Parliamentary Committees



Casino Control and Other Legislation Amendment Bill 2022

Report No. 28, 57th Parliament
Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

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All web address references are current at the time of publishing.

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Abbreviations

ABN	Australian Business Number
ACNC	Australian Charities and Not-for-profits Commission
Bill	Casino Control and Other Legislation Amendment Bill 2022
Casino Control Act	*Casino Control Act 1982*
Collections Act	*Collections Act 1966*
committee	Legal Affairs and Safety Committee
Crown	Crown Resorts Limited
department/DJAG	Department of Justice and Attorney-General
FLPs	fundamental legislative principles
Gaming Machine Act / GM Act/ Gaming Act	*Gaming Machine Act 1991*
GHM Plan	Gambling Harm Minimisation Plan for Queensland 2021-2025
GiC	Governor in Council
GTA	Gaming Technologies Association
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
QHA	Queensland Hotels Association
QLS	Queensland Law Society
MVSE	multi-venue self-exclusion
OFT	Office of Fair Trading
OLGR	Office of Liquor and Gaming Regulation
QCAT	Queensland Civil and Administrative Tribunal
RGAC	Responsible Gambling Advisory Committee
RGCP	Responsible Gambling Code of Practice
RIA	regulatory impact analysis

Star/The Star	Star Entertainment Group Limited
UBET	UBET Qld Limited
Wagering Act	*Wagering Act 1998*
working party	Regulatory Framework and Technology and Environment working party

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Casino Control and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.

Mr Peter Russo MP

Chair

Recommendations

Recommendation 1 **6**

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

Recommendation 2 **34**

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.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Casino Control and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly on 26 May 2022 and referred to the committee. The committee is required to report to the Legislative Assembly by 22 July 2022.

1.2 Inquiry process

On 31 May 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. Eight submissions were received.

The committee received a public briefing about the Bill from the Office of Regulatory Policy – Liquor, Gaming and Fair Trading of the Department of Justice and Attorney-General (department/DJAG) on 8 June 2022. A transcript is published on the committee's web page (see Appendix B for a list of officials).

The committee also received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 11 July 2022 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the public briefing and hearing are available on the committee's webpage.

1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and HRA, ss 39, 40, 41 and 57.

1.3 Policy objectives of the Bill

The Bill proposes to implement a range of reforms to the regulation of liquor, gaming and fair trading in Queensland, including amendments that aim to:

- strengthen casino integrity and modernise gambling legislation
- introduce a framework for wagering on simulated events
- extend New Year's Eve gaming hours
- introduce a cross-border recognition scheme for charitable fundraising.[3]

1.4 Government consultation on the Bill

1.4.1 Amendments to strengthen casino integrity and regulation

As set out in the explanatory notes, consultation was undertaken in March 2022 with Queensland casinos, the Alliance for Gambling Reform, United Workers Union, Victorian Gambling and Casino Control Commission, and New South Wales Independent Liquor & Gaming Authority. The amendments were 'generally supported or accepted by stakeholders' with the following concerns raised.[4]

Introduce a pecuniary penalty as a form of disciplinary action (maximum $50 million)

Some stakeholders suggested 'there should be consistency between jurisdictions in terms of the maximum pecuniary penalty which may be imposed on casino entities as a form of disciplinary action'. However, the explanatory notes advised: 'this is not possible as the maximum penalty permitted in other States and Territories varies from $1 million to $100 million'. For example, the Alliance for Gambling Reform advocated for $100 million maximum pecuniary penalty in line with Victoria.[5] The explanatory notes state that 'an upper limit of $50 million will enable Queensland to levy the second highest possible pecuniary penalty against casino entities, behind Victoria'.[6]

Other stakeholders suggested the maximum penalty be capped at lower levels for smaller casinos as a penalty of $50 million would have the same impact as cancelling a casino licence. In this regard, the explanatory notes state:

> It is to be noted though that, under the Bill, the Minister will have the ability to impose a minor pecuniary penalty of up to $5 million while the Governor in Council will have the ability to impose a major pecuniary penalty of up to $50 million. Each decision maker has the discretion to impose a pecuniary penalty below their permissible maximum. The Bill also provides a list of factors which must be considered in determining the appropriate quantum including the nature and extent of the act or omission; whether the act or omission undermines the objects of the Casino Control Act; whether the act or omission caused any loss or damage to the State or public; the seriousness of the grounds for taking the disciplinary action; whether any disciplinary action has previously been taken; and any other matter the Minister or Governor in Council considers relevant.[7]

3 Explanatory notes, p 1.

4 Explanatory notes, p 39.

5 Explanatory notes, p 39.

6 Explanatory notes, p 40.

7 Explanatory notes, p 39.

Introduce power to impose a cost order

Some stakeholders sought careful consideration of the scope of cost orders related to disciplinary actions undertaken, to avoid potential procedural fairness issues. The explanatory notes state that the Bill 'provides that a cost order may only be imposed if disciplinary action is ultimately carried out' and that only 'reasonable costs may be recouped and must relate to administrative actions associated with taking the disciplinary action'.[8]

Introduce power to require information on oath or affirmation

United Workers Union was concerned that 'an obligation to provide information on oath or affirmation may require casino employees to give evidence that may be against the interests of their employers or antithetical to their ongoing employment'. The explanatory notes state that the Bill 'does not address this issue as it is considered to be more appropriately dealt with under existing industrial relations protections'.[9]

Introduce ability to require engagement of a qualified external adviser

During government consultation on the Bill, the Alliance for Gambling Reform sought assurance that qualified external advisers engaged by a casino entity would not have any professional or personal bias. The explanatory notes advise:

> The Bill provides that the Minister may direct the engagement of an appropriately qualified external adviser on terms and conditions decided by the Minister. It will therefore be open to the Minister to consider whether a proposed adviser has any conflicts of interest or potential conflicts of interest which may affect the work or advice to be provided by the adviser. It will also be open to the Minister to direct a casino entity to enter into any necessary integrity agreements with the proposed external adviser to address any potential ethical issues.[10]

1.4.2 Amendments to remove a human rights incompatibility under the Casino Control Act

The Bill proposes to remove the detention power under the *Casino Control Act 1982* (Casino Control Act). The government consulted with Queensland casinos and Queensland Police. The following feedback was received:

