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Safe Night Out Bill 2014
Submission 026

BAR ASSOCIATION OF QUEENSLAND

14 July 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Sir

Re: Safe Night Out Legislation Amendment Bill 2014

I refer to the letter from the Honourable Ian Berry MP, dated 10 June 2014 which calls for submissions relating to the Safe Night Out Legislation Amendment Bill 2014. I am grateful to the Legal Affairs and Community Safety Committee for consulting the Bar Association of Queensland (Association) regarding the Bill.

Bail Act 1980 – Mandatory condition of bail regarding a Drug and Alcohol Assessment Referral ("DAAR") course

The proposed amendment requires a court or a police officer granting bail to a person charged with an offence allegedly committed in public whilst adversely affected by an intoxicating substance to impose a condition that the person complete a DAAR course. This appears more of a sentencing option than a bail condition. Of particular concern is that it requires a police officer to impose the condition in the absence of due process, and compels the imposition of such a condition even where bail is granted by a court. It is of course possible that in some cases it may be a desirable that a defendant undertake a DAAR course as a condition of bail, the proposed amendment does not, but the Association believes should, permit the exercise of discretion by a court. The Association accordingly opposes this amendment in its current form.

Unlawful striking causing death

In relation to the proposed new offence of unlawful striking causing death to be created by section 302A of the *Criminal Code*, the Association has concerns about both the operation of the provision and the sentencing regime to be applied in the event of a conviction for the offence.

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The new provision will make it an offence, punishable by life imprisonment, to unlawfully strike another person to the head or neck, causing the death of the other person.

The offence provision expressly excludes the application of sections 23(1)(b) and 270 of the Code. Also, by expressly providing that assault is not an element of the offence, the defence of provocation under sections 268 and 269 of the Code is also excluded. The Explanatory Notes to the Bill state that "the offence as framed in effect excludes any consideration of whether the ensuing death of the victim due to the strike by the person to the victim's head or neck was likely or foreseeable (whether reasonable or otherwise) in the circumstances"[1].

The Association is concerned that (despite the effect of section 302A(4)) the provision in its current form may well lead to convictions in circumstances where the defences of accident, prevention of repetition of insult and provocation would otherwise have operated to exculpate an accused person. It is easy to envisage circumstances in which the application of some minor force by one person to another might cause the death of the other person, however unintended or unforeseeable. It would be unjust for a person charged under this section not to be able to rely on the defences of accident, prevention of repetition of insult and provocation in appropriate circumstances. The risk of unjust consequences for defendants charged under the new offence provision would be militated by allowing defendants to rely on those defences.

The Association is also concerned that, when a person is sentenced for an offence under section 302A of the Code, they will be required to serve the lesser of either 80% of the sentence or 15 years before they become eligible for parole.

The rationale underpinning the Bill is the aim of making Queensland's nightlife safer for all through the reduction of alcohol- and drug-related violence[2]. However, it is unclear what research suggests mandatory sentencing will achieve this outcome, and the Association notes that research shows that mandatory sentencing fails to prevent or deter offending.

The Association's position and submission is that sentencing Judges must be equipped with an appropriately flexible discretion so as to avoid unjust outcomes. It is of vital importance to the avoidance of such injustice that sentencing judges be permitted to approach the sentencing task in a way that reflects not only the circumstances of the offending but also factors personal to each offender.

In certain cases, it will be unjust for a person convicted under section 302A of the Code to be required to serve 80% of their sentence, or 15 years, before becoming eligible for parole.

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[1] Explanatory Notes, page 13.
[2] Explanatory Notes, page 1.

Further, we regard the proposed sentencing regime as potentially anomalous, in that many offenders guilty of manslaughter will not be subject to a mandatory sentencing regime, yet (for example) a 17 year-old first offender guilty of causing an unforeseen and unforeseeable death by reason of an impulsive act of striking will be required to serve 80% of any sentence imposed.

The Association is therefore opposed to the sentencing regime proposed by section 302A in its current form and urges the reformulation of the section so as to remove the mandatory aspect of the sentencing process for the offence.

Police Powers and Responsibilities Act 2000 – Sober safe centre

The Association supports this amendment as an alternative to arrest and charge.

Police Powers and Responsibilities Act 2000 – Banning orders

The proposed amendment provides the power for a police officer to issue a banning notice preventing, among other things, a person entering or remaining in nominated licenced premises. The provision operates prior to any independent due process taking place or any independent finding of guilt being made. The Association queries why the powers to issue a move on direction or the offences under the current *Liquor Act 1992* are not sufficient.

It is noted that, whilst a banning notice nominally operates for a period of 10 days, police may extend the operation of the notice so that it runs for a maximum of three months. There is also a power for police to withdraw the notice. There is, however, no provision enabling a person who is subject to a banning order to seek to have it set aside, and the only remedy would be a costly and time-consuming application for judicial review. This may be of particular concern in small communities with limited numbers of licensed premises.

The Association suggests the inclusion of a review provision which allows a person to apply to a Magistrate to have a banning notice revoked within a nominated period of, for example, 72 hours.

Police Powers and Responsibilities Act 2000 – Power to photograph a person and distribute

The proposed amendments allow the police to photograph a person and distribute the photograph to various licenced premises and liquor bodies. The Association notes the significant encroachment upon a person's privacy and dignity this provision allows. Further, this provision provides for the exercise of this power prior to any due process or finding of guilt. It is for that reason opposed.

Other proposed amendments

The Association makes no submission regarding the balance of the proposed amendments in the Bill.

Other issue

To the extent the proposed Bill is passed the government should allocate funding to finance proper evaluation of the measures to evaluate the effectiveness of the amendments.

Yours faithfully

Shane Doyle QC
President