



BAR ASSOCIATION  
OF QUEENSLAND

24 April 2014

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

Dear Sir

**Re: Construction and Tourism (Red Tape Reduction) and Other Legislation  
Amendment Bill 2014**

Thank you for the invitation to make this submission in respect of the Construction and Tourism (Red Tape Reduction) and Other Legislation Amendment Bill 2014.

**Overview**

1. This submission is focussed not on the policy matters, which is respectfully a matter for the parliament, but provides the Association's submissions in relation to the Bill meeting the objectives in an equitable way, namely:
  - ♦ reduce red tape and regulatory complexity for employers in the construction industry;
  - ♦ further reduce regulatory burden on the gaming industry, particularly the club industry, by amending the various Gaming Acts;
  - ♦ amalgamate the casino benefit funds into the Gambling Community Benefit Fund to create a streamlined single grant funding program;
  - ♦ make minor amendments to the Gaming Acts to improve the efficiency and clarity of the legislation;
  - ♦ amend the *Reprints Act 1992* to facilitate the delivery of the Office of the Queensland Parliamentary Counsel's eLegislation project; and
  - ♦ repeal the *Travel Agents Act 1988* and the *Travel Agents Regulation 1998*.
2. The reduction of regulatory burdens or "red tape" and sound law reform are always appropriate to ensure equity and efficiencies for affected industry and the community, and to reduce inconsistencies between Queensland and other Australian jurisdictions.
3. It is acknowledged that a number of legislative reforms were made in relation to Liquor and Gaming during 2013. This Bill logically continues the process in relation to community clubs, which will provide benefits for members and local communities more broadly.

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4. The *Building and Construction Industry (Portable Long Service Leave) Act 1991* governs the equitable and efficient system of portable long service leave in the building and construction industry. Notwithstanding the particular interest for reform in the mining sector these legislative amendments are proposed to apply for the whole of the building and construction industry. It is not clear to the Association whether this wider reform is necessary, but it ensured consistency and equitable treatment of workers within the whole industry.
5. The building and construction industry is a fertile area where further law reform to reduce red tape is warranted and justified. In particular, there is now relevant experience and jurisprudence to consider reform and interaction of the *Building and Construction Industry Payments Act 2004*, *Domestic Building Contracts Act 2000* and *Subcontractors' Charges Act 1974*. The Association will provide relevant submissions when invited to do so.
6. The amalgamation of the various Casino Funds into a single Gambling Community Benefit Fund will promote equity and consistency across the funding programs.
7. An amendment to the *Reprints Act 1992* will facilitate the delivery of the Office of the Queensland Parliamentary Counsel's *eLegislation* project and standardisation of legislative drafting.
8. The Bill also repeals the *Travel Agents Act 1988* and the *Travel Agents Regulation 1998*. This is consistent with the national reform in that industry now regulated by a national scheme and new deregulated arrangements established under the Participation Agreement for the Co-operative Scheme for the Uniform Regulation of Travel Agents. The Bill generally maintains appropriate savings and transitional matters in relation to the compensation scheme, rights of appeal, investigation and prosecution of offences under the former Act.

**Amendment of *Building and Construction Industry (Portable Long Service Leave) Act 1991***

9. Clause 4 arguably offends the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. It is submitted that the clause has a clarifying role of existing practice that an individual only has a right to eligibility for one form of long service leave at a time. It is submitted that the amendment is justified as a person will have an entitlement to long service leave, under one or the other Act, based on the work performed subject of either *Coal Mining Industry (Long Service Leave) Administration Act 1992 (Clth)* or the *Building and Construction Industry (Portable Long Service Leave) Act 1991*. It is noted that the Bill will not affect the ability of an eligible worker from retaining previous services credits for eligible work under the amended Act.
10. Clause 5 can be further improved to clarify the wording of section 50(1)(b). It is submitted that proposed new words "if the engagement was" should replace the existing words "on a basis that is".

