

Gambling and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Peter Lawlor MP

Title of the Bill

Gambling and Other Legislation Amendment Bill 2009

Objectives of the Amendments

The objectives of the amendments are to amend the *Liquor Act 1992* (the Liquor Act) to:

- Provide that a commercial special facility licence authorises the sale of liquor on the premises, at any time, to a resident or guest of a resident in the resident's company, and if the liquor is consumed on the premises at a time other than the time stated on the licence, it must be consumed in a residential unit on the premises.
- Provide for a 12 month moratorium (with a possible three month extension) on extended trading hours approvals after midnight, except for an extremely limited number of designated inner city areas with a concentration of premises with existing extended trading hour approvals between 12am and 5am.
- Allow the chief executive to prohibit the use of regular glass in high risk licensed premises at all times during trading.
- Provide that the chief executive, in deciding whether to grant an application under section 116, must explicitly consider the public interest in so far as it relates to the Liquor Act's objective to regulate liquor in a way compatible with minimising harm caused by alcohol abuse and misuse, and the impact on the amenity of the community.

Reasons for the Amendments

Amendment to the *Gambling and Other Legislation Amendment Bill 2009* (GOLAB) during consideration in detail is proposed in order to give effect to a number of urgent amendments to the Liquor Act.

Authority of Commercial Special Facility Licences

Amendment to the Liquor Act is proposed to provide for liquor to be supplied under the authority of a commercial special facility licence to a resident or a guest of a resident for consumption at any time in a residential unit on the premises. A provision permitting commercial special facility licences to supply liquor through room service or mini bars in guests' rooms at any time was inadvertently omitted from the *Liquor and Other Acts Amendment Act 2008*. This has resulted in the unintended consequence of restricting access to liquor in guests' rooms in some tourist resorts in Queensland. It appears that there are approximately 18 commercial special facility licences which include accommodation as part of their licences, but only six of these provide mini bars in their accommodation. As this issue could potentially impact on Queensland's competitiveness in the interstate and international tourism sector, an amendment to rectify the omission has been included in this submission. All of these licensees have been contacted and advised of this unintended consequence and of the intention to address the matter urgently.

Moratorium on Extended Trading Hours Approvals After Midnight

Amendment to the Liquor Act is also proposed to give effect to a moratorium on extended trading hours approvals after midnight, with an exemption for applications in an extremely limited number of designated inner city areas with a concentration of licensed premises with approved extended trading hours after midnight. The moratorium was announced by the Honourable Anna Bligh MP, Premier and Minister for the Arts in a Parliamentary statement on 16 September 2009. To comply with the Premier's announcement, it is proposed that the moratorium be imposed for a 12 month period, retrospectively from 16 September 2009, with the ability for the Minister to extend the period of the moratorium for a further period not exceeding 3 months.

Prohibiting the Use of Regular Glass in High Risk Licensed Premises

Amendment to the GOLAB during consideration in detail is proposed to give effect to an amendment to the Liquor Act to allow the chief executive to prohibit the use of regular glass in high risk licensed premises at all times

during trading. The Government has publicly announced plans to prohibit the use of regular glass in high risk licensed premises by the end of the year, in response to community concerns about increasing glassing incidents in licensed premises.

Chief Executive Must Have Regard to Harm Minimisation and Public Interest

Amendment to the GOLAB during consideration in detail is also proposed to give effect to an amendment to the Liquor Act to provide for an explicit statement requiring the chief executive to take into account the harm minimisation objective of the Act and the impact on the amenity of the community when determining applications under the Act. The proposed amendment stipulates that the chief executive must be satisfied that applications are in the public interest, and take into account the requirements of section 116(6) in relation to Community Impact Statements, before deciding to approve applications under the Liquor Act.