> Consultation with the casino sector did not result in advice that the detention power is used and produced mixed views on whether the power should be retained.
>
> Consultation with the Police portfolio identified an alternative approach to section 105 whereby it would be retained with additional legislative safeguards with respect to its use. However, it should be noted that the power can currently only be used by an inspector, a casino operator and a casino operator's employees and agents. OLGR [Office of Liquor and Gaming Regulation] inspectors do not use the detention power. Accordingly, the justification for retaining the detention power in light of its incompatibility with human rights, particularly when the power is not used by OLGR inspectors and has a narrow application only to specific offences is considered limited.[11]

8 Explanatory notes, p 40.

9 Explanatory notes, p 40.

10 Explanatory notes, p 40.

11 Explanatory notes, pp 40-41.

1.4.3 Amendments to modernise various gambling Acts

Government consulted with the following stakeholders on proposed amendments to modernise gambling Acts by improving 'regulatory agility to address cashless gambling and enable gambling rules to be notified on a departmental website':

- Queensland casinos
- licensed monitoring operators – Tabcorp Holdings Limited, Odyssey Gaming Services Pty Ltd and Utopia Gaming Systems
- gaming manufacturers – Ainsworth Game Technology, Aristocrat Technologies Australia Pty Ltd, Aruze Gaming Australia Pty Ltd, Atlas Gaming Technologies Pty Ltd, IGT (Australia) Pty Ltd, Konami Australia Pty Ltd, SG Gaming ANZ Pty Ltd and Wymac Gaming Solutions Pty Ltd
- the parent company of the sole keno, lotteries and wagering licensee in Queensland – Tabcorp Holdings Limited
- category 3 gaming licensees – Multiple Sclerosis Society of Queensland, Sporting Wheelies & Disabled Sport & Recreation Association of Qld Inc, Yourtown, Endeavour Foundation, Mater Foundation Limited (Mater Foundation), Returned & Services League of Australia (Queensland Branch), The Surf Life Saving Foundation, Deaf Services Limited (Deaf Services), Vision Australia Limited, Rural Fire Brigades Association – Queensland Inc, Children's Hospital Foundation Queensland, Act for Kids Limited, 50-50 Foundation Limited as trustee for 50-50 Foundation, Guide Dogs for the Blind Association of Queensland, Australian Horizons Foundation Limited, The Kids' Cancer Project Ltd, Women's Legal Service Inc, Australian Football League, Isa Rodeo Limited, Cricket Australia, Connect Community Plus Kids Inc., Hearts4heros Incorporated, Muragadi Heritage Indigenous Corporation, Queensland Cricketers Club Limited, Young Veterans Australia Limited, The Lord's Taverners Australia National Office Incorporated, The Teamfmr Foundation Limited, Teens Take Control Inc., Rally For A Cause Ltd, 1 Million Women Limited, National Homeless Collective Limited, Katie Rose Cottage Hospice Limited, Rotary Club Of Townsville Sunrise Inc, Rotary Club Mackay North Inc, Toowoomba Caledonian Society and Pipe Band Incorporated, Save A Horse Australia INC, It's A Bloke Thing (Qld) Ltd as Trustee for It's A Bloke Thing Foundation, Rotary Club Of Townsville Inc, National Heart Foundation of Australia, The MND and ME Foundation Limited, Wandering Warriors Limited, Rotary Club of Ayr Inc, Pankind Australian Pancreatic Cancer Foundation Limited, Australian Road Safety Foundation Limited, Clayfield College Parents & Friends Association and Top Blokes Australia Limited As Trustee For The Top Blokes Foundation
- industry associations – Gaming Technologies Association (GTA), Clubs Queensland, Queensland Hotels Association (QHA), Responsible Wagering Australia and RSL & Services Clubs Association Inc
- other community groups – Gambling Health Services and Alliance for Gambling Reform.[12]

The government received the following comments/concerns during the consultation process:

- the QHA did not support the proposal to introduce a regulation making power relating to harm minimisation. The explanatory notes state that the regulation power aims to future proof Queensland's gambling legislation to allow it to be more responsive and able to keep up with best practice harm minimisation strategies as technological advances are made and new gambling products are introduced.[13] (Section 2.2.1.2 addresses this matter further.)

[12] Explanatory notes, pp 41-42.

[13] Explanatory notes, p 42.

- a regulation making power to minimise harm is not needed because sufficient powers exist under the *Gaming Machine Act 1991* (Gaming Machine Act/GM Act/Gaming Act) (GTA and Clubs Queensland). The explanatory notes state that, although licence conditions have been used in the past to address harm minimisation issues for licenced gaming venues, a regulation making power 'will provide for more certain scope and allow harm minimisation measures to apply to a person or class of persons'.[14] (Section 2.2.1.2 addresses this matter further.)
- the *Charitable and Non-Profit Gaming Act 1999* should be excluded from the harm minimisation regulation making power because there is a lack of harm from charitable games and it would place a disproportionate regulatory burden on charities (Yourtown). The explanatory notes acknowledge that charitable games generally have a lower risk profile but that charities have displayed innovation that has been replicated in other gambling streams, and therefore there is a need for government to have a regulatory avenue to ensure harm minimisation measures can be applied to emergent practices in the charitable gaming sector.[15]
- Some organisations submitted that any harm minimisation measures prescribed should not automatically be applied across all forms of gambling (Deaf Services, Mater Foundation, Endeavour Foundation and Gambling Help Services). The explanatory notes highlight that there are 7 gambling Acts that ensure regulation is relevant to specific gambling activity and specific harm minimisation measures would need to be applicable to the relevant form of gambling. Additionally, the requirement for proportionality is part of the development of subordinate legislation.[16]
- Some stakeholders called for harm minimisation measures to be subject to regulatory impact assessment. The explanatory notes advise:

> Some proposals for regulatory impact assessment far exceeded the assessment that would be applied to any other regulation made in Queensland. Consultation and regulatory analysis on harm minimisation proposals will however be undertaken in accordance with the Queensland Government Guide to Better Regulation, which provides a best practice approach to regulatory development, including consultation with stakeholders.[17]

1.4.4 Amendments to introduce a framework for wagering on simulated events

In regards to amendments to introduce a framework for wagering on simulated events, consultation was undertaken with Tabcorp, which advised:

> the framework would allow it to seek to replace the existing simulated racing game Keno Racing with a product that is not reliant on the Keno draw, and to operate the same virtual wagering products it operates in New South Wales, Victoria and the Australian Capital Territory.[18]

The explanatory notes explain why public consultation was not undertaken:

> Given the intent of the provision is to allow the replacement of an existing simulated racing game within a more appropriate wagering framework, and that a number of other jurisdictions already provide a legislative framework for the consideration and approval of simulated events (mainly racing), public consultation on the proposed simulated events wagering framework was not undertaken. It is considered the integrity measures and other safeguards imposed by the Bill provide adequate oversight of the

[14] Explanatory notes, p 42.

