

# **Liquor and Other Acts Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

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

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

The primary policy objective of the Legislation is to amend the *Liquor Act 1992* (Liquor Act) to impose statutory licence conditions on all licensed premises in the Brisbane City Council area which are authorised to operate after 1am.

The Legislation also aims to progress a number of miscellaneous amendments to the Liquor Act which will minimise cumbersome administrative processes for both government and stakeholders; reinforce harm minimisation principles; and clarify the intent of particular sections of the Act.

The additional minor administrative amendments to the *Property Agents and Motor Dealers Act 2000* (PAMD Act) and the *Body Corporate and Community Management Act 1997* (BCCM Act) relate to real estate transactions. Specifically the amendments will clarify and codify the ways that residential property contractual documents and pre-contractual documents may be given to proposed buyers. Amendments to the BCCM Act will also impact on the sale of lots in community titles schemes that are not residential property.

#### **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 City 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 tougher licence conditions on all licensed premises in the Brisbane City Council area which are authorised to operate after 1am.

In May 2003 the Liquor Licensing Division (the Division) of the Department of Tourism, Fair Trading and Wine Industry Development (DTFTWID) released a Discussion Paper which proposed a number of amendments to the Liquor Act. A number of the proposed amendments canvassed in the Discussion Paper are included in the Bill.

In 2002 a review of the PAMD Act conducted by the Office of Fair Trading, identified a lack of clarity in the ways that seller or seller's agents might give or deliver warning statements to proposed buyers. Under the PAMD Act a warning statement must be attached as the first or top sheet of the relevant or proposed relevant contract.

In July 2005, the Court of Appeal, in a matter before it, also made comment which could limit the meaning of "*attached*" and noted that the facsimile transmission of pre-contractual documents was not specifically included in the legislation. This led to significant uncertainty in the real estate industry and a demand to clarify the legislation. The amendments intend to define "*attach*" in order to remove any doubt.

Where the transmission of contractual documents is by facsimile or email, physical attachment of the warning statement to the proposed contract is not possible. Processes to enable the delivery of contractual and pre-contractual documents by facsimile or other means of electronic communication, such as email transmission, have been developed. These processes will ensure that consumers continue to have the greatest opportunity to read and consider the warning statement which accompanies the proposed relevant contract.

The BCCM Act includes consumer protection provisions relating to the sale of lots in community titles scheme (for example, home units). The provisions include a requirement for sellers to provide buyers with an approved 'information sheet' setting out various body corporate issues a buyer should consider. Similar to the PAMD Act, the BCCM Act requires the information sheet to be 'attached' to the contract of sale. The Bill

includes amendments to the BCCM Act designed to ensure the processes for providing buyers with BCCM information sheets complement those proposed for the provision of warning statements under the PAMD Act. If amendments to the BCCM Act are not made, the benefits of the proposed amendments to the PAMD Act will not be realised in the sale of lots in a community titles scheme.

### **Achieving the Objectives**

The Bill contains amendments to the Liquor Act to impose statutory licence conditions on all licensed premises in the Brisbane City Council (BCC) area that are authorised to operate after 1am. These conditions include a requirement that:

- all licensees develop and maintain a House Policy;
- licensees must employ sufficient numbers of crowd controllers as outlined under the Regulation;
- a prohibition on competitions that involve contestants consuming alcohol on the premises;
- all staff must complete *Responsible Service of Alcohol (RSA)* training; and
- Closed Circuit Television (CCTV) be installed at each public entrance and exit.

The amendments to impose statutory licence conditions on all licences in the BCC area are the most efficient and effective means of imposing uniform regulation. The amendments will increase community safety through improved standards and increased security measures.

The Bill also contains a number of miscellaneous amendments to the Liquor Act to minimise cumbersome administrative processes, clarify intent and reinforce the objectives of the Act. Consultation on the miscellaneous amendments has identified that they are the most effective means of responding to industry, and community interests and meeting government objectives.

The Bill also contains amendments to the PAMD Act. The amendments will enable real estate sellers and their agents to fax or email pre-contractual and contractual documents to buyers. This will facilitate real estate sales processes by providing alternative means of giving sales documents to buyers without sacrificing consumer protection processes provided by the warning statement. The amendments are in accord with the

objects of the PAMD Act in regulating for the protection of consumers and promoting freedom of enterprise in the market place.

The Bill further contains amendments to the BCCM Act to allow sellers and their agents to provide buyers with the required BCCM information sheet by facsimile and other electronic means, while ensuring an appropriate level of consumer protection is maintained. The amendments are designed to provide a complementary framework for the provision of required consumer information between the PAMD Act and the BCCM Act.