Achievement of the Objectives

The amendments to the Liquor Act will achieve the following:

- Enable commercial special facility licensees to sell liquor to residents and their guests at any time, provided that all liquor consumed on the premises outside the approved trading hours endorsed on the licence is consumed in a residential unit on the premises;
- Prevent new applications for extended trading hours approvals after midnight for liquor licences being made for a 12 month moratorium period (with the potential for an extension of three months) except in extremely limited number of designated inner city areas where there is a high concentration of premises with existing extended trading hour approvals after midnight. Consequently, an application that was made or purportedly made (excluding premises that are in an extended trading hours precinct) during the moratorium period is of no effect.
- Provide that applications for extended trading hour approvals made or purported to be made before the moratorium period (excluding premises that are in an extended trading hours precinct), but which were not decided by the chief executive immediately before the commencement of the moratorium

period, will not be considered until after the end of the moratorium period.

- Provide that court or tribunal proceedings related to extended trading hours applications (excluding premises that are in an extended trading hours precinct) which commenced between the start of the moratorium period and the commencement of part 4, division 8 and have not been decided by the court or tribunal are taken to end and must not be further considered by the court or tribunal.
- Provide that court or tribunal decisions related to extended trading hours applications (excluding premises that are in an extended trading hours precinct) which commenced between the start of the moratorium period and the commencement of part 4, division 8 have no effect.
- Allow the chief executive to prohibit the use of regular glass in high risk licensed premises at all times during trading.
- Ensure that the chief executive considers the public interest in so far as it relates to regulating liquor in a way compatible with minimising harm caused by alcohol abuse and misuse, and the impact on the amenity of the community, when deciding whether to grant:
 - an application for a liquor licence;
 - an application by a licensee for a variation of the licence;
 - an application for an extended trading hours approval; and
 - an application for a commercial public event permit or community liquor permit.

Alternative Ways of Achieving Policy Objectives

Amendment of the Liquor Act is the only suitable method to rectify the unintended consequence of a previous amendment to the Liquor Act which has resulted in restricted access to liquor in guests' rooms in some tourist resorts in Queensland prior to 10am. Additionally, amendment of the Liquor Act is the only suitable vehicle to comprehensively implement the announced moratorium on the grant of extended trading hours approvals, and to emphasise the primacy of the harm minimisation objective of the

Liquor Act and the importance of public interest considerations when the chief executive is deciding applications.

Amendment of the Liquor Act is also the only means of implementing a legislative ban on the use of regular glass in licensed premises.

Estimated Cost for Government Implementation

Authority of Commercial Special Facility Licences, Moratorium on Extended Trading Hours Approvals after Midnight, and Chief Executive Must Have Regard to Harm Minimisation and Public Interest

It is not anticipated that the proposed amendments will result in an appreciable cost to Government.

Prohibiting the Use of Regular Glass in High Risk Licensed Premises

There may be costs incurred by Government with regard to information technology system changes to allow for collection, analysis and reporting of liquor-related incident data to support the implementation of the ban. The costs are yet to be fully quantified.

Consistency with Fundamental Legislative Principles

Moratorium on Extended Trading Hours Approvals after Midnight

Government policy objectives

In the context of the Parliamentary Inquiry by the Law, Justice and Safety Committee, the moratorium is designed to suspend consideration on extended trading hours applications after midnight while the Committee investigates the issue thoroughly, and to reduce the harm caused by alcohol misuse. The Premier indicated in her Parliamentary statement of 16 September 2009 that it would undermine the Committee's findings and public interest objectives in regard to extended trading hours after midnight, if applications currently on hand were considered before the outcomes of the Inquiry with regard to extended trading hours were presented. Therefore, the moratorium has been implemented on the basis of a harm minimisation objective, which aligns with the primary objective of the Liquor Act. The position on extended trading hours after midnight will be re-evaluated upon consideration of the findings of the Committee. Therefore it is considered that broadly the amendments are substantially justified on public interest grounds.

