

**EXPLANATORY MEMORANDUM**  
*Liquor Control Amendment (Banned Drinkers Register) Bill 2023*

## **OVERVIEW**

The purpose of the *Liquor Control Amendment (Banned Drinkers Register) Bill 2023* (the Bill) is to amend the *Liquor Control Act 1988* (the Act) to establish a legislative framework related to the Banned Drinkers Register (BDR) in Western Australia, and its operation.

Since its inception in the Pilbara in 2020, the BDR has been run as an administrative trial program. Liquor retailers in nominated areas participate on a voluntary basis. The voluntary program also has limited pathways for including at-risk individuals on the BDR.

The Bill provides for the establishment of a register of people who are prohibited from purchasing packaged (take-away) liquor and expands the pathways for being included on the BDR. A person will now be a banned drinker if they:

- are subject to a barring notice;
- are subject to a prohibition order;
- are subject to a banned drinker order made by a police officer or the Director of Liquor Licensing;
- have had a banned drinker order made on application by a medical practitioner, social worker or other prescribed person; or
- have voluntarily placed themselves on the register. The amendments provide for banned drinker areas to be prescribed, in which participation on the BDR is mandatory for all licensees authorised to sell packaged liquor in the area. Penalties will apply for the sale, or supply, of liquor to a person on the BDR.

A banned drinker order prohibits a person from 'purchasing, possessing or consuming' alcohol during the period for which the order is in force, which can be for three, six, or 12 months. Banned drinker orders can be superseded, revoked or extended in specified circumstances and the Bill provides for the banned drinker to have the decision reviewed by the Liquor Commission.

Licensees of premises authorised to sell packaged liquor in a banned drinker area will be required to check the purchaser's identification against the BDR before selling or supplying packaged liquor.

The Bill creates offences for:

- licensees to sell or supply liquor to a person on the BDR in banned drinker areas (including licensees outside the banned drinker area delivering to banned drinkers within a banned drinker area); and
- any person supplying packaged liquor to a person known to be on the BDR (secondary supply).

Penalties for committing these offences have been set in the Bill at \$10,000.

The Bill allows the disclosure and use of information about a banned drinker order or banned drinker in the context of, and in support of, the banned drinkers register, despite any written law relating to confidentiality or secrecy. The Bill also imposes a fine of \$10,000 for the improper use or disclosure of that information.

As the amendments are intended to facilitate the trial of the BDR program to be expanded, the legislative framework related to the BDR have a sunset period of two years after the operating provisions are proclaimed.

**LIQUOR CONTROL AMENDMENT (BANNED DRINKERS REGISTER) BILL 2023**  
**CLAUSE NOTES**

**Glossary of Abbreviations**

Act	<i>Liquor Control Act 1988</i>
Amendment Act	<i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i>
Bill	<i>Liquor Control Amendment (Banned Drinkers Register) Bill 2023</i>
BDO	banned drinker order
Commission	Liquor Commission
Commissioner	Commissioner of Police
Director	Director of Liquor Licensing

<b>Part 1 — Preliminary</b>	
<b>Clause 1</b>	Cites the <i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i> as the short title of the Act.
<b>Clause 2</b>	Provides for the timing of the provisions of the Act to come into operation such that: <ul style="list-style-type: none"> <li>(i) Part 1 will come into operation on the day that the Liquor Control Amendment (Banned Drinkers Register) Act 2023 receives Royal Assent;</li> <li>(ii) Part 2 (other than the sunset clauses provided for the amendments to the Act in Division 3) and Part 3 (other than the sunset clauses provided for amendments to the <i>Criminal Investigation (Identifying People) Act 2002</i> in section 34) will come into effect on a day fixed by proclamation, and different days may be fixed for different provisions; and</li> <li>(iii) the amendments that specifically provide the regulatory framework for banned drinkers are repealed two years after coming into effect.</li> </ul>
<b>Part 2 — Liquor Control Act 1988 amended</b>	
<b>Division 1 — Preliminary</b>	
<b>Clause 3</b>	Specifies that the amending Act amends the <i>Liquor Control Act 1988</i> .
<b>Division 2 — Amendments commencing on proclamation</b>	
<b>Clause 4</b>	Amends section 3(1) of the Act to insert definitions, by reference to the sections of the Amendment Act in which they are defined, of banned drinker, banned drinker area, banned drinker order, banned drinkers register and barring notice.
<b>Clause 5</b>	Amends section 24 of the Act to: <ul style="list-style-type: none"> <li>(1) remove the gender pronouns;</li> <li>(2) insert a new subsection 24(ba) to extend the requirement that the Commission be constituted by three members if the matter, or part of a matter, referred to it by the Director, relates to the making, extension or revocation of a banned drinker order under Part 5C of the Act.</li> </ul>
<b>Clause 6</b>	Amends section 25 of the Act to: <ul style="list-style-type: none"> <li>(1) add a person who is the subject of a banned drinker order to the definition of interested person in relation to a reviewable decision;</li> <li>(2) add a decision made by the Director that relates to the making, extension or revocation of a banned drinker order to the definition of a reviewable decision;</li> <li>(3) insert a new subsection 25(2)(ba) to extend the requirement that the Commission be constituted by three members if the decision relates to the making, extension or revocation of a banned drinker order under Part 5C of the Act.</li> </ul>
<b>Clause 7</b>	Amends section 26 of the Act to add banned drinker orders to the types of Director's decisions which have effect (unless the Commission, by way of interim order, otherwise directs).
<b>Clause 8</b>	Subclause (2) amends section 115AA of the Act to insert a parenthetical definition of the term "barring notice" to provide ease of reference to the term throughout the Act. Subclauses (1) and (3) to (6) amends references to the term "notice" in section 115AA to refer to "barring notice". Subclause (7) amends the word "Penalty" to the phrase "Penalty for this subsection". Subclause (8) replaces subsection 115AA(7) to incorporate the change to the term in

