

LEGAL AFFAIRS AND SAFETY COMMITTEE

Report No. 28, 57th Parliament

Casino Control and Other Legislation Amendment Bill 2022

QUEENSLAND GOVERNMENT RESPONSE

1. INTRODUCTION

On 26 May 2022, the Casino Control and Other Legislation Amendment Bill 2022 (the Bill) was introduced into Parliament.

The Bill was referred to the Legal Affairs and Safety Committee (the Committee) for detailed consideration.

On 22 July 2022, the Committee tabled its report (No.28) in relation to the Bill (the Report).

The Queensland Government response to the Committee's recommendations in the Report is provided below.

2. RESPONSE TO RECOMMENDATIONS

a) Recommendation 1

The Committee recommends that the Casino Control and Other Legislation Amendment Bill 2022 be passed.

Queensland Government response

The Queensland Government thanks the Committee for its consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

b) Recommendation 2

The Committee recommends that the Queensland Government engages with stakeholders to review the legislative framework for charitable fundraising, giving consideration to the relevancy of other state and federal legislation, including consumer law.

Queensland Government response

The Queensland Government notes this recommendation.

The Queensland Government is an ongoing participant in national inter-jurisdictional efforts to harmonise fundraising legislation, including the development of the cross-border recognition model introduced by the Bill, removal of duplicated financial reporting requirements, and ongoing work to harmonise fundraising conduct regulations.

In relation to financial reporting requirements, on 29 July 2022, the *Associations Incorporation Regulation 1999* (Associations Incorporation Regulation) and the *Collections Regulation 2008* (Collections Regulation) were amended to prescribe classes of associations and charities that are exempt from financial reporting requirements in Queensland. Incorporated associations and entities fundraising in Queensland that are registered with the Australian Charities and Not-for-profits Commission (ACNC) no longer need to provide annual returns or financial reports to the Office of Fair Trading if they have complied with ACNC reporting obligations.

The Queensland Government is also working to reduce red tape for local charities and associations. On 1 August 2022, a consultation paper was published on the Office of Fair Trading website seeking comment on changes to increase revenue and asset thresholds that determine reporting obligations for local incorporated associations and fundraising entities, and streamlining other record keeping requirements prescribed in the Associations Incorporation Regulation and Collections Regulation.

The submission period for the consultation paper ends on 12 September 2022. Further amendments to the Associations Incorporation Regulation and the Collections Regulation will be developed based on the feedback received.

With regards to fundraising conduct, in December 2021, the Council on Federal Financial Relations and National Cabinet agreed to develop a national fundraising framework to reduce red tape. The Department of Justice and Attorney-General is continuing to work with the inter-jurisdictional Fundraising Working Group on national harmonisation in relation to regulating the conduct of charitable fundraising, having regard to inter-state legislation and Australian consumer protection principles.

The Queensland Government will work with the new Commonwealth Government to continue reducing the regulatory burden on charities.

3. OTHER ISSUES RAISED BY THE COMMITTEE

a) Fundamental legislative principles

The Committee noted that the Explanatory Notes could have been more fulsome in its identification and consideration of potential breaches of fundamental legislative principles (FLPs).

Committee's comments

The Bill contains numerous provisions allowing for various matters to be prescribed by regulation, or amending existing regulation-making provisions, including providing for powers to prescribe: a cheque that a casino operator may accept for deposit to a person's player account; measures that minimise potential harm from gambling; and the methods of payment used with certain gaming equipment.

Whether a Bill has sufficient regard to the institution of parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons. Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

The explanatory notes do not address whether these clauses have sufficient regard to the institution of Parliament, but note that the harm minimisation regulation making power will allow for a more responsive regulatory environment, that is better equipped to keep up with best practice harm minimisation in light of rapid technological advances and new gambling products which may pose a risk of harm.

Queensland Government response

The Bill provides for the following matters to be prescribed by regulation:

- (i) Clause 21 amends section 67 of the *Casino Control Act 1982* (Casino Control Act) to provide that a casino operator may accept a cheque for deposit to a person's player account if it is a type of cheque that is prescribed in section 67 or another cheque prescribed by regulation;
- (ii) Clauses 43, 77, 87, 96 and 111 amends the *Charitable and Non-Profit Gaming Act 1999* (Charitable and Non-Profit Gaming Act), *Interactive Gambling (Player Protection) Act 1998* (Interactive Gambling (Player Protection) Act), *Keno Act 1996* (Keno Act), *Lotteries Act 1997* (Lotteries Act) and *Wagering Act 1998* (Wagering Act) to provide a regulation making power which will enable a regulation to be made to prohibit, permit, or otherwise regulate the different types of payment methods which may be used to enter a game or make a bet, deposit into or withdraw from a gambling account, and pay winnings, prizes and refunds; and
- (iii) Clauses 26, 41, 66, 73, 85, 92 and 108 inserts a regulation making power into the *Casino Control Act*, *Charitable and Non-Profit Gaming Act*, *Gaming Machine Act 1991*, *Interactive Gambling (Player Protection) Act*, *Keno Act*, *Lotteries Act* and *Wagering Act* to enable a regulation to prescribe harm minimisation measures that must be implemented.