### **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.

The Liquor Industry is already highly regulated by statute and the proposed amendments are consistent with the existing regulatory approach which seeks to minimise the potential harm of liquor abuse and misuse on the community as a whole.

Conditions are currently imposed, under section 107C of the Liquor Act, which give 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. As the proposed Action Plan amendments licence conditions will be imposed by statute, licensees will have no right of appeal. The right to appeal a condition of a licence, under section 30 of the Act, only applies to decisions of the chief executive.

The measures form part of the Government's broader Action Plan to manage alcohol abuse, misuse and associated violence in Brisbane and will be applied equally to all licensees in the BCC area.

## **Consultation**

### **Community**

#### **Action Plan Amendments**

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.

The Brisbane City Safety Action Plan Taskforce, chaired by the Director General of the Department of Tourism, Fair Trading and Wine Industry Development has been consulted on the proposed amendments relating to the implementation of the Brisbane City Safety Action Plan. The Taskforce includes representatives from key stakeholder groups including industry organisations, industry businesses, community groups and the BCC.

Consultation has also taken place with the Liquor Industry Consultative Forum. This forum is also convened by the Director General of the Department of Tourism, Fair Trading and Wine Industry Development with representatives from industry organisations, licensees, social justice groups, industry consultants, and representatives of the Gold Coast City Council, Queensland Health and Queensland Police.

Consultation regarding the proposed ratio for security providers was conducted with the working party for the Office of Fair Trading review of the *Security Providers Act 1993*. This group comprises representatives from the Office of Fair Trading, security industry, unions, Griffith University, the Consumer's Association and representatives from the Department of the Premier and Cabinet, Queensland Treasury, Justice and Attorney-General and the Division.

The Liquor, Hospitality and Miscellaneous Workers Union have also been consulted.

On the 23 March 2005, the Division mailed a questionnaire to all licensees in the BCC area who have the authority to operate after 1am seeking comment on the proposed amendments. The survey was distributed to approximately 327 licensees with 80 response received (25% response rate).

During mid June a telephone survey was conducted to canvass licensees about three of the proposed amendments to determine how much of an impact the proposals would have on business. These three items were crowd controllers, CCTV and RSA training. Of the 327 licensees contacted, 152 provided responses (46% response rate).

On 24 June 2005, senior officers of the Division met with representatives of the Brisbane City Licensees Association (BCLA). BCLA is a group of licensees representing the interests of liquor licensees in Fortitude Valley, Caxton Street and the central business district.

Senior officers of the Division have also discussed the proposed amendments with individual licensees and their representatives including liquor consultancy companies.

The proposed amendments were also canvassed in a combined Regulatory Impact Statement/Draft Public Benefit Test (RIS/DPBT), pursuant to the *Statutory Instruments Act 1992* and the National Competition Policy agreements, that was released for public consultation on 22 July 2005 with a closing date for submissions of 22 August 2005.

Generally stakeholders are supportive of the amendments as they realise the need to satisfy the communities concerns in relation to safety and amenity in the BCC area.

### **Miscellaneous Amendments**

There has been limited on-going consultation with the Queensland Hotel's Association, Clubs Queensland and the Restaurant and Caterers Association who have been advised of the amendments which will affect their industry. The Local Government Association of Queensland has also been informed of the changes.

### **PAMD Act and BCCM Act Amendments**

While consultation with the real estate industry, through the Real Estate Institute of Queensland (REIQ), was undertaken to determine the magnitude and urgency of the problem, no community consultation was undertaken.

## Notes on Provisions

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

Clause 2 provides for the commencement date of the Act. Clauses 3, 4 (other than the excepted provisions), 25 to 31, 36 (other than the excepted provisions) and Part 3 relate to the BCC Action Plan Liquor Act amendments and commence on 1 December 2005. Part 4 relates to the BCCM amendments and Part 5 relates to the PAMD Act amendments which also commence on the 1 December 2005. The remaining clauses and provisions relate to the miscellaneous amendments to the Liquor Act and commence on the 1 January 2006.

Clause 3 states that Part 2 of the Bill amends the Liquor Act.

Clause 4 makes a number of amendments to the definitions contained in section 4 of the Liquor Act. Clause 4(1) deletes the current definition of trading period. Clause 4(2) inserts definitions for the following terms:

- Anzac Day event;
- approved training course;
- commencement;
- crowd controller;
- current training course certificate;
- development approval;
- exit;
- incident register;
- post-amended Act;
- pre-amended Act;
- trading period;
- training course certificate; and
- training register.

