

EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair Mr MA Boothman MP (virtual) Mr N Dametto MP (virtual) Mr JP Lister MP (virtual) Mr JR Martin MP Mr JA Sullivan MP (virtual)

Staff present:

Ms D Jeffrey—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE RACING INTEGRITY AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 7 MARCH 2022 Brisbane

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The committee met at 9.30 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Racing Integrity Amendment Bill 2022. My name is Kim Richards. I am the member for Redlands and chair of the Education, Employment and Training Committee. I would like to acknowledge that we are meeting on custodial land of the oldest living civilisation in the world and I pay my respects to the Jagera and Turrbal people and their elders past, present and emerging. We are very fortunate in this country to live with two of the world's oldest continuous living cultures in Aboriginal and Torres Strait Islander people. With me here today from the committee are: James Lister, the member for Southern Downs and our deputy chair; Mr Mark Boothman, the member for Theodore; Mr Nick Dametto, the member for Hinchinbrook; and Mr Jimmy Sullivan, the member for Stafford, who are all joining us here today by teleconference. Mr James Martin, the member for Stretton, in accordance with standing orders 202(1) and 202(2), has been appointed as a substitute member of the committee for the member for Rockhampton, Barry O'Rourke, who is unable to attend the briefing today as he is out on other committee business.

On Thursday, 24 February 2022 the Hon. Grace Grace MP, the Minister for Education, Minister for Industrial Relations and Minister for Racing, introduced the Racing Integrity Amendment Bill 2022 into the Queensland parliament. The bill was referred to the Education, Employment and Training Committee for detailed consideration and report. The briefing today by the Department of Agriculture and Fisheries is to explain the objects and key provisions of the bill. The committee's proceedings today are proceedings of the Queensland parliament and are subject to parliament's standing orders. Witnesses will not be required to give evidence under oath but I remind everyone that intentionally misleading the committee is a serious offence.

BOLTON, Mr Graeme, Deputy Director-General, Fisheries and Forestry, Department of Agriculture and Fisheries

CLARKE, Ms Marguerite, Director, Legislation and Regulation, Department of Agriculture and Fisheries

CHAIR: Good morning and welcome. Thank you for joining us this morning. Graeme, would you like to make an opening statement before we start our questions?

Mr Bolton: Thank you, Chair. I would like to start by acknowledging the traditional owners of the lands where we are all gathered here, including the members meeting remotely, and acknowledge the elders past, present and emerging. I would also like to acknowledge the committee today. Thank you for the opportunity to make an opening statement about the Racing Integrity Amendment Bill 2022.

As you may be aware, the Racing Integrity Act 2016 established the Queensland Racing Integrity Commission, or QRIC, as an independent statutory body with a range of functions regarding animal welfare and the integrity of the racing industry, including greyhound, thoroughbred horse and harness horseracing codes. As you would be aware, the Racing Integrity Act 2016 falls within the portfolio responsibilities of the Minister for Education, Minister for Industrial Relations and Minister for Racing, the Hon. Grace Grace MP. As you may be aware, the act is currently administered by the Department of Agriculture and Fisheries. That is to maintain the policy separation from the Office of Racing within the Department of Education which administers the Racing Act and Racing Queensland. This is consistent with the recommendations from the Queensland Greyhound Racing Industry Commission of Inquiry report, also known as the MacSporran report, which were to establish QRIC, being the integrity body, separate from the racing industry and Racing Queensland, being the commercial bodies.

Stewards, who are QRIC employees, hold inquiries about potential breaches of the rules of racing for each of the three codes. Stewards can decide, amongst other things, to suspend, reprimand and/or warn off persons for breaches of these rules. The rules of racing are generally decided nationally and adopted at the state level. Each state may also make local rules which apply only in that state. The national rules of racing and the local rules of racing are collectively known as the rules Brisbane

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of racing. The Australian Rules of Racing apply to thoroughbred horseracing nationally and generally take precedence over local rules to the extent of any inconsistency. The structure of rules for harness racing is very similar. However, for greyhound racing local rules take precedence over national rules.

