same time as the model by-law stating whether steps 3 to 7 of division 3 apply for making the by-law. These provisions relate to the consultation on the proposed by-law.

Section 43ZF(3) provides that the Minister can only require the consultation under steps 3 to 7 if the Minister is satisfied it would serve a useful purpose. It is anticipated that if the model by-law is about a minor matter, or is simply an updated draft of an existing by-law of the council, the Minister will exempt the council from this consultation process, as it would serve no useful purpose. Another circumstance where this would occur might be where the Minister has consulted widely with the community in developing the model by-law. A by-law that is substantially new for the community, will require consultation through steps 3 to 7 before making the by-law.

Section 43ZG provides the power for a council to make a subordinate by-law if a by-law expressly states the council can make a subordinate by-law about the matter. This provision requires the head of power for a subordinate by-law to be expressly contained in the principal by-law.

Section 43ZH(1) requires the process in division 3, which sets out nine steps, to be used for making a by-law. This includes a model by-law or another by-law.

Section 43ZH(2) qualifies subsection (1) by confirming that steps 3 to 7, relating to consultation, only apply for a model by-law if the Minister has required this under the notice in section 43ZF(1).

Section 43ZH(3) states that if a council purports to make a by-law in contravention of this section (in other words, without following the required steps in the division), the by-law is of no effect.

Section 43ZI provides for Step 1 in the process, where the council is required to pass a resolution to propose to make a by-law as the first step in making either a model by-law or another by-law.

Section 43ZJ provides for Step 2 in the process allowing the State Government to ensure that the proposed by-law satisfactorily deals with State interests. The section does not apply where the council is proposing to adopt a model by-law because the State interests have already been dealt with when the Minister drafts the by-law. The section requires that the council must give the Minister a copy of its proposed by-law, its drafting certificate and any other information about the proposal required by the Minister or prescribed by regulation. The council must receive an advice from the Minister confirming that it may proceed to Step 3 and setting out any conditions which the council must satisfy. In giving this advice, the Minister checks that State interests have been dealt with and that the proposed by-law is drafted in accordance with drafting standards prescribed under a regulation. The provision also allows the Minister to give an advice to a council that proposes to make a minor amendment to an existing by-law, that it may proceed to Step 8 without satisfying Steps 3 to 7. In other cases, the Minister may advise that the council can proceed without satisfying step 7, which is a further State interests check, if it agrees to satisfy particular conditions.

Section 43ZK provides for Step 3 in the process, which requires the council to make the proposed by-law known to the public by advertising in a newspaper or other publication and displaying a notice in the council's office and another prominent place in the area. The consultation period is a minimum of 14 days unless a longer period is fixed by a condition set by the Minister in step 2 or is prescribed by regulation. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed by-law and make written submissions. The notice that is displayed in the council office and the prominent place must attach an actual copy of the by-law. Both notices

must state that a copy of the by-law is open to inspection or available free of charge from the council's office. In addition to the public notification, the section provides that a council may consult with its residents in any way it considers appropriate, and that if this consultation comprises an open meeting, the council's clerk must keep minutes.

Section 43ZL provides for Step 4 in the process allowing for public access to the proposed by-law and the availability of a free copy at the council office.

Section 43ZM provides for Step 5 in the process, which requires the council to properly consider each written submission properly made, plus submissions recorded in the minutes of an open meeting under section 43ZK(8).

Section 43ZN provides for Step 6 in the process, which requires the council to make a resolution as to whether to proceed with the by-law making process. The council may proceed with the by-law as advertised or with amendment. At this point, the council would be able to amend a proposed by-law which was a model by-law.

