

Submissions on Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013

12 April 2013

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1 Introduction and background

- 1.1 The Newman Government is committed to build a 4 pillar economy. In order to facilitate that commitment the Government has an initiative to reduce red tape burden as part of the Government's revitalisation of the tourism industry in Queensland.
- 1.2 Reducing regulatory inefficiency is a critical priority for the Government. The liquor and gaming industries, particularly, have been subject to a large volume of red tape and associated regulatory burden.
- 1.3 To address this red tape, the Government has appointed an expert panel to review the current licensing laws in Queensland in multiple phases.
- 1.4 The expert panel has contributed to the development of the Department of Justice and Attorney General's discussion paper, released to the public in February 2013, on red tape reduction and other reform proposals for the regulation of liquor and gaming. The discussion paper invited comments from stakeholders on proposed amendments to legislation to improve the liquor and gaming regime.
- 1.5 The *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 (Bill)* amends the relevant liquor and gaming legislation to give effect to the first phase of initiatives. The second phase will be implemented at a later date.
- 1.6 The Bill amends, among other legislation, the *Liquor Act 1992 (Act)*.
- 1.7 The Legislative Assembly has referred the Bill to the Legal Affairs and Community Safety Committee (**Committee**) for examination and report.
- 1.8 The Committee must report to the Parliament on the Bill by Tuesday, 14 May 2013. The Committee, therefore, requests submissions from the public and stakeholders on the Bill by 12 April 2013. Norton Rose has prepared these submissions in response to the Committee's request.
- 1.9 These submissions have been prepared by:
 - (1) Tom Young, Partner; and
 - (2) David Castelino, Associate.

2 **Section 155AD**

2.1 We focus our submissions on the Bill’s proposed amendments to section 155AD of the Act.

2.2 Currently, section 155AD provides:

“155AD Who must be present or reasonably available at licensed premises etc.

(1) *This section applies while the licensed premises or premises to which the permit relates are open for business.*

(2) *If the licensee or permittee is a corporation, the licensee or permittee must take reasonable steps to ensure that an approved manager—*

(a) *is present or reasonably available during the following times at the licensed premises or premises to which the permit relates—*

(i) *ordinary trading hours;*

(ii) *approved extended trading hours between 7a.m. and 10a.m.; and*

(b) *is present during approved extended trading hours between 12 midnight and 5a.m. at the licensed premises or premises to which the permit relates.*

Maximum penalty—50 penalty units.

...

(4A) *Despite subsections (2)(a) and (3)(a), the commissioner may, under section 107C, impose a condition on a licensee’s licence or a permittee’s permit requiring—*

(a) *if the licensee or permittee is a corporation—the licensee or permittee to take reasonable steps to ensure an approved manager is present during the times mentioned in subsection (2)(a) at the licensed premises or premises to which the permit relates; and*

...”

2.3 Section 155AD applies to:¹

(1) licensed premises, other than licensed premises to which a community club licence or community other licence relates if liquor is served or supplied at those premises only by volunteers; and

(2) premises to which a permit relates, other than premises to which a community liquor permit or restricted liquor permit relates if liquor is served or supplied at those premises only by volunteers.

Background to Section 155AD

2.4 Section 155AD was inserted in 2008 by the *Liquor and Other Acts Amendment Act (2008 Amendment)*.

¹ Section 155AC of the Act.

- 2.5 The 2008 Amendment replaced the regime of licence nominees with the concept of approved managers, who, under section 155AD of the Act are required by a corporate licensee to be present or readily available on the premises during ordinary hours and present during any extended trading hours between 12 midnight and 5a.m.
- 2.6 The intention behind section 155AD was to ensure that “managers of licensed venues are responsible for ensuring compliance with the Act and conditions of the licence”.²

² Page 3 of the Explanatory Note of the *Liquor and Other Acts Amendment Bill 2008*.

3 Proposed Amendments to Section 155AD

3.1 Clause 152 of the Bill proposes to amend section 155AD, as follows:

“Clause 152 Amendment of s 155AD (Who must be present or reasonably available at licensed premises etc.)

(1) Section 155AD(2), after ‘ensure that’—
insert—

a person employed by the corporation as

(2) Section 155AD(3)(a) and (b), after ‘ensure that’—
insert—

a person employed by the individual as

(3) Section 155AD(4A) and (4B)—
omit, insert—

(4A) *Without limiting section 107C, the commissioner may, under that section, impose the following conditions on a licence or permit—*

(a) *if the licensee or permittee is a corporation—a condition requiring the corporation to take reasonable steps to ensure a person employed by the corporation as an approved manager is present during the times mentioned in subsection (2)(a) at the premises to which the licence or permit relates;*

(b) *if the licensee or permittee is an individual—a condition requiring the individual to be present, or take reasonable steps to ensure a person employed by the individual as an approved manager is present, during the times mentioned in subsection (3)(a) at the premises to which the licence or permit relates.*

(4B) *For this section, an approved manager is present at premises if the approved manager is—*

(a) *at the premises acting in the capacity of approved manager; and.*

(b) *in control of the premises.*

Note—

See section 142ZF for the responsibilities of an approved manager in control of licenced premises or premises to which a permit relates.”

[Emphasis added]

3.2 The Explanatory Notes to the Bill provides³ that the reason for the amendment is to ensure that the approved manager, who is required to be present or readily available to attend the

³ Page 50 of the Explanatory Notes to the Bill.

licensed premises, is employed in the capacity of an approved manager, and as such, is in control of the premises in accordance with section 142ZF of the Act.

- 3.3 Section 142ZF provides that in the conduct of business on the premises, the approved manager is responsible for ensuring that liquor is supplied or possessed on the premises only in accordance with the authority conferred by the licence or permit.
- 3.4 The Bill seeks to clarify the original intent of the section.⁴ Currently, a licensee would have complied with section 155AD in the circumstances where its approved manager is present on the premises but only present for social purposes and not performing the duties of an approved manager.⁵
- 3.5 The Bill's proposed amendment is said to be requested by the Office of Liquor and Gaming Regulation⁶ and also said to be minor and technical in nature.⁷
- 3.6 We submit that section 155AD must exempt corporate holders of commercial special facility licences, who have entered into arrangements of the letting of the sale of alcohol to third parties, from the obligation that those licensees must be the entity that employs the approved manager for reasons discussed in the remaining paragraphs of these submissions.

⁴ See paragraph 2.6 of these submissions above.

⁵ Page 50 of the Explanatory Notes to the Bill.

⁶ Page 15 of the Explanatory Notes to the Bill.

⁷ Page 2 of the Explanatory Notes to the Bill.

4 **The effects of the proposed amendments to section 155AD on commercial special facility licences**

4.1 Holders of commercial special facility licences are able to seek an approval from the Commissioner to:⁸

- (1) let or sublet part of the licensed premises;
- (2) let or sublet the right to sell liquor; or
- (3) enter into a franchise or management agreement for part of the premises.

4.2 If a commercial special facility licensee has entered into an arrangement under section 153(3), it is more than likely that under that arrangement the approved manager would not be employed by the licensee. For example, South Bank is licensed under a single commercial special facility licence⁹ but consist of numerous bars and restaurants operating by persons that have entered into subletting agreements with the licensee of South Bank. Those persons are independent to the licensee of South Bank and will have their own approved manager employed by them as part of their business.

4.3 Section 155AD, in its proposed amended form, does not:

- (1) distinguish from where a holder of a commercial special facility licence:
 - (a) is operating the entire business of the licensed premises; or
 - (b) who has entered into an approved agreement with an independent operator under section 153; or
- (2) impose an obligation on an independent operator to ensure that it is the independent operator's approved manager who must be present or readily available to attend the licensed premises, and as such, will be in control of the premises in accordance with section 142ZF of the Act.

4.4 As a consequence, practically, it is difficult to see how a holder of a commercial special facility licence could sublease part of licensed premises to an independent operator and yet still be the entity that is obligated to employ the approved manager for that independent operator's business and, as such, will be liable under section 155AD. Indeed, it will be fanciful that South Bank Corporation is to be responsible for the employment of one of its tenant's business.

4.5 It appears that this inconsistency has been brought to the attention of the Government as the Bill also proposes to make a minor amendment¹⁰ to section 141 of the Act. The Bill seeks to achieve the original intent of the legislation¹¹ by ensuring that if approval is given under section 153 for a commercial special facility licensee to enter into an agreement to sublet part of the licensed premises to another person, the Commissioner cannot order a closure of the business when it is conducted by an approved manager who is employed by the person who has entered into that agreement with the licensee under section 153.

4.6 However, it is likely that the proposed exemption provided to holders of commercial special facility licenses, under the proposed section 141 of the Act, to a discretionary power of the Commissioner will not exempt such licence holders from the strict obligation imposed under section 155AD.

⁸ Section 153.

⁹ South Bank Commercial Special Facility Licence no. 80986.

¹⁰ Clause 144 of the Bill.

¹¹ Page 16 of the Explanatory Notes to the Bill.

4.7 Therefore, we submit that holders of commercial special facility licences must be given an explicit exemption to comply the obligation imposed under section 155AD, if an approval is given by the Commissioner to an arrangement under section 153.

We submit that holders of commercial special facility licences must be given an explicit exemption to comply the obligation imposed under section 155AD, if an approval is given by the Commissioner to an arrangement under section 153.

Norton Rose