Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) and Other Acts Amendment Bill 2008

Explanatory Notes

Short Title of the Bill

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) and Other Acts Amendment Bill 2008.

Objectives of the Bill

The main objectives of the Bill are to amend relevant legislation to:

(a) ensure that the full policy intent of the alcohol restrictions in discrete Indigenous communities, namely the reduction of alcohol-related harms, can be more effectively and consistently realised; and

(b) enable community justice groups to be set up outside the discrete Indigenous communities; and

(c) enable the closure of the Aborigines Welfare Fund to enable the monies to be put in a Foundation for the benefit of young Aboriginal Queenslanders.

Policy rationale

Amendments relating to alcohol

Background

In December 1998 the then Minister for Women's Policy established the Aboriginal and Torres Strait Islander Women's Task Force on Violence. In July 2001 Justice Tony Fitzgerald, at the request of the Queensland Government, undertook the Cape York Justice Study in relation to Indigenous communities on the Cape. Both concluded that harmful levels

of alcohol consumption in remote Indigenous communities were the chief precursor to violence, crime, injury and ill-health in these populations.

The *Meeting Challenges, Making Choices* (MCMC) strategy was the Queensland Government's response to the Study in 2002 and aimed to improve the health and well-being of those people living in the 19 discrete Indigenous communities (the MCMC communities) with an immediate focus on addressing the level of alcohol use and related violence.

(The MCMC communities are: Aurukun, Bamaga, Cherbourg, Doomadgee, Hope Vale, Injinoo, Kowanyama, Lockhart River, Mornington Island, Mapoon, Napranum, New Mapoon, Palm Island, Pormpuraaw, Seisia, Umagico, Woorabinda, Wujal Wujal, and Yarrabah.)

Alcohol management under the MCMC strategy had three interdependent elements:

(a) **separation of the management of canteens from councils**: while legislation was passed to support the divestment of canteen licences, implementation proved to be problematic and divestment has not occurred to date.

(b) **restriction of supply and availability of alcohol:** broadly, the alcohol restrictions regime is implemented through legislation: the *Liquor Regulation 2002* has a schedule for each community which details the restricted area and the restrictions and the *Liquor Act 1992* provides that it is an offence to have more than the prescribed amount of liquor in a restricted area (section 168B).

In determining the restrictions on the type and amount of alcohol in individual communities, the Government considered the level of harm occurring in the community and the recommendations of the local community justice group. The outcome has become known as the *alcohol restrictions* for the community.

Aurukun was the first community to have alcohol restrictions put in place in December 2002. Palm Island was the last in June 2006.

(c) **demand reduction initiatives:** the Alcohol Demand Reduction Program, which commenced distribution of grants in 2006, has provided funding for projects, programs and services which assist a community to:

- provide appropriate activities and supports for young people and families to enhance culture, education and recreation; and
- develop strategies with government and non-government agencies for alcohol and other substances treatment services.

Recent developments

In early 2007 the Office for Aboriginal and Torres Strait Islander Partnerships, Department of Communities, commenced a whole-of-government review of alcohol and other substances policy, programs and service settings in the MCMC communities (the review).

The review findings indicated that, to date, there has not been a sufficient or sustained improvement in the level of harms which are alcohol-related and a more concerted, intensive and sustained program of action is needed across four key themes: strengthening supply restrictions; strengthening demand reduction; strengthening individual, family and community; and strengthening service delivery.

The government response has been to commit to: an incentive package to encourage communities to be as alcohol-free as they can be; enhancement of acute alcohol rehabilitation and treatment services; diversionary services and programs; as well as the legislative and enforcement measures contained in this Bill. The State Government has committed $66 million and the Commonwealth Government $36 million to service and program enhancement.

Policy rationale

The alcohol restrictions, and the measures to enforce them, are therefore only part of the broader plan to address alcohol-related harm, in particular to reduce alcohol-related violence, and thereby improve the health and well-being of all community members, especially children.

However, the review found that there are currently gaps in the legislative response which means that the policy intent of the restrictions, namely limiting access to, or availability of, alcohol in order to reduce alcohol-related harms, cannot be fully realised. For example, the restrictions currently only apply to public places in the communities. The result is that, if people are able to get illicit alcohol through the community and into a house, the ability of the police to act is limited.

It is anticipated that, if in due course there is a sufficient decline in alcohol-related harms, restrictions can change, with an eventual goal of no restrictions, although it is acknowledged that this may take years rather than months.