Retrospectivity

Section 4(3)(g) of the *Legislative Standards Act 1992* (LSA) states that legislation should not impose obligations retrospectively. In the case of the moratorium on extended trading hours approvals after midnight, the legislative amendments will apply retrospectively to disallow applications received after the announcement of the moratorium on the 16 September 2009, because legislation was not in place at the time of receipt. Additionally, any proceedings that are started, or started and decided by a court or tribunal in the period between the announcement of the moratorium and the commencement of these amendments, regarding extended trading hours applications after midnight undecided at the commencement of the moratorium will be retrospectively disallowed by the amended legislation. An example of a possible proceeding would include an action to compel the chief executive to make a decision regarding an application for extended hours trading after midnight.

Retrospective operation of legislation is a fundamental legislative principle (FLP) issue, but in this case is largely justified by the fact that despite no legislation being in place, any affected applicants would have been reasonably made aware of the moratorium by the Premier's announcement in Parliament on 16 September 2009.

Additionally, retrospectivity is required to give effect to the Government's policy intent that from the time of the Premier's statement in Parliament that there would be a moratorium on consideration of applications for extended trading hours after midnight until after the Government has responded to the Inquiry by the Committee into alcohol related violence. Not having an element of retrospectivity would seriously undermine the practical implications of the Government's policy intention that no further applications should be lodged or applications on hand further considered.

Natural Justice – Appeals and Procedural Fairness

The LSA stipulates that legislation must be consistent with the principles of natural justice (section 4(3)(b)). Further, FLPs also indicate that something should not be done to a person that will deprive the person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision maker. This includes allowing applicants the right to appeal to a court or tribunal. It is proposed to disallow any proceedings begun in the period after the announcement of the moratorium and before the commencement of these amendments, and any decisions from proceedings started and

decided on during the period between the announcement of the moratorium and the commencement of these amendments.

Given the overarching policy aim of the Government that no further applications for extended trading hours after midnight should be taken or considered until the Government has considered the findings of the Committee's Inquiry into alcohol related violence, it is considered that the FLP breach is justified on the grounds of public interest, taking into account the objective of harm minimisation.

Additionally, it could be considered that declaring a decision invalid that was made on a proceeding that began after the announcement of the moratorium and was decided on before the commencement of these amendments would be depriving a licensee of the legitimate expectation that a court or tribunal decision would stand. This may also constitute a breach of FLPs because although the moratorium has been publicly announced, during the period after the announcement of the moratorium and before the commencement of these amendments, the legislative provisions are not yet in place to quash the relevant court or tribunal decision.

However, it is considered that the breach is mitigated given the public announcement of the moratorium would mean that licensees were made aware of the Government's policy intention to prevent any further consideration of extended trading hours applications after midnight and the intention to implement it legislatively by the announcement.

Prohibiting the Use of Regular Glass in High Risk Licensed Premises

Natural Justice – Appeals and Procedural Fairness

Not providing affected licensees with appeal rights to a tribunal may raise the FLP issue of whether the proposed amendments have sufficient regard to the rights and liberties of the individual, in particular, whether the amendments are consistent with principles of natural justice (section 4(3)(b) LSA).

However, it is considered that any potential breach is outweighed by the public interest to minimise risks from alcohol related incidents, including glassings, in licensed premises. The first objective of the Liquor Act is to regulate the liquor industry in a way compatible with minimising harm caused by alcohol abuse and misuse. The nature of the potential harm involved requires an immediate response to ensure consistency with the Government's policy and the first objective of the Liquor Act. In this

regard, an appeal to a tribunal would undermine the policy intent of quickly minimising the risk of further harm caused by alcohol abuse or misuse.

Furthermore, it would be impracticable to allow the chief executive's decision to remain in force during the time that any appeal is pending with QCAT, given that the affected venue would be required to replace all of its glassware in any case to comply with the chief executive's decision under the Liquor Act.