The Queensland Government considers that the amendments have sufficient regard to the institution of Parliament and allow the delegation of legislative power only in appropriate cases and to appropriate persons, consistent with sections 4(2)(b) and 4(4)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act).

Payment methods have evolved throughout the years from coins and paper money to cards and digital payments. The matters in paragraphs (i)¹ and (ii) above are required to be prescribed by regulation to provide the Government with the ability to flexibly respond to different types of payment methods as payment systems advance. To otherwise prescribe an exhaustive list of acceptable payment methods for gambling in primary legislation (ie. an Act) would make the primary legislation quickly unfit for purpose in light of the rapid developments associated with payment technologies. Delegating the regulation of payment methods to subordinate legislation will:

- future proof Queensland's gambling legislation in a manner that will provide greater assurance of their sustained relevance;

¹ It may also be noted that the amendment in paragraph (i) which permits a regulation to prescribe other types of cheques that a casino operator may accept for deposit to a player account is not new. Section 67(2A)(d) of the *Casino Control Act* currently allows other cheques to be prescribed by regulation.

- encourage innovation; and
- permit technology advancements in payment methods to be regulated more responsively in order to provide better certainty to the gambling industry and keep communities safe.

In relation to the amendments in paragraph (iii) above, the Queensland Government considers that harm minimisation measures are matters which are more suitable for subordinate legislation than primary legislation for the reasons canvassed in the Explanatory Notes to the Bill and the Department of Justice and Attorney General's written responses to the Committee. These include the fact that:

- regulating harm minimisation by subordinate legislation will provide greater regulatory agility to deal with emergent risks of harm arising from new gambling and payment technologies so that Queensland's gambling regulatory frameworks will remain proportionate, contemporary and fit for purpose which is a key strategic pillar of the *Gambling Harm Minimisation Plan for Queensland 2021-25*;
- subordinate legislation is preferred where a matter is technical or detailed in nature as may be the case with particular harm minimisation measures;
- no harm minimisation measure has yet been identified to be prescribed; and
- a consistent regulation making power relating to harm minimisation in all gambling Acts as proposed by the Bill will enable appropriate measures to be prescribed for licences or classes of licences at a later date following consultation.

In terms of the impact of prescribing payment methods and harm minimisation measures by regulation on industry and the community, the Queensland Government wishes to reiterate that:

- consultation and regulatory impact analysis is required to be undertaken in relation to any new regulatory proposals in accordance with the *Queensland Government Guide to Better Regulation*;
- subordinate legislation must have sufficient regard to FLPs as outlined under the Legislative Standards Act;
- subordinate legislation is subject to the notification, tabling and disallowance provisions of the *Statutory Instruments Act 1992* (Statutory Instruments Act) and is subject to scrutiny by the appropriate parliamentary portfolio committee; and
- subordinate legislation automatically expires after 10 years under the Statutory Instruments Act unless action is taken to remake it (which only usually occurs after a sunset review is undertaken to evaluate the continuing need, effectiveness and efficiency of the regulation).

b) Smoking in premium gaming rooms

Committee's comments

While the Committee notes this matter is outside the scope of the Bill, the Committee is of the view that Cancer Council Queensland has highlighted an area of potential reform in the Tobacco and Other Smoking Products Act 1998 in relation to smoking in premium casino gaming rooms. In this regard, the Committee encourages the Queensland Government to undertake consultation on this with relevant stakeholders, including casino operators, Cancer Council Queensland and unions, with a view to removing smoking from all rooms in Queensland casinos.

Queensland Government response

The Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence has referred the Committee's comments to the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services. The matter of removing smoking in premium gaming rooms would involve potential amendments to the Tobacco and Other Smoking Products Act 1998, which is within the portfolio responsibility of the Minister for Health. The Department of Justice and Attorney-General will assist Queensland Health with any casino-related matters as required.

c) Communication technologies and operation of foreign gambling entities

Committee's comments

The Committee encourages the Queensland Government to make representations to the Australian Government, in relation to its responsibilities around the adoption of new communication technologies as used in the gambling industry, to consider regulating the operation of foreign gambling entities in Queensland.

Queensland Government response

The Queensland Government acknowledges the Committee's comments and notes that online betting activities of gambling providers are already subject to strict regulatory controls at both a Commonwealth and state level.