	<p>section 115AA from “notice” to “barring notice”.</p> <p>Clause 8 also provides for the heading of the amended section 115AA to be changed from “Banning people from licensed premises, Commissioner of Police’s power for” to “Commissioner of Police may bar people from licensed premises.”</p>
<b>Clause 9</b>	<p>Amends section 115AC to incorporate the change of the term “notice” to the term “barring notice.”</p> <p>Subclause (4) amends section 115AC(2) to replace the phrase “to whom the notice is given” with the phrase “the subject of the barring notice” to incorporate the term “barring notice” and reflect current drafting language.</p> <p>Clause 9 also provides for the heading of the amended section 115AC to be changed from “Publication and disclosure of details of people banned under s. 115AA” to “Publication and disclosure of details of people barred under barring notices.”</p>
<b>Clause 10</b>	<p>Inserts a new section 115ACA to provide that the Commissioner for Police must ensure that barring notices are entered in the banned drinkers register.</p>
<b>Clause 11</b>	<p>Amends section 115AD to incorporate the change of the term “notice” to the term “barring notice.”</p> <p>Subclause (3) amends section 115AD(4) to replace the phrase “a month after the applicant is served with the notice or such” with the phrase “1 month after the applicant is given the barring notice or a” to incorporate the term “barring notice” and reflect current drafting language.</p> <p>Clause 9 also provides for the heading of the amended section 115AC to be changed from “Review of s. 115AA notices” to “Review of decision to give barring notice.”</p>
<b>Clause 12</b>	<p>Amends section 115AE to incorporate the change of the term “notice under section 115AA(2)” to the term “barring notice” and clarify that, in order for an offence to be committed, the barring notice must be in effect.</p> <p>Clause 9 also provides for the heading of the amended section 115AC to be changed from “Permitting entry to premises contrary to s. 115AA notice” to “Permitting entry to premises contrary to barring notice.”</p>
<b>Clause 13</b>	<p>Inserts a new section 115AKA to provide that the Director must ensure that prohibition orders are entered in the banned drinkers register.</p>
<b>Clause 14</b>	<p>Amends section 152NZF to incorporate the change of the terms “notice” to the term “barring notice” and add banned drinker orders to the list of restriction orders which must be complied with by a person if other restriction orders under the Act are in effect in respect of them.</p>
<b>Clause 15</b>	<p>Inserts a new Part 5C of the Act titled Banned drinkers.</p> <p><u>Division 1 — Preliminary</u></p> <p><b>152Y. Terms used</b></p> <p>New section 152Y inserts definitions of:</p> <p><i>Alcohol-related infringement notice</i> to mean an infringement notice given under section 167(2) of the Act for an alleged offence against a prescribed provision of the Act;</p> <p><i>alcohol-related offence</i> to mean:</p> <ul style="list-style-type: none"> <li>(a) an offence under any written law that has a maximum penalty that includes a term of imprisonment, if a police officer believes on reasonable grounds that the alleged offender was affected by liquor when committing the offence; or</li> <li>(b) an offence against the <i>Road Traffic Act 1974</i> for which a disqualification notice can be issued under section 71C of that Act; or</li> <li>(c) an offence against section 152ZB(1); or</li> <li>(d) another offence under any written law that involves liquor; or</li> <li>(e) an offence prescribed as an alcohol-related offence;</li> </ul> <p>Example for this definition: For the purposes of paragraph (d) — an offence of stealing liquor.</p> <p><i>banned drinkers register</i> to mean the register of banned drinkers kept under section 152ZH</p> <p><i>first police BDO</i> by reference to section 152YD(1);</p>

*ID system* by reference to section 152ZL;  
*police FVRO* to mean an order made by a police officer under the *Restraining Orders Act 1997* Part 2A Division 3A;  
*registered* to mean, in relation to a banned drinker order, information about the order is entered in the banned drinkers register;  
*second police BDO* by reference to section 152YD(2);  
*self-imposed*, in relation to a banned drinker order, by reference to section 152YM(3);  
*senior officer* to mean a police officer who is of or above the rank of sergeant;  
*subsequent police BDO* by reference to section 152YD(3);  
*taken into alcohol-related protective custody* to mean, in relation to a person, that the person is apprehended and detained under the *Protective Custody Act 2000* Part 3.

#### **152YA. Who is a banned drinker**

New subsection 152YA(1) defines a person as a banned drinker if they are subject to

- (a) a banned drinker order; and/or
- (b) a barring notice; and/or
- (c) a prohibition order issued under Part 5A of the Act.

New subsection 152YA(2) sets out that, in a provision about a banned drinker order, a reference to the banned drinker is a reference to the person who is the subject of the banned drinker order.

#### **152YB. What is a banned drinker order**

New subsection 152YB(1) defines a *banned drinker order* as an order that the person named in the order is prohibited from doing any of the following in a banned drinker area —

- (a) purchasing packaged liquor, either on licensed premises or using a website maintained by or on behalf of a licensee;
- (b) consuming liquor, other than consuming liquor on licensed premises that was purchased for consumption at the licensed premises;
- (c) possessing liquor that was supplied to the person as packaged liquor, whether or not the liquor is still in the container (sealed or open) in which it was supplied.

New subsection 152YB(2) provides that a banned drinker order must be in a form approved by the Director and sets that it must state:

- (a) the name of the person who is subject to the order;
- (b) the reason for making the order;
- (c) whether the order is self-imposed, made by a police officer or made on the application of a person under Division 4;
- (d) for an order made by a police officer —
  - (i) the name, rank and place of duty of the officer; and
  - (ii) the date and time the order is made;
- (e) that the order takes effect when the order is registered, regardless of whether the person is given a copy of the order;
- (f) the period for which the order remains in force;
- (g) the consequences of a contravention of the order and a description of what constitutes a contravention;
- (h) whether the person is entitled to apply for the order to be revoked and how to apply;
- (i) whether the person is entitled to apply for review of the decision to make the order and how to apply.

#### **152YC. When banned drinker order, or extension or revocation of banned drinker order, takes effect**

New subsection 152YC(1) sets out that a banned drinker order takes effect when the order is entered in the banned drinkers register.

New subsection 152YC(2) sets out that the extension of a banned drinker order takes

effect when information about the extension is entered in the banned drinkers register. New subsection 152YC(3) sets out that the revocation of a banned drinker order takes effect immediately after a decision to revoke the order is made under section 152YJ or 152YW.

New subsection 152YC(4) sets out that subsections (1), (2) and (3) apply regardless of whether the banned drinker is given —

- (a) a copy of the banned drinker order; or
- (b) notice of the extension or revocation.