Section 43ZO provides for Step 7 in the process, which gives the Minister a further opportunity to ensure the proposed by-law satisfactorily deals with any State interest, if the by-law has been amended since the State interest check under step 2, or if the by-law is an amended model by-law. The provision requires the council to advise the Minister of the resolution made at Step 6 and include any other information required by the Minister or prescribed by regulation. If the council advises the Minister that it wishes to proceed with making the by-law, it must receive an advice from the Minister that it may proceed to the next Step, and this advice may be subject to conditions if the Minister considers them necessary to deal with State interests.

Section 43ZP provides for Step 8 in the process, which provides for the proposed by-law to be made by the council. Subsection (1) provides that a model by-law is made if the council adopts the by-law by resolution, amends or repeals any inconsistent existing by-law by resolution, and the council's clerk certifies the required number of copies. Subsection (2) provides that another by-law is made if the council adopts it by resolution and the council's clerk certifies the required number of copies.

Section 43ZQ provides for Step 9 in the process, which requires a notice that a by-law has been made to be published in the Gazette and displayed at the council office and other prominent places in the council area as the council considers appropriate. The section lists the type of information

which must be included in the notice. The section also specifies that a by-law be notified within one year of the date of the council's resolution otherwise the by-law making process must recommence. A copy of the notice and the required number of certified copies of the by-law must be given to the Minister as soon as practicable after the date of notification.

Section 43ZR requires the process in division 4, which sets out six steps, to be used for making a subordinate by-law. If a council purports to make a subordinate by-law in contravention of this section (in other words, without following the required steps in the division), the subordinate by-law is of no effect.

Section 43ZS provides for Step 1 in the process, where the council is required to pass a resolution to propose to make a subordinate by-law as the first step in making the subordinate by-law.

Section 43ZT provides for Step 2 in the process, which requires the council to make the proposed subordinate by-law known to the public by advertising in a newspaper or other publication and displaying a notice in the council's office and another prominent place in the area. The consultation period is a minimum of 14 days unless a longer period is prescribed by regulation. The provision also specifies the information which must be included in a notification so that the public has an opportunity to view the proposed subordinate by-law and make written submissions. The notice that is displayed in the council office and the prominent place must attach an actual copy of the subordinate by-law. Both notices must state that a copy of the subordinate by-law is open to inspection or available free of charge from the council's office. In addition to the public notification, the section provides that a council may consult with its residents in any way it considers appropriate, and that if this consultation comprises an open meeting, the council's clerk must keep minutes.

Section 43ZU provides for Step 3 in the process allowing for public access to the proposed subordinate by-law and the availability of a free copy at the council office.

Section 43ZV provides for Step 4 in the process, which requires the council to properly consider each written submission properly made, plus submissions recorded in the minutes of an open meeting under section 43ZT(9).

Section 43ZW provides for Step 5 in the process, which provides for the subordinate by-law to be made by the council by resolution. It can be made with amendments, but if the amendments are substantial, before making the

by-law the council must consult with residents again under Steps 2 to 4. The council's clerk must certify the required number of copies of the subordinate by-law.

Section 43ZX provides for Step 6 in the process, which requires a notice that a by-law has been made to be published in the Gazette and displayed at the council office and other prominent places in the council area as the council considers appropriate. The section lists the type of information which must be or may be included in the notice. The council must give the Minister a copy of the notice and the required number of certified copies of the by-law, and a drafting certificate for the subordinate by-law.

Section 43ZY sets out a process to enable the council to commence the process for consulting on a subordinate by-law even before the process for making the by-law that authorises the subordinate by-law is finished.

Section 43ZZ provides that a by-law or subordinate by-law commences on the day it is notified in the Gazette unless a later day or time is fixed in the by-law or subordinate by-law.

Section 43ZZA declares that a by-law has the force of law on commencement.

Section 43ZZB clarifies that a subordinate by-law is binding on the council and is binding on anyone else to the extent stated in the authorising by-law.

Section 43ZZC clarifies that a subordinate by-law ceases to have effect if the by-law that authorised it is repealed.