[15] Explanatory notes, p 42.

[16] Explanatory notes, p 42.

[17] Explanatory notes, p 43.

[18] Explanatory notes, p 43.

provisions by both the Minister and the chief executive, including the restriction on granting an approval for a simulated event or simulated contingency considered to be contrary to the public interest.[19]

1.4.5 Amendments to extend New Year's Eve gaming hours

No consultation was undertaken on the amendments to extend gaming hours on New Year's Eve until 2am on New Year's Day 'as they reduce unnecessary red-tape and regulatory burden and formalise longstanding administrative arrangements'.[20]

1.4.6 Amendments to introduce a cross-border recognition scheme for charitable fundraising

National consultation was undertaken about the cross-border recognition model via a discussion paper released by an inter-jurisdictional working group (led by New South Wales) in August 2020 with stakeholders expressing support for the proposal. The Queensland Government also consulted with Charities Crisis Cabinet, the Public Fundraising Regulatory Agency and the Queensland Law Society (QLS) with support from the agency and QLS received.[21]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

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

Recommendation 1

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

19 Explanatory notes, p 43.

20 Explanatory notes, p 43.

21 Explanatory notes, p 43.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Strengthen casino integrity and regulation

2.1.1 Background

Inquiries and investigations have been undertaken into casinos operated by subsidiaries of Crown Resorts Limited (Crown) and the Star Entertainment Group Limited (Star/The Star) in multiple jurisdictions. These inquiries (the Finkelstein Inquiry in Victoria, the Bergin Inquiry in New South Wales, and the Owen Inquiry in Western Australia) and their findings suggest that the 'wider casino sector should be subject to stronger regulatory scrutiny to ensure casinos operate with the highest standards of integrity'.[22]

In this regard, the Bill proposes amendments to the Casino Control Act that would address recommendations from these inquiries, particularly recommendations 18, 19, 20 and 27 of the Finkelstein Inquiry, and matters arising including casinos prioritising profit over compliance with the law; failing to be honest and transparent in dealings with the regulator; and disregarding the authority of the regulator.[23] The four recommendations noted above relate to the powers of inspectors; the obligation of casino operators to cooperate with the regulator; introducing new powers for the regulator; and undertaking a review of penalties with a view to increasing them, including the penalty to be imposed for disciplinary action.[24]

Allegations in relation to Star subsidiaries are still under investigation, including by the OLGR and the New South Wales Bell Inquiry which is expected to report by 31 August 2022. The department advised that the outcomes of these investigations may impact the need for further reforms beyond this Bill.[25]

The committee also notes media reports that the Queensland Government has launched an inquiry into Star Entertainment's suitability to hold a casino licence in the state.[26]

2.1.2 Proposed amendments

In summary, the Bill proposes to address matters raised during the above inquiries by enhancing the Casino Control Act through:

- introducing and increasing penalties for critical offences to ensure there are meaningful consequences for breaches of the law

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22 Department of Justice and Attorney-General, written briefing, 8 June 2022, pp 1, 2.

23 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2. See also the Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, https://content.royalcommission.vic.gov.au/sites/default/files/2021-10/The%20Report%20-%20RCCOL%20-%2015%20October%202021.pdf.

24 The Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, https://content.royalcommission.vic.gov.au/sites/default/files/2021-10/The%20Report%20-%20RCCOL%20-%2015%20October%202021.pdf, pp 6, 7, 16.

25 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2.

26 See, for example, The Guardian, 'Queensland launches inquiry into Star's suitability to hold a casino licence', 14 June 2022, https://www.theguardian.com/australia-news/2022/jun/14/queensland-launches-inquiry-into-stars-suitability-to-hold-a-casino-licence.

- imposing a requirement on particular entities (that is, casino licensees, casino lessees, casino operators under casino management agreements and their associates) to self-report contraventions of the law and breaches of certain prescribed agreements to which they are a party, and to comply with all reasonable requests made by the Minister or regulator under the Act and do everything necessary to ensure that the management and operations of the casino operator are conducted honestly and fairly
- expanding information gathering powers and introducing other powers which are considered necessary to reflect the complexity of regulating casinos in current times.[27]

In regards to enhancing the accountability and transparency of casino entities and their associates in their dealings, the Bill includes the following:

- a duty to cooperate, which involves complying with reasonable requests made by the chief executive, inspector and the Minister and to do everything necessary to ensure that the management and casino operations of the relevant casino operator are conducted honestly and fairly
- a requirement to self-report breaches of the Casino Control Act, Casino Agreement Act/s, directions given to them by the chief executive or Minister, and certain prescribed agreements to which they may be a party
- a broad prohibition on false and misleading information.[28]

To ensure there are 'meaningful consequences for misconduct and breaches of the law', the Bill:

- increases the penalty for contravening an approved control system from 200 penalty units to 400 penalty units, and the penalty for interfering with an inspector's duties from 40 penalty units to 160 penalty units
- enables, as a form of disciplinary action, a pecuniary penalty to be imposed on a casino entity of up to $5 million by the Minister and up to $50 million by the Governor in Council
- enables letters of censure to be made public.[29]

To reflect the complexity of modern casino operations, the Bill expands the powers of the regulator and Minister by:

- bolstering general information seeking powers to enable any information (including information that is the subject of legal professional privilege) to be sought from a casino entity or a person associated with a casino entity and for that information to be provided on oath or by statutory declaration, if considered appropriate
- lowering the threshold for taking disciplinary action
- enabling reasonable costs and expenses of disciplinary action to be recovered from a casino entity
- introducing the ability for the Minister to direct a casino entity to engage and pay for a qualified external adviser, on terms and conditions decided by the Minister, to inquire and report to the Minister on any matter relevant to casino operations, the conduct and suitability of the casino entity, the suitability of an associate, and any other matter relating to the casino entity

[27] Explanatory notes, p 2.