## Division 2 — Banned drinker orders made by police officers

### **152YD. First police BDO, second police BDO and subsequent police BDO**

New subsection 152YD(1) defines a *first police BDO* as a banned drinker order made by a police officer for a person

- (a) when no other banned drinker order under this Division or Division 4 is in effect for the person; and
- (b) whether or not a self-imposed banned drinker order is in effect for the person.

New subsection 152YD(2) defines a *second police BDO* as a banned drinker order made by a police officer for a person when a first police BDO is in effect for the person.

New subsection 152YD (3) defines a *subsequent police BDO* as a banned drinker order made by a police officer for a person when a banned drinker order made by a police officer, other than a first police BDO, is in effect for the person.

### **152YE. Police officer may make banned drinker order**

New subsections 152YE(1) and (2) set out that a police officer can make a banned drinker order for a person who —

- (a) is charged with an alcohol-related offence; or
- (b) is bound by a family violence restraining order, if the police officer who makes the family violence restraining order believes on reasonable grounds that the person was affected by liquor at the time of engaging in the conduct to which the family violence restraining order relates; or
- (c) if the person —
  - (i) is taken into alcohol-related protective custody; or
  - (ii) is given an alcohol-related infringement noticeand, within the previous two years, the person was:
  - taken into alcohol-related protective custody at least twice; or
  - given at least 2 alcohol-related infringement notices; or
  - taken into alcohol-related protective custody at least once and given at least one alcohol-related infringement notice.

New subsection 152YE(3) sets the requirement that a police officer who is not a senior officer cannot make a banned drinker order without the approval of a senior officer.

### **152YF. Police officer may make second police BDO or subsequent police BDO**

New subsection 152YF(1) provides that, if a police officer believes on reasonable grounds that a banned drinker has contravened a first police BDO, the officer can make a second police BDO, and the first police BDO ceases to have effect when the second police BDO is entered on the banned drinkers register.

New subsection 152YF(2) provides that, if a police officer believes on reasonable grounds that a banned drinker has contravened a second police BDO, the officer can make a subsequent police BDO, and the first police BDO ceases to have effect when the second police BDO is entered on the banned drinkers register.

New subsection 152YF(3) sets the requirement that a police officer who is not a senior

officer cannot make second or subsequent banned drinker orders without the approval of a senior officer.

#### **152YG. Period of banned drinker order**

New subsections 153YG(1)-(3) set out that a first police BDO remains in force for 3 months, a second police BDO remains in force for 6 months and subsequent police BDO remain in force for 12 months.

New subsection 152YG(4) sets out that the period of the police BDO applies unless a police BDO:

- is superseded by a second or subsequent police BDO;
- is revoked; or
- is extended in accordance with new sections 152YU or 152YV.

#### **152YH. Notice and registration of banned drinker order**

New section 152YH sets out that, if a police officer makes a banned drinker order, the Commissioner of Police must ensure that:

- (a) all reasonable steps are taken to give a copy of the order to the banned drinker; and
- (b) the banned drinker order is entered into the banned drinker register.

#### **152YI. Police officer may require person to give personal details**

New subsection 152YI(1) defines *personal details* by reference to section 16(1) of the *Criminal Investigation (Identifying People) Act 2002*.

New subsection 152YI(2) applies section 152YI if:

- (a) a police officer requires all or some of a person's personal details for the purposes of making a banned drinker order for the person; or
- (b) a police officer reasonably suspects that a person in a banned drinker area is a banned drinker.

New subsections 152YI(3) and (4) provides for a police officer to ask the person to give the officer all or some of the person's personal details and specifies that section 16 of the *Criminal Investigation (Identifying People) Act 2002* applies to the request, as if it were a request made under section 16(2) of that Act.

#### **152YJ. Revocation of banned drinker order**

New subsection 152YJ(1) provides for the Commissioner of Police to revoke a banned drinker order either on the application of the banned drinker, or on the Commissioner's own initiative.

New subsection 152YJ(2) provides that an application by a banned drinker to the Commissioner of Police to revoke the banned drinker order must be made in writing, in a form approved by the Commissioner of Police and while the banned drinker order is in force.

New subsection 152YJ(3) requires that the Commissioner of Police must revoke the banned drinker order:

- (a) for a banned drinker order made for a person who is charged with an alcohol-related offence, if satisfied that:
  - (i) the charge was withdrawn, dismissed or not proceeded with; or
  - (ii) the banned drinker was found not guilty of the offence; or
  - (iii) the banned drinker was convicted of the offence and the court sentencing the banned drinker imposed no sentence or made a spent conviction order (as defined in the *Sentencing Act 1995* section 4(1));
- (b) for a banned drinker order made for a person who is bound by a police family violence restraining order, if satisfied that the banned drinker is no longer a person

who is bound by a family violence restraining order; or  
(c) if the revocation is required because of an administrative error.

To ensure that an application under this section is disposed of, new subsection 152YJ(4) provides that, if the Commissioner of Police does not decide to revoke a banned drinker order on an application by the banned drinker, the Commissioner of Police must refuse the application.

New subsection 152YJ(5) provides that the requirements to revoke a banned drinker order under subsection 152YJ(3) includes second or subsequent banned drinker orders that would not have been made to the same banned drinker if the original order had not been made.

#### **152YK. Decision to revoke banned drinker order**

New subsection 152YK(1) provides that, if the Commissioner of Police revokes a banned drinker order, the Commissioner must give the banned drinker written notice that the order is revoked and ensure that the information about the revocation is entered in the banned drinkers register.

New subsection 152YK(2) provides that, if the Commissioner of Police decides to refuse an application to revoke a banned drinker order, the Commissioner must give the banned drinker written notice of the decision and that the banned drinker can apply to the Liquor Commission for a review of the decision, and how to do so.

New subsection 152YK(3) provides that the notice of decision to refuse the application by the banned drinker to revoke the banned drinker order can include the reasons for the decision, but does not have to.

New subsections 152YK(4) and (5) provide that, if the Commissioner for Police does not provide reasons for the decision, the banned drinker has 28 days, or a longer period allowed by the Commissioner, to ask for the reasons, and the Commissioner of Police must provide the reasons to the banned drinker in writing.