Section 43ZZD specifies that a certified copy of a by-law or subordinate by-law provides evidence of the content of the law, and that judicial notice shall be given to the certified copy in any proceedings. A copy of the Gazette, newspaper or publication containing a notice about the making of the by-law or subordinate by-law is evidence of the matters stated in the notice and evidence that the law has been properly made.

Section 43ZZE clarifies a council's competence in respect of the making of a by-law or subordinate by-law.

Clause 28 inserts new subsections in section 80 as evidentiary aids for enforcing section 43T, which relates to possession or consumption of alcohol in a dry place. The provisions assist in proving that a fluid was alcohol.

Clause 29 inserts a new section 80A to enable the chief executive to approve forms for use under the Act.

Clause 30 amends section 81, to add a regulation-making power relating to the business and conduct of meetings of community justice groups, including times and places, the quorum, the presiding member, and disclosure of interests.

Clause 31 inserts a new section 84A as a transitional provision for the process of making by-laws. The old provisions for making by-laws (sections 24 and 25) continue to apply to the making of a by-law commenced under the process of those provisions at the time the new provisions come into force.

Clause 32 inserts a new part 12—Provision for reprinting Act.

‘PART 12—PROVISION FOR REPRINTING ACT’

Section 86 provides for the Act to be numbered and renumbered in the next reprint of the Act.

PART 4—AMENDMENT OF LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

Clause 33 provides that part 4 and the schedule amend the *Local Government (Aboriginal Lands) Act 1978*.

Clause 34 inserts two new definitions, “liquor provision” and “police officer in charge”, into section 3 of the Act. The definition of “liquor provision” is needed to nominate the offences for which police officers and Aboriginal police officers (with the authorisation of the police officer in charge) can take enforcement action. Offences under sections 168B, 169 and 171 of the *Liquor Act 1992* relate to restricted areas, sale of liquor without a licence, and sale/exposure of liquor in licensed premises without a licence for the premises, respectively. New section 45T of the *Community Services (Aborigines) Act 1984* provides an offence for possessing or consuming alcohol in a dry place or being drunk in a dry place.

Clause 35 inserts a new section to require the Aurukun and Mornington Shire Councils to keep separate accounting records for payments made to the Councils under section 9 of the *Indigenous Communities Liquor Licences Act 2002*. It also provides for the use of these payments. The

section mirrors the new provision for Aboriginal Councils and Island Councils inserted by clauses 8 and 23 of the Bill.

Clause 36 amends section 33 to provide that the police officer in charge for the shire may authorise an Aboriginal police officer to exercise (within the community area) the powers of an investigator under part 7 of the *Liquor Act 1992* and powers under sections 51 to 53 of the *Police Powers and Responsibilities Act 2000* for the enforcement of a liquor provision. This provision replaces the existing authorisation under section 68 of the Act for Aboriginal police to enforce declarations made by the Aurukun Alcohol Law Council, which will be repealed when part 6 of the Act is repealed.

Clause 37 inserts a new section 55AA to enable the secretary of the Aurukun Alcohol Law Council to delegate the role to an appropriately qualified person. Under the legislation, the chief executive officer of the Aurukun Shire Council is the secretary of the Law Council. The intention in providing this facility is to enable the Law Council to meet at its convenience and conduct business in the period before it is abolished and re-established as a community justice group under the *Community Services (Aborigines) Act 1984*.

Clause 38 omits part 6 of the Act. This section will commence on a date to be fixed by proclamation (see clause 2). The intention is that the Aurukun Alcohol Law Council will continue in existence and operate under the provisions of part 6 of the Act until such time as a regulation is made to re-establish the group as a community justice group under the *Community Services (Aborigines) Act 1984*. At this time, a regulation will also be made under the *Liquor Act 1992* to create a restricted area, incorporating Aurukun Shire, and set limits on the amount of alcohol that can be carried in the area. The repeal of part 6 will become effective on the same day as these two regulations are made.