[28] Department of Justice and Attorney-General, written briefing, 8 June 2022, p 4.

[29] Department of Justice and Attorney-General, written briefing, 8 June 2022, p 5.

- clarifying that, in investigating the suitability of a casino entity or its associate, the Minister may take into account the findings of investigations undertaken by other States and the Commonwealth (such as a royal commission inquiry) and the report of an external adviser
- allowing the Minister to undertake a suitability investigation to satisfy the Minister *or* Governor in Council (as opposed to only Governor in Council at present) of the suitability of a casino entity or associate
- making the contravention of the Casino Control Act a ground for taking disciplinary action.[30] [Emphasis in original source]

2.1.3 Stakeholder comments

2.1.3.1 Suitability of a casino operator and their associates (amended section 30)

Clause 7 of the Bill would allow 'for probity investigations to be undertaken, from time to time, in relation to a casino entity (that is, a casino licensee, casino lessee, casino operator under a casino management agreement) and their associates to determine their suitability to be associated or connected with the management and operations of a hotel-casino complex or casino'. The Bill would do this by amending section 30 of the Casino Control Act 'to provide that a finding of unsuitability may be based, wholly or in part, on a report of an external adviser engaged under new section 91AA of the Act, and the findings of an investigation under a law of the State or the Commonwealth, or undertaken by a State authority if the findings relate to a casino entity or their associates'.[31]

While Star considered the purpose of the amendment to be 'appropriate', it stated that the 'current drafting may give rise to some issues', including the following (noting that Star defines 'Ongoing Suitability' as mentioned below as 'the ongoing suitability of casino licensees, lessees, operators or their associates to be associated or connected with the management and operations of either a hotel-casino complex or casino'):

> (a) firstly – a Queensland casino entity may not have necessarily had the opportunity to be heard before, or make submissions to, the State or Commonwealth inquiry whose findings the Minister is considering. That potentially denies the Queensland casino entity procedural fairness in decisions the Minister is making as to Ongoing Suitability;
>
> (b) secondly – the Minister can consider findings from a State or Commonwealth inquiry about the associates of a Queensland entity, when making findings about that Queensland entity. There is scope for the Minister to form views on a Queensland casino entity's Ongoing Suitability based on findings about its associates – when the associate operations may be quite different than the Queensland casino entity; and
>
> (c) thirdly – under existing section 30(1), the Minister can investigate (amongst other matters) the Ongoing Suitability of persons "associated or connected … with the ownership, administration or management of the operations or business of the licensee, lessee or operator". Under proposed amended section 30(2), the Minister can have regard to State or Commonwealth inquiry findings about an "associate" of an entity mentioned in section 30(1). Hence, on the current proposed drafting of amended section 30(2), the Minister can consider a Queensland casino licensee, lessee or operator's Ongoing Suitability based on findings about associates of associates of that Queensland casino licensee, lessee or operator. It seems that it is, in fact, the intention that findings about associates of associates can be considered. Respectfully though, there is a question to be considered further around the relevance

[30] Department of Justice and Attorney-General, written briefing, 8 June 2022, p 5.

[31] Explanatory notes, p 30.

> of findings about parties distanced from the Queensland casino entity when assessing Ongoing Suitability.[32]

Star proposed the following amendments to section 30(2) of the Casino Control Act:

> (a) provide a procedural right of reply for a Queensland casino entity or its associates (as described in section 30 of the Act) to make submissions to the Minister in respect of the findings of a State or Commonwealth inquiry, if the Minister is proposing to use those findings to form a view about Ongoing Suitability. That affords that party procedural fairness and natural justice which may otherwise only have an opportunity to respond to the Minister on the findings of the State or Commonwealth inquiry after the Minister or Governor in Council had already relied on those findings to form a view of non-Ongoing Suitability, and had proceeded to issue a show cause notice for possible disciplinary action under section 31 of the Act; and
>
> (b) clarify that the Minister may consider findings from a State or Commonwealth inquiry about a Queensland casino entity or an associate of that entity. That resolves the "associates of associates" issue raised above. The Star notes that this amendment could be achieved, for example, by replacing in proposed amended sections 30(2)(a) and (b) the words "*an entity mentioned in subsection (1)*" with "*a casino licensee, lessee under the casino lease or casino operator under the casino management agreement mentioned in subsection (1)*".[33]

The committee notes Star's advice that it has had a number of minor breaches, for such matters as an exclusion or a staff error on tables, over the last 5 years and that it had not paid any fines for these breaches. Star also advised that in the case of most of the breaches, it had notified the regulator itself. In relation to the Bill's requirement to self-report breaches, Star advised it was 'supportive of the change, because a policy and a position of ours is to proactively report to the regulator and be on the front on all of those situations'.[34]

In response to Star's concerns noted above, the department advised that section 30 of the Casino Control Act already provides for the Minister to undertake such investigations as are necessary for the purposes of determining the suitability of a casino entity and its associates. This means that the Minister already has the power to give regard to the findings of another State or Commonwealth investigation as part of a section 30 suitability investigation. The purpose of clause 7 is to clarify that this is the case.[35]

In response to Star's concern about procedural fairness and the right of reply, the department advised the following is in place in accordance with the rules of natural justice:

> Where an Act gives a decision maker the right to affect a person's rights or interests, the decision maker is bound to observe the rules of natural justice unless there is express contrary legislative intention. Accordingly, a decision about the suitability of a casino entity or its associates under section 30 of the Act is subject to the rules of natural justice which includes the right to be heard. A casino entity and its associates will therefore, in accordance with the rules of natural justice, be provided with sufficient notice of a possible adverse decision and an opportunity to put their own case forward. A breach of the rules of natural justice is a ground for seeking judicial review under the *Judicial Review Act 1991* (Judicial Review Act).

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32 Submission 6, p 3. NB: in-text references have been removed. Refer to original source for more information.

33 Submission 6, pp 3-4.

34 Public hearing transcript, Brisbane, 11 July 2022, p 19.

35 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 3.