Amendments relating to Community Justice Groups (CJGs)

Background

Statutorily established CJGs have a role to play in relation to both alcohol restrictions in the MCMC communities and the Family Responsibilities Commission which is being established as part of the implementation of the welfare reform trial in Aurukun, Hope Vale, Coen and Mossman Gorge (see *Family Responsibilities Commission Act 2008* and Explanatory Notes).

Mossman Gorge and Coen are bounded localities (suburbs) within the jurisdiction of the Cairns Regional Council and Cook Shire Council respectively. They do not fall within the current definition of "community area" under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* and therefore a community justice group (CJG) can not be prescribed for these areas.

Policy rationale

It is essential that statutory CJGs can be established in Coen and Mossman Gorge for the welfare reform trial. CJGs may also need to be established elsewhere in the State in the future.

Amendments relating to the Aborigines Welfare Fund (AWF)

Background

The AWF was established by statute in 1943 for "the general benefit of Aboriginals". AWF funds were derived from Queensland Government budget allocations; a compulsory levy on the wages of Aboriginal workers (until 1966); child endowment received by the Government for maintenance of children in dormitories on Government-run communities; Commonwealth/State Housing funding; income from sale of craft work, and income from farming, grazing, trading enterprises conducted on Government-run communities, including the retail stores.

Monies from the AWF were used for Aboriginal Welfare (such as grants of aid to people in need, food, housing and medical expenses), funding

economic enterprises, including major grazing enterprises, on the Reserves as well as subsidising losses from these trading activities (e.g. retail stores, livestock and farming), housing and training initiatives on communities.

In 1993 the Queensland Government froze the AWF which had a balance of $5.25 million. With accumulated interest, the account balance was over $10,000,000 at 31 January 2008.

The statutory provisions for the AWF remain in what is now the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld).

Policy rationale

It is proposed to wind-up the AWF in order to establish a perpetual fund, the *Indigenous Queenslanders Foundation*, and utilise available funds for the benefit of Indigenous Queenslanders. The fund will be comprised of two sub-funds being:

(a) the current balance of the AWF (currently approximately $10.6M), interest on which will provide support for young Aboriginal Queenslanders (in recognition of the source of the funds); and

(b) the balance of unspent reparations funds after second round payments to successful claimants (approximately $21.4M), interest on which will provide scholarships for young Aboriginal and Torres Strait Islander Queenslanders.

Establishment costs and first year of operations of the Foundation will be funded from the aggregate funds with ongoing costs funded proportionally from the income of these funds.

It is intended that the Foundation will provide support wherever possible through partnering or matching existing organisations or programs which provide or broker secondary, TAFE or tertiary scholarships or traineeships or related mentoring and support. As a result of the arrangements proposed, it is estimated that the Foundation as constituted should currently support 70 to 140 scholarships per year in perpetuity.

A board of eminent persons with expertise in educational, financial, philanthropic, corporate, youth and community affairs will be appointed to govern the Foundation and make decisions relating to the management and application of its assets.

How objectives are achieved

The objective of ensuring that the full policy intent of the alcohol restrictions in discrete Indigenous communities is achieved by amending the appropriate legislation to ensure that all parts of the restricted area are subject to the restrictions; the police have appropriate powers to enforce the restrictions; drinking in public places in the MCMC communities is prohibited in the same way as the rest of Queensland; home-brew is automatically banned where there is a zero carriage limit; and councils are finally divested of their general liquor licences.

The objective of enabling community justice groups to be set up outside the discrete communities is achieved by amending the relevant legislation to provide for this.

The objective of closing the AWF is to enable the monies to be put in a Foundation for the benefit of young Aboriginal Queenslanders is achieved by removal of provisions relating to the AWF from the relevant legislation.

Alternative method of achieving the policy objectives

There is no alternative method of achieving the policy objectives as all require amendment of existing legislation.

Estimated cost for Government implementation

An initial increase in enforcement and prosecution workload, together with enhanced service delivery, should be offset in the longer term by fewer alcohol-related offences and reduced alcohol-related harm, in turn leading to a reduced need for tertiary services.

The Government has announced a package of approximately $102 million for the provision of health and diversionary services and for revenue replacement following closure of the licensed premises to the extent that canteen revenue is used by the councils to provide social services over four years. The Commonwealth Government has provided $36 million of this total to be used specifically for health services.

Consistency with Fundamental Legislative Principles

Reversal of the onus of proof

Clause 22(3) of the Bill provides for a reversal of the onus of proof.