Procedural fairness will be afforded to licensees during the decision making process. Affected licensees will have the opportunity to make representations to the chief executive during the 14 day notice period. Such representations may relate to incidents upon which the ban is proposed, the possibility of excluding areas within the licensed premises, and current measures the licensee has implemented to minimise the risk of glassings and alcohol related violence at the premises. Under the proposed amendments, the chief executive will be required to consider any representations made by an affected licensee before making a final decision to prohibit the use of regular glass. In considering the licensee's representation, the chief executive may also conclude that grounds no longer exist to prohibit the use of regular glass. In which case, the chief executive must not take further action about the notice and advise the licensee accordingly. In addition, an aggrieved licensee will still have recourse to the Supreme Court for judicial review under the *Judicial Review Act 1991*.

It is proposed that guidelines will be developed to clearly set out the criteria the chief executive is to have regard to, and the process to be followed, if a licensed premises is proposed to be prohibited from using regular glass. This will ensure transparency and consistency in the decision making process.

Under the guideline, the chief executive may have regard to data provided by the QPS, premises referred to OLGR by QPS that QPS considers problematic because of the premises' risk profile, and other operational considerations. The chief executive would also be required under the guidelines to consult with the QPS in relation to a proposed ban.

Consultation

Consultation was carried out with the Treasury Department (with regard to National Competition Policy), the Department of the Premier and Cabinet, the Department of Justice and the Attorney-General and the Queensland

Police Service, in addition to consultation with the Queensland Office for Regulatory Efficiency and the Office of the Queensland Parliamentary Counsel.

NOTES ON PROVISIONS

Amendment 1—Inserted after clause 69 as new clauses 69A and 69B

Amendment 1 of the amendments during consideration in detail amends the GOLAB by inserting clauses 69A, and 69B after clause 69 on page 76, after line 12 of the Bill.

Clause 69A amends section 64(1) in division 3 of part 4 of the Liquor Act.

Section 64(1) is omitted and substituted with a new section 64(1), which provides that a commercial special facility licence authorises the licensee to carry out a number of actions related to the sale of liquor. Section 64(1)(a) provides that the licensee may sell liquor on the licensed premises for consumption on or off the premises during the times stated on the licence. Section 64(1)(b) provides that the licensee may sell liquor to a resident at any time on the licensed premises, for consumption on or off the premises. Section 64(1)(c) provides that the licensee may sell liquor on the licensed premises, for consumption on the premises, at any time to a guest of a resident on the premises, while the guest is in the resident's company.

Clause 69B inserts a new section 65A, which provides that liquor supplied as directed under a commercial special facility licence to a resident or resident's guest on the licensed premises, must only be consumed in the resident's unit if not during the times stated on the licensee's licence.

Amendment 2—Inserted after Clause 72 as new Clause 72A

Amendment 2 of the amendments during consideration in detail amends the GOLAB by inserting a new clause 72A on page 77, after line 8 of the Bill. Clause 72A amends the Liquor Act by inserting new divisions 8 and 9 in part 4 (new sections 89 – 99G inclusive).

Clause 72A inserts a new section 89 which stipulates definitions for 'commencement', 'delegate', 'extended trading hours application',

‘extended trading hours precinct’ and ‘moratorium period’ for the purposes of new division 8.

Clause 72A also inserts a new section 90 into the Liquor Act which implements a moratorium period for extended trading hours approvals after midnight. Section 90(1) provides that an application for extended trading hours approval after midnight may not be made during the moratorium period. Section 90(2) provides that any extended trading hours application made or purportedly made during the moratorium period (whether before or after commencement) does not have effect. Section 90(3) provides that premises in an extended trading hours precinct are exempt from the moratorium and may continue to make applications for extended trading hours approvals.

Clause 72A also inserts a new section 91 into the Liquor Act relating to premises not in an extended trading hours precinct, which have made applications to the chief executive before the start of the moratorium period, but which have not been finally decided. Section 91(1) provides that this section relates only to those applications. Section 91(2) states that the chief executive must not consider or further consider the relevant application until after the end of the moratorium period.