> If, following a finding of unsuitability, the Minister intends to take disciplinary action against the casino entity, the Minister must, pursuant to clause 9(9) of the Bill, give the casino entity another right of reply via a show cause notice. The show cause notice must describe the incident forming the basis of the grounds for taking disciplinary action. This would include, for example, any relevant findings from a State or Commonwealth investigation.
>
> A copy of the show cause notice must also be given to any other person who has an interest in the casino licence providing that person with an opportunity to make a submission.[36]

In response to Star's concern that the operations of an 'associate' may be investigated and considered to determine the suitability of a Queensland casino entity, the department advised that the Casino Control Act has always recognised that a casino entity's associates are relevant to this 'in order to prevent criminal involvement and influence, and maintain public confidence in the integrity of the industry'.[37]

The department explained that the Casino Control Act in section 31(1)(d) currently provides 'that it is a ground for taking action against the casino licence, casino lease or casino management agreement if any director, partner, trustee, executive officer, secretary or other person determined by the Minister to be associated or connected with the ownership, administration or management of the casino entity's operations is not, or ceases to be, a suitable person.'[38] Further:

> Section 30(2) of the Casino Control Act provides (and is further made clear by clause 9(7) of the Bill) that it is a ground for taking disciplinary action against a casino entity if, following a suitability investigation under section 30 of the Act, an associate of the casino entity is found to be unsuitable.[39]

The department provided additional information regarding why it considered it important that the Minister has the power to investigate the operations of a casino entity's associate:

> As casinos are vulnerable to criminal exploitation, it is essential that anyone who is associated or connected with the ownership, administration or management of the operations or business of a casino entity is a person of good repute (having regard to character, honesty, and integrity) and is otherwise suitable to be associated or connected with the management and operations of a hotel-casino complex or casino.
>
> Section 30 of the Casino Control Act permits probity investigations to be undertaken into associates from time to time. Where an associate is an entity, the Casino Control Regulation 1999 (see section 10 and schedule 3) allows the Minister to seek a diverse range of information intended to assist the Minister with such probity investigations including information about the associate's past and present activities, capital, ownership, financial accounts, investments, related bodies corporate and officers. In this regard, an associate's operations are a relevant consideration for determining the suitability of the associate.[40]

Star was also concerned that the Bill under clause 7 gave the Minister power to investigate the *associates of associates* of a casino entity to determine suitability to hold a casino license, with Star recommending the Bill be amended so that only associates could be considered in this regard.

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36 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 3-4.

37 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 4.

38 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 4.

39 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 4.

40 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 4-5.

The department explained why it was relevant to consider the findings of a State or Commonwealth investigation into an associate of a casino entity's associate 'particularly where the casino entity is part of a larger group of associated companies as is the case in relation to the Star operated casinos':[41]

> For example, the casino licensees of Treasury Brisbane and The Star Gold Coast are both subsidiaries of the parent company, The Star Entertainment Group Limited (Star) which makes Star an associate of the licensees of Treasury Brisbane and The Star Gold Coast. Star also owns and operates, through another subsidiary (The Star Pty Ltd), The Star Sydney casino. The Star Pty Ltd would be an associate of the associate (ie. Star) of the licensees of Treasury Brisbane and The Star Gold Coast.
>
> The New South Wales Independent Liquor and Gaming Regulation is currently investigating the continuing suitability of The Star Pty Ltd and its associates (the 'Bell Review'). Although the Bell Review is not due to submit its final report until 31 August 2022, evidence from the public hearings held have revealed a range of failures including significant anti-money laundering program weaknesses, deceptive and misleading conduct, and cultural and governance failings. In closing submissions, counsel assisting the Bell Review submitted that on the evidence presented, the licensee of The Star Sydney casino should be found not suitable to hold a casino licence, and that Star should be found not a suitable associate.
>
> In determining the suitability of the casino licensees of Treasury Brisbane and The Star Gold Coast, it would be relevant to consider any findings against The Star Sydney casino licensee, most especially if the practices adopted by The Star Sydney casino licensee were also adopted by the licensees of Treasury Brisbane and The Star Gold Coast, given they form part of the same group of companies.
>
> Although the Bill permits the findings of a State or Commonwealth investigation into a casino entity's associate's associate to be taken into account in determining the casino entity's suitability, the findings must relate to a *relevant* associate's associate. If it does not, then judicial review may be sought under the Judicial Review Act on the ground that the making of the decision was an improper exercise of power because an irrelevant consideration was taken into account in the exercise of the power.[42]

In relation to this, the committee notes Star's comments during the public hearing that the concerns that were raised in the Bell Inquiry in New South Wales have some relevancy to the Queensland casino environment:

> We have a group that overarches some of our procedures that look at all jurisdictions we operate in, which is New South Wales and Queensland, and therefore there have been some things of concern in New South Wales that would apply in Queensland and there are some things that have occurred that may not have here because of the different environment. It would be fair to say that there are obviously areas like anti money laundering et cetera. We have been focusing on improving our policies now over the past three or four years, once we realised there were some gaps in what we have done, that would apply in both areas. We committed to fixing those and addressing those, which we have done over the past four years.[43]

Committee comment

The committee notes the key concerns of Star regarding the provisions relating to the suitability of a casino operator and their associates. In regards to the matter of procedural fairness in decisions the Minister makes as to the ongoing suitability of a casino entity, the committee is satisfied with the department's advice that section 30 of the Casino Control Act is subject to the rules of natural justice, which includes the right to be heard. This would provide a casino entity and its associates with

41 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 5.

42 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 5-6.

43 Public hearing transcript, Brisbane, 11 July 2022, p 19.

sufficient notice of a possible adverse decision and an opportunity for their case to be heard. If a finding of unsuitability was found and the Minister intended to take disciplinary action against the casino entity, the Bill under clause 9(9) would provide the casino entity another right of reply via a show cause notice.

The committee notes the department's advice that the Bill does not change the current situation under the Casino Control Act where an associate may be investigated and the findings of that investigation considered to determine the ongoing suitability of a Queensland casino entity. The committee supports the reasoning that a casino entity's associates are relevant in determining suitability 'in order to prevent criminal involvement and influence, and maintain public confidence in the integrity of the industry'.[44]

In regards to Star's concerns that the Minister can consider findings from a State or Commonwealth inquiry about the associates of associates of a Queensland casino entity when making findings about that entity, the committee notes the department's advice that it is relevant to consider these findings into an associate of an associate particularly where the casino entity is part of a larger group of associated companies as is the case in relation to Star operated casinos. The committee notes that any findings considered must relate to a relevant associate's associate; otherwise, a judicial review may be sought under the *Judicial Review Act 1991*.