The Commonwealth's *Interactive Gambling Act 2001* prohibits gambling providers (both inside and outside of Australia) from offering online gambling services to Australian residents relating to online casinos, in-play sports betting and betting on the outcome of a lottery. Additionally, offering other online services such as wagering on sporting events to Australian residents is prohibited, except if authorised under an Australian licence. Accordingly, under the national framework, it is illegal for foreign gambling entities to provide gambling services to Queenslanders unless they obtain an applicable licence.

Race and sports wagering conducted in Queensland is regulated under the Wagering Act. Tabcorp Holdings Limited (Tabcorp), through its subsidiary (UBET QLD Limited (UBET)), is the exclusive Queensland sport and race wagering licensee under the Wagering Act. These wagering licences broadly authorise Tabcorp to conduct wagering on sport and racing events held in Australia or internationally, via a network of more than 700 terrestrial wagering retail outlets (stand-alone outlets and agencies in clubs, hotels and casinos) and online.

New and emerging communication technologies used in the conduct of wagering in Queensland are subject to the requirements of the Wagering Act, and are a matter for evaluation and approval by the Queensland Government. The existing framework provides strict regulatory controls around the operation of regulated wagering equipment, such as computer software and communication technology, which includes a rigorous and comprehensive assessment and evaluation process to ensure the fairness and integrity of the product for the Queensland market.

Queensland punters can place bets online with licensed providers operators in other Australian jurisdictions, subject to the applicable laws of that jurisdiction.

In view of the Commonwealth Government's longstanding restrictions on interactive gambling activities in Australia and the existing legislative frameworks governing gambling activities in Queensland, the Queensland Government does not consider it necessary to make representations to the Australian Government in relation to the gambling activities of foreign entities at this time.

4. STATEMENTS OF RESERVATIONS

a) Casino integrity amendments

Comments from Ms Laura Gerber MP, Deputy Chair and Member for Currumbin, and Mr Jon Krause MP, Member for Scenic Rim

This Bill does not address the issue of undue influence on a minister and doesn't consider actions of NSW and Victoria in establishing a separate casino regulator from the liquor and gaming regulator. It also does not consider establishing an independent casino regulatory authority with powers currently exercised in Queensland by the minister. This is particularly concerning given recent reports of lobbying activities by lobbyists with close ties to the Labor government on behalf of Star Entertainment. In both Victoria and New South Wales we have seen establishment of a separate gambling regulator in line with recommendations from the Bergin and Finkelstein independent reviews.

Given the serious allegations against Star Entertainment's NSW operations, the findings in other states not only in relation to Star but also the Crown group, and the now publicised relationship between the Government and Star, changes to gambling regulation should follow recommendations from Mr Gotterson's independent assessment.

Queensland Government response

The Bill is the Queensland Government's first response to the need for enhanced regulation of casinos. It represents the outcomes of the Queensland Government's proactive examination of the issues identified by recent public inquiries and reviews into casinos in several jurisdictions, and the ability of the Casino Control Act to respond to such issues.

Further regulatory enhancements will be informed by the findings and recommendations of the 'External review of the Queensland operations of The Star Entertainment Group Limited' report by the Honourable Robert Gotterson AO KC. Mr Gotterson delivered his report on 30 September 2022.

On the matter of regulatory structure, at paragraph 560 of his report Mr Gotterson noted there was no suggestion during the review that the Minister or Government of the day had improperly intervened in regulatory decisions. There was also no realistic suggestion that the revenue derived from casinos had prevailed over the need for strict regulation. Mr Gotterson also expressed the view that it is appropriate that the regulator, through the Government, is answerable to the people of Queensland.

Mr Gotterson ultimately concluded there is insufficient justification to fundamentally change the structure of the Office of Liquor and Gaming Regulation (OLGR) particularly since the Queensland regulatory model has not been called into question nor is it one that has adopted a risk-based approach to casino regulation that has been the subject of criticism in interstate inquiries into Crown Resorts Limited. Additionally, as the Bill, when passed, will confer OLGR with additional regulatory powers, Mr Gotterson considered the existing regulatory model to be adequate.

The Government has in-principle accepted all of Mr Gotterson's recommendations.

b) Cashless amendments

Comments from Ms Sandy Bolton MP, Member for Noosa

Firstly, the Bill proposes to remove any barriers to cashless payments and cashless gaming, and yet it does not propose any harm minimisation mechanisms to go with these changes. The Bill does provide a Regulation making power to prescribe, potentially, harm minimisation measures at some point in the future, however, there has not been any indication during the scrutiny of the Bill as to what these will be, not even any principles to guide their development.