#### **Division 3 – Banned drinker order make on person's request**

#### **152YL. Person may ask for self-imposed banned drinker order**

New section 152YL provides for a person to ask the Director to make a 'self-imposed' banned drinker order for them.

The request must be in writing and can request that the banned drinker order be in force for 3, 6 or 12 months or indefinitely, unless revoked by the Director on application by the self-imposed banned drinker in accordance with new section 152YP.

#### **152YM. Director must make self-imposed banned drinker order**

New section 152YM defines a banned drinker order made under this section as a *self-imposed* order and provides that the Director must make a banned order as soon as possible after receiving a request if satisfied:

- (a) about the person's identity
- (b) that the person is not already a banned drinker; and
- (c) that the person agrees to be subject to a self-imposed banned drinker order.

Otherwise, the Director must refuse the request.

#### **152YN. Period of self-imposed banned drinker order**

New subsection 152YN(1) provides that the Director must consider the request by the person for the period of the self-imposed banned drinker order, decide whether the banned drinker order will be in force for 3, 6 or 12 months or indefinitely, unless revoked by the Director on application by the self-imposed banned drinker in accordance with new

section 152YP, and specify the determined period in the self-imposed order.

New subsection 152YN(2) provides that the self-imposed banned drinker order remains in force for the period specified in the order unless it is revoked earlier in accordance with new section 152YP.

New subsection 152YN(3) specifies that a self-imposed banned drinker order:

- (a) has no effect while a banned drinker order made by a police officer, or by the Director under Division 4, is in effect for the person; and
- (b) resumes having effect if, when the person is no longer the subject of a banned drinker order made by a police officer, or by the Director under Division 4, the period of the self-imposed order has not ended.

#### **152YO. Notice of decision and registration of self-imposed banned drinker order**

New subsection 152YO(1) requires that, if the Director makes a self-imposed banned drinker order the Director must give a copy of the order to the person; and enter the information in the banned drinkers register.

New subsection 152YO(2) provides that, if the Director decides to refuse a person's request to make a self-imposed banned drinker order, the Director must give the person written notice of the decision.

New subsection 152YO(3) provides that a decision to refuse the person's request for a self-imposed banned drinker order is not subject to review by the Liquor Commission under section 25 of the Act.

#### **152YP. Revocation of self-imposed banned drinker order**

New section 152YP provides for a person who is subject to a self-imposed banned drinker order to ask the Director to revoke the self-imposed order.

New subsection 152YP(2) requires that the request must be in writing.

New subsection 152YP(3) requires the Director, as soon as possible after the request is made, to revoke the self-imposed order, ensure that all reasonable steps are taken to advise the person of the revocation, and enter the information about the revocation in the banned drinkers register.

#### **Division 4 – Banned drinker order made on application of certain professionals**

##### **152YQ. Application for a banned drinker order**

New subsection 152YQ(1) defines:

*medical practitioner* as a person in the medical profession registered under the *Health Practitioner Regulation National Law (Western Australia)*; and

*social worker* as a person who is a member, or is eligible for membership, of the Australian Association of Social Workers Limited.

New subsection 152YQ(2) allows for a medical practitioner, a social worker, or any other person prescribed, to apply to the Director to make a banned drinker order for a person.

New subsection 152YQ(3) sets out that the application must be in writing in a form approved by the Director and contain information to demonstrate that

- (i) the person the subject of the application is misusing or has misused liquor; and
- (ii) the person's misuse of liquor is a serious risk to the health, safety or wellbeing of the person or another person.

The applicant can request for the banned drinker order to be in force for a period of 3, 6 or 12 months.



**152YR. Director may make banned drinker order**

New section 152YR provides that, if a medical practitioner, a social worker, or any other person prescribed, to applies to the Director to make a banned drinker order for a person, the Director can make the banned drinker order if satisfied:

- (a) about the person's identity; and
- (b) the person is misusing or has misused liquor; and
- (c) that the person's misuse of liquor is a serious risk to the health, safety or wellbeing of the person or another person; and
- (d) it is in the public interest to make the order.

Otherwise, the Director must decide to refuse the application.

**152YS. Period of banned drinker order**

New subsection 152YS(1) requires the Director to:

- (a) if the applicant has made a request about the period of the order, consider the request;
- (b) decide whether the order will be in force for a period of 3, 6 or 12 months; and
- (c) specify the determined period in the banned drinker order.

New subsection 152YS(2) provides that the banned drinker order remains in force for the specified period unless it is

- extended in accordance with new sections 152YU or 152YV; or
- revoked.

**152YT. Notice of decision and registration of banned drinker order**

New section 152YT sets out the Director's obligations after making a decision on an application to the Director to make a banned drinker order for a person by a medical practitioner, a social worker, or any other person prescribed.

Under new subsection 152YT(2), if the Director decides to make a banned drinker order on application by a medical practitioner, a social worker, or any other person prescribed, the Director must

- (a) advise the applicant in writing of the decision to make the banned drinker order and the period for which the order will be in force;
- (b) ensure all reasonable steps are taken to give the banned drinker a copy of the order; and
- (c) enter the information about the banned drinker order on the banned drinkers register.

New subsection 152YT(3) provides that the copy of the banned drinker order given to the banned drinker can include the reasons for the decision to make the banned drinker order, but does not have to.

New subsections 152YT(4) and (5) provide that, if the Director does not provide reasons for the decision, the banned drinker has 28 days, or a longer period allowed by the Director, to ask for the reasons, and the Director must provide the reasons to the banned drinker in writing.

New subsection 152YT(6) provides that, if the Director decides to refuse the application by a medical practitioner, a social worker, or any other person prescribed to make a banned drinker order for a person, the Director must give the applicant written notice of the decision.

**152YU. Director may extend banned drinker order**

New subsection 152YJ(1) provides for the Director to revoke a banned drinker order made as a result of an application by a medical practitioner, a social worker, or any other person prescribed, either on the application of the medical practitioner, social worker, or

any other person prescribed, or on the Director's own initiative.

New subsection 152YU(2) requires that the application must be in writing in a form approved by the Director and made while the banned drinker order is in force.

New subsection 152YU(3) provides that the Director can extend the banned drinker order if the Director believes the banned drinker has contravened the order or that the grounds for making a banned drinker order under this Division exist.

New subsection 152YU(4) restricts the extension of a banned drinker order under this section such that:

- (a) a banned drinker order made for a period of three months can be extended to a period of six months;
- (b) a banned drinker order made for, or extended to, a period of six months can be extended to a period of 12 months;
- (c) a banned drinker order made for a period of 12 months, or extended to a period of 12 months or more, can be extended for a further period of up to 12 months.

New subsection 152YU(5) requires that, if the decision is made to extend the banned drinker order, the Director must ensure:

- (a) that all reasonable steps are taken to give the banned drinker written notice that the order has been extended and the period of the extension and that the banned drinker can apply to the Liquor Commission to review the decision to extend the order; and
- (b) that the information about the extension is entered in the banned drinkers register.

New subsection 152YU(6) provides that the notice of decision to the banned drinker that the order has been extended, and for what period (the decisions), can include the reasons for the decisions, but does not have to.

New subsections 152YU(7) and (8) provide that, if the Director does not provide reasons for the decisions, the banned drinker has 28 days, or a longer period allowed by the Director, to ask for the reasons, and the Director must provide the reasons to the banned drinker in writing.

New subsection 152YU(9) provides that, if the Director decides to extend a banned drinker order, or to refuse the application by a medical practitioner, a social worker, or any other person prescribed to extend a banned drinker order for a person, the Director must give the applicant written notice of the decision.

#### **152YV. Police officer may extend banned drinker order**

New section 152YV provides for a police officer to extend a banned drinker order made by the Director as a result of an application by a medical practitioner, a social worker, or any other person prescribed, on similar grounds to those that a police officer can make a banned drinker order under the new section 152YE. That is, if

- (a) the officer believes on reasonable grounds that the banned drinker contravened the order;
- (b) the banned drinker is charged with an alcohol-related offence;
- (c) the banned drinker is named as the person bound by a police family violence restraining order, if the police officer who makes the family violence restraining order believes on reasonable grounds that the banned drinker was affected by liquor at the time of engaging in the conduct to which the family violence restraining order relates;
- (d) the banned drinker is taken into alcohol-related protective custody;
- (e) the banned drinker is given an alcohol-related infringement notice.

New subsection 152YV(2) restricts the extension of a banned drinker order under this section such that:

- (a) a banned drinker order made for a period of three months can be extended to a period

of six months;

(b) a banned drinker order made for, or extended to, a period of six months can be extended to a period of 12 months;

(c) a banned drinker order made for a period of 12 months, or extended to a period of 12 months or more, can be extended for a further period of up to 12 months.

New subsection 152YV(3) sets the requirement that a police officer who is not a senior officer cannot extend a banned drinker order without the approval of a senior officer.

New subsection 152YV(4) requires that, if the decision is made by a police officer to extend the banned drinker order, the Commissioner of Police must ensure:

(c) that all reasonable steps are taken to give the banned drinker written notice that the order has been extended and the period of the extension and that the banned drinker that they can apply to the Liquor Commission to review the decision to extend the order; and

(d) that the information about the extension is entered in the banned drinkers register.

New subsection 152YV(5) provides that the notice of decision to the banned drinker that the order has been extended, can include the reasons for the decisions, but does not have to.

New subsections 152YV(6) and (7) provide that, if the notice does not provide reasons for the decision, the banned drinker has 28 days, or a longer period allowed by the Commissioner of Police, to ask for the reasons, and the Commissioner must provide the reasons to the banned drinker in writing.

#### **152YW. Revocation of banned drinker order**

Section 152YW allows for the Director to revoke a banned drinker order made as a result of an application by a medical practitioner, a social worker, or any other person prescribed person on application by the banned drinker or on the Director's own initiative.

New subsection 152YW(2) requires that the application must be in writing in a form approved by the Director and made while the banned drinker order is in force.

New subsection 152YW(3) requires that the Director must revoke the banned drinker order if satisfied that:

(a) the grounds for making the order no longer exist;

(b) for an order extended by a police officer under section 152YV(1)(b):

(i) the charge was withdrawn, dismissed or not proceeded with; or

(ii) the banned drinker was found not guilty of the offence; or

(iii) the banned drinker was convicted of the offence and the court sentencing the banned drinker imposed no sentence or made a spent conviction order (as defined in the *Sentencing Act 1995* section 4(1));

(c) for an order extended by a police officer under section 152YV(1)(c), the banned drinker is no longer bound by a family violence restraining order; or

(d) the revocation is required because of an administrative error.

New subsection 152YW(4) provides that the Director may revoke a banned drinker order if satisfied that the banned drinker has participated in and completed a therapeutic support program.

To ensure that an application under this section is disposed of, new subsection 152YW(5) provides that, if the Director does not decide to revoke a banned drinker order, the Director must refuse the application.

New subsection 152YW(6) provides that the requirements to revoke a banned drinker order extended by a police officer under subsection 152YV(1)(b) or (c) includes second or

subsequent banned drinker orders that would not have been made to the same banned drinker if the original order had not been made.

New subsection 152YW(7) specifies that the Director's powers under this section to revoke a banned drinker order apply in addition to, and do not limit, the powers of the Commissioner of Police to revoke a banned drinker order under section 152YJ and the revocation of a self-imposed banned drinker order under section 152YP.

#### **152YX. Decision to revoke banned drinker order**

New subsection 152YX(1) provides that, if the Director revokes a banned drinker order, the Director must give the banned drinker written notice that the order is revoked and ensure that the information about the revocation is entered in the banned drinkers register.

New subsection 152YX(2) provides that, if the Director decides to refuse an application to revoke a banned drinker order, the Director must give the banned drinker written notice of the decision and that the banned drinker can apply to the Liquor Commission for a review of the decision, and how to do so.

New subsection 152YX(3) provides that the notice of decision to refuse the application by the banned drinker to revoke the banned drinker order can include the reasons for the decision, but does not have to.

New subsections 152YX(4) and (5) provide that, if the Commissioner for Police does not provide reasons for the decision, the banned drinker has 28 days, or a longer period allowed by the Commissioner, to ask for the reasons, and the Commissioner of Police must provide the reasons to the banned drinker in writing.

