

Tourism and Events Queensland Bill 2012

Report No. 14

**State Development, Infrastructure and Industry
Committee**

November 2012

State Development, Infrastructure and Industry Committee

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Abbreviations

Bill	Tourism and Events Queensland Bill 2012
CEO	chief executive officer
committee	State Development, Infrastructure and Industry Committee
department	Department of Tourism, Major Events, Small Business and the Commonwealth Games
proposed Act	proposed Tourism and Events Queensland Act

Chair's foreword

This report presents a summary of the committee's examination of the Tourism and Events Queensland Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation and the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank the officials from the Department of Tourism, Major Events, Small Business and the Commonwealth Games who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I would also like to recognise the work of the former chair, Ted Malone MP, in guiding the committee through the public hearing and the compilation of the report.

I commend the report to the House.



David Gibson MP
Chair

November 2012

Recommendation**Recommendation 1****3**

The committee recommends that the Tourism and Events Queensland Bill 2012 be passed.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that the committee is responsible for examining each bill in its portfolio area to consider:

- the policy to be given effect by the legislation; and
- the application of the fundamental legislative principles to the legislation.

1.2 The referral

On 1 November 2012, pursuant to Standing Order 131, the Tourism and Events Queensland Bill 2012 (the Bill) was referred to the committee for examination and report. Pursuant to Standing Order 136(1), the Legislative Assembly fixed the time for report on the Bill as 22 November 2012.

1.3 The committee's inquiry process

In her explanation of why 22 November 2012 was selected as the committee's reporting date for the Bill, the Hon Jann Stuckey MP, Minister for Tourism, Major Events, Small Business and the Commonwealth Games said that the Bill is one which does "*not require detailed public submissions or input*" because "[i]t is a process bill that addresses the operating mechanisms of Tourism Queensland and Events Queensland".¹ The committee agreed with the Minister but decided to give the public an opportunity to air their views on the Bill in case there were any issues with the Bill that were not immediately apparent.

On 2 November 2012, through its webpage, the committee called for expressions of interest from stakeholders who wished to be considered for an invitation to appear before the committee at a public hearing. Stakeholders were also given the opportunity to provide written submissions on the Bill by 9 November 2012. On 5 November 2012, letters were emailed to particular stakeholders notifying them of the inquiry, and a notice about the inquiry was sent to the committee's email subscribers. The committee did not receive any expressions of interest regarding appearing at a public hearing or any written submissions.

The committee was briefed by officers of the Department of Tourism, Major Events, Small Business and the Commonwealth Games (the department) on 2 November 2012. The transcript of the departmental briefing is published on the committee's webpage at www.parliament.qld.gov.au/SDIIC.

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:²

- merge Events Queensland and Tourism Queensland, with the new entity to be named Tourism and Events Queensland; and
- implement governance arrangements and structure for Tourism and Events Queensland.

¹ Hon Jann Stuckey MP, Minister for Tourism, Major Events, Small Business and the Commonwealth Games, 'Portfolio Committee, Reporting Date', Record of Proceedings, 1 November 2012, p 2,387.

² Tourism and Events Queensland Bill 2012, Explanatory Notes, p 1.

The intention is that the merger will provide for *“a more coordinated and strategic approach to attracting visitors to Queensland”*.³

³ Tourism and Events Queensland Bill 2012, Explanatory Notes, p 1.

2 Examination of the Bill

2.1 Should the Bill be passed?

Standing Order 132(1)(a) required the committee to determine whether to recommend that the Bill be passed. After examining the Bill, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Tourism and Events Queensland Bill 2012 be passed.

2.2 Government consultation on the Bill

During its preparation of the Bill, the department consulted with Tourism Queensland and Events Queensland.⁴ At the briefing to the committee, the Director-General of the department, Dr Richard Eden, said that the chair of the Queensland Tourism Industry Council “*has been aware and supportive*” of the proposed changes.⁵

2.3 Policy issues

The committee considered the key policy proposals in the Bill. These are outlined in the sections below.

2.4 Tourism and Events Queensland

Tourism Queensland is a statutory body under the *Tourism Queensland Act 1979*.⁶ Clause 4 of the Bill proposes to continue Tourism Queensland as Tourism and Events Queensland. Tourism and Events Queensland is proposed to be a statutory body subject to the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982* (cl 6).

As is apparent from its name, it is intended that Tourism and Events Queensland will have functions relating to both tourism and events (cl 7).

Pursuant to clause 39, the Minister may give Tourism and Events Queensland a written statement (a statement of expectations) of the Minister’s expectations of the corporation in performing its functions and exercising its powers. If the Minister gives a statement of expectations to Tourism and Events Queensland, it must give the Minister a statement of intent for the statement of expectations (cl 40).⁷

The Bill proposes that a board, consisting of the chief executive of the department and at least eight other members, will be responsible for the way the corporation performs its functions and exercises its powers (cl 19, 20).⁸ Members will hold the position for no more than three years (cl 21).⁹

Clause 45(2) states that the members of Tourism Queensland immediately before the commencement of the proposed Act¹⁰ will become members of the Tourism and Events Queensland

⁴ Tourism and Events Queensland Bill, Explanatory Notes, p 3.

⁵ Department of Tourism, Major Events, Small Business and the Commonwealth Games, briefing, 2 November 2012, transcript, p 3.

⁶ Clause 43 of the Bill proposes to repeal the *Tourism and Queensland Act 1979*.

⁷ Statement of intent, for a statement of expectations, is defined in cl 40(3) as a written statement about how the corporation proposes to comply with the statement of expectations.

⁸ Under the *Tourism Queensland Act 1979* (s 7), membership of the corporation is limited to not more than 10 persons, one of whom is the chief executive.

⁹ This is the same term as members of Tourism Queensland: *Tourism Queensland Act 1979*, s 8.

board. The Tourism Queensland chairperson will be the initial chairperson of the Tourism and Events Queensland board (cl 45(3)).

A chief executive officer will be appointed, for not more than three years (cl 15), under the proposed Act *“to ensure the efficient and effective administration and operation of the corporation in accordance with the board’s priorities”* (cl 13). The general manager of Tourism Queensland immediately before the commencement of the proposed Act will continue as the chief executive officer (cl 45(1)).

Events Queensland is a proprietary limited company.¹¹ Gold Coast Events Management and Asia Pacific Screen Awards are Events Queensland subsidiaries (cl 48(5)).

On the commencement of the proposed Act, Events Queensland will be replaced by Tourism and Events Queensland as a member of Gold Coast Events Management and the Asia Pacific Screen Awards (cl 48(2)). At the same time, the Gold Coast Events Company will be transferred from Events Queensland to Tourism and Events Queensland (cl 48(3)).

Also on the commencement of the proposed Act (cl 48(1)):

- the assets and liabilities of Events Queensland immediately before the commencement will become the assets and liabilities of Tourism and Events Queensland;
- any agreement or arrangement in force immediately before the commencement, between Events Queensland and another entity will be taken to be an agreement or arrangement between Tourism and Events Queensland and the other entity;
- any property of Events Queensland that is held on trust, or subject to conditions, immediately before the commencement will continue to be held by Tourism and Events Queensland on the same trust or subject to the same conditions; and
- any legal proceedings by or against Events Queensland that were current immediately before the commencement may be continued in the name of Tourism and Events Queensland.

Events Queensland will be wound up if the Bill is passed.¹²

Currently, Tourism Queensland has 130 employees and Events Queensland has 18 employees.¹³ At the departmental briefing provided to the committee, the Director-General said that the planned merger is not designed to save money but *“is about leveraging each other’s skill sets and the complementarity that goes with that”*.¹⁴ He further stated that it was not intended that employees would be made redundant because of the merger, although *“[t]here might be [some redundancies] in minor administrative positions”*.¹⁵

Committee comment

The committee is satisfied with this policy proposal.

¹⁰ The proposed Act will commence on the date of assent: *Acts Interpretation Act 1954*, s 15A.

¹¹ Dr Richard Eden, Director-General, Department of Tourism, Major Events, Small Business and the Commonwealth Games briefing, 2 November 2012, transcript, p 1.

¹² Hon Jann Stuckey MP, Minister for Tourism, Major Events, Small Business and the Commonwealth Games, Introductory Speech, Record of Proceeding, 1 November 2012, pp 2,385-2,386, p 2,386.

¹³ Dr Richard Eden, Director-General Department of Tourism, Major Events, Small Business and the Commonwealth Games, briefing, 2 November 2012, transcript, p 2.

¹⁴ Department of Tourism, Major Events, Small Business and the Commonwealth Games, briefing, 2 November 2012, transcript, p 4.

¹⁵ Department of Tourism, Major Events, Small Business and the Commonwealth Games, briefing, 2 November 2012, transcript, p 3.

2.5 Tourism and Events Queensland Employing Office

The Tourism Queensland Employing Office was established in 2007.¹⁶ Clause 32 of the Bill proposes to continue the Tourism Queensland Employing Office as the Tourism and Events Queensland Employing Office. Tourism Queensland Employing Office employees will continue as employees of the Tourism and Events Queensland Employing Office under the proposed Act (cl 46).

It is intended that the Tourism and Events Queensland Employing Office will consist of the executive officer and the employees of the Tourism and Events Employing Office (cl 32).

Clause 34 provides that it will be a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982* (cl 34).

It is proposed that the Tourism and Events Queensland Employing Office's functions will be to (cl 35):

- enter into, for the State, a work performance arrangement with Tourism and Events Queensland under which employees of the Tourism and Events Queensland Employing Office perform work for Tourism and Events Queensland;
- employ, for the State, staff to perform work for Tourism and Events Queensland under the work performance arrangement; and
- do anything incidental to the discharge of those functions.

Clause 38 provides that Tourism and Events Queensland Employing Office employees will be employed under the proposed Act, not under the *Public Service Act 2008*, and the Tourism and Events Queensland Employing Office may decide the terms of their employment (subject to any relevant industrial instrument).

Many of the provisions relating to the proposed Tourism and Events Queensland Employing Office in the Bill are effectively the same as those in the *Tourism Queensland Act 1979* relating to the Tourism Queensland Employing Office.

Committee comment

The committee is satisfied with this policy proposal.

¹⁶ Part 2AA of the *Tourism Queensland Act 1979* was inserted by Part 10 of the *Statutory Bodies Legislation Amendment Act 2007*.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that “*fundamental legislative principles*” are the “*principles relating to legislation that underlie a parliamentary democracy based on the rule of law*”. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

3.1 Rights and liberties of individuals

Section 4(2)(a) *Legislative Standards Act 1992* – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 17 deals with a vacancy in the office of the chief executive officer (CEO) of Tourism and Events Queensland. A mirror provision to cl 17 is contained in cl 23 in respect of Board members for Tourism and Events Queensland.

Subclause 17(1) provides that the office of the CEO becomes vacant if the CEO completes a term of office and is not reappointed, resigns, is convicted of an indictable offence, becomes insolvent/bankrupt, or is removed from office by the Governor in Council under subclause (2). Subclause 17(2) states that “*The Governor in Council may at any time remove the chief executive officer from office for any reason or none.*”

Whilst membership of a Board is often not the sole income stream for a particular board member, the nature of the role of a CEO is that it is typically a full-time job and the main (or only) income stream of that person. Given the role of CEO would involve significant responsibility, the remuneration for that position is likely to be substantial. If a person assumed financial liabilities (eg. home mortgage) commensurate with that level of remuneration and then they were suddenly removed from their position, without recourse to any appeal mechanism, it is not inconceivable that they (and their family) may encounter sudden and significant financial hardship.

No appeal rights from the Governor in Council’s actions are specified in this Bill; however, the CEO may still have some action at law in respect of their removal from office (eg. under their contract of employment). Any challenge to the decision is made more difficult by the fact that the removal decision can be made ‘for any reason or none’ and the fact that there is no requirement under the Bill for any kind of information notice or written reasons to be provided (such as would normally provide grounds upon which to base an appeal/seek redress).

Provisions that allow the Governor in Council to remove a statutory body’s corporate CEO or Board members ‘for any reason or none’ are not uncommon.

The committee wishes to draw this matter to the Minister’s attention.

3.2 Amendment of an Act only by another Act

Section 4(3)(c) *Legislative Standards Act 1992* – Does the Bill allow or authorise the amendment of an Act only by another Act?

Clause 38 allows the Tourism and Events Queensland Employing Office (‘the employing office’) to employ staff for its office and to decide the terms of their employment (38(1)-(3)).

Subclause 38(4) provides that subsection (3) [which allows the employing office to decide the terms of employment for its employees] applies subject to any industrial instrument that is relevant to the terms of employment of the employees.

Subclause 38(4) operates as a Henry VIII clause¹⁷ as it allows the statutorily set flexibility to decide employment terms under 38(3) to be able to be displaced by a contrary provision in a relevant (subordinate) *industrial instrument*¹⁸ such as an industrial award, certified agreement, code of practice etc.

The former Scrutiny of Legislation Committee's approach was that if an Act was purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the Committee would request Parliament disallow the part of the instrument that breached the fundamental legislative principle requiring legislation to have sufficient regard for the institution of Parliament. (see Scrutiny Committee 1997, The use of "Henry VIII clauses" in Queensland Legislation, paragraph 5.17). The Committee considered the possibly justifiable uses of Henry VIII clauses to be limited to circumstances where the clause was necessary to facilitate – immediate executive action, the effective application of innovative legislation, transitional arrangements, or national scheme legislation. If a Henry VIII clause did not fall within any of the above situations, the Scrutiny Committee classified it as 'generally objectionable'.

Considering there are transitional provisions in this Bill (see cl 46) which provide for the continuation of existing employment conditions for employees of Events Queensland and Tourism Queensland who are being transitioned to the new Tourism and Events Queensland, it seems likely that the Henry VIII clause identified in subclause 38(4) could be justified as 'necessary to facilitate transitional arrangements'.

The committee wishes to draw this matter to the Minister's attention.

Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by s 23 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

¹⁷ A Henry VIII clause is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action.

¹⁸ Industrial instrument has, pursuant to s 38(6), the meaning given under the *Industrial Relations Act 1999*, which means an award, certified agreement, industrial agreement, enterprise flexibility agreement, code of practice under section 400I or order under chapter 5, parts 5 and 6 of the *Industrial Relations Act 1999*.