Clause 5 inserts a new section 4D into the Act. This new section will confirm that the note is part of the Act.

Clause 6 amends section 9 in relation to the ordinary trading hours of licensed premises to include the period from 5am until 1pm for an RSL or Services Club providing a function on Anzac Day.

Clause 7 amends subsection 10(b) to allow liquor to be supplied on Christmas Day, Anzac Day and Good Friday after the consumer orders a meal and before they finish eating.

Clause 8 amends section 59 to specify that the phrase ‘approvals under section 59(1)(d)(ii)’ of the Act means detached bottle shops.

Clause 9 inserts into section 102A a new subsection (2) to authorise licensed premises to trade between 5am and 1pm on Anzac Day if they enter into an agreement with an RSL or Services Club to provide services for an Anzac Day function at their premises. The new subsection 102A(2)(b) will limit the sale of liquor to the function.

Clause 10 will insert into section 102C a new subsection to allow for an extended hours permit, that includes trading between 5am and 7am for a one-off occasion, for a limited or special facility licensee. The new subsection 102C(2)(a) will provide that the permit must not be granted unless trading coincides with an event that the chief executive reasonably considers to be a special event that occurs in the locality in which the premises is located and is of particular significance or special interest to the regular patrons of the premises. The new subsection 102C(2)(b) allows a one off extended hours permit for a licensee holding a function at the premises of an RSL or Services Club on Anzac Day.

Clause 11 inserts into section 102F(4) a new subsection to allow the chief executive to grant a limited or special facility licensee a catering away permit to supply liquor at an RSL or Services Club premises function on Anzac Day. The new subsection 102F(4)(b) will limit the sale of liquor to the function.

Clause 12 inserts in section 109 a new subsection to clarify that a person may not be nominee for a licence if the same person is the holder of a licence for which there is no nominee under the Act.

Clause 13 amends section 111(1) to clarify that a licensee may apply to vary a licence by amending or revoking a condition of the licence. A new subsection 111(1A) provides that only a limited or special facility licensee may make application under this section to alter the times when business may be conducted, as these two licenses are not subject to ordinary trading hours. Trading hours for these two licenses are set by the conditions on their licence. Therefore a licensee may make application to vary a licence under this section by amending or revoking a condition of the licence.

The new subsection 111(1B) will allow a producer/wholesaler licensee to apply to vary their licence by changing the description of the licensed



premises under the licence. This allows multiple warehouses and offices to be listed under one produce/wholesaler licence.

The new subsection 111(2) is a consequential amendment which allows Anzac Day trading from 5am.

Clause 14 will amend subsection 116(1)(b) to reiterate that the referral to section 59(1)(d) means a detached bottle shop.

Clause 15 amends section 117 to provide that the chief executive may choose to refer any application for a liquor licence to the local government or the Officer in Charge of the police for the locality in which the applicant is applying for the liquor licence. To make this clear, the term 'relevant' has been added to the section, and a definition of 'relevant application' is provided.

Clause 16 expands section 118 to exempt an application for a variation of a special facility or limited licence for a one-off extended hours permit from advertising, unless requested to do so, by written notice from the chief executive. A new subsection 118(6B) will require the chief executive to have regard to the nature of the proposed variation when considering an application for an adult entertainment permit. A one-off adult entertainment permit is currently excluded from advertising requirements.

Clause 17 amends subsection 121(6) to extend the existing six month renewal period for an extended hours permit for the extension of trading hours beyond 3am to a maximum renewal period of 12 months. Under the amended subsection 121(6) applicants will be limited to applying for the renewal within the period the chief executive decides and advises.

Clause 18 amends section 121A which provides for the renewal of extended hours permits for an extension of trading hours beyond 3am. This amendment will insert a new statutory process for the application of renewal of permits. The amendments to section 121A will establish specific timeframes for both the applicant and the Liquor Licensing Division to comply. Accordingly, the process is:

- The Division will have four days after the receipt of an application or renewal for an extended hours permit, to analyse and ensure all necessary information has been received;
- The local government of an area and the Assistant Commissioner of a locality may comment on, or object to, the application by giving written comments or objections to the chief executive within 28 days of receiving the chief executive's advice about the application.

Direction regarding the form of written comments will be contained in guidelines prepared by the Division.

- The Division has five days to review the written report from the local government of an area and the Assistant Commissioner of a locality and forward it to the applicant.
- The applicant has fourteen days to respond to, and lodge any objections against issues raised in the written report from the local government and the Assistant Commissioner.
- The LLD has fourteen days for negotiations between the applicant, of an area and the Assistant Commissioner of a locality to issue/reissue/trial period licence.

