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The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Sir/Madam

### Safe Night Out Legislation Amendment Bill 2014

Legal Aid Queensland (LAQ) provides input to State and Commonwealth policy development and law reform processes to advance its organisational objectives and to provide factual information and/or advice with a focus on issues affecting access to justice.

Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and “giving legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. In pursuance of these statutory objects, LAQ contributes to government policy processes about any proposals that will impact on the cost-effectiveness of LAQ’s services, either directly, or consequentially through impacts on the efficient functioning of the justice system.

Under LAQ’s Strategic Plan 2011-16, which has been endorsed by the Queensland and Commonwealth governments, LAQ’s purpose is to “provide quality legal services to financially disadvantaged people”, and our vision is to “be a leader in a fair justice system where people are able to understand and protect their legal rights”. In pursuit of our purpose, LAQ offers policy feedback on proposals that will impact on the quality of services that LAQ is able to provide to our client groups. In pursuit of our vision, LAQ also provides feedback on proposals that may impact on our clients’ ability to understand or protect their legal rights.

LAQ conducts the state’s largest criminal law defence practice, representing children and adults charged with criminal offences before all courts in Queensland, and playing an integral role in the state’s criminal justice system. This submission in relation to the Safe Night Out Legislation Amendment Bill 2014 (the Bill) is made with the input of senior lawyers employed in LAQ’s criminal law defence practice.

LAQ supports the objective of the Bill to reduce alcohol and drug related violence in Queensland’s nightlife. However, LAQ is concerned that some of the proposed amendments, in their present form, may have unintended and/or unjust consequences. .

Unlawful Striking Causing Death (clauses 12 to 15).

While LAQ appreciates the community concern about incidents in which single punches to the head or neck, often in night time entertainment venues, have caused the death of persons, we are of the view that the current provisions of the Criminal Code dealing with the offences of murder and manslaughter are a comprehensive, effective and fair mechanism for dealing with criminal behaviour resulting in death.

Regarding the proposed new offence of unlawful striking causing death, we are concerned that the exclusion of the application of the defence of accident under section 23(1)(b) of the Criminal Code and the exclusion of assault as an element of the offence, may have unintended and unjust consequences.

In relation to the exclusion of the defence of accident, we are concerned about the potential for an unjust outcome where a person would be guilty of the offence of unlawful striking causing death, and potentially liable to a sentence of life imprisonment with a minimum term of up to 15 years, where a defence of accident might otherwise be appropriately raised. For example, where person A slaps person B with mild force, not causing any injury, person B trips on a slippery surface in trying to avoid the slap and falls and dies of an unexpected and unlikely injury. There is the potential for the Crown to avoid having to negative an appropriately raised defence of accident by choosing to charge unlawful striking causing death instead of manslaughter or, if the defence in the proposed s302A(4) arises on the facts, choosing to charge manslaughter instead of unlawful striking causing death.

Regarding the exclusion of assault as an element of the offence, we are concerned about the potential for injustice arising from the consequential exclusion of the justifications and excuses for assaults. We submit that whether or not a justification or excuse applies in particular cases, the circumstances of which will be highly variable, are best left to the common sense of juries.

We note that the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* (NSW), introduced by the New South Wales Government to deal with single punches causing death, defines the offence as an "assault" and does not exclude any defences to assault other than possibly accident in the limited circumstances of a person dying from injuries received from hitting the ground as a consequence of the assault.

We are also concerned that the defence to unlawful striking causing death in the proposed new section 302A(4) may be so widely defined as to be problematic for both judges and juries, particularly given that no other defence in the Criminal Code requires a jury to consider the meaning of the phrase 'socially acceptable'.

In relation to the sentencing provisions in the proposed new section 302(5), we submit that it would be sufficient to include unlawful striking causing death as a serious violent offence in Schedule 1 of the *Penalties and Sentences Act 1992*. This would communicate to the courts an intention by the legislature that the offence is to be regarded with a high level of seriousness but still allow some discretion in exceptional cases, so that unjust consequences can be avoided. It would also avoid the situation where a defendant against whom the Crown chooses to charge with manslaughter receiving a more lenient sentence than one against whom the Crown chooses to charge with unlawful striking causing death.