In Queensland the rules of racing are made by Racing Queensland, a statutory instrument underneath the Racing Act 2002, and are enforced by QRIC not Racing Queensland. The Racing Integrity Act provides a framework to allow racing participants to challenge decisions made by QRIC, including decisions by QRIC stewards, under the rules of racing. The current review model is comprised of the original decision made by the stewards, internal review by QRIC and, should the applicant remain dissatisfied, external review by the Queensland Civil and Administrative Tribunal, QCAT. The review model is consistent with the administrative review policy dated June 2018 and that is how the majority but not all administrative decisions are typically reviewed under Queensland legislation. While the current review model is consistent with the administrative review policy, the racing industry has raised concerns that this model is not fit for purpose, nor is it timely enough for the review of stewards' decisions. Stewards' decisions, particularly those that relate to riding by jockeys, which constitute most of the decisions, are comparable to referees' decisions in professional sports like Rugby League which are reviewed and finalised by a tribunal established by the code. The state government is generally not involved in oversighting compliance with such rules of sport. That makes the state government's regulation of how stewards' decisions under the rules of racing are reviewed rather unique.

Racing industry participants and the wider community should have confidence in the independence of the review process to provide fair, appropriate, risk managed and timely decisions. Currently the internal review of QRIC's decisions is carried out by the internal review adjudicator. The incumbent in this position is not the original decision-maker, is more senior to the stewards, is physically located from the QRIC staff and reports directly to the Racing Integrity Commissioner. Nonetheless, there are industry perceptions that the review process is not sufficiently independent and that it would be preferable for reviews to be conducted by a separate entity.

Currently under the act applications for further review may be made to QCAT. Industry representatives have raised concerns that a review by QCAT is inappropriate because of the racing expertise needed to properly consider racing matters. Further, QCAT time frames are often established through the consent of the parties to a proceeding which can result in delays. Further delays may arise from obtaining evidence or through a lack of evidence or the need to provide further evidence such as medical or scientific data or tests. Parties may also fail to engage in the process or they may consent to extensions. As a result, the average time taken for QCAT decisions on review of racing matters is more than 200 days in the five years to 2020-21.

Stakeholders also have serious concerns that the provision of stays pending review is being used inappropriately by industry participants to continue operating despite serious or repeated breaches of the rules of racing. Anecdotal reports by stakeholder representative groups suggest that many applications for review by QCAT of less serious decisions and subsequent requests for stays are being used to delay the commencement of the penalty to enable the participant to continue to race until it is convenient for the participant to either take their penalty, such as after riding in lucrative races or when a break from racing might coincide with a family holiday.

The data shows that more than 40 per cent of the applications for review by QCAT are being withdrawn before being considered by QCAT which lends weight to the claims that many applications are being lodged for purposes other than challenging the decision or penalty. The procedures that QCAT employs in the review of racing matters are the same as those used to review other matters, such as administrative decisions, motor vehicle disputes, antidiscrimination complaints and others. The concerns raised by stakeholders are not with QCAT itself but rather that the QCAT model is not fit for purpose for the expedient review of stewards' decisions.

The bill is the culmination of significant work and consultation by the Queensland government to investigate these concerns and to ensure Queensland has a fit-for-purpose system for the review of stewards' decisions under the rules of racing—a review system which is better suited to protecting the integrity and reputation of the Queensland racing industry. As I just mentioned, significant consultation has been undertaken to date. This includes public consultation on the report titled *Racing Integrity Reforms—Review of the Racing Integrity Act 2016* which was released for public comment in June 2019. Consultation on this report resulted in 746 views of the consultation report, 27 completed online surveys and seven written submissions. Submissions and survey responses were received from racing industry bodies, law societies, animal welfare organisations and private individuals. In response to the consultation, industry participants generally expressed satisfaction with the QRIC model. However, stakeholders did raise concerns about the review of stewards' decisions Brisbane

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under the Racing Integrity Act. The Queensland government responded and in September 2020 the then minister for racing announced the new Racing Appeals Panel would be established and that stays would be limited. Following this announcement the department continued to consult with industry representatives in respect to ongoing concerns regarding the independence of the panel and the time currently taken for reviews to be finalised. In December 2021 the Minister for Education, Minister for Industrial Relations and Minister for Racing made further announcements in respect to the new model for reviews, which this bill will establish. Following this announcement the department again consulted with industry representatives to ensure it had the balance right before the government introduced this bill to make the reforms.

