

# **Liquor Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Liquor Amendment Bill 2005*.

#### **Policy Objectives of the Legislation**

The policy objective of the Legislation is to amend the *Liquor Act 1992* (the Liquor Act) to impose a 3.00 am lock out on all licensed premises in the Brisbane City Council area and to prohibit advertising of free drinks, multiple drinks and/or discounted liquor State-wide.

#### **Reasons for the Bill**

The Premier and Minister for Trade hosted a summit on 25 February 2005 of Ministers, the Lord Mayor of Brisbane, the Lord Mayor of the Gold Coast, licensees, industry representatives, the Queensland Police Service and not-for-profit community organisations to discuss safety concerns in Brisbane and possible solutions to the problem.

As a result the 17 Point Brisbane Safety Action Plan (the Action Plan) was released by the Premier and Minister for Trade on 1 March 2005. The Action Plan is aimed at curbing inappropriate behaviour associated with alcohol use in Brisbane. One of the recommendations in the Action Plan was to amend the Liquor Act to impose a 3.00 am lock out on all licensed premises in the Brisbane City Council area and to prohibit advertising of free drinks, multiple drinks and/or discounted liquor State-wide.

#### **Achieving the Objectives**

The Bill contains amendments to the Liquor Act to impose a 3.00 am lock out on all licensed premises in the Brisbane City Council area and to prohibit advertising of free drinks, multiple drinks and/or discounted liquor State-wide.

**Administrative costs**

Any financial impact from the development and implementation of initiatives in the Bill will be met from the Department of Tourism, Fair Trading and Wine Industry Development's (DTFTWID) existing budget allocations.

**Fundamental Legislative Principles**

None of the amendments raise issues relating to Fundamental Legislative Principles. Lock outs are currently imposed under section 107C of the Liquor Act. This gives the Chief Executive a wide discretion to impose licence conditions. The only fetter on this power is that any condition imposed must be reasonable in the circumstances. Licensees therefore have a right to appeal the decision of the Chief Executive. The Brisbane City Council lock out is not being imposed at the discretion of the Chief Executive but will be statutorily imposed. The right to appeal a lock out under section 30 of the Liquor Act only applies to decisions of the Chief Executive

**Consultation****Community**

The Premier and Minister for Trade hosted a summit on 25 February 2005 of Ministers, the Lord Mayor of Brisbane, the Lord Mayor of the Gold Coast, licensees, industry representatives, the Queensland Police Service and not-for-profit community organisations to discuss safety concerns and possible solutions to the problem.

Key issues raised were policing, licensing arrangements, the success of the lock out provision on the Gold Coast and advertising of discount drinks.

**Government**

The strategies contained in the Action Plan have been developed by the Department of the Premier and Cabinet in association with DTFTWID, the Queensland Police Service, the Department of Transport, the Department of Local Government and Planning, the Department of Communities and the Department of Health.

Government Departments consulted were generally supportive of the Action Plan.

## Notes on Provisions

Clause 1 sets out the short title by which the Act will be known.

Clause 2 provides the commencement date for the Act. Clause 8 commences on a day to be fixed by proclamation. This provides for the automatic expiry in 12 months time of the division and associated amendments relating to the lock out. This occurs as a result of section 15DA of the *Acts Interpretation Act 1954*. This also allows the lock out provisions to be expired by proclamation at an earlier date if it is required.

Clause 3 states that this Act amends the Liquor Act.

Clause 4 inserts a definition of “resident” into the Liquor Act for the purpose of the new section 142AB and various other sections of the Liquor Act that refer to a “resident”. A definition of “trading period” is also inserted into section 4 of the Liquor Act for the purposes of defining the lock out.

Clause 5 inserts a new division into part 5 of the Liquor Act. The new division imposes a 3.00am lock out condition on all licensees and permittees in the Brisbane City Council area. A new division is needed so that the division can expire in 12 months time or earlier and does not effect the current numbering of the Liquor Act.

Clause 5 inserts new sections 142AA, 142AB and 142AC into the Liquor Act. Section 142AA sets out that the lock out applies to the Brisbane City Council area and that it applies to both licensees and permittees authorised under the Liquor Act to sell or supply liquor during the trading period. The trading period for the purposes of the lock out is from 3.00am to 7.00am on a particular day.

The lock out does not apply to the Brisbane Casino and the Brisbane Domestic and International Airports. The lock out does not apply on New Year’s Day and it does not apply to those granted an extended hours permit granted under section 102C of the Liquor Act to commence early trading on ANZAC day.

Section 142AB explains how the lock out will work. It explains that the lock out is a mandatory condition on all licences and permits. The licensee or permittee must not allow patrons of the licensed premises or the premises to which the permit relates to enter or re-enter the premises at or after 3.00am.

Section 142AB(2) and 142AA(2)(b) read together explain that the lock out does not apply in relation to patrons who are residents of the premises, or guests of the residents in the residents' company. This is intended to allow residents of hotels (or other licensed premises that offer accommodation) to order drinks from their room, have access to their mini-bars and they may attend the public bar of the hotel they are staying at. It does not permit patrons to attend the bars of other hotels, just the hotel they are staying at.

If a licensee or permittee breaches the lock out condition there is a maximum penalty set at 100 penalty units or \$7,500 for individuals or \$37,500 for corporations.

Section 142AB(4) inserts a definition of patron. This is to make it clear that the definition for the purposes of the lock out also covers those people seeking entry to become a patron and the person does not have to spend any money to be considered a patron, for example the person may want to enter to dance, use the toilet, or meet up with friends. It is intentionally drafted with this wider meaning. It is not intended to include other people who are entering or seeking to enter the premises when they have legislative authority to enter the premises, for example investigators and Police. Nor emergency personnel or employees who are entering or seeking to enter the premises in their professional capacity.

Section 142AC states that if a licensee or permittee breaches the lock out condition it is also a ground for taking disciplinary action under the Liquor Act.

Clause 6 inserts a new section 148B into the Liquor Act to prohibit certain advertising by licensees or permittees. This new section applies State-wide. The following must not be advertised external to the licensed premises or the premises to which the permittee's permit relates:

- free drinks;
- multiple quantities of liquor, for example two for one, six drinks for a certain price etc (this is drafted extremely broadly due to the indefinite number of ways this practice can be carried out);
- the sale price of liquor (this is to avoid statutory interpretation issues over what is a "discount" as liquor prices can vary at different times of the day and on different days of the week); or
- any type of drinking promotion, for example, happy hours, all you can drink, toss the boss etc.

This amendment does not apply to bottle shops, only where there is consumption of the alcohol on the licensed premises or premises to which the permit relates. Advertising for take away liquor is not considered to promote excessive consumption of alcohol, unlike external advertising for on premises consumption. The proposed amendments are not intended to ban advertising of take away liquor as this would be a restriction on trade which could not be justified on public interest grounds.

The advertising may occur inside the premises, but only if it is not visible or audible to a person who is outside the premises. The section does not ban free drinks, multiple drinks or promotions just the advertising of such.

Section 148B(4) is inserted to ensure that licensees who are currently required to comply with section 74 of the Liquor Act do not need to remove the liquor list as required by this section. Therefore the holders of an on-premises (meals) licence may display the liquor list with the selling price of the liquor, but they must comply with the other advertising prohibitions set out in this section. Therefore the liquor list must not advertise free drinks, multiple drinks or drink promotions.

Section 148B(6) defines “advertise”. It is given its ordinary dictionary meaning, so that it can be interpreted extremely broadly, that is; in any way whatsoever. This is intended to cover advances in technology as well as covering traditional advertising methods today. A few examples are provided to clarify that it is intended to cover all written and oral advertising, all sorts of signage external to the premises, the handing out of flyers, advertising over the internet, radio, tv or newspaper, SMS and touting.

Clause 7 amends section 165A of the Liquor Act to allow this provision to apply to the 12 month trial lock out. The effect of this is to allow authorised persons as defined (the licensee or permittee, or an employee or agent of the licensee or permittee) to refuse entry to persons and to use necessary and reasonable force to prevent the person from entering the premises. It also imposes a maximum penalty of 25 penalty units if the person attempts to enter the premises during the lock out or if they resist authorised persons. Section 165(1)(e) of the Liquor Act (removal of persons from premises) would then apply to persons who enter the premises despite being refused entry under section 165A(1)(e) during the lock out period. Investigators, as defined (both Liquor Licensing officers and police officers) will also have the powers of an authorised person under sections 165 and 165A pursuant to section 184 of the Liquor Act.

Clause 8 will not commence until the lock out provisions are to be expired. This is explained above in relation to clause 2.

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