Drug and Alcohol Assessment Course as Condition of Bail (clause 5)

LAQ supports compulsory attendance of offenders at Drug and Alcohol Assessment (DAAR) courses as a condition of a non-custodial sentence for offenders who have been convicted of offences because of drug or alcohol addiction. However, we are concerned about amendment

of the *Bail Act 1980* to require the compulsory imposition of a requirement that a person attend a DAAR course as a condition of bail for certain offences, given that the person has not yet been convicted of any offence, and may ultimately be acquitted. Potentially, a person charged with the relatively minor offence of obstructing police, where the police allege the offence occurred in a public place while the person was intoxicated, may be required to undertake the course even if they do not have any identifiable problem with alcohol or drugs, to obtain bail, including watch-house bail.

#### Mandatory Community Service for Certain Offences (clauses 92-99)

The proposed new section 108B of the *Penalties and Sentences Act 1992* (PSA) in its current form, requires courts to impose a community service order for prescribed offences when committed in the relevant circumstances. While the explanatory notes discuss imposing a mandatory community service order 'in addition to any other penalty', the proposed new provision states:

*The court **must** make a community service order for the offender unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.*

The proposed new section, when not read with the explanatory notes, allows for an interpretation that the only penalty that can be imposed for a prescribed offence is one of community service. There is no ambiguity in the words of the section – the word 'must' is used. There is no inclusion of the wording of a similar provision to s110A of the PSA (Graffiti removal) - '*in addition to any other penalty*'. While there are provisions to suspend the time available to complete the CSO while a person is in custody, there is nothing specific referring that period of custody to the penalty for the prescribed offence.

We recommend that the effect of the proposed new section 108B be clarified to avoid the cost and delay of legal argument over the correct application of section 108B.

Consideration should also be given to the implications for offenders with other legal obligations or restrictions, for example, offenders subject to reporting requirements, for example, under *Child Protection (Offender Reporting) Act 2004*.

#### Sober Safe Centre (clause 113)

LAQ supports the amendment of the *Police Powers and Responsibilities Act 2000* to insert a new Chapter 14, Part 5, Division 2 establishing a Sober Safe Centre trial, as an alternative to arresting and charging intoxicated persons suspected of committing nuisance offences or detaining intoxicated persons for their own safety.

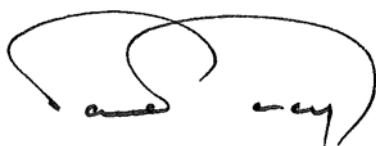
However, LAQ is concerned that in the absence of civil legal action, there will be no checks and balances on the use of police discretion to detain persons and that there is a risk of people who are mentally ill, have an intellectual disability or are homeless being unfairly removed to Sober Safe Centres. For this reason, we recommend that the legislation provide for the development of guidelines and protocols for removal of persons to the centres, specifically designed to ensure that the centres are only used for the purpose for which the legislation intends.

While we accept that the costs of operating Sober Safe Centres should be offset by the imposition of a charge for removal to the centre, it is submitted that the proposed scale referencing the charges to penalty units is inappropriate. By referencing the charges to penalty units, and providing for a sliding scale of charges for subsequent admissions, increasing to up to eight penalty units (currently \$880.00 in total), the charge is effectively a penalty imposed by

the police without conviction, rather than by a court following conviction. Additionally, this has the potential to effectively impose an additional burden on financially disadvantaged persons removed to the centres. We recommend that consideration be given to reducing the charge for removal to the centres, and imposing the same charge for subsequent admissions.

Thankyou for the opportunity to comment on the Bill. If you have any further inquiries, please contact Craig May, Senior Policy Officer, Legal Aid Queensland, on 07 3247 0390 or at [cmay@legalaid.qld.gov.au](mailto:cmay@legalaid.qld.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Davey', with a large, stylized loop at the end.

Paul Davey  
A/Chief Executive Officer  
Legal Aid Queensland