Clause 19 amends subsection 123(3) to align the approval of a provisional licence with the relevant period for a development approval given to the applicant by a local council under the *Integrated Planning Act 1997*.

Clause 20 amends subsection 123A(3) which enables the chief executive to grant authority to trade for a staged development. The amendment will increase the period for the completion of the development from one to two years.

Clause 21 amends section 123B, which provides for situations where a provisional licence and a staged development approval are linked. This amendment will link the process for the allocated time period to the relevant period for the development approval given to the applicant by the local council under the *Integrated Planning Act 1997*. An amendment to subsection 123B(5) will limit the period of time for the currency of a staged development approval by only allowing the approval to be renewed four times.

Clause 22 amends subsection 123C(3) to provide that a provisional licence is only current for the length of time stated in the licence. With the linking of the relevant period for a development approval given to the applicant by a local council under the *Integrated Planning Act 1997*, this may not always be known when applying for the provisional licence. Therefore the provisional licence is only valid while it is in force.

Clause 23 amends subsection 131(2) to provide that a person may not be nominee for a licence if the same person is already the holder of a licence for which there is no nominee under the Act. Under section 129 of the Act a licensee must be physically present or appoint a nominee. Thus in the absence of a nominee for one premise they cannot become a nominee for another.

Clause 24 amends section 133 in regards to the surrender of club licenses. The amendment will enable the surrender of licenses in cases where licensees and interested parties associated with the licence, like mortgagees and lessees, cannot reasonably be located. The amendments include a process to enable the surrender of the licence in these circumstances.

Clause 25 deletes subsection 142AB(4) which outlines a definition of the term patron. This definition has been moved to section 4 of the Act, as it now applies to the whole Act and not exclusively to the section under which it was written.

Clause 26 inserts a new Division 6 into Part 5 of the Liquor Act. The new division imposes statutory licence conditions on licensed premises which operate after 1am in the Brisbane City Council area. The new division is required as the statutory conditions only apply to a specific area namely the Brisbane City Council area.

Specifically clause 26 inserts new sections 142AD, 142AE, 142AF, and subdivision 2 which includes sections 142AG, 142AH, 142AI, 142AJ, 142AK, 142AL, 142AM. Also inserted is Subdivision 3 which inserts section 142AN.

Section 142AD sets out the definitions for Division 6. Under the division 'crowd controller' means the holder of a crowd controller's licence under the *Security Providers Act 1993*. 'Current training course certificate' means a training course certificate that is valid for the period of three years from the date of completion of the course. 'Exit' is defined to exclude emergency exits from the CCTV provisions under subsection 142AH(a). 'Incident register' refers to the term used and the keeping of such a register under subsection 142AI(1)(a). 'Trading period' is the period starting at 8pm on any day and ending at 7am the following day. 'Training course certificate' defines the type and currency of the certificate which complies with the mandatory RSA training requirement contained in the new section 142AK. 'Training register' refers to the term used and the keeping of such a register contained in the new subsection 142AI(2)(a).

The new section 142AE identifies who the statutory licence conditions apply to and which statutory licence conditions do not apply. In summary, they apply to all licensed premises in the Brisbane City Council area who are authorised in their liquor licence to sell or supply liquor on the premises at any time after 1am. The licensee or permittee must comply with the provisions every night they operate even if they only have authority to operate after 1am on specific days of the year or the week.

The new subsection 142AE(2) provides that the Division does not apply to licensed premises if the premises is only authorised, under subsection 9(13), to sell or supply liquor after 1am on New Year's Day. Nor does it apply to that part of licensed premises which is used principally for the residential accommodation of guests. The new subsection 142AE(3) provides that it does not apply to premises which are authorised under section 102C to trade, or if they are on the premises of an RSL or Services Club, at 5am on Anzac Day only.

Further, the new subsection 142AE(4)(a) provides that the crowd controller ratios as prescribed under section 142AG and Closed Circuit Television (CCTV) requirements under section 142AH do not apply to the Brisbane International or Domestic Terminal Buildings. Subsection 142AE(4)(b) provides that the crowd controller ratios prescribed under section 142AG do not apply to on-premises (meals) licensees (restaurants), Suncorp Stadium, Queensland Sports and Athletics Centre, the Brisbane Cricket Ground (Gabba), and the Brisbane Convention and Exhibition Centre.

The objects of the new section 142AF are the same as those provided for in current subsection 148A(1). Sub section 148A(1) imposes obligations on licensees and permittees in the conduct of their business for maintaining a safe environment for patrons and staff, and ensuring liquor is served, supplied and promoted in a way that is compatible with minimising harm.