11. Clause 6 provides appropriate scope of guidance when considering exemption from payment levy for building and construction work.
12. Clause 7 will provide better certainty in statutory construction when considering what is included and what is exempt in the meaning of cost of building and construction: GST is will be expressly excluded; total costs of construction will include all the materials used even though sourced outside Queensland, and environmental impact statements and feasibility studies will be exempt.
13. Clause 8 confirms remuneration for Private Certifiers who sight approved forms. This is appropriate.

#### **Amendments of Casino Control Act 1982**

14. Clause 10 removes section 42 of the *Casino Control Act*, and will alleviate the need for casino operators to provide a list of all licensed casino staff every 6 months. The Association submits that is important to ensure that casino workers are suitable and appropriate; this can be achieved without the burden of the 6 monthly list.
15. Clause 12 facilitates the amalgamation of the various Casino Funds into a single Gambling Community Benefit Fund. It is important that funds are governed under the auspices of a trust, and the Minister on the recommendation of the trustees will distribute funds. It is respectfully submitted that the proposed amendments will maintain responsible, accountable, equitably consistent funding programs.
16. Whilst the existing trustees will not retain their position from commencement of the new fund on 24 August 2014, their current appointments are due to expire on 24 August 2014 in any event. It is submitted that this juxtaposition will avert any potential breach of the fundamental principle that legislation should have sufficient regard to the rights and liberties of individuals.

#### **Amendment of Charitable and Non-Profit Gaming Act 1999**

17. Clauses 14, 15 and 16 provide for a regulation making power to prescribed the amount of gross proceeds that would define 'other games' (e.g. art unions or calcutta sweeps) as being category 1, 2 or 3. This will change the different and more stringent accounting, record keeping and reporting requirements currently apply to category 2 and 3. The Association submits that the regulator should monitor these changes to ensure that the amendment does not offend the legislative principle of allowing the delegation of legislative power only in appropriate cases.
18. Clauses 17 and 18 remove the current obligation of the holder of a bingo centre, or lucky envelope printer, licence to give a return half yearly. It is not clear how this return to self-regulation activities will be monitored. Compliance will be a matter for the regulator to ensure.

#### **Amendment of Gaming Machine Act 1991**

19. Clauses 19 to 31 facilitate the removal of the current requirement for an additional club premises under a Category 2 (club) gaming licence to be approved only if it is near the club's existing premises. The explanatory notes acknowledge that the

removal of the current 'near rule' will facilitate larger clubs to establish new club premises in greenfield areas and provide sporting and other facilities to these new communities, and to take over smaller struggling clubs to prevent their closure.

20. The club industry operates in a market-based scheme that allows clubs to reallocate their gaming machine entitlements amongst venues. It is submitted that the removal of the 'near rule' to, what can be described as, the 'anywhere rule' has the potential to adversely impact smaller community clubs, promote proliferation of larger clubs and thereby affect the public interest.
21. The Association submits that this will be somewhat ameliorated by the proposed retention of the existing power of the Commissioner for Liquor and Gaming to only approve additional premises if the installation of gaming machines on the additional premises is unlikely to adversely affect public interest. The public interest test will have regard to the commonality of interests between the concerned clubs and involve an assessment of direct and indirect benefits provided by the clubs to their immediate local communities.
22. However, the Association submits that the proposed regime ought be subject to review after a reasonable operation period.

#### **Amendment of *Interactive Gambling (Player Protection) Act 1998***

23. Clause 33 properly provides for a regulation making power to allow fees to be imposed under the *Interactive Gambling (Player Protection) Act*.

#### **Amendment of *Keno Act 1996***

24. Clause 35, 35 removes the need for a keno licensee to give a list of its licensed and exempt keno employees, agents, and sub-agents.
25. The Association submits that whilst it is important to ensure that keno workers are suitable, responsible and accountable; this is unlikely to be adversely affected by the proposed amendment.

#### **Amendment of *Lotteries Act 1997***

26. Clauses 39, 40 and 41 remove the requirement of lottery operators to: report on their current lottery agents and place of operation; terminate agency agreements if directed; and report on circumstances of terminated agency agreements. The Association is not in a position to remark about these changes.

#### **Amendment of *Wagering Act 1998***

27. Clause 43 provides needed clarification in s 8 to a totalisator pool as including any pool top-up amount added by the operator, and inserts definitions for 'pool top-up amount' and 'minimum pool amount'.
28. Clauses 44 – 48 removes the requirement for an authority operator to report to the chief executive in relation to: a list of licensed and unlicensed employees; a wagering agent's name and place of operation; current wagering agents and any changes to an agent's place of operation; on terminated agency agreements; and

circumstances of the termination of an agency agreement. Again, the Association is not in a position to remark about these changes.

### **Amendment of *Reprints Act 1992***

29. The Association welcomes the amendments to the *Reprints Act 1992* that will allow the Parliamentary Counsel, to reprint statutes using standardised and current legislative drafting practice for the purpose of converting the electronic version to eXtensible Markup Language for publication on the Queensland legislation website.
30. It is arguable that the proposed reprints power strictly offends the fundamental principle that legislation should have sufficient regard for the institution of Parliament, because it allows particular aspects of the form of an Act to be amended other than by an Act of Parliament.
31. However, the power is justified where mere structural changes to modernise and improve access by members of the public and legal practitioners alike, and in doing so, no substantive changes will be made. The conversion to XML as part of the development of a new legislative drafting and publishing system for the Office of the Queensland Parliamentary Counsel under the eLegislation project will improve access to justice.
32. The Association submits that the amendment provides appropriate safeguards by ensuring the provision can only be used for the limited purpose and providing for the power to expire.

### **Repeal of travel agents legislation**

33. The proposed repeal of the *Travel Agents Act 1988*, are consistent with the national reform in that industry now regulated by a national scheme and new deregulated arrangements established under the Participation Agreement for the Co-operative Scheme for the Uniform Regulation of Travel Agents.
34. Clauses 51 to 62 maintain appropriate savings and transitional matters in relation to the compensation scheme, rights of appeal, investigation and prosecution of offences under the former Act.
35. Clause 53 continues disqualification orders, which disqualify persons from directing, managing or conducting business as a travel agent. This could be regarded as adversely affecting the rights and liberties of those individuals in breach of fundamental legislative principles.
36. The Association submits that the proposed treatment of pre-existing orders is justified and appropriate. The restriction is linked to the closure of the national Travel Compensation Fund. That is a function outside the power of the Queensland parliament. This will produce some uncertainty of when the post repeal disqualification order expires which may be regarded as adversely affecting the rights and liberties of individuals. At best, upon termination of the Travel Compensation Fund, the Office of the Queensland Parliamentary Counsel may publicise the expiry on its website.

37. This is a source of some concern by the Association and its management will be a matter of individual importance. At the minimum the preservation of rights of a disqualified person to appeal the disqualification order to the Queensland Civil and Administrative Tribunal, during the post repeal period, may be extended to permit relief from the order by demonstration of being a fit and proper person.
38. Clause 64 will ensure that no claims against the Travel Compensation Fund can outlive the actual life of the Travel Compensation Fund. Clause 27.1 of the Travel Compensation Fund Substitution Trust Deed provides that the Travel Compensation Fund will terminate on earlier of either 31 December 2015 or as soon after 30 June 2015 as the obligations under the Fund are discharged.
39. As clause 64 is dependent on an event outside Parliament's control it could be considered that insufficient regard is being given to the institution of Parliament. This though, will be familiar to all Parliaments transitioning to a national legislative framework.
40. Schedule 1 includes consequential and minor amendments to the *Fair Trading Inspectors Act 2014*, the *Police Powers and Responsibilities Regulation 2012*, the *State Penalties Enforcement Regulation 2000* and the *Tourism Services Act 2003*. These amendments are predominantly related to removing references to the *Travel Agents Act 1988*, from these Acts, due to the repeal of the *Travel Agents Act 1988*.
41. The Association respectfully submits that the savings and transitional provisions will facilitate the transition to the national scheme to be correctly and efficiently implemented.

### **Conclusion**

42. The Association commends these submissions to you and thank you again for the opportunity to make submissions regarding the *Construction and Tourism (Red Tape Reduction) and Other Legislation Amendment Bill 2014*.

Yours faithfully



**Peter J Davis QC**  
President