#### **Division 5 – Other provisions about banned drinker orders**

#### **152YY. Review of decisions**

New section 152YY provides for banned drinkers to apply to the Liquor Commission for a review of any of the following decisions:

- (a) a decision of 1 a police officer to make a banned drinker order for the person under section 152YE or 152YF;
- (b) a decision of a police officer to extend a banned drinker order for the person under section 152YV;
- (c) a decision of the Commissioner of Police to refuse the person's application to revoke a banned drinker order for the person under section 152YJ.

New subsection 152Y(2) requires that an application for a review of a decision must be in writing in a form approved by the Commission, and made within one month after the decision takes effect, or a longer period allowed by the Commission.

When reviewing the decision, new subsection 152YY(3) allows the Commission to consider —

- (a) the material that was before the police officer or the Commissioner of Police when making the decision; and
- (b) information or a document provided by the banned drinker.

New subsection 152YY(4) provides that the Commission may:

- (a) affirm, vary or quash the decision being reviewed; and
- (b) substitute another decision for the decision being reviewed; and
- (c) give the directions to the Commissioner of Police that are necessary to give effect to the Commission's decisions under paragraph (a) or (b); and
- (d) make any incidental or ancillary order.

New subsection 252YY(5) specifies that a banned drinker order or an extension of a banned drinker order remains in force while the decision to make or extend the order is reviewed.

#### **152YZ. Decision of Commission on review**

New section 152YZ provides for:

- (a) the review of a decision, under section 152YY, of a police officer or the Commissioner of Police; or
- (b) the review of a decision, under section 25, of the Director that relates to the making, extension or revocation of a banned drinker order; or
- (c) appeals under section 28 against a decision of the Commission on a review referred to in paragraph (a).

New subsection 152YZ(2) provides that, if the Commission's decision on a review or appeal is to extend or revoke the banned drinker order:

- (a) the extension or revocation takes effect at the time specified by the Commission; and
- (b) the Commission must specify how the banned drinker is to be notified of the extension or revocation.

New subsection 152YZ(3) specifies that, if the Commission's decision on a review or appeal is that a new banned drinker order is made, how the new order is to be regarded as, and given effect.

New subsection 152YZ(3)(a)(i) states that, for a review or appeal referred to in subsection (1)(a) or (c), the new order is to be regarded and given effect as an order made by a police officer under section 152YE (the power for a police officer to make a banned drinker order).

New subsection 152YZ(3)(a)(ii) states that, for a review referred to in subsection (1)(b), the new order is to be regarded and given effect as an order made by the Director under section 152YR (the power for the Director to make a banned drinker order).

New subsection 152YZ(3)(b) specifies that, if the Commission's decision on a review or appeal is that a new banned drinker order is made, the police officer or the Director (as relevant) must ensure that all reasonable steps are taken to give the banned drinker a copy of the new order and that the new order is entered onto the banned drinkers register.

New subsection 152YZ(4) specifies that, if the Commission's decision on a review or appeal is that a new banned drinker order is made, the new banned drinker order is not subject to review by the Commission under section 25 of the Act.

#### **Division 6 – Offences**

#### **152Z. When packaged liquor is sold, or authorised by licence to be sold, in banned drinker area**

New section 152Z provides that, for the purposes of the new Divisions 6 and 7, packaged liquor is sold, or authorised by a licence to be sold, in a banned drinker area if the packaged liquor is sold or authorised to be sold from licensed premises in the banned drinker area for consumption off the licensed premises.

To account for the online sale of packaged liquor delivered to a banned drinker area, section 152Z specifies that packaged liquor is sold, or authorised by a licence to be sold, in a banned drinker area if the packaged liquor is sold or authorised to be sold, to be consigned from licensed premises – whether or not the licensed premises are in the banned drinker area, for delivery to a purchaser in a banned drinker area.

**152ZA. Offence of knowingly selling packaged liquor to banned drinker**

New section 152ZA applies if a licence for licensed premises authorises the sale of packaged liquor in a banned drinker area.

New subsection 152ZA(2) creates an offence for a responsible person (as defined by section 3(1) of the Act) to sell packaged liquor to a person who the responsible person knows, or ought reasonably to know, is a banned drinker. The penalty for this offence is a fine of \$10,000.

New subsection 152ZA(3) provides a defence for a breach to subsection (2) if the accused person proves that:

- (a) they used the ID system in relation to the sale of the packaged liquor and the ID system did not identify the person as a banned drinker;
- (b) the ID system did not operate properly or was not otherwise able to be used.

**152ZB. Offence of supplying packaged liquor to banned drinker**

New subsection 152ZB(1) creates an offence for a person to supply packaged liquor to a banned drinker in a banned area. This provision captures “secondary supply” of, or “sly grogging,” liquor to banned drinkers. The penalty for this offence is a fine of \$10,000.

New subsection 152ZB(2) provides a defence for a breach of subsection (1) if the accused person proves that they are a responsible person in relation to the licensed premises from which the liquor was supplied and either:

- (i) they used the ID system in relation to the sale of the packaged liquor and the ID system did not identify the person as a banned drinker;
- (ii) the ID system did not operate properly or was not otherwise able to be used.

New subsection 152ZB(3) provides an additional defence for a breach of subsection (1) if the accused person, other than a person who is a responsible person in relation to the licensed premises from which the liquor was supplied, proves that they did not know, and could not reasonably be expected to know, the person was a banned drinker.

**Division 7 – Disclosure and use of information**

Division 7 provides for information to be disclosed in the context of, and in support of, the banned drinkers register, despite any written law relating to confidentiality or secrecy.

**152ZC. Disclosure of information about banned drinker order or banned drinker**

New section 152ZC provides for a person (for example, a medical practitioner or social worker) who applies under the new Division 4 to the Director for a banned drinker order for a person, or to extend a banned drinker order for a person, to give the Director information about the person who is the subject of the application or order.

New subsection 152ZC(2) allows a police officer or the Director to give information about a banned drinker order, and the banned drinker who is the subject of the order, to:

- (a) a public service officer who is acting under a written law in relation to the banned drinker; or
- (b) a responsible person in relation to licensed premises; or
- (c) a legal representative of the banned drinker; or
- (d) a prescribed person in relation to the banned drinker.