Cashless payments and gaming have the potential to reduce the effectiveness of current harm minimisation, for example, it would reduce interactions with cashiers and staff, such that self and venue excluded gamblers may be less likely to be identified. It would be possible to craft harm minimisation measures for cashless payments and gaming to mitigate this issue, and yet this Bill does not implement any, or propose principles on which they might be based. There is no reason they could not be included in this Bill.

Queensland Government response

The Bill amends the gambling Acts to the extent required to improve each Act's capacity to address and respond to emerging technologies and cashless payment methods for gambling. As explained in the Explanatory Notes, the Bill does this by:

- allowing alternative payment methods (such as electronic funds transfer) to be considered and approved for use in Queensland in the gambling environment in lieu of the traditional forms of payment (ie. by cash and cheque);
- ensuring that cashless systems and technology, and other emergent technology, can be approved (with conditions if required) and made to undergo technical evaluation (if considered necessary) before their use in the gambling market; and
- providing a regulation making power dealing with the methods of payment that may be used in connection with the gambling activity authorised by the relevant gambling Act.

Harm minimisation will be a relevant factor in any consideration and approval of cashless payment methods, systems and technologies. However, the types of harm minimisation measures that will be expected to be implemented alongside cashless payments will need to be considered in the context of the cashless payment method, system and technology being sought for approval to ensure the measures will be relevant to address the specific risk of harm posed by the particular cashless payment method, system or technology.

In relation to the regulation making power for harm minimisation, as advised by the Department of Justice and Attorney-General to the Committee, no specific harm minimisation measure has been identified to be prescribed. However, the Bill provides guidance on the types of measures which could be prescribed including measures which have the purpose of:

- delaying the start of a process in particular circumstances;
- interrupting a process in particular circumstances;
- using particular technology or software;
- providing particular information to the chief executive or persons participating in the authorised gambling activity; or
- enabling a person to access a service that provides help with gambling problems.

c) Simulated wagering

Comments from Ms Sandy Bolton MP, Member for Noosa

Secondly, the Bill also provides for amendments to the Wagering Act to allow Tabcorp to conduct wagering on simulated sports and racing events. In this case a simulated event in one where the outcome is randomly determined. While this product is intended to be a replacement for the existing Keno Racing, it is an expansion as it allows for simulated racing - and sports - events. This apparent expansion of simulated gambling [is] not accompanied by a risk assessment or harm minimisation measures or approaches.

Queensland Government response

The Queensland Government acknowledges the comments of the Member for Noosa on her consideration of the Bill.

Simulated event products are a new development for Queensland. Given the potential for gaming-related harm from these emerging wagering products, the Queensland Government has taken a cautionary approach in adopting a framework for Queensland. The framework for simulated wagering events proposed by the Bill appropriately balances the commercial interests of Queensland's sole sports wagering licensee, UBET, with a range of new and existing harm minimisation measures to reduce potential for gambling-related harm in the community.

It is important to note, the Bill does not automatically allow the sports wagering licensee to start conducting or offering wagering on simulated events or simulated contingencies in Queensland. Rather, the Bill provides a framework for the detailed consideration and Ministerial approval of virtual wagering products on a case-by-case basis. This is necessary to ensure emerging technologies and their market impact can be appropriately assessed and, where found unsuitable or contrary to the public interest in minimising potential for gambling-related harm, can be denied operation in Queensland.

To respond to any potential gambling-related harm or other concerns which may arise from offering a specific simulated event wagering product, the existing framework allows the Minister to withdraw an approval for a simulated event or simulated contingency for any reason the Minister considers appropriate. A decision by the Minister to refuse an application or withdraw an existing approval is final. Mirroring the existing framework for

non-sporting events and contingencies, a sports wagering licensee is not afforded a right of review.

As a second layer of harm protection, the Bill ensures the underlying equipment used for the conduct of wagering on simulated events and simulated contingencies (e.g., simulated event random number generator) is subject to strict regulatory controls existing under the Wagering Act. This includes a comprehensive and rigorous evaluation and assessment process to ensure the integrity, security and fairness of games, and restrictions on the operation of approved wagering equipment to authorised persons.

As a further harm minimisation measure, the Bill ensures wagering on simulated events and simulated contingencies can only be conducted at bricks and mortar retail wagering outlets. Accordingly, simulated events will be subject to the same harm minimisation measures that apply to terrestrial wagering on traditional sports and racing events including bans on credit betting and the ability for customers to self-exclude from venues. To ensure bets on simulated events and simulated contingencies are only taken from within TAB agencies and outlets, the Bill creates an offence, punishable by a maximum penalty of 200 penalty units (\$28,750) for a licence operator or wagering agent who accepts a wager by phone or other form of communication.

Accordingly, the Queensland Government considers appropriate safeguards have been built into the simulated events framework to reduce the potential for gambling-related harm and to ensure appropriate action can be taken should harm be identified.