Currently the Liquor Act enables roads to be excluded by regulation. Certain major routes which go through restricted areas and pass close to or through townships are excluded by regulation from the restrictions in order to not affect tourists and tourism in the region. Around 100,000 vehicles per year pass through the Gulf and Cape area.

However, this has created a loophole, undermining the effectiveness of the restrictions. For example, where the houses are adjacent to an exempt road it has proved easy to get 'sly' or 'hot' grog (illicit alcohol for either sale or personal use) into the community.

It is now proposed that the regulation be amended so that such roads will be subject to the relevant carriage limits.

However, in order to still accommodate tourist traffic and tourism which provides economic and employment opportunities for the communities, the Bill exempts a person from breach of the alcohol restrictions if the person is travelling along a road or using a public facility prescribed by regulation and has more alcohol than is permitted in the restricted area through which the road runs, provided that the person meets certain criteria.

If a person is to be exempt from the restrictions, the person is being accorded special status and should have the responsibility of showing that he or she is travelling to an area beyond the community rather than the police having to show that the person is not entitled to be exempt or is intending to travel to the community. It is necessary to balance the harms from illicit alcohol and the needs of the high volume of tourists and the economic opportunity they bring to the area.

The person will also have to show that they intended to travel through the area to a destination beyond that area to be exempted from attempting to breach the restrictions. Since the person would need to be able to prove this only a few kilometres further down the road, this should not cause the person any additional difficulties.

The Bill provides that the standard of proof for the traveller is on the *balance of probabilities* rather than the usual standard which the prosecution has in a criminal matter of *beyond reasonable doubt*. Examples of how this criterion could be met are an accommodation booking, itinerary, a phone call to a person who can confirm that they are expecting the traveller.

Use of regulation

The use of regulation to declare "community areas" for the purpose of establishing CJGs under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* could be regarded as a "Henry VIII" clause in that the Regulation is providing the extent to which the Act might operate. The purpose of statutory CJGs in particular is to ensure that there is an Indigenous group to be consulted if Government decides to put alcohol restrictions in place in the area relevant to the CJG. To this extent, the proposed amendment does not impose unwarranted obligations or interfere with any individual's rights. However, certain people in a community area can apply for their home to be a 'dry place' and breach of this is an offence. The maximum penalty has been reduced from 250 penalty units under the current dry place provisions to 25 penalty units under the new regime in this Bill which is considered to be more commensurate with the offence. It is considered that as this, too, is an enabling provision and in this context it is an appropriate provision.

Search without warrant

Search of a person or premises without a warrant is a significant power which raises fundamental legislative principle concerns. However, as the evidence clearly indicates that alcohol is at least as harmful as illegal drugs in these communities, it is imperative that police have the ability to seize alcohol before it is dispersed through the community.

The power to search premises is required as private premises, including homes, are now covered by the alcohol restrictions in a community. Police will need the ability to enforce this.

The Queensland Police Service (QPS) advises that its officers obtain warrants where there is realistically time to do so. While warrants can be obtained over the phone, QPS advises that in the communities it takes at least an hour to do this as there are still procedures and paperwork to be undertaken. This power is not new and is already used in the detection and seizure of illicit drugs, weapons and other offences, including summary offences. Therefore the *Police Powers and Responsibilities Act 2000* already provides the safeguards for search without warrant, in particular, the police must apply to a Magistrate after the search for a post search approval order which means that they must be able to justify the appropriateness of their actions. The Police Responsibilities Code in the *Police Powers and Responsibilities Regulation 2000* and the Police

Operations and Procedures Manual also provide direction to officers in this situation.

Breach of the alcohol restrictions is a simple offence and the question has been asked as to whether this level of enforcement is appropriate. However, the maximum penalty is 500 penalty units for the first offence; 700 penalty units and six months imprisonment for a second offence; and 1000 penalty units and 18 months imprisonment for a third offence. These are significant consequences for a simple offence and indicates a recognition of the level of harm related to alcohol, particularly in the home and as it impacts on women and children. In this context, the police power is not inappropriate.

Consideration was given to narrowing this power by, for example, only allowing police to search for, and seize, illicit alcohol when conducting a search without a warrant as a result of a reasonable suspicion of its presence. However, this would be unacceptable as it would limit police capacity to respond to other serious concerns that may become apparent when on the premises, such as child abuse or child pornography or the presence of drugs or weapons.