New subsection 152ZC(3) restricts a police officer or the Director to giving information only if:

- (a) the police officer or Director mentions the banned drinker order when giving the information; and

- (b) the police officer or Director believes on reasonable grounds that the information —
- (i) will assist the recipient of the information to provide a service to, or perform a function relating to, the banned drinker; or
  - (ii) will ensure the effective and efficient enforcement of the banned drinker order; or
  - (iii) is required for a purpose related to the administration or enforcement of this Act or another written law.

**152ZD. Restriction on use or disclosure of information**

New subsection 152ZD(1) creates an offence for a person who is given information about a banned drinker order or banned drinker disclosing that information for a purpose other than the purpose for which the information was given. The penalty for this offence is a fine of \$10,000.

New subsection 152ZD(2) does, however, allow for the disclosure of the information:

- (a) in a statistical form that does not identify the person to whom the information relates; or
- (b) if authorised or required by another provision of this Act or another written law; or
- (c) with the consent of the person to whom the information relates.

**152ZE. Protection for disclosure in good faith**

New section 152ZE provides for information to be disclosed under this new Division, despite any written law relating to confidentiality or secrecy.

New subsection 152ZE(2) provides that, if information is disclosed under this Division in good faith,:

- (a) no civil or criminal liability is incurred in respect of the disclosure; and
- (b) the disclosure is not to be regarded as a breach of a duty of confidentiality or secrecy imposed by law; and
- (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

Division 8 – Miscellaneous

**152ZF. Condition relating to sale of packaged liquor in banned drinker areas**

New subsection 152ZF(1) defines *approved form of identification*, for the purposes of the section, as a form of identification referred to in section 152ZI(4).

New subsection 152ZF(2) provides that a licence for licensed premises that authorises the sale of packaged liquor in a banned drinker area is subject to the conditions that:

- (a) a responsible person in relation to the licensed premises must not sell packaged liquor to a person (the *purchaser*) unless the responsible person uses the ID system in the way stated in subsection (3) to check whether the purchaser is a banned drinker;
- (b) a responsible person in relation to the licensed premises must not sell packaged liquor to a banned drinker.

New subsection 152ZF(3) specifies that a responsible person uses the ID system to check whether a purchaser is a banned drinker if (and only if):

- (a) the purchaser provides either —
  - (i) an approved form of identification; or
  - (ii) in the case of a purchase not made in person — details of an approved form of identification; and
- (b) the responsible person uses the ID system to check the purchaser's identification or identification details; and
- (c) the ID system indicates whether or not the purchaser is a banned drinker.

New subsection 152ZF(4) requires that the Director ensures that the licensee is provided

with a way to access and use the ID system.

New subsection 152ZF(5) provides that the conditions for licensed premises that authorises the sale of packaged liquor in a banned drinker area under subsection (2) do not apply if —

- (a) the Director has not provided the licensee with a way to access and use the ID system; or
- (b) the ID system does not operate properly or is not otherwise able to be used.

**152ZG. Banned drinker order may be given electronically**

New section 152ZG provides that, if a copy of a banned drinker order or a written notice must or may be given to a person (the recipient) under this Part, that the copy or notice may be given to the recipient electronically, with the recipient's consent, to an electronic address provided by the recipient.

**152ZH. Director must keep banned drinkers register**

New section 152ZH requires the Director to keep a register of banned drinkers.

New subsection 152ZH(1) sets out that the banned drinkers register must contain the following information about a banned drinker:

- (a) the banned drinker's name;
- (b) whether the banned drinker is the subject of —
  - (i) a banned drinker order; or
  - (ii) a barring notice; or
  - (iii) a prohibition order under Part 5A;
- (c) the period for which the order or notice referred to in paragraph (b) is in force;
- (d) other information about the order or notice, including, for example —
  - (i) for a banned drinker order, whether the banned drinker order is self-imposed, made by a police officer, or made on the application of another person; and
  - (ii) for a banned drinker order made by a police officer, whether it is a first police BDO, second police BDO or subsequent police BDO.

**152ZI. Director must establish ID system**

New section 152ZI requires the Director to establish an ID system for checking whether a person is a banned drinker in relation to the sale of packaged liquor from licensed premises.

New subsection 152ZI(2) specifies that the ID system must be designed to:

- (a) enable a responsible person in relation to licensed premises to check whether a person is a banned drinker before selling packaged liquor to the person; and
- (b) for the purposes of carrying out the check, access information stored in the banned drinkers register or a copy of the information; and
- (c) for the purposes of carrying out the check, verify the person's identity using —
  - (i) an approved form of identification presented by the person; or
  - (ii) in the case of a sale not made in person — details of an approved form of identification provided by the person.

New subsection 152ZI(3) allows that the ID system may provide for different ways to check if a person is a banned drinker including, for example:

- (a) using a device that scans approved forms of identification;
- (b) using a secure webpage as defined in new section 115AC (in relation to banned drinkers who are persons given barring notices) or section 152K (in relation to banned drinkers who are subject to prohibition orders).

New subsection 152ZI(4) limits the approved forms of identification for the ID system to:

- (a) a current passport;