Clause 39 inserts a new division 2 for part 8 of the Act and inserts a new part 9 in the Act.

Section 112 provides definitions for division 2.

“law council” refers to the Aurukun Alcohol Law Council.

“community justice group” refers to the community justice group that will be established in place of the Law Council under the new provisions of part 3B of the Bill.

“new dry place provisions” refers to the new provisions in part 3B of the Bill for the declaration of dry places. In effect, these provisions replace the

old dry place and controlled place provisions under the *Local Government (Aboriginal Lands) Act 1978*.

“repeal” refers to the repeal of the Law Council provisions by the *Community Services Legislation Amendment Act 2002*.

“repealed part” refers to part 6 of the *Local Government (Aboriginal Lands) Act 1978*.

“shire council” is defined for the purposes of sections 114 and 119.

Section 113 provides that on the “repeal” (as defined), the Aurukun Alcohol Law Council is dissolved.

Section 114 provides that any assets and liabilities of the Aurukun Alcohol Law Council immediately before the repeal vest in the Aurukun Shire Council.

Sections 115 and 116 make provision for applications made to the Aurukun Alcohol Law Council in relation to dry places to be continued and dealt with under the new “dry place provisions” (as defined) following the repeal of part 6. This means that if an application for a dry place is commenced but not completed before the Law Council is dissolved, the community justice group replacing the Law Council will be obliged to deal with the application as if it were an application under the new provisions. However, provision has not been made for applications relating to controlled places to be continued under the new provisions because there is no provision for controlled places under the new legislative framework. Existing controlled place declarations and any applications relating to controlled places commenced but not completed before the repeal, will simply lapse at the time part 6 is repealed.

Section 117 provides that, if before the repeal of part 6, the Aurukun Alcohol Law Council had declared a place to be a dry place but had not displayed a notice of the declaration, the community justice group replacing the Law Council must display a notice of the declaration as if the declaration had been made under the new dry place provisions.

Section 118 provides that dry place declarations made before the repeal of part 6 continue in force as if they were made under the new dry place provisions.

Section 119 makes provision for a final report of the Aurukun Alcohol Law Council’s activities following the repeal of part 6. As this period is expected to be less than a full financial year, the final report is due within 30 days after the repeal of part 6.

Section 120 provides a regulation-making power to deal with any transitional matters that may arise from the repeal of part 6 that are not specifically dealt with under the transitional provisions.

Section 121 provides that when the next reprint of the Act is produced under the *Reprints Act 1992* the provisions of the Act must be numbered and renumbered as permitted under the Reprints Act.’

PART 5—MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 40 provides for the schedule to make minor and consequential amendments.

SCHEDULE

COMMUNITY SERVICES (ABORIGINES) ACT 1984

Clauses 1 to 4 replace references to “Aboriginal police” with “Aboriginal police officers”.

Clause 5 changes the part heading “Transitional Provision” to “Transitional Provisions” to reflect the fact that there is now more than one provision in the part.

COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

Clauses 1 to 4 replace references to “Island police” with “Island police officers”.

Clause 5 changes the part heading “Transitional Provision” to “Transitional Provisions” to reflect the fact that there is now more than one provision in the part.

JUVENILE JUSTICE ACT 1992

Clause 1 amends the definition of community justice group in section 109(5) to include the new community justice groups established under part 3A of the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.

LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

Clause 1 simplifies the drafting of the provisions amended and removes outdated references.

Clause 2 updates the provisions amended in accordance with current drafting practice.

Clause 3 simplifies the drafting of the provisions amended and removes outdated references.

Clause 4 amends the part heading and inserts a division heading to reflect the inclusion of new division 2 for the part (*Transitional provisions for Community Services Legislation Amendment Act 2002*) inserted by the Bill.

PENALTIES AND SENTENCES ACT 1992

Clause 1 amends the definition of community justice group in section 9(6) to include the new community justice groups established under part 3A of the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*.