There is no one model for racing governance across Australian jurisdictions or, indeed, for the review of stewards' decisions. The model established by the bill has been borrowed from the best elements of Australian jurisdictions and will result in a review model more consistent with other states, particularly Victoria and New South Wales. The written briefing provided by the department last week describes the features of the panel and the new model for review provided in the bill. The main features I would like to highlight are that review by the independent Racing Appeals Panel would replace internal review and merits review by QCAT; most matters would be finalised by the panel within 10 business days of the original decision; appeals to QCATA, which is the QCAT appeals tribunal, would only be on a question of law relating to the extent of the penalty and then only if the penalty was three months or more; and stays pending review by QCATA would be prohibited if the panel found that the breach of the rules of racing involved a serious risk to human safety, animal welfare or the integrity of racing. It should be noted that the new model will only apply to the review of decisions made by stewards under the rules of racing. Existing review arrangements will continue to apply to other reviewable decisions by QCAT. The bill also includes some unrelated and relatively minor amendments to other aspects of the Racing Integrity Act 2016 which are described in the written briefing and in more detail in the explanatory notes for the bill. I again would like to thank the committee for allowing the department to provide a brief opening statement. My colleagues and I are very happy to answer any questions you may have.

CHAIR: Thank you very much. That was very comprehensive. Deputy Chair, did you want to have the first question?

Mr LISTER: Thank you, Chair. I thank the department representatives for coming in to brief us this morning. Is the department aware of any findings of the involvement of organised crime in the racing industry and is that something that the Racing Integrity Commission has a remit to observe and investigate?

Mr Bolton: That is probably a question more appropriately directed to QRIC in its current administration of its powers. It is probably not necessarily related to the bill before us today, but I am happy to take that on notice.

Mr LISTER: I just wanted to ask about the requirement for fingerprinting of applicants for bookmakers licences and that being removed. What is the basis for that? Can you give us some indication, please?

Mr Bolton: I might hand to my colleague.

Ms Clarke: Sorry, I missed a crucial bit of the question.

CHAIR: I think that was in relation to the removing of fingerprinting requirements for applicants for bookmaker licences; was that right?

Mr LISTER: Yes, thank you. If you could provide the basis for the removal of that requirement under the proposed amendments.

Ms Clarke: You will realise that when the Racing Integrity Act was established there were a number of provisions brought across from the old Racing Act. The requirement for fingerprints and for copies of fingerprints to be stored was a quite old requirement that had been in the Racing Act and that was brought across. Actually fingerprints have not been used at all for some time and so the bill is simply removing those redundant requirements. There has been no storage of fingerprints for some time.

CHAIR: Member for Hinchinbrook?

Mr DAMETTO: I do not have any questions for the panel just yet, but thank you very much for giving your briefing.

Mr BOOTHMAN: Why haven't fingerprints been used for quite some time? I am curious about that.

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Ms Clarke: I cannot speak to the specifics. In most modern licensing schemes there is not a requirement to collect fingerprints. It is perhaps a hangover from past days. They have just become a redundant requirement.

Mr BOOTHMAN: I find that quite interesting.

Mr SULLIVAN: In relation to those matters that will continue to go to QCAT as a question of law, in the briefing notes it states that it will only be where the penalty imposed is either 'manifestly inadequate or excessive'. If it is excessive, I assume it is the jockey or trainer who would take that action. If it is considered manifestly inadequate, who would lodge the appeal? Would that be QRIC or the department or a third party? Who is the party in that appeal?

Mr Bolton: It would be QRIC. If QRIC formed the view that the decision of the panel was manifestly inadequate, it could then appeal that decision to QCATA for any panel decisions of a penalty of three months or more.

Mr SULLIVAN: One of the additional amendments to the act relates to the authorisation of the publication of stewards' race day reports that have recorded elevated levels of TCO2, as you call it—total carbon dioxide—and prohibited substances. Has the occurrence of elevated levels of TCO2 been increasing or is that something that is managed day to day by the department, QRIC and the racing industry?

