

Safe Night Out Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 225

made under the

Liquor Act 1992

Police Powers and Responsibilities Act 2000

Queensland Civil and Administrative Tribunal Act 2009

General Outline

Short title

Safe Night Out Legislation Amendment Regulation (No. 1) 2014

Authorising law

- Sections 142AG, 142AH, 142ZZ, 173NB, 173NC, 173NQ, 187 and 235 of the *Liquor Act 1992*
- Sections 390A, 602P and Schedule 6 of the *Police Powers and Responsibilities Act 2000*
- Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Policy objectives and the reasons for them

The policy objectives of the *Safe Night Out Legislation Amendment Regulation (No. 1) 2014* (Amendment Regulation) is to amend the *Liquor Regulation 2002*, *Police Powers and Responsibilities Regulation 2012* and *Queensland Civil and Administrative Tribunal Regulation 2009* to implement measures of the Safe Night Out strategy, including the prescription of Safe Night Precincts (precincts) and SNP boards.

The Safe Night Out Strategy

The Safe Night Out strategy is a comprehensive action plan based on extensive community consultation that includes:

- stronger penalties – introducing new penalties and compulsory counselling to make it clear bad behaviour won't be tolerated;
- targeted policing – increasing policing powers and providing safe and supportive places through precincts, sober safe centres and more; and
- better prevention – enhancing the liquor licensing regime, raising awareness of clear standards of behaviour, and educating young Queenslanders (grades 7-12) to promote responsible behaviour.

The Safe Night Out Legislation Amendment Act 2014

The *Safe Night Out Legislation Amendment Act 2014* (Amendment Act) implements the legislative elements of the strategy. The Amendment Act contains amendments to a number of Acts to introduce new offences and increased penalties, police issued banning notices, mandatory community service, drug and alcohol assessment and referral, establish the ‘sober safe centre’ trial, strengthen liquor licence compliance, and create a regime for establishment and local management of precincts.

The Amendment Act contains regulation-making provisions for a number of matters. These include regulation-making provisions for:

- prescribing boundaries of and the local board associations for precincts;
- prescribing rules for the local board associations;
- exempting particular classes of licensee from the requirement to be a member of a local board association;
- providing minimum standards for licensees to maintain their closed circuit television (CCTV) equipment and data;
- prescribing precincts to be included in the sober safe centre trial;
- prescribing practices or promotions that must or must not be engaged in by licensees and permittees; and
- prescribing the application fee for applications to the Queensland Civil and Administrative Tribunal’s jurisdiction under section 602P of the *Police Powers and Responsibilities Act 2000* (PPR Act).

The Amendment Act was debated and passed on 26 August 2014 in the Legislative Assembly and received Royal Assent on 5 September 2014.

An implementation panel comprising representatives of affected stakeholders including the Office of Liquor and Gaming Regulation (OLGR), licensees, non-government organisation service providers, Queensland Police Service and local governments has been tasked with overseeing the development of the precincts and boards. There has been regular consultation with a range of stakeholders, including relevant Members of Parliament, to settle both the geographic boundaries of precincts and the potential composition of local boards.

Precincts

Precincts will be established in locations across Queensland. Each precinct will be managed by a local board, which will be an association incorporated under the *Associations Incorporation Act 1981* (the AI Act) and then prescribed under the *Liquor Regulation 2002* (Liquor Regulation). Under the provisions of the Amendment Act, precincts are able to be prescribed whether or not an incorporated local board association has been prescribed to manage the precinct.

The Implementation Panel has endorsed the prescription of the 15 areas identified by the Government as priorities for the Safe Night Out strategy. The 15 precincts are: Cairns CBD, Townsville CBD, Airlie Beach CBD, Mackay CBD, Rockhampton CBD, Gladstone CBD, Bundaberg CBD, Sunshine Coast (incorporating two areas in Mooloolaba and Maroochydore), Toowoomba CBD, Ipswich CBD, Brisbane CBD, Fortitude Valley, Inner West Brisbane, Broadbeach CBD and Surfers Paradise CBD.

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The geographic parameters of each precinct have been set by maps prescribed under the Amendment Regulation.

Local boards

The Amendment Act provides for both the precinct (i.e. its geographic boundaries) and the local board association to manage the precinct to be prescribed in a regulation. To be prescribed as the local board for a precinct, an association must be incorporated under the AI Act. It must also have at least one member who is the licensee of licensed premises in the Safe Night Precinct.

The Amendment Regulation provides for the prescription of seven incorporated associations as the local boards for various precincts. The seven boards that have been incorporated are –

- Safe Night Bundaberg CBD Precinct Inc
- Safe Night Fortitude Valley Precinct Inc
- Safe Night Gladstone CBD Precinct Inc
- Safe Night Rockhampton CBD Precinct Inc
- Safe Night Sunshine Coast Precinct Inc
- Safe Night Toowoomba CBD Precinct Inc
- Safe Night Inner West Brisbane Precinct Inc

The remaining eight precincts will initially be operated without the benefit of a local board, as provided for under section 173NC(3) of the Liquor Act, until such time as a local board emerges in the precinct and a later amendment regulation prescribes it as the local board. It is understood that the implementation panel is currently negotiating this issue with licensees in the remaining precincts.