Clause 72A also inserts a new section 92 into the Liquor Act relating to proceedings in a court or tribunal commenced in the period between the announcement of the moratorium and the commencement of these amendments. Section 92(1)(a)–(c) stipulate that section 92 applies to proceedings started within this period if they relate to an extended trading hours application, and the premises are not in an extended trading hours precinct, and the proceedings have not been decided by the court or tribunal at the commencement of these amendments. Section 92(2) states that the proceeding is taken to end and must not be further considered by the court or tribunal.

Clause 72A also inserts a new section 93 into the Liquor Act stating that particular decisions made by a court or tribunal are taken to have no effect. Section 93(1) states the section applies to a decision of a court or tribunal before the commencement:

- on a proceeding commenced between the start of the moratorium period and the commencement of these sections (section 93(1)(a)); and
- relating to an extended trading hours application for premises that are not in an extended trading precinct (section 93(1)(b)).

Section 93(2) provides that the decision is taken to have no effect.

Clause 72A also inserts a new section 94 into the Liquor Act, protecting the State, chief executive or delegate from liability. Section 94(1)(a)–(c) provides that a chief executive decision not to consider or further consider an extended trading hours application is final and conclusive and is not subject to the *Judicial Review Act 1991* or the jurisdiction of the Supreme Court, a tribunal or any other entity on any ground. Section 94(2) states that no liability will be incurred by the State, chief executive or delegate for acting or failing to act under division 8 of part 4 of the Liquor Act in relation to extended trading hours applications. Section 94(3) provides that if a civil proceeding relating to an extended trading hours application was started before the commencement of these amendments against the State, chief executive or delegate, the proceeding is stayed and the court dealing with the proceeding must dismiss it.

Clause 72A also inserts a new section 95 into the Liquor Act to provide for the Minister to extend the moratorium period. The Minister can extend the moratorium period by gazette notice by a period not exceeding three months, if satisfied that it would be in the public interest having regard to the Act's objects to regulate the liquor industry in a way compatible with minimising harm caused by alcohol abuse and misuse.

Clause 72A of the amendments during consideration in detail amends the GOLAB by inserting a new division 9 in part 4.

The clause also inserts a new section 96 into the Liquor Act which defines 'regular glass', 'regular glass container', 'glassing', and 'relevant period' for the purposes of division 9. 'Regular glass' is defined as glass other than tempered or toughened glass. 'Glassing' is defined as an act of violence by a person that involves the use of regular glass and causes injury to any person. 'Relevant period' is defined as the period of one year before a notice under section 98 is given.

Clause 72A also inserts a new section 97 into the Liquor Act, to provide for when all or part of licensed premises may be classified as high risk. Section 97(1) provides that the chief executive may classify all or part of licensed premises as high risk if satisfied that:

- one or more glassings have happened at the premises during the relevant period (section 97(1)(a)); or
- there has been a level of violence at the premises during the relevant period that is unacceptable having regard to the Act's

object to regulate the liquor industry in a way compatible with minimising harm caused by alcohol abuse and misuse (section 97(1)(b)).

However, under section 97(2)(a) and (b) before the chief executive classifies the premises as high risk, the chief executive must give the licensee written notice and have regard to the licensee's response. The section note provides that the chief executive may issue a guideline under section 42A informing persons about the attitude the chief executive is to adopt on a particular matter or how the chief executive administers the Act.

Clause 72A also inserts a new section 98 into the Liquor Act to provide for notices to licensees of licensed premises considered high risk. Under section 98(1), the chief executive must issue a notice to a licensee if the chief executive considers that all or part of licensed premises are high risk. Under section 98(2)(a)–(c) the notice is to state: that the chief executive considers the premises high risk, the reasons why it is considered high risk, and that the licensee has 14 days in which to demonstrate why the premises should not be so classified. The example in section 98 provides that the types of parts of licensed premises that may not be classified as high risk include accommodation rooms, restaurants and bottle shops.