Mr Bolton: I will answer the first part and ask my colleague if she would like to add anything further. The publication of stewards' reports is a longstanding event that QRIC has undertaken for some time. It is also common across other jurisdictions. In the review of the bill we identified that it is probably not overtly clear in terms of how that is done in the head of power. The amendment to allow the publication is basically providing overt authority for a practice that has been longstanding and currently exists.

Ms Clarke: In terms of the specific reports about elevated levels of TCO2 or prohibited substances, that is slightly different. We could not comment without some notice on the trends in those substances. We would have to get advice from QRIC on those. They are another type of report which the industry is keen to see in the interests of transparency. Remember that people are placing quite large bets in many circumstances and are very keen to see a transparent and open industry.

Mr SULLIVAN: In your written brief you mentioned that 70 per cent of applications for review are around thoroughbred racing. Is that due to the nature of the human involvement in that sport compared to the other racing industries—

CHAIR: Is it scale?

Mr SULLIVAN:—the nature of having jockeys, not to make a pun, but the ins and outs of what is involved in racing?

Mr Bolton: Yes, that is correct. That is representative of the broad number of races that occur compared to thoroughbred, harness horse racing and greyhound racing.

Mr SULLIVAN: Where decisions are going to QCAT what are some examples of serious breaches that would account for stays pending at QCAT? I note in your brief that you think—you do not use these words; these are my words—that people are gaming the system a little bit where they use QCAT appeals to get a stay and then do not go through with it. I think you said 40 per cent. Can you give us some examples of those? Secondly, can you give us some examples of what activity you think is legitimately going to QCAT for appeal?

Mr Bolton: I can certainly relay some of the anecdotal evidence that was provided to us from the racing industry stakeholders including the peak organisations. One example would be jockeys undertaking dangerous riding, getting served with a suspension and then appealing that and getting a stay so they can continue riding. The perception from industry is that they are doing that and potentially doing it under multiple subsequent offences in order to time their penalties either at a time that is convenient for the racing season—so after lucrative races are finished—or at a time that is convenient for them to serve a penalty.

In response to the second part, the appeal system is really valid and very important in making sure that we safeguard everyone's appeal rights and natural justice. It is not about affecting or amending any of that. It is about making sure that we have a panel or a method of hearing stewards' decisions that is fit for purpose and appropriately qualified here in Queensland.

Ms Clarke: In addition to that, the allowance for an appeal to QCATA for three months or more recognises that where there is a potentially serious impact on somebody's ability to earn a living, for example, we want to make sure they have opportunities for appeal in those circumstances. I think part of that question was around what are perhaps some of the more serious ones. They potentially Brisbane

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could involve quite serious integrity issues like substitution of horses, doping of both human and horses with illegal substances, as well as quite serious animal welfare issues. There is potential for some very serious issues there.

One of the key changes is that, while those things would be open to appeal in terms of the length of the penalty, if they are really serious issues, people would not be able to get a stay. The effect is that the industry does not have to be concerned that it is not a level playing field, that they are not competing against people who have already been found to have cheated in some quite serious way. They can appeal the length of their penalty but, once the panel has heard the case and affirmed the decision, those people will be unable to race.

CHAIR: There are some serious issues.

Mr MARTIN: Following on from the member for Stafford's question about major breaches, my question is at the other end. Could you give us some examples of minor breaches? Looking at your brief, it looks like the chairperson of the Racing Appeals Panel will be able to sit to hear those minor breaches either themselves or with two other members for minor matters where the fine is less than \$200 or an eight-day suspension. Would you be able to give me some examples of what minor breaches are?

Mr Bolton: Some of the minor breaches are things like the use of the whip. There are standards about how many times you can use the whip within a certain distance. They are the minor ones. It is about making sure that we are not tying up proceedings unnecessarily.

Ms Clarke: If you allow me one moment, I think I have some statistics on how many breaches fall into that category. Of decisions that went to internal review in 2021, to give you an example, 98 of 152 were those more minor matters. For those minor matters, it is proposed that the chairperson could hear them alone or the chairperson could have up to two members depending on his judgement of what expertise he might need to decide those matters.

CHAIR: Was that the total number of minor matters?

Ms Clarke: No. That is the number that went to internal appeal in 2021—98 of 152 that went to internal appeal in 2021. I believe overall it is quite a high proportion, but I am not sure we have that number.