Prescribe precincts to be included in the sober safe centre trial

The Amendment Act amends the PPR Act to provide a legislative mechanism to establish a sober safe centre trial under the PPR Act. The scheme provides for the detention of intoxicated persons for up to eight hours, who are located in the prescribed precincts, and posing a risk of physical harm to themselves or others or causing a nuisance offence. The sober safe centre trial will be conducted in the Brisbane CBD and operate out of the court cells at the Brisbane Magistrates Court Complex at 363 George Street, Brisbane. New section 390A of the PPR Act provides that a ‘prescribed safe night precinct means a safe night precinct prescribed by regulation for the centre’. The Brisbane CBD, Inner West Brisbane and Fortitude Valley precincts are to be prescribed for the purposes of the sober safe centre trial.

Rules

Under the AI Act, an association is required to adopt a set of rules. The Amendment Act provides that the Liquor Regulation may prescribe further rules (‘prescribed rules’), which are then taken to form part of the local board’s rules. The objective of prescribing rules in this way is to ensure that the local board operates in a way that supports the purpose for which the local board was established.

The prescribed rules address the following matters:

- the development of a plan by which the board will manage the precinct (a management plan);
- how the board will report to the Government on its progress against the management plan;

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- the frequency of meetings that the local board or its management committee are required to hold, being at least three general meetings each financial year, at intervals of not more than five months; and
- how bodies corporate (which will include the majority of liquor licensees who are required to join the board) will be represented at meetings of the local board.

The prescribed rules also obligate local boards to comply with the conditions of any grant funding provided to the board.

Requirement to join local board - exemptions

Once an association is prescribed as the local board for a precinct, all relevant licensees in the precinct will be required to join the local board pursuant to section 173NF of the Liquor Act. However, section 173NB of the Liquor Act provides that a regulation may exempt certain classes of licensee from the requirement to join the local board. Accordingly, it is intended to exempt certain categories of licensees from the requirements of section 173NF of the Liquor Act (via the definition of “exempt class at section 173NB of the Liquor Act).

The exemption will apply to –

- restaurants (provided they do not trade beyond midnight on a regular basis);
- accommodation providers (provided they do not trade beyond midnight on a regular basis);
- very small clubs operating under a community other licence;
- producer/wholesalers;
- vessels;
- cinemas; and
- commercial hotel licensees whose only licensed premises in the precinct is a detached bottle shop.

These liquor-related businesses are considered low risk in terms of alcohol-related violence and it is not considered that the licensees of these venues should be burdened with the requirement to join a local board. The commissioner has the power under section 173NG of the Liquor Act to require an exempt licensee to join the local board, if it is in the public interest or necessary to ensure the safety and amenity of the precinct.

CCTV requirements

A significant number of liquor licensees are required to install CCTV equipment in their premises either as a condition of licence or under section 142AH of the Liquor Act. The Liquor Act requires licensees to keep CCTV data for a period of time and provide it to an investigator if requested.

To ensure that licensees do not avoid complying with these requirements by claiming that their equipment malfunctioned or the data was corrupted, the Amendment Act provides a head of power to prescribe requirements in the Liquor Regulation for the storage and maintenance of the data and equipment.

It is proposed to amend the Liquor Regulation to require that the following CCTV maintenance program be put in place:

- performance checking and logging at the commencement of trade;

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- where equipment malfunction occurs, repairs are arranged within 48 hours of identification of the problem and this action is logged;
- CCTV equipment be checked and certified every six months by a suitably qualified person, and this be recorded in a register to substantiate that such maintenance work is being carried out. Certification should include:
 - the equipment is in good working order;
 - clearly recording images;
 - able to record images for at least 28 days as required by legislation;
 - the equipment is able to provide copies of the CCTV captured images; and
 - there is an ability to store the required CCTV images of incidents for one year either on the particular equipment or on external equipment.

Practices and promotions

The Amendment Act omits section 148A from the Liquor Act, and replaces it with new provisions relating to unacceptable practices and promotions; responsible practices and promotions; and practices for the purposes of maintaining a safe environment and ensuring the use of a premises does not adversely affect the amenity of the local area.

These Act changes require amendments to be made to the Liquor Regulation. These changes are:

- amendments to section 41(1) of the Liquor Regulation to prescribe the following existing example in that regulation as an unacceptable practice or promotion:
 - serving or supplying liquor to a patron while holding the patron's financial institution access card or other property pending payment for the liquor, in a way that discourages the patron from monitoring or controlling the patron's purchase of liquor; and
- removal of sections 41(2) to (4) of the Liquor Regulation, as some examples have been incorporated into the content of the new provisions in the Liquor Act.