2.1.3.2 Duty to operate (new section 30A)

Clause 8 of the Bill amends the Casino Control Act to introduce a duty on a casino licensee, casino lessee and casino operator under a casino management agreement, and their associates, to comply with reasonable requests made by the Minister, chief executive or an inspector, and do everything necessary to ensure that the management and casino operations of the relevant casino operator are conducted in a manner that is honest and fair.[45]

Star raised its concern about the *duty to cooperate* provision in the Bill, which has 2 components:

> (a) per section 30A(2)(a) – a duty to comply with all reasonable requests by the Minister, chief executive or an inspector; and
>
> (b) per section 30A(2)(b) – a duty to "do everything necessary to ensure that the management and casino operations of the relevant casino operator are conducted in a manner that is fair and honest".

While Star agrees that those parties subject to the duty to cooperate should take steps to ensure that casino management and operations are fair and honest, it views that the proposed new section is stated as an 'absolute obligation' and would require the four parties subject to the duty to do so. As noted above, the 4 parties are a casino licensee, a lessee under casino lease, a casino operator under a casino management agreement, and any associates of these 3 entities. 'Associates' here can include directors and management of the casino licensee, lessee or operator. Star is concerned that if any entity or its associates 'do not do everything within their power to procure fair and honest management and operations, then that entity or associate is subject to penalties of up to $23,000'.[46]

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44 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 4.

45 Explanatory notes, p 31.

46 Submission 6, p 4.

For this reason, Star proposed that new section 30A(2)(b) of the Casino Control Act be amended so the duty to cooperate includes an obligation to 'do everything *reasonably* necessary' to ensure fair and honest management and operations. Star explained further:

> Indeed, such a change will ensure internal consistency within the new duty to cooperate – in 30A2(a), the duty to cooperate is said to include an obligation to comply with all reasonable requests by the Minister, chief executive or an inspector. 'Reasonableness' qualifications are common in legislative instruments, and The Star does not consider the inclusion of the same would detract from the objective of the amendment as stated in the Explanatory Notes.[47]

During the public hearing, Star elaborated on its reason for making this recommendation:

> In what was put forward we referenced the word 'reasonable' with regard to a change that may be considered. I do want to clarify what that means. From our perspective, we saw the original drafting as a bit black and white with regard to what the options would be. I will use one example. Gaming on a table game involves a lot of interactions with a dealer and a human element at the table. We train our dealers and we focus on making sure they know the right procedures, but there are some elements of human error that can happen that can impact on the integrity of the gaming. We manage that effectively.
>
> We also have the situation where guests can try to be fraudulent on a table or try to cheat. It is obviously in our best interests, as well as the state's, for us to be able to stop that. Obviously we do not want to be in a situation where you would do everything possible to stop it. That could actually mean to the point that you stop having dealers on a table and remove the human element, or you get to the point where you do not conduct gaming because you want to ensure there is no fraudulent activity. We just wanted to make sure there was a reference to the word 'reasonable' to say that we will do everything possible as long as it is not to that point where you actually say you do not conduct the game or you no longer have dealers on a table game and you only have electronic tables. We would think that is not the intent. The intent is on us as an operator doing everything within our control to do the right things in terms of fairness, honesty and integrity of gaming without getting to that point that you actually do not have the gaming.[48]

The department provided the following response to Star's concern and suggested amendment:

> The first limb of the duty to cooperate has been drafted in a way to ensure that the obligation to comply with the requests of the Minister or regulator only extends to requests that are reasonable, thereby protecting entities from unreasonable demands. Where a request is reasonable however, the entity will be expected to comply with the request.
>
> To amend the second limb of the duty to cooperate in the way suggested by Star so that entities are only required to do everything reasonably necessary to ensure the fair and honest conduct and management of casino operations would weaken the obligation, potentially inviting unnecessary debate over what constitutes "reasonable" efforts and would make the provision difficult to enforce.[49]

The department noted that new section 30A is modelled on a similar provision under section 25A of the *Casino Control Act 1991* (Vic). That provision states an absolute obligation, requiring a casino operator and its associates to comply with any reasonable request made by the Commission and do everything necessary to ensure that the management and casino operations of the casino operator are conducted in a manner that is honest and fair.[50]

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47 Submission 6, p 4.

48 Public hearing transcript, Brisbane, 11 July 2022, p 20.

49 Department of Justice and Attorney General, briefing paper, 7 July 2022, p 1.

50 Department of Justice and Attorney General, briefing paper, 7 July 2022, pp 1, 2.

Committee comment

The committee is satisfied that clause 8 of the Bill that would insert a duty to cooperate under new section 30A of the Casino Control Act as drafted supports the objective of the Bill to strengthen casino integrity and regulation.

2.1.3.3 Letter of censure (amended sections 31(3) & (4))

The Star expressed concern that clause 9 of the Bill would allow for a letter of censure to be issued by the Minister without a preceding show cause notice and that the letter of censure would become 'a permanent part of the Department's records about the casino entity, and will become public when published on the Department's website'. Star supported the measures in the Bill to lower the threshold for taking disciplinary action (including issuing a letter of censure) for the purpose of promoting public confidence and trust in a casino entity; however, it was concerned about the capacity of the letter to reflect negatively on a casino entity.[51]

The Star sought clarification that casino entities would be 'afforded an opportunity to comment on any proposed letter of censure or the Minister's concerns that may prompt such a letter to be issued', noting that 'consultation prior to the issuing of a letter of censure is consistent with the New South Wales and Victorian positions, where show cause notices precede letters of censure'.[52]

The department advised that 'as a matter of practice, consistent with the rules of natural justice, the Minister would provide a casino entity with an opportunity to comment on a proposed letter of censure'.[53]

2.1.3.4 Governor in Council's decision on disciplinary action is non-reviewable (section 31)

Star was concerned that proposed amendments to section 31(23) (clause 9 of the Bill) would 'insulate from review any decision by the Governor in Council to take any disciplinary action against a casino entity under section 31(12)'.[54] Star explained further:

> Whilst the supervisory jurisdiction of the Queensland Supreme Court may be available to review disciplinary action decisions of the Governor in Council affected by jurisdictional error (notwithstanding the privative clause), the amendments remove review rights that would ordinarily be available to a casino entity aggrieved by a decision by the Governor in Council to take disciplinary action against the entity.
>
> The amendment in effect would shield significant decisions from review. For example, a decision by the Governor in Council, to impose a pecuniary penalty of up to $50 million or to appoint an administrator

[51] Submission 6, p 5. NB: the explanatory notes on page 10 state the following in relation to what the Casino Control Act allows in relation to disciplinary action and proposed changes under the Bill: The current forms of disciplinary action available under section 31 of the Casino Control Act include a letter of censure, direction to rectify, suspension or cancellation of the casino licence, a direction to terminate the casino lease or casino management agreement, and appointment of an administrator. Short of suspending or cancelling the casino licence, or taking some action in relation to the casino lease or casino management agreement, there are limited repercussions for a Queensland casino entity found to have committed an act that is serious and fundamental in terms of the integrity of casino gaming. The Bill resolves this by introducing a pecuniary penalty.

[52] Submission 6, p 5. NB: in-text reference has been removed. Refer to original source for more information.

[53] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 6.

[54] Submission 6, p 5.

> will now (it is proposed) not be capable of review or challenge by the casino entity. This, it is respectfully submitted, introduces an undesirable element of risk into the casino market in Queensland.[55]

Star stated that the amendment would create 'a level of inconsistency by establishing a regime in which the same type of disciplinary action will be treated differently, in terms of amenability to review, depending on who has made the decision to take the disciplinary action' ie the Minister would be able to issue a judicially reviewable minor fine (of up to $5 million) while the Governor in Council would be able to issue a non-reviewable major fine (of up to $50 million). The Star questioned the rationale behind this.[56]

Star proposed that the position under the current legislation be retained so 'that the privative clause only purports to insulate a Cancellation Decision from review' and recommended amending the drafting of the proposed amendment to section 31(23) as follows:

> "*insert* – take disciplinary action against a casino entity under subsection (15) ~~this section~~".[57]

In its response to this matter, the department clarified the process for taking disciplinary action:

> Under the Casino Control Act, disciplinary action may be undertaken by the Minister. Where a ground for taking disciplinary action arises, the Minister may, following a show cause process in relation to the casino entity being disciplined, issue a letter of censure, give a written direction to rectify a matter. The Bill proposes that the Minister may, in addition to or in lieu of these existing disciplinary options, direct the payment of a pecuniary penalty of not more than $5 million. Alternatively, the Minister may recommend to the Governor in Council that a more significant disciplinary measure be enforced – specifically, that the casino licence be cancelled or suspended, or the casino lease or casino management agreement be terminated. The Bill adds that the Minister may also recommend an order be made for a pecuniary penalty of more than $5 million.
>
> The Governor in Council is therefore, required to decide whether or not to take disciplinary action only in the significant circumstances where the Minister makes a recommendation for action to be taken against the casino licence, casino lease, or casino management agreement, or for a high pecuniary penalty after having considered submissions and responses received as part of the show cause process. The Minister would only make such a recommendation where the Minister considers that the disciplinary measures available to the Minister would not adequately address the casino entity's conduct. The Governor in Council may also, as currently permitted under section 31(15) of the Act, at the Governor in Council's absolute discretion cancel or suspend a casino licence or direct the termination of a casino lease or casino management agreement at any time but only where the circumstances are so extraordinary that it is imperative in the public interest to do so.[58]

The department explained why it is proposed in the Bill that the Governor in Council's decision to take disciplinary action be non-reviewable:

> The object of the Casino Control Act is to ensure that, on balance, the State and the community as a whole benefit from casino gambling. Where an act or omission by a casino entity is so serious that it warrants disciplinary action by the Governor in Council, it is necessary, on public interest grounds, for the Governor in Council's decision to be final and non-reviewable so that the casino entity can be disciplined as quickly as possible and with certainty. The casino business is not a right but a revocable privilege. This

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55 Submission 6, pp 5-6. NB: in-text references have been removed. Refer to original source for more information.

56 Submission 6, p 6.

57 Submission 6, p 6.

58 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 7.

> highlights the importance that the State and the community place on ensuring casinos are conducted with the utmost integrity and fairness, and remain free from criminal influence and exploitation (which is a significant risk for this industry), and that harm from gambling is minimised.[59]

Committee comment

The committee notes Star's concern regarding the Bill's provision that a decision by the Governor in Council to take disciplinary action against a casino entity is non-reviewable and the Star's view that this has the potential to create an inconsistency because decisions by the Minister are reviewable. The committee notes the department's advice in regard to the process for taking disciplinary action and that a range of actions can be taken by the Minister prior to recommending to the Governor in Council that a more significant disciplinary measure should be enforced (ie the casino licence be cancelled or suspended, or the casino lease or casino management agreement be terminated) after the Minister has considered submissions and responses received as part of the show cause process. Under the Bill, the Minister may also recommend that a pecuniary penalty of more than $5 million be made. The committee notes the potential serious consequences for the casino entity if this recommendation is made.

However, the committee notes that 'Governor in Council' decisions are the Governor acting with the advice of the Executive Council, which comprises the Ministry and the Cabinet. The committee also notes the department's advice that the Minister would only make such a recommendation where the Minister considered that the other disciplinary measures available to the Minister would not adequately address the casino entity's conduct and that the Governor in Council may also, as currently permitted under section 31(15) of the Act, cancel or suspend a casino licence or direct the termination of a casino lease or casino management agreement but only where the circumstances are so extraordinary that it is imperative in the public interest to do so.

Finally, the committee supports the department's view that the object of the Casino Control Act is to ensure that the State and community as a whole benefit from casino gambling and that in a circumstance where an act or omission by a casino entity is so serious that it warrants disciplinary action by the Governor in Council, it is necessary, on public interest grounds, for the Governor in Council's decision to be final and non-reviewable so that the casino entity can be disciplined as quickly as possible and with certainty.