Appeal and compensation

The Bill does not provide for an appeal, and specifically provides that compensation will not be payable, as a result of councils no longer being able to hold general liquor licences or a transfer application lapsing.

The divestment of canteens from local governments is a policy decision based on the inappropriateness of local government social services being reliant on the level of profit from a business whose purpose is to sell alcohol, particularly when alcohol-related harm is driving the need for those services. An appeal is not relevant in this situation as there is no discretion in relation to the cancellation. It is possible for the chief executive of Queensland Treasury, as the department which currently has responsibility for the *Liquor Act 1992*, to continue the licence for a limited period to enable the coordination of health and other services and diversionary activities at the time the licence is cancelled. Again, an appeal is not relevant in these circumstances.

As part of the alcohol reforms, the Government has committed $14 million as revenue replacement over the next 4 years for canteen profits to the extent they have been used to provide social services. This is not direct compensation, but is to ensure that there is no loss in services as a result of councils no longer having canteens as a source of revenue.

With respect to licence transfer applications, following the introduction of this Bill, councils will be provided with information on the Government's intentions in relation to transfers of canteens. This will ensure that anyone who lodges an application for transfer is aware of the relevant provisions.

Consultation

Community

Amendments relating to alcohol

At the Indigenous Ministerial Roundtable held on 15 February 2008 (the roundtable) the main business of the day was how to address alcohol issues. The Premier gave communities until the end of May to advise government of their response to a proposal, which includes additional Government support, for communities to go as dry as possible.

Senior Officers from the Department of Communities and Australian Government agencies, together with relevant Government Champions, the Minister for Aboriginal and Torres Strait Islander Partnerships, or the Premier, are visiting all 19 MCMC communities in April 2008 to talk with communities about their willingness to "go as dry as possible" and how the Government might be able to support this.

An information sheet was made available to communities which flagged the changes to be made by the legislation as well as explaining how the Government will support the communities to go drier.

Amendments relating to community justice groups

This is an enabling provision and consultation will take place with a community when it is proposed to set up a CJG.

Amendments relating to the Aborigines Welfare Fund

The Minister has met with the Stolen Wages Working Group to explain the Government's decision to wind up the AWF and transfer the funds to the proposed Indigenous Queenslanders Foundation.

Government

Amendments relating to alcohol

The Bill amends legislation which is within the portfolios of the Minister for Aboriginal and Torres Strait Islander Partnerships, the Minister for Police and the Treasurer. Consultation also occurred with the Departments

of the Premier and Cabinet; Justice and Attorney-General; Main Roads, Housing and Tourism; and Regional Development and Industry.

Consultation has been undertaken with the Alcohol Reforms Senior Executives Reference Group which has responsibility to oversee the implementation of the reforms. Membership of the Group, which is chaired by the Deputy Director-General, Indigenous Government Coordination Office, includes officers from the Department of Communities, Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney General, Queensland Police Service, as well as a number of Departments involved in service delivery to the communities.

Amendments relating to community justice groups

This is an enabling provision. As the agencies with responsibility for the work of the CJGs, the Department of Justice and Attorney-General and the Department of Communities will liaise as and when CJGs are to be set up.

Amendments relating to the Aborigines Welfare Fund

Consultation has occurred with the Department of the Premier and Cabinet, Queensland Treasury and the Public Trustee.

Notes on Provisions

Part 1 Preliminary

Short title

Clauses 1 and 2 provide for the short title of the Act and commencement of the provisions of the Act.

Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Part 2 amends the Act in relation to the Aborigines Welfare Fund; community justice groups; dry place declarations; and homemade alcohol.

Clause 3 notes Part 2 amends the Act.

Clause 4 removes section 3(3) to (7). This has the effect of removing the legislative provisions which relate to the Aborigines Welfare Fund.

As noted above, the intent is to set up the Indigenous Queenslanders Foundation and the monies from the Fund will be given over to the Foundation and be made available to support the educational aspirations of young Aboriginal Queenslanders.

Clause 5 removes or inserts a number of definitions in the Act consequential on other amendments being made.

Clause 6 replaces section 19. The effect of this amendment is to remove all references to the community justice groups' current function of declaring dry places as a consequence of the amendments made in clause 10. These amendments mean that community justice groups no longer require this function.

Clause 7 removes a reference to the community justice groups' function of declaring dry places.

Clause 8 removes section 24 as it is replaced with new *section 69A* for protection from civil liability to take into account the function of the clerk of the court in relation to dry place declarations as well as the work of the community justice groups.