Prescribe the application fee for applications to the Queensland Civil and Administrative Tribunal's jurisdiction under section 602P of the *Police Powers and Responsibilities Act 2000*

The Amendment Act inserts the Police Banning Notice scheme into Chapter 19 of the PPR Act. The scheme enables police officers to immediately ban a person from being in and around stated licensed premises, public places within a precinct, or a stated event. An initial police banning notice is for 10 days. An extended police banning notice may be issued by a police officer of, or above, the rank of senior sergeant for a maximum period of three months.

New section 602N enables a respondent to apply to the Commissioner of Police to have the notice amended or cancelled. Pursuant to sections 602O and 602P, where the application relates to an extended police banning notice, the respondent for the notice may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the Commissioner's decision on that application.

To enable QCAT to undertake the review and charge the prescribed fee for the application, Schedule 1, Part 1 of the *Queensland Civil and Administrative Tribunal Regulation 2009* (QCAT Regulation) is to be amended to include the PPR Act section 602P as an enabling act and provision.

Definition of unreasonable noise

The Amendment Act included provisions to allow OLGR to take appropriate action against a licensee in respect to noise emanating from licensed premises. These provisions were principally enacted by amendments to sections 46 and 187 of the Liquor Act.

Prior to the Amendment Act amendments, the definition of *unreasonable noise* was included in section 187(5) of the Liquor Act. As a result of the Amendment Act amendments, the definition of *unreasonable noise* was amended and relocated to section 4 (Definitions) of the Liquor Act.

Accordingly, a minor, consequential amendment is required to the sectional reference contained in section 40 of the Liquor Regulation to reflect the relocation of the definition.

Sectional reference for crowd controllers provisions

Section 142AG of the Liquor Act has been clarified to provide that, while the required number of crowd controllers for licensed premises in the area of the Brisbane City Council trading after 11p.m. may be prescribed by regulation, the Commissioner may impose a condition on a licence for a different required number of crowd the controllers to be engaged. As these amendments have relocated the head of power from section 142AG(a) to section 142AG(2)(b), a consequential amendment to section 37C of the Liquor Regulation is required.

Achievement of policy objectives

The policy objectives are achieved by–

- Omitting Part 1A (and related schedules) of the Liquor Regulation, which had prescribed extended trading hour precincts which were exempt from the now ceased moratorium on applications for extended liquor trading hours after midnight;
- Omitting Part 1B (and related schedules) of the Liquor Regulation, which had prescribed the now defunct Drink Safe Precincts;
- Prescribing (in the Liquor Regulation for section 173NC of the Liquor Act) 15 safe night precincts, where an enhanced place-based approach to liquor-related issues will be applied through enhanced police banning powers, and local board management (as provided in recent amendments to the Liquor Act arising from the Amendment Act);
- Prescribing (in the Liquor Regulation for section 173NC of the Liquor Act) incorporated associations as local boards to manage seven of the safe night precincts. Licensees in the seven relevant precincts will be required to join the local board, subject to criteria outlined in the Act;
- Prescribing (in the Liquor Regulation for section 173NB of the Liquor Act) classes of licensees who will be exempt from the requirement to join a local board;
- Prescribing (in the Liquor Regulation for section 173NQ of the Liquor Act) certain rules that the local board must adopt, to ensure the local board functions effectively in managing the precinct;
- Amending section 37D of the Liquor Regulation to clarify the minimum requirements of CCTV equipment installed in licensed premises in relation to storage and production of digital copies;
- Amending section 37DA of the Liquor Regulation to clarify maintenance processes that must be undertaken by the licensee to ensure that their equipment is in good working order to enable them to comply with the requirements of the Liquor Act;

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- Amending section 37DB of the Liquor Regulation to clarify how data from CCTV recordings are to be stored to ensure their security;
- Amending section 41 of the Liquor Regulation to remove the existing prescribed examples of acceptable and unacceptable practices or promotions that no longer have a head of power, and prescribe an unacceptable practice that licensees and permittees must not engage in, for the purposes of the new section 142ZZ(2)(g) of the Liquor Act;
- Inserting a new Part 4B into the *Police Powers and Responsibilities Regulation 2012* to prescribe the Brisbane CBD safe night precinct, Fortitude Valley safe night precinct and Inner West Brisbane safe night precinct as precincts for the Brisbane sober safe centre;
- Amending Schedule 1 of the QCAT Regulation to prescribe the application fee for applications to QCAT's jurisdiction under section 602P of the PPR Act;
- Amending section 37C of the Liquor Regulation to update the sectional reference to the head of power under the Liquor Act to prescribe the number of crowd controllers by regulation; and
- Amending section 40 of the Liquor Regulation to update a sectional reference to the definition of *unreasonable noise*, which was relocated as a result of the Amendment Act.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the primary legislation.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

As part of the 2014-15 budget process CBRC approved additional funding of \$29.1M over four years and \$4.94M per annum ongoing to fund the initiatives for the strategy, including the establishment of the boards, sober safe centre trial and increased compliance activities.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation has advised that the Proclamation is excluded from the Regulatory Impact System (RIS) system as it is machinery in nature and that the Amendment Regulation does not require a RIS.

The Department of the Premier and Cabinet and Queensland Treasury and Trade have been consulted and have no issues with the Proclamation or Amendment Regulation.