The new Subdivision 2 of Division 6 provides for conditions of licensed and permits.

The new section 142AG provides for the conditions. In subsection 142AG(a) licensee or permittee must ensure that at least the minimum number of crowd controllers are engaged when the premises is open for business and at least one hour after the close of trade. Subsection 142AG(b) provides that the licensee or permittee must ensure that at least one of the prescribed crowd controllers is located at each entrance and exit of the licensed premises which patrons access during the trading period. Subsection 142AG(c) provides that the crowd controller must have a current training course certificate; must give the licensee or permittee a copy of the certificate and a copy of the licence issued to the crowd controller under the *Security Providers Act 1993*; and must be dressed in a way that distinguishes the crowd controller from patrons of the premises. Subsection 142AG(d) provides that the crowd controller's certificate and licence must be kept in the training register whilst they are engaged in maintaining order in and around the premises.

The new section 142AH outlines the conditions about closed circuit television (CCTV). Subsection 142AH(a) provides that the licensee or

permittee must ensure that they install closed circuit television equipment at each entrance and exit of the licensed premises which patrons access during the trading period. The CCTV equipment must meet the standards prescribed under the regulation. It must be operational and recording for the trading period which starts at 8pm and ends at the time the premises would ordinarily otherwise close for business. With respect to privacy laws, signage must be displayed in the premises to notify patrons that CCTV is installed and operating. The CCTV must not be operated by anyone other than the licensee, permittee or nominee or a designated person responsible for the management of the premises. The recordings must be kept in a secure place and available for inspection or viewing by an investigator as requested, until it is erased or destroyed or given to an investigator. The recordings cannot be viewed, erased or destroyed by a person other than an investigator, licensee, permittee or nominee or a designated person responsible for the management of the premises. The recordings, unless they are given to an investigator, must be kept for at least 28 days (the retention period) after they are made if there is not an incident on them which is to be recorded in the incident register, but must not be kept longer than 30 days after the 28 day period. For all other purposes the recordings must be destroyed not earlier than one year after the retention period for the recording ends.

The new section 142AI sets out the requirements for incident and training registers. Subsection 142AI(1) outlines that an incident register must be kept in relation to any incident on the licensed premises in which a person is injured or required to be removed from the premises. The details which must be kept in the incident register are prescribed under the regulation. The incident register must be signed by all members of staff who dealt with the incident and must be available to an investigator as requested. In respect of privacy laws the incident register must be kept in a secure place at the premises and must not be inspected by anyone other than the licensee, permittee or nominee or a designated person responsible for the management, and the staff involved in an incident recorded in the register. Subsection 142AI(2) outlines that a training register must be kept, with the details to be contained in that register prescribed under the regulation. Current training course certificates, as outlined in the crowd controllers provisions and to be outlined under section 142AK, state the conditions about training course certificates for particular persons. The training register must also contain information relating to training persons involved in the service of supply of liquor at the licensed premises or premises to which the permit relates. The training register must be available to an investigator as requested.

The new section 142AJ provides for the condition about a house policy. The licensee or permittee must have a house policy for the premises to which the licence or permit relates, and it must be available for inspection as requested by patrons and investigators. Signage must be displayed at the premises identifying that there is a house policy and it is available for inspection. The licensee or permittee must ensure all staff of the premises, including crowd controllers, are aware of and perform their duties at the premises in compliance with the house policy. The licensee or permittee must also ensure that as soon as possible after the house policy is prepared, the chief executive of the Division must receive an approved form about the policy. For the purposes of this section house policy is defined in subsection 142AJ(3) as a document containing information about the procedures and practices, relating to the matters prescribed under the regulation, for the conduct of business at the premises.

The new section 142AK provides for the condition about training course certificates for the completion of the Division's RSA training program. The section provides that licensees or permittees, nominees, and all other staff, including bartenders, glass collectors, floor hosts or hostesses, and room service staff, must all have a current training course certificate. Subsection 142AK(2) provides that members of staff have 30 days from beginning employment to obtain a training course certificate. The section also reiterates the provisions set out in section 142AI(2) with regards to a training register.

The new section 142AL provides for the condition about drinking practices. Subsection 142AL(1) provides that the licensee or permittee must not conduct on the licensed premises a competition or game in which contestants or players consume liquor on the premises or free or discounted liquor is given as a prize. Other activities which must not be conducted are prescribed under the regulation. Subsection 142AL(3) provides that the licensee must not conduct a 'restricted activity', defined as an activity in relation to which liquor is available for consumption on the premises at a price less than that normally charged for the liquor. Subsection 142AL(2) provides an example of a 'restricted activity', a happy hour, which must not be conducted for more than two hours a day or after 9pm in the trading period. This amendment will complement the Liquor Licensing Division's *Code of Practice for the Responsible Service, Supply and Promotion of Liquor*.

The new section 142AM provides that licensed premises to whom the conditions contained in Division 6 relate to must comply with the conditions. The section additionally provides that if a licensee or permittee

breaches the statutory licence condition a maximum penalty of 100 penalty units or \$7,500 for individuals or \$37,500 for corporations may be applied.

The new section 142AN ensures that a breach of the statutory licence conditions contained in the new Division 6 are grounds for cancellation, suspension or variation of a permit and grounds for disciplinary action under sections 134 and 136 of the Liquor Act.

Clauses 27 to 31 replace the current term used in the Act for the licensees and nominees course from 'course' to 'an approved training course'.

Clause 32 inserts new subsections into section 154 to provide for the alteration and maintenance of licensed premises. The new subsection enables the chief executive to request that a management plan be lodged with all applications regardless of whether they involve a permanent or temporary change to the licensed area.

Clause 33 expands subsection 155(4)(e) to enable the chief executive to permanently exempt by way of a licence condition a minor being on premises. It is anticipated that this provision will be utilised in limited situation such as to enable minors to travel on licensed premises.

Clause 34 amends section 228 and provides for the automatic suspension of a licence if within a two year period two convictions are recorded against the holder of a licence for offences relating to the sale of liquor to minors or unduly intoxicated persons. This amendment will clarify the existing power of the chief executive.

Clause 35 expands section 233 to include other matters which may be accepted by a court as being an accurate statement or record without further investigation or evidentiary procedure. These other matters are a statement that the specified date was Good Friday in that calendar year and a statement from the chief executive that a particular person does or does not hold a licence or permit.

Clause 36 inserts a new Division 6 in Part 12 which outlines the transitional provisions for the amendments to the Act. Transitional provisions are applied to current sections 268, 269, 270, 271, 271A, 272, 273 and 274. Most of the transitionals are technical however the new amendment to section 273 will provide that if a person has completed RSA training within 3 years of the commencement of the new requirements then their training is considered to be current. The new section 274 will provide that the statutory licence condition requiring training course certificates will not take effect for 30 days after the commencement. This will allow an appropriate period for licensees to ensure that new staff are suitable for the position before they engage in training.

Clause 37 inserts a new Part 3 into the *Liquor Amendment Act 2005*.

Clause 38 amends section 8 of the *Liquor Amendment Act 2005* to delete the definition for trading period and replace it with the following definition outlined under the new section 142AD. 'Trading period' means the period starting at 8pm on any day and ending at 7am on the following day.

### ***Body Corporate and Community Management Act 1997***

Clause 39 identifies the *Body Corporate and Community Management Act 1997* (the BCCM Act) as the Act being amended by Part 4.

Clause 40 inserts two new sections (sections 205A and 205B). Section 205A defines 'attached' and 'electronic communication' for the purposes of Chapter 5. The section also establishes an identifying tag ('disclosure statement') for body corporate information required to be provided to buyers under sections 206(2) to (4) and sections 213(2) to (4). In addition, the section establishes the meaning of 'residential property' by reference to the *Property Agents and Motor Dealers Act 2000* (the PAMD Act).

One of the purposes of amendments of the BCCM Act is to facilitate the use of communication technology in real estate transactions. Section 205B establishes that Chapter 5 is subject to the *Electronic Transactions (Queensland) Act 2001*.

Clause 41 amends section 206. Section 206 requires the seller of an existing lot in a community titles scheme to provide the buyer with a statement setting out certain information about the particular scheme (tagged as a 'disclosure statement'), as well as an approved 'information sheet' which provides general information about body corporate issues.

Clause 41 amends subsections (1), (2), (3), (4) and (8) to incorporate the identifying tag 'disclosure statement'.

Clause 41 also amends subsections (5) and (6) which require sellers of lots included in community titles schemes to provide buyers with an approved information sheet. Subsection (5) is amended to require the seller of a lot that is not residential property (as defined in the PAMD Act) to give the buyer an information sheet in accordance with the new section 206A. Subsection (6) applies for contracts for the sale of lots that are residential property. Specifically, subsection (6) is amended to provide that a seller must provide a buyer with an information sheet and a warning statement in accordance with specified provisions of the PAMD Act.

Due to the amendments to subsections (5) and (6) described above, Clause 41 amends subsection (7) which allows a buyer to cancel a contract if a



seller fails to comply with requirements of section 206. Subsection (7) is amended to allow a buyer to cancel a contract if a seller fails to comply with subsections (1), (5) or (6).

Finally, Clause 41 omits the definition of 'residential property' in subsection (9) which is to be included in the new section 205A.

Clause 42 provides for a new section 206A. As provided in section 206A(1), the new section sets out how a seller of a lot that is not residential property provides a buyer with the required information sheet. The requirements under section 206A are not as strict as those required for the sale of residential property. This recognises that generally, purchasers of residential property require stricter protection regarding information about their purchase than buyers of non-residential or commercial property. However, it is considered that arrangements in subsections (2) to (4) of section 206A will provide an appropriate level of protection for buyers of non-residential property.

Subsection (2) applies to sellers providing buyers with the information sheet and contract by facsimile. The subsection stipulates the order in which documents are to be faxed to the buyer. The provision seeks to ensure that the information sheet and contract are prominent and brought to the attention of the buyer. Unlike provisions relating to residential property under the PAMD Act, subsection (2) allows for other documents to accompany the facsimile (subsection (2)(d)), however, these must follow the information sheet and contract.

Subsection (3) applies to sellers providing buyers with the information sheet and contract by electronic means, other than facsimile. The subsection requires the seller to provide the buyer with a single electronic document with the information sheet as the first or top page of the document.

Subsection (4) applies to sellers providing buyers with the information sheet and the contract in a way other than by electronic communication. The subsection requires the information sheet to be attached to the contract.

Clauses 43 to 45 amend sections 207 to 209 to incorporate the identifying tag 'disclosure statement'.

Clause 46 amends section 213. Section 213 requires the seller of a proposed lot intended to come into existence as a lot included in a community titles scheme to provide the buyer with a statement setting out certain information about the proposed scheme (tagged as a 'disclosure statement'), as well as an approved 'information sheet' which provides general information about body corporate issues.

Clause 46 amends subsections (1), (2), (3), (4) and (7) to incorporate the identifying tag ‘disclosure statement’.

Clause 46 also amends subsection (5) which requires sellers of lots proposed to be included in community titles schemes to provide buyers with an approved information sheet. Subsection (5) is amended to require the seller of a lot that is not residential property (as defined in the PAMD Act) to give the buyer an information sheet in accordance with the new section 213A. A new subsection (5A) applies for contracts for the sale of lots that are residential property. Specifically, subsection (5A) is amended to provide that a seller must provide a buyer with an information sheet and a warning statement in accordance with specified provisions of the PAMD Act.

Due to the amendments to subsection (5) and the new subsection (5A) described above, Clause 41 amends subsection (7) which allows a buyer to cancel a contract if a seller fails to comply with requirements of section 213. Subsection (7) is amended to allow a buyer to cancel a contract if a seller fails to comply with subsections (1), (5) or (5A).

Finally, Clause 46 omits the definition of ‘residential property’ in subsection (8) which is to be included in the new section 205A.

Clause 47 provides for a new section 213A. As provided in section 213A(1), the new section sets out how a seller of a lot that is not residential property provides a buyer with the required information sheet. The requirements under section 213A are not as strict as those required for the sale of residential property. This recognises that generally, purchasers of residential property require stricter protection regarding information about their purchase than buyers of non-residential or commercial property. However, it is considered that arrangements in subsections (2) to (4) of section 213A will provide an appropriate level of protection for buyers of non-residential property.

Subsection (2) applies to sellers providing buyers with the information sheet and contract by facsimile. The subsection stipulates the order in which documents are to be faxed to the buyer. The provision seeks to ensure that the information sheet and contract are prominent and brought to the attention of the buyer. Unlike provisions relating to residential property under the PAMD Act, subsection (2) allows for other documents to accompany the facsimile (subsection (2)(d)), however, these must follow the information sheet and contract.

Subsection (3) applies to sellers providing buyers with the information sheet and contract by electronic means, other than facsimile. The subsection requires the seller to provide the buyer with a single electronic

document with the information sheet as the first or top page of the document.

Subsection (4) applies to sellers providing buyers with the information sheet and the contract in a way other than by electronic communication. The subsection requires the information sheet to be attached to the contract.

Clauses 48 to 51 amend section 214 to 217 to incorporate the identifying tag ‘disclosure statement’.

Clause 52 amends the dictionary in schedule 6 of the Act to define “attach”, “disclosure statement”, “electronic communication” and “residential property” by reference to the new section 205A.

### ***Property Agents and Motor Dealers Act 2000***

Clause 53 notes that Part 5 amends the PAMD Act.

Clause 54 amends section 363(b) to include a requirement that proposed relevant contracts, as well as relevant contracts, must include a statement that the contract is subject to a cooling-off period (the PAMD Form 30c – Warning Statement).

Clause 55 adds definitions for “attached”, “electronic communication”, “information sheet”, “unit sale” and “warning statement” to apply in Chapter 11 of the PAMD Act. Examples of “attached” indicate ways of attaching the warning statement, and the information sheet (in the case of a unit sale), to the contract or proposed contract so that there is compliance with the provisions of the PAMD Act. Inclusion of definitions of “information sheet” and “unit sale” ensure that requirements in the BCCM Act to provide an information sheet for the sale of lots or proposed lots in a community title scheme in addition to the PAMD Act requirement for the warning statement, fit within the processes for providing documents.

Clause 56 confirms that Chapter 11 is subject to the *Electronic Transactions (Queensland) Act 2001* in a new section 364A.

Clauses 57 to 59 amend the PAMD Act by omitting section 365, inserting a new section 365 and amending sections 365A and 365B as necessary. These amendments do not change the intention of the omitted provision in establishing when the buyer and seller are bound under a relevant contract as this is the critical point at which the cooling-off period commences for the buyer, but provide greater detail depending on the method by which contracts and pre-contractual documents are provided.

The amending sections confirm that where the warning statement, the information sheet (in the case of a unit sale), and the relevant contract,

signed by both the buyer and seller, can be physically attached when given to the buyer by the seller or seller's agent, the warning statement must be attached as the first or top sheet of the relevant contract. Where the documents are provided by facsimile or by other means of electronic communication, when the documents cannot be physically attached, the provisions detail processes for giving a cover page or message providing information about the documents; the warning statement, information sheet (in the case of a unit sale); and relevant contract.

Clause 60 omits Chapter 11, part 2 of the PAMD Act and inserts a new part 2 with a number of new sections to allow for the provision of the warning statement, information sheet (in the case of a unit sale) and proposed relevant contract (that is, the pre-contractual documents) to a proposed buyer in a variety of ways, including by electronic communication.

Section 366 provides for the giving of the warning statement, information sheet (in the case of a unit sale) and proposed relevant contract to a proposed buyer by fax. The section provides a process for giving a message which provides information about the documents; the warning statement; information sheet (in the case of a unit sale); and relevant contract.

Section 366A provides for the giving of the warning statement; information sheet (in the case of a unit sale); and proposed relevant contract to a proposed buyer by electronic communication, other than fax, for example by e-mail. The provision provides a process for giving a message which provides information about the documents; the warning statement, information sheet (in the case of a unit sale) and relevant contract.

Section 366B provides for the giving of the warning statement and proposed relevant contract to a proposed buyer in a way other than by fax or other electronic communication. This section provides the process when the documents are given directly to the proposed buyer in hard-copy form, that is, directly handed to the buyer, or sent to the buyer, such as by Australia Post or parcel delivery services.

A new section 366C provides for the correction of any error in the process of giving or delivering a proposed relevant contract to a proposed buyer, by allowing the seller or seller's agent to give a written notice to the proposed buyer. The notice must identify the failure to comply with the processes for giving the documents, state that the proposed relevant contract is withdrawn and advise whether new documents which comply with the requirements of Part 2 of Chapter 11 will be sent to the proposed buyer. Errors can only be corrected if the notice is given to the proposed buyer before the proposed buyer and the seller have both signed the proposed relevant contract.

New section 366D retains the parts of the omitted provision in relation to the contents of a warning statement which require a statement purporting to be a warning statement to be presented substantially in the same way as the in the approved form; require a warning statement to be signed and, where the contract is handed to the buyer, that it is to be signed prior to the signing of the proposed relevant contract.

New section 367 (Buyer's rights if a warning statement is not given or is not effective) is substantially the same as the omitted section 367 save for amendments in order to make it consistent with the other amendments to Chapter 11, Part 2.

The amendments preserve the buyer's rights to terminate the relevant contract at any time before settlement of the contract if the warning statement requirement for a proposed relevant contract or relevant contract is not complied with or the warning statement is of no effect (such as, not being substantially in accordance with the approved form).

Clauses 61 to 64 correct references to "*contract*" by substituting the words "*relevant contract*" and, where appropriate, omit reference to "*proposed contract*" and insert "*proposed relevant contract*" to standardise and clarify the wording in all appropriate sections.

Clause 65 makes complementary amendments to the Dictionary.