Mr Bolton: In 2020-21, there were 1,947 original decisions made by stewards. There were 152 internal appeal reviews that were of penalties of \$200 or a suspension of less than eight days and 98 of those were in that category. It is a very small overall percentage. It is about five per cent.

CHAIR: In that briefing, we have 148 applications. Did that go up? The briefing states—

In 2020-21, QRIC's stewards made 1 947 original decisions, and 148 applications were made for internal review.

Ms Clarke: We would have to check, I am afraid. It is a little bit difficult sometimes because of the crossover of a financial year. Obviously you can get a decision made in one year and the internal review either happens in that year or the following year and then the QCAT review follows that. It is a little bit difficult to line up some of the statistics at times.

CHAIR: Do you know roughly how many matters are heard annually by QCAT?

Mr Bolton: We have some trend data here from the last five years as part of the analysis that we have undertaken. In 2016-17, there were approximately 1,640 decisions. In 2017-18, there were roughly 1,600. In 2018-19, there were roughly 1,500. In 2019-20, there were roughly 1,700. There were a little more each year. What we are seeing is that the internal reviews over time are staying about the same. They are fairly consistent between 7½ per cent in that first year through to about eight per cent in recent years. The first step has been fairly consistent. What we have seen is that the number of requests going to QCAT have just about doubled. In 2017-18, it was 48 per cent. In 2020-21, it reached 70 per cent. In terms of the matters being withdrawn from QCAT before a final decision is made, in 2017-18 it was 17 per cent; now it is at more than 42 per cent.

CHAIR: Is that information contained within a report so we can get a copy of that data?

Mr Bolton: It is not but we can certainly provide that on notice.

CHAIR: That would be great. Thank you very much.

Ms Clarke: Chair, you have to understand it is a little difficult to line up some of those figures. We will do our best, but they will be approximate.

CHAIR: That is fine. They are very useful statistics. How significantly do you see the amendments in this bill reducing QCAT's workload? What does that look like proportionately in terms of what will now no longer most likely need to go before QCAT?

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Mr Bolton: I have those figures here. In 2020-21, there were 1,947 original decisions. Only 24 of those were breaches of three months or more.

CHAIR: That is substantial. That will be a substantial reduction.

Mr Bolton: It is. It will have a large impact on reducing QCAT's workload.

CHAIR: Absolutely. That is great.

Mr SULLIVAN: In answer to my question about some of the more serious matters that could be up for appeal, I think you mentioned the issue of doping both in terms of animal and rider. What is the interplay with ASADA, the anti-doping authority? I assume they have a role with jockeys. Is that fair?

Mr Bolton: I am not too sure what you are asking.

CHAIR: Could you repeat that again?

Mr SULLIVAN: I am asking about doping issues in relation to jockeys. The previous answer was in relation to both animals and jockeys. In relation to jockeys, are they covered by the anti-doping authority. ASADA?

Mr Bolton: No. QRIC does testing of both riders and animals involved in the Queensland racing industry.

Mr SULLIVAN: So QRIC takes that role on behalf of ASADA.

Mr Bolton: QRIC has that role, yes. I do not know what the relationship is. We would have to take that on notice in terms of the relationship between any findings of QRIC in regard to those tests and fines and how that relates to ASADA, but we can take that on notice if you like.

Mr SULLIVAN: It is just interesting that there is an overarching level of anti-doping procedure that occurs for athletes across sports and I am wondering how that fits with jockeys.

CHAIR: Does anyone else on the line have any more questions?

Mr SULLIVAN: Chair, I have one more. Do you have a tip for race 4 on Saturday?

CHAIR: Member for Stafford! I would have expected that from the member for Rockhampton.

Mr LISTER: Can I ask that you take on notice a question from me regarding the impetus for the decision to remove the requirement for fingerprinting of applicants for bookmakers licences. As far as I am aware, that requirement came in after revelations in the Fitzgerald inquiry that money was being laundered by criminal organisations through sham betting transactions and so forth. I am curious to know if another measure, test or biometric measurement is being taken in place of fingerprints or whether it has been dispensed with altogether and what would be the need to do that. If you could come back with an answer—with your concurrence, Chair—I would appreciate that.

CHAIR: Sure.

Mr Bolton: I am more than happy to take that on notice. We will give you a detailed answer about how the fingerprints removal would impact the current arrangements and what other arrangements are in place to safeguard the integrity of the industry.

Mr LISTER: That is fantastic. Thank you.

CHAIR: I have one final question in relation to the new penalty provisions in clause 24. Could you talk us through how they were developed and why they are needed?

Mr Bolton: I did not quite hear that.

CHAIR: In relation to the new penalty provisions in clause 24 with regards to the establishment of the new offence 'Contempt of panel at hearing', could you talk us through the development of that penalty regime?

Ms Clarke: Are you interested in the size of the penalty or the offence?

CHAIR: The size—how you got to the price point for the penalty for the fine. There are some that would reach up to \$14,000 under 252AK I think in the new section. That provides that the panel may require a witness to attend a hearing to give evidence. There are 100 penalty units.

Ms Clarke: What we tend to do with all new offences is we look at offences in comparable legislation. I would have to check with respect to this particular offence but I know, for example, we were looking at these sorts of provisions for QCAT or other similar bodies and we go through that analysis. I do not have in front of me exactly the analysis that we did for this particular offence, but if you are happy for us to come back with an answer we could give you some comparable offences and the penalties.

CHAIR: Thank you.

Mr DAMETTO: I have a question regarding the number of cases coming before QCAT in regard to the industry. There is some anecdotal evidence that some jockeys are using that as a stalling method. We have seen case increases in other departments away from racing—for example, more disputes with QCAT in the Weapons Licensing Branch when it comes to licences being taken away from people et cetera and issues with weapons licensing. I want to make sure there has not been increased activity from Racing Queensland or those involved in taking some of the jockeys and trainers to task—like I said, the anecdotal evidence of jockeys and trainers using QCAT as a stalling tactic.

Mr Bolton: I cannot comment on the firearms licensing arrangements. What I can comment on is the data that we have obtained through QRIC and QCAT and the deductions and trends we are seeing within that space. We have also done a very comprehensive review of other Australian models and how they currently provide their review models. Queensland is largely out of step with that. The new model that we are bringing forward takes the best out of particularly New South Wales and Victoria. It is very similar in terms of time frames, appeal rights and the limitation of stays such that we are hopefully creating a model that is going to be fit for purpose that provides robust and timely decisions for the racing industry, which is what people want. They want that certainty fairly quickly so they can make the next wager.

CHAIR: In looking at those numbers, I think you said earlier that across the course of the five years we are probably looking at on average about 1,500 matters being diverted away from QCAT and taking a four- to five-month period, 200 days, down to a 10-day period for a resolution.

Mr Bolton: It is probably not quite that high going to QCAT. It is significantly less than that from the data we have got. I can provide you that so you have got the details.

CHAIR: That would be great. It would be very good to see how much is being diverted away and how much is being reduced from what you said is currently, on average, a 200-day time frame for a decision down to a 10-day process. That is a significant change and a more rapid decision-making process.

Ms Clarke: Are you also asking us whether part of the trend relates to the number of decisions being made? I do not have that data in front of us, but we could certainly try to find some information about the number of decisions made in that time period. I believe an element of that question was whether the number of appeals was perhaps reflecting the increased number of decisions. We would need to take that on notice.

CHAIR: Thank you. As there are no further questions, I thank you for your time today. That concludes our questions. We have a number of questions that have been taken on notice: the QRIC review decisions made and the data on the review requests and trends over the last five years; the QRIC versus ASADA relationship for jockeys; the requirements for fingerprinting and what that process looks like now for licensing; the comparable penalties to arrive at penalties in the bill; how many cases are being diverted away from QCAT's workload; and the number of decisions made over the last five years.

Thank you again. We are very grateful for your time today and the information you have provided. We look forward to getting the feedback on those questions on notice. Thank you to Hansard reporters, our parliamentary broadcast staff and our secretariat. A transcript of these proceedings will be available on the committee's inquiry webpage in due course. Finally, I remind anyone who wishes to contribute to the committee's examination of the bill that the closing date for written submissions is Friday, 11 March at 9 am. I declare this public briefing closed.

The committee adjourned at 10.07 am.