Clause 9 removes**,** inserts and amends a number of definitions relevant to Part 5 of the Act (Control of possession and consumption of alcohol in community areas) as a consequence of the amendments being made to Part 5.

Clause 10 removes the current divisions 2 to 6 of Part 5 and replaces them with new divisions 2 and 3. New division 2 addresses "dry places" and new division 3 addresses homemade alcohol.

The *Liquor Act 1992* is being amended in this Bill so that the provisions prohibiting drinking in a public place which generally apply across Queensland will also now apply to the 19 MCMC communities and the Torres Strait Islands. Therefore, it will no longer be necessary for community justice groups to make dry place declarations for *public areas*.

Community justice groups can also declare a *private place* dry. However, the procedure is cumbersome and therefore this Bill puts a simpler process in place to support those people who would like to stop others drinking in their home but need some support to be able to do this.

Consequently, the Bill removes all current provisions in the Act relating to the ability of the community justice groups to declare places dry.

New *section 28* of the Act enables a tenant or tenants covered by the Residential Tenancies Act; or an occupying lessee of a lease for private residential premises under the Aboriginal Land Act; or an owner-occupier of residential premises to apply to the clerk of the relevant Magistrates Court for a declaration that the premises are a dry place. **All** tenants, lessees or owners must be party to the application.

The declaration takes effect once the notice is displayed as required by section 29. This means that the police can take action where a person has alcohol on the premises or is drinking on the premises.

For an owner-occupier or a lessee-occupier, the declaration remains in force while the owner or lessee occupies the premises unless they apply to have the declaration revoked. Where there is a Residential Tenancies Act tenancy, the declaration remains in force until the tenant(s) apply to have the declaration revoked, regardless of any change in tenants. This is because tenancies are likely to change more frequently than ownership of premises which may cause confusion.

New *section 29* provides that the tenant/owner/lessee must display a notice about the declaration near any entrances to the premises. However, failure to display the notice once it has first been erected does not prevent a person being prosecuted. This is because it is possible that people who are unhappy with the declaration being made may attempt to remove signage.

New *section 30* provides that the local police will maintain a list of dry residences in the public area of the police station, or on a community noticeboard if there is no police station in the community, to ensure that there is a permanent public notice of residences which have been declared dry.

New *section 31* enables the tenant/owner/lessee to apply to the court clerk for a suspension of the declaration for a period of up to 7 days. This is to enable a person who might be responsible for a family event, for example, to hold the event but still generally maintain the home's alcohol free status. Such an application must be made at least 3 days before the suspension is required to ensure that the court clerk is provided with reasonable notice of the application.

New *section 32* enables the declaration to be revoked on application by the tenant/owner/lessee.

With respect to an application for a declaration, or to suspend or revoke a declaration, if the clerk of the court is satisfied that all the current tenants/owners/lessees are party to the application, the court must make the relevant order. Signage must be displayed or removed as appropriate when such orders are made.

New *section 33* confirms that if a residence is declared dry, then no alcohol is permitted, irrespective of any 'carriage limit' in force in the community generally.

New *section 34* provides for an offence if a person possesses or consumes alcohol in a dry place with a maximum penalty of 25 penalty units.

New *sections 35 and 36* provide that a person must not knowingly provide the clerk of the court with false or misleading information or documentation when making an application in relation to a dry place. The maximum penalty is 10 penalty units.

New *section 37* provides that there is no fee to make the applications as the aim is to encourage people to make an application for a declaration.

New *sections 38(1) and (2)* provide that where the prescribed quantity of liquor in a restricted area is zero (that is, the community has a 'zero carriage limit' and a person may not have liquor of any kind) home-brewing equipment is automatically banned. This means that a person commits an offence if the person has a kit, or part of a kit intended to make home-brew; is using or has used anything else to make home-brew; has any home-brew concentrate or alcohol; or is supplying home-brew to others. This is to give full effect to the policy intention of a zero carriage limit that alcohol not be available in the home.

New *section 38(3)* provides that home-brew offences can be put in place in other communities that have a 'carriage limit' above zero by regulation.

New *section 39* confirms that prohibition of possession of home-brewed alcohol in a community prescribed by regulation applies irrespective of the 'carriage limit' for that community.

Clauses 11, 12 and 13 amend sections 67, 68 and 69 of the Act respectively to amend the references to the new sections following the amendments made by clause 9.