	<p>(b) a current Australian driver's licence;</p> <p>(c) a current photo card, as defined in section 3 of the <i>Western Australian Photo Card Act 2014</i>;</p> <p>(d) another form of identification approved by the Director.</p> <p><b>152ZJ. Offence to use or disclose information obtained from banned drinkers register or using ID system</b></p> <p>New section 152ZJ creates an offence for a person to use or disclose information, including a photograph, obtained from the banned drinkers register or by using the ID system. The penalty for this offence is a fine of \$10,000.</p> <p>New subsection 152ZJ(2) specifies that the use or disclosure of the information is not an offence if it is permitted under Division 7.</p> <p>New subsection 152ZJ(3) provides that a responsible person in relation to licensed premises does not commit an offence under subsection (1) if the person:</p> <p>(a) uses or discloses the information in performing duties relating to the person's work on the licensed premises; or</p> <p>(b) discloses the information to another responsible person in relation to the licensed premises for the purpose of enabling the other responsible person to perform duties relating to that person's work on the licensed premises.</p> <p><b>152ZK. Delegation by Commissioner of Police</b></p> <p>New subsection 152ZK(1) provides for the Commissioner of Police may delegate any power or duty of the Commissioner under this Part to a police officer of or above the rank of Inspector.</p> <p>New subsection 152ZK(2) specifies that a delegation must be in writing and signed by the Commissioner of Police.</p> <p>New subsection 152ZK(3) specifies that a delegate cannot delegate a function, power or duty which has been delegated to them.</p> <p>New subsection 152ZK(4) states that a person exercising a power, or performing a function or duty, that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.</p> <p>New subsection 152ZK(5) specifies that nothing in the section limits the ability of the Commissioner to perform a function through an agent or officer.</p>
<b>Clause 16</b>	<p>Amends section 155 of the Act by inserting new subsection 155(8A) which provides, in a banned drinker area, for a police officer to seize from a banned drinker:</p> <p>(a) if the person is on licensed premises – liquor that the person purchased as packaged liquor; or</p> <p>(b) if the person is not on licensed premises – an open or unopened container of liquor in the person's possession.</p> <p>The clause inserts reference to the new subsection 155(8A) in subsection 155(9), which requires a police officer who seizes a container of liquor to dispose of it as soon as practicable after it is seized.</p> <p>The clause also amends the heading of section 155 from "Police, powers of to enter, seize liquor etc" to "Powers of police to enter premises and seize liquor etc."</p>
<b>Clause 17</b>	<p>Amends section 175 of the Act by inserting new subsections 175(1G) and (1H).</p> <p>New subsection 175(1G) provides for the Governor, on the recommendation of the Minister, to make regulations prescribing an area of the State to be a banned drinker area.</p>

	<p>New subsection 175(1H) provides for the Minister to make a recommendation for regulations prescribing an area of the State to be a banned drinker area only if, after consultation with the Commissioner of Police, each local government in the district of which any part of the banned drinker area is to be situated and any other person the Minister considers it appropriate to consult, the Minister is satisfied that the proposed regulations are in the public interest.</p>
<b>Clause 18</b>	<p>Inserts a new section 177E of the Act titled Transitional provisions for <i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i> (Sch. 1E).</p> <p>The new section 177E provides that Schedule 1E, which is inserted by clause 20, sets out transitional provisions relating to amendments made to this Act by the <i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i>.</p>
<b>Clause 19</b>	<p>Amends section 178 of the Act by excluding the amendments made to the Act by the <i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i> from the requirements on the Minister to review the operations of the Act in accordance with section 178.</p>
<b>Clause 20</b>	<p>Inserts Schedule 1E — Transitional provisions relating to the <i>Liquor Control Amendment (Banned Drinkers Register) Act 2023</i> pursuant to new section 177E.</p> <p>Clause 1 of the new Schedule 1E provides transitional provisions that apply the application of the new section 115ACA to existing barring notices given to a person under section 115AA(2) immediately before the amendments to section 115AA(2) under clause 10 of the Amendment Act come into effect.</p> <p>Clause 2 of the new Schedule 1E provides transitional provisions that apply the application of new section 152KA to existing prohibition orders in force immediately before the amendments to section 115KA under clause 13 of the Amendment Act come into effect.</p> <p>Clause 3 of the new Schedule 1E provides transitional provisions that apply the existing circumstances for a police officer making a banned drinker order under section 152YE(2), whether the circumstance happened before, on, or after the day on which the new Part 5C of the Act comes into effect.</p> <p>Clause 4 of the new Schedule 1E provides transitional provisions for banned drinker orders to cease to have effect when Part 5C is repealed by the sunset provisions in Division 3 of the Amendment Act.</p>
<b>Clause 21</b>	<p>Amends various provisions in the Act to</p> <ul style="list-style-type: none"> <li>- create consistency (such as updating references to “member of the Police Force” to “police officer” as the position is referred to in the <i>Police Act 1892</i> and other Western Australian statutes)</li> <li>- correct errors (such as correcting the spelling of “licensing”); and</li> <li>- comply with contemporary drafting style and language.</li> </ul>
<b>Division 2 — Amendments commencing 2 years after proclamation</b>	
<b>Clause 22</b>	<p>Amends section 3 of the Act by deleting the definitions of banned drinker, banned drinker area, banned drinker order, and banned drinkers register inserted by section 4 of the Amendment Act.</p>
<b>Clause 23</b>	<p>Amends section 24 of the Act by deleting subsection 24(2)(ba), inserted by section 5 of the Amendment Act.</p>
<b>Clause 24</b>	<p>Amends section 25 of the Act by removing the amendments to the definition of interested person inserted by section 6 of the Amendment Act.</p>
<b>Clause 25</b>	<p>Amends section 26 of the Act by removing reference to a banned drinker order under Part 5C inserted by section 7 of the Amendment Act.</p>

<b>Clause 26</b>	Deletes section 115ACA of the Act inserted by section 10 of the Amendment Act.
<b>Clause 27</b>	Deletes section 152KA of the Act inserted by section 13 of the Amendment Act.
<b>Clause 28</b>	Amends section 152NZF(1) of the Act by removing the reference to a banned drinker order inserted by section 14 of the Amendment Act.
<b>Clause 29</b>	Deletes Part 5C of the Act inserted by section 15 of the Amendment Act.
<b>Clause 30</b>	Amends section 155 of the Act by deleting subsection 155(8A) and reference to subsection 155(8A) in subsection 155(9), inserted by section 16 of the Amendment Act.
<b>Clause 31</b>	Deletes subsections 175(1G) and (1H) inserted by section 17 of the Amendment Act.
<b>Part 3 — <i>Criminal Investigation (Identifying People) Act 2002</i> amended</b>	
<b>Clause 32</b>	Provides for amendments to the <i>Criminal Investigation (Identifying People) Act 2002</i> .
<b>Clause 33</b>	Amends section 73 of the <i>Criminal Investigation (Identifying People) Act 2002</i> by inserting references to sections 152ZC, 152ZD and 152ZJ of the Act into subsection 73(1)(nb).
<b>Clause 34</b>	Amends section 73 of the <i>Criminal Investigation (Identifying People) Act 2002</i> two years after proclamation of the Amendment Act, by deleting references to sections 152ZC, 152ZD and 152ZJ of the Act into subsection 73(1)(nb), which were inserted by section 33 of the Amendment Act.