Clause 72A also inserts a new section 99 into the Liquor Act to provide licensees with the ability to make representations to the chief executive about the notice within the 14 day period (section 99(1)). Under section 99(2), the licensee is also able to request all or part of the premises not be classified as high risk. Section 99(3) requires the chief executive to consider all written submissions made under this section.

Clause 72A also inserts a new section 99A into the Liquor Act, which provides for when the notice process must end without further action. Section 99A(a) provides that the chief executive must not take any further action regarding a notice, if after considering any representations, the chief executive no longer considers the ground exists to classify a premises as high risk. The chief executive must notify the licensee accordingly (section 99A(b)).

Clause 72A also inserts a new section 99B into the Liquor Act to provide for when a relevant premises is given notice of classification as high risk. Section 99B(1) provides that section 99 applies if the chief executive, after considering the licensee's representation, still considers all or part of the licensed premises should be classified as high risk. Section 99B(2) states the chief executive must give the licensee a written notice classifying all or

part of the premises as high risk and stating the day from which the classification starts. Section 99B(3) makes it clear that the notice must not classify a part of the premises not previously mentioned in the first notice given under section 98.

Clause 72A also inserts a new section 99C into the Liquor Act, which sets out obligations of a licensee who receives notice under section 99B that the premises are high risk (section 99C(1)). Section 99C(2)(a)–(b) provides a licensee who receives a such a notice must not at any time during trading hours serve liquid to patrons in a regular glass container, or leave or place a regular glass container in an area to which a patron has access. The maximum penalty is 100 penalty units.

Clause 72A also inserts a new section 99D into the Liquor Act, which allows a licensee who is subject to a classification of high risk to make written representations to the chief executive to revoke the classification after one year has elapsed since the classification (section 99D(1) and (2)). However, the chief executive can revoke the classification only if satisfied that the licensee has put measures in place at the licensed premises that sufficiently minimise the risk of harm caused by alcohol abuse and misuse (section 99D(3)).

Clause 72A also inserts a new section 99E into the Liquor Act dealing with judicial review. Section 99E(1)(a)–(b) provides that a chief executive decision under this division is final and conclusion and cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, whether by the Supreme Court, another court, a tribunal or another entity. Also, the decision is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground (section 99E(1)(c)). However, section 99E(2) provides that the section does not limit a licensee's ability to apply for judicial review under the *Judicial Review Act 1991*.

Clause 72A also inserts a new section 99F into the Liquor Act dealing with publication of details of classification of premises. Section 99F states that the chief executive may publish details of licensed premises or parts of premises classified as high risk on the department's website on the internet. The editor's note provides the website address for the Office of Liquor and Gaming Regulation.

Clause 72A also inserts a new section 99G into the Liquor Act dealing with the obligation for the commissioner to provide information to the chief executive. Section 99G(1) provides that the chief executive may ask the

commissioner to give the chief executive the information the chief executive requires to decide whether to classify premises as high risk under this division. Section 99G(2) creates an obligation on the commissioner to provide the information requested. Section 99G(3) provides that the obligation of the commissioner to comply with the chief executive's request applies only to information to which the commissioner has possession or access.

Amendment 3—Inserted after Clause 77 as new Clause 77A

Amendment 3 of the amendments during consideration in detail amends the GOLAB by inserting a new clause 77A on page 78, after line 10.

Clause 77A amends section 121 of the Liquor Act by omitting section 121(a) and inserting a new section 121(a). New section 121(a)(i)–(ii) states that when considering an application to which s116 applies, the chief executive must have regard to the matters mentioned in s116(6) of the Liquor Act in addition to the public interest in so far as it relates to the Act's object to minimise harm and the impact on the amenity of the community.