Clause 14 inserts new *section 69A* which is a section to protect officials from civil liability if they make an error honestly and not negligently. It replaces section 24 and includes community justice groups and court clerks. A person who suffers detriment in this situation can sue the State instead.

Clause 15 removes a reference to the Aborigines Welfare Fund in section 71 (Regulation making power) consequential to the amendments in clause 4.

Clause 16 inserts a new Part 11 which contains the transitional provisions for the amendments in relation to dry place declarations.

New *section 86* provides relevant definitions for Part 11.

New *sections 87-91* provide for existing declarations; existing applications for declaration, amendment, revocation and suspension; and existing appeals. In the broad, these lapse on commencement of the amendments. If a tenant, lessee-occupier or owner-occupier of residential premises wishes to re-instate a dry place declaration or pursue an application for a declaration, this can be done quickly under the simplified process in new sections 28 to 30 at clause 10.

New *section 92* provides for an offence against Part 5 of the Act prior to the amendments commencing to be started or continued.

Part 3 Amendment of Liquor Act 1992

Clause 17 notes that Part 3 amends the Liquor Act.

Clause 18 deals with a number of definitional issues. It removes the definition of "public place" as it is no longer required as the phrase is to be removed from section 168B and, as a consequence, the reference to 'airport' is no longer needed.. The clause also provides for a definition of

"designated public place" for the amendments in relation to the designation of public areas where liquor can be consumed ('wet areas'). It also provides for definitions required for the provisions in relation to cancellation of general liquor licences held by local governments and amends a reference to a section as a result of other amendments.

Clause 19 and clauses 22 and 30 clarify that alcohol is prescribed both by type and quantity. This is required as some amendments make a distinction between type and quantity.

Clause 20 provides that a local government or a local government controlled entity cannot hold a general liquor licence. This achieves the policy intent of separating the running of canteens (as hotels are generally referred to in Indigenous communities) from Indigenous councils and thereby breaks the nexus between profits from the sale of alcohol and delivery of services. There are transitional provisions at clause 36 to manage the situation where a local government or local government controlled entity holds a licence immediately prior to commencement of the amendments.

Clause 21 provides that where the chief executive proposes to vary the licence (this includes varying the conditions of a licence) in a community area that is also a restricted area, or which is in a restricted area, the chief executive must give notice of this to the police and the community justice group who can object to the proposal. This is current practice but it is considered that it should be mandated in legislation in order to ensure accountability. This would include consultation where there is a proposed change to conditions on the amount or type of liquor a person can possess on the licensed premises and complements the removal of the requirement that these particular issues be set by regulation to enable the chief executive to set such conditions.

Clause 22, as well as clauses 19 and 30, clarifies that alcohol is prescribed both by type and quantity. It also inserts references to "licensee or permittee" to ensure that all those who can legally possess alcohol in excess of the restrictions (such as the licensee of the canteen) are not affected by excluded roads becoming subject to the restrictions.

Currently the Liquor Act enables roads to be excluded by regulation. The major through routes of the Savannah Way (and Roadhouse) at Doomadgee; the Bloomfield Track (and car park at Bloomfield Falls) in Wujal Wujal; and Frenchmen's Road and Portland Roads Road through Lockhart River are all excluded by regulation from the restrictions in order

to not restrict tourists and tourism in the region. Around 100,000 vehicles per year pass through the Gulf and Cape area.

However, this has created a loophole, undermining the effectiveness of the restrictions. For example, where the houses are adjacent to an exempt road it has proved easy to get 'sly' or 'hot' grog (illicit alcohol for either sale or personal use) into the community.

It is now proposed that such roads will be subject to the relevant carriage limits (some small sections of road which pass through a restricted area and are not in the vicinity of a township will remain excluded roads).

However, in order to still accommodate tourist traffic and tourism which provides economic and employment opportunities for the communities, clause 22 inserts a new section 168(3A). It exempts a person from breach of the alcohol restrictions if the person is travelling along a road or using a public facility prescribed by regulation and who has more alcohol than is permitted in the restricted area through which the road runs, provided that the person meets certain criteria. In particular, the person must show that their destination is outside the restricted area and the person must not stop anywhere other than a prescribed place unless there is an emergency. It is intended that the Liquor Regulation will be amended to remove the exclusion of the roads and facilities described above from the restricted area provisions, but the Regulation will name them as roads and facilities to which the 'traveller exemption' will apply.

This section provides for a reversal of the onus of proof. This has been discussed in the section on Fundamental Legislative Principles above. Examples of how this criterion could be met are an accommodation booking, itinerary, a phone call to a person who can confirm that they are expecting the traveller. The clause provides that the standard of proof is *on the balance of probabilities*.

Finally, clause 22 provides that with respect to residences, which are now covered by the alcohol restrictions for a community, breach of 168B only relates to the type, not quantity of alcohol on the premises. This is because it is possible for more than one person to legally bring home the amount of a type of liquor allowed by a carriage limit, or one person could make several trips, on each occasion legally bringing an amount of a type of liquor allowed by the carriage limit into the house.

Clause 23 inserts a new section 168C, namely an attempt to take alcohol not allowed under the 'carriage limit' into a restricted area.

This provision aims to prevent 'sly grogging' and illicit alcohol getting to the restricted area where it is dispersed or hidden very quickly by the sly groggers or those who obtain alcohol from them.

The penalty for the attempt provision is high for a simple offence – 500 penalty units, which is $37,500 at the time of introduction of the Bill. This enables a suitable penalty to be imposed where there is a large 'shipment' of sly grog. It is also in line with the general rule that the penalty for an attempt should be no more than half the penalty for an actual breach. The offence of breaching a restricted area has a maximum penalty of 1000 penalty units and 18 months imprisonment for a third offence.

The section will not apply to people whose business is to transport and deliver alcohol or to a person who has bought alcohol outside the restricted area and intends to travel through the area, that is, someone who would be relying on new section 168B (3A) when in the restricted area. In the last case, the reversal of the onus of proof will apply to the attempt as it does for the actual offence.

Clause 24 removes the definition of *local government* as not including Indigenous councils. This effectively removes the exemption to drinking in public places in section 173B.

Clause 25 inserts a new sub-section which is consequential to the insertion of new section 173L.

Clause 26 inserts the wording which has the effect of prohibiting councils responsible for an area which is a restricted area from being able to declare 'wet areas', that is, public areas where it will be possible to consume alcohol. If there is to be a 'wet area' in a community it will be included in the Liquor Regulation that sets out the alcohol restrictions – see clause 31.

Clause 27 removes the reference in section 173D to the section not applying to an Indigenous council. This is consequential to the amendments in clauses 24, 26 and the new section 173L inserted by clause 31 and the way 'wet areas' may be designated where there is a restricted area.

Clauses 28 and 29 make technical amendments to the Bill in order to insert a new Division 2 (Declaration of restricted areas) of Part 6A.

Clause 30 and clauses 19 and 22 clarify that alcohol is prescribed both by type and quantity.

Clause 30 also inserts a new subsection (3) in section 173H, the intent of which is to enable the chief executive of the department with responsibility

for the Liquor Act to put conditions on the liquor licence of licensed premises in a restricted area in relation to the type and quantity of alcohol which can be sold to a person on the premises and which a person can have in their possession on the premises rather than this being done by way of Regulation. The chief executive sets all other licensing conditions, and can choose to set conditions about type and quantity of liquor in licensed venues which are not in restricted areas. This also enables swift action to be taken to address any problems which arise in relation to the premises.

Clause 31 makes a technical amendment to the Bill in order to insert a new Division 3 (Designation of public places where liquor may be consumed) of Part 6A.

Clause 31 inserts new sections 173K to 173M and relate to the amendment contained in clause 26. The new sections set out the procedure for declaration of a 'wet area' (described as a *designated public place* in the Bill) by regulation. Only the alcohol allowed under the 'carriage limit' for the community area can be consumed in this area. The council will be responsible for signage.

New section 173N provides that the council or the chief executive of the department with responsibility for the *Liquor Act 1992* may suspend the operation of the wet area for up to 10 days if the entity reasonably believes it is in the community's interests to do so. The entity which suspends the wet area must ensure a notice is displayed about the suspension and must advise the other entity and the Queensland Police Service.

The ability to still have a wet area is required for two reasons. Firstly, there are some camping grounds in communities where tourists stay where alcohol (within the 'carriage limit') has been consumed legally up to now because of the exemption from the general public drinking law. Such tourism opportunities are a source of revenue and employment for communities.

Secondly, with the closure of canteens, the only place left to drink in a community will be private premises, generally the home. It may be appropriate for there to be a public place where people can drink so that there is an alternative to drinking in the home as in some cases this may increase the risk of family violence.

Clause 32 removes a reference to investigators being able to enter a public place which has been declared a dry place which is no longer required due to the amendments in the Bill which make drinking in a public place an

offence in the discrete Indigenous communities as it is across the rest of Queensland.

Clauses 33, 34 and 35 provide for the powers enforcement officers have in relation to section 168B (prohibition on possession of liquor in a restricted area) to have these powers in relation to the new attempt to enter a restricted area provision of section 168C.

Clause 36 inserts new part 12 division 7 subdivisions 1 and 2 into the Act which contain the transitional provisions in relation to the divestment of general liquor licences from councils.

Subdivision 1 (new *clauses 276 to 281*) relates to general licences held by councils or council controlled entities other than the Torres Strait Island Regional Council (TSIRC). New *section 276* has the definitions for subdivision 1 and new *section 277* notes that subdivision 1 addresses those general licences held by councils other than the TSIRC.

New *section 278* provides that a general liquor licence will lapse at 1 July 2008 unless the chief executive has decided it is to continue after that date.

New *section 279* provides that before 1 July 2008 the chief executive must decide if the licence can continue and set a date, no later than 31 December 2008, it can continue to. The chief executive must consider the health and social impact on the community if the licence does or does not continue and the availability of any services to address this impact. The licence, however, remains subject to the general provisions of the Liquor Act which means that if there are any issues, the chief executive could still cancel a licence irrespective of the continuance.

New *section 280* provides that if any application for transfer of a licence is not decided by 1 July 2008, the application lapses.

New *section 281* provides that even if a licence continues in force after 1 July 2008, an application for transfer of a licence cannot be made.

Sections 278 to 281 all provide that no compensation is payable to any person as a result of the operation of these provisions.

Subdivision 2 (new *sections 282 to 287*) has similar provisions to sections 276 to 281 but for licences held by the TSIRC where the relevant dates are 1 July 2009 and 31 December 2009.

Part 4 Amendment of Local Government (Aboriginal Lands) Act 1978

Clause 37 notes that Part 4 amends the *Local Government (Aboriginal Lands) Act 1978*.

Clause 38 amends the reference to a section number which has changed as a result of amendments in this Bill.

Clause 39 removes a reference to the *Indigenous Communities Liquor Licences Act 2002* which is repealed by clause 50 of the Bill.

Part 5 Amendment of Local Government Act 1993

Clause 40 notes that Part 5 amends the *Local Government Act 1993*.

Clause 41 removes a reference to the *Indigenous Communities Liquor Licences Act 2002* which is repealed by clause 50 of the Bill.

Part 6 Amendment of Local Government (Community Government Areas) Act 2004

Clause 42 notes that Part 6 amends the *Local Government (Community Government Areas) Act 2004*.

Clause 43 removes a reference to the *Indigenous Communities Liquor Licences Act 2002* which is repealed by clause 50 of the Bill.

Part 7 Amendment of Police Powers and Responsibilities Act 2000

Clause 44 notes that Part 7 amends the *Police Powers and Responsibilities Act 2000*.

Clause 45 inserts a reference to sections 168B and 168C of the *Liquor Act 1992* to section 30 of the Act to enable a person to be searched without a warrant where there is a reasonable suspicion that the person has something which may be evidence of a breach of those provisions.

Clauses 46 to 48 amend references to section numbers in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* as a result of amendments in this Bill.

Clauses 47 and 48 enable police to stop and search a vehicle or an animal, and a vehicle pulled by an animal, which is under the control of a person in relation to an attempt to enter a restricted area with illicit alcohol. Police officers may currently exercise these same powers to monitor and enforce an actual breach of the restrictions.

Clause 49 inserts a reference to sections 168B and 168C of the *Liquor Act 1992* to section 159 of the Act to enable police to enter premises if a police officer reasonably suspects that there is evidence of a breach of those provisions and the evidence may be concealed or destroyed unless the place is immediately entered and searched.

This provision does not allow police to conduct random searches of people's homes. The need for such a provision is discussed in the Fundamental Legislative Principles section of these Explanatory Notes.

Part 8 Repeal of Indigenous Communities Liquor Licences Act 2002

Clause 50 repeals this Act as it is no longer required. Divestment of canteens from Indigenous councils has been effected by clause 20 of this

Bill as an alternative means of achieving the policy objective. There were practical difficulties in operationalising the Act.

Schedule Minor amendments of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.

The Schedule makes amendments to address minor drafting issues in the Act identified during the drafting of this Bill.