2.1.3.5 Retrospectivity – initiating incidents (new section 152)

New section 152(1), inserted by clause 32 of the Bill, provides that section 31 as amended by the Bill applies in relation to initiating incidents (ie. acts or omissions that form the basis of the grounds for taking disciplinary action) that happened before or after the commencement of the amendments.[60]

In relation to proposed new section 152(1), Star was concerned about the lack of definition for 'disciplinary action' in the Bill and the power under the Bill to impose a pecuniary penalty on a casino entity for an initiating incident that theoretically could have occurred any time since the entity first became a casino.[61] Star explained:

> "Initiating incident" is proposed to be defined as "the act or omission that forms the basis of the grounds for taking the disciplinary action". The term "disciplinary action" is not defined or referred to in the current Act, nor defined in the proposed amendments in the Bill. Nevertheless, the grounds for taking

[59] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 8.

[60] Explanatory notes, pp 52, 53; Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 8.

[61] Submission 6, p 6.

> what plainly seems to be "disciplinary action" are to be expanded by proposed amended section 31(1) to include contraventions of the Act, and the scope of what may be considered "disciplinary action" now appears to be provided for in sections 31(9) & (12) of the Act (though it is acknowledged that some but not all of the disciplinary actions are available under the current Act). Importantly, in the proposed sections 31(3) and (4), the Minister must assess initiating incidents as likely to be sufficiently addressed only by taking disciplinary action in order to enliven the power to give a show cause notice and take disciplinary action beyond issuing a letter of censure.
>
> The proposed section 152(1) of the Act has the potential to create significant commercial uncertainty and, arguably, unnecessary complexity for a casino entity. This is because such casino entity may be required to be subject to the detailed process and new consequences provided for in proposed sections 31 and 31A with respect to incidents which (theoretically) could have occurred any time since an entity first became a casino entity. Such potential consequences include a decision by the Governor in Council that a penalty of up to $50 million be imposed. This could arguably occur in circumstances where the initiating incidents may have already been subject to remedial or other investigative processes by OLGR under the Act (depending, presumably, on how formalised OLGR's action was at the time).[62]

Star argued for the following amendment to the Bill:

> Noting that the Act already provides a show cause process, amongst other actions, The Star would submit that no significant prejudice to the objectives of the Bill arises from section 31 and 31A applying to initiating incidents which occur following commencement of the Bill. Alternatively, the retrospective operation of the disciplinary action provisions could be limited such that casino entities cannot be subject to the new significant pecuniary penalties for past conduct.[63]

In response to Star's concern that new section 152(1) may allow disciplinary action to be taken in relation to initiating incidents, the department advised:

> If an initiating incident has been subject to a formal disciplinary action process under section 31 of the Act in the past, pursuit of action again on the same set of facts and circumstances risks being viewed as an improper exercise of power – specifically, exercising power in bad faith. New section 152(1) simply seeks to ensure that disciplinary action can still be taken in relation to past conduct where it is warranted such as where a particular initiating incident was not known to the regulator or if it was known, further new information has come to light changing the facts and circumstances upon which the initial disciplinary action was determined.[64]

The department emphasised that the State and community expects casinos to operate with 'the utmost integrity and fairness and remain free from criminal influence and exploitation (which is a significant risk for this industry)', and that the public 'expects that casino entities should take full responsibility for any misconduct regardless of when that misconduct may have occurred'.[65]

In relation to cost recoupment for disciplinary action, the department provided additional advice:

> Clause 10 of the Bill inserts a new section 31A which provides that if disciplinary action is taken against a casino entity, the chief executive may recover from the entity the reasonable costs and expenses incurred by the Department in assisting the Minister or Governor in Council in preparing for and taking the disciplinary action.

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62 Submission 6, p 6.

63 Submission 6, pp 6-7.

64 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 9.

65 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 9.

> To ensure fairness to casino entities, new section 152(1), inserted by clause 32 of the Bill, provides that new section 31A applies in relation to initiating incidents regardless of when they may have occurred but does not apply to disciplinary action started before the commencement of new section 31A. This means that costs cannot be recouped from a casino entity in relation to any disciplinary action started before the passage of the Bill and will need to be absorbed by the Department.[66]

Committee comment

The committee notes Star's view that the Bill has the potential to create commercial uncertainty and unnecessary complexity for a casino entity because 'disciplinary action' is not defined and the Bill provides the power to impose a pecuniary penalty for an initiating incident that could have occurred any time since the entity first became a casino.

The committee is satisfied with the department's advice that a) an initiating incident that has already been subject to a formal disciplinary action process under section 31 of the Act in the past will not be investigated again on the same set of facts and circumstances as it risks being viewed as an improper exercise of power – specifically, exercising power in bad faith; and b) new section 152(1) in the Bill will provide that disciplinary action can still be taken in relation to past conduct where it is warranted such as where a particular initiating incident was not known to the regulator or if it was known, further new information has come to light changing the facts and circumstances upon which the initial disciplinary action was determined.[67]

2.1.3.6 Other matters raised

The committee notes that Responsible Wagering Australia (RWA) supported all proposed amendments in the Bill that aim to strengthen casino integrity and regulation.[68]

The QHA urged caution 'for regulators to ensure that they are sufficiently educated, and that substantiated evidence is relied upon as opposed to 'allegations' when considering Queensland's trading environment'. QHA expressed particular concern about 'regulatory creep into hotel and club trading environments' as they are already tightly regulated.[69] In this regard, QHA stated that there was a significant difference between casinos and the hotel and club trading environments, particularly compared to other jurisdictions and gave the following examples:

> In Queensland it is quite starkly different when you consider that New South Wales has a $10,000 light-up limit—that is the maximum amount you can insert into a machine—while in Queensland it is only $199.99. In New South Wales there is a $10 maximum bet whilst in Queensland it is only $5. We already have a nation-leading system in Queensland. Queensland fears there is a propensity for regulatory creep across borders and industry sectors that is not necessarily evidence based.[70]

In response to QHA's view regarding the basis for taking regulatory action in the casino environment, noting that the 4 casinos in Queensland are members of the QHA,[71] the department stated that the outcomes of casino inquiries in New South Wales, Victoria and Western Australia into Crown Resorts

66 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 9-10.

67 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 9.

68 Submission 4, p 1.

69 Submission 3, p 1.

70 Public hearing transcript, Brisbane, 11 July 2022, p 9.

71 Submission 3, p 1.

Limited 'indicate the Australian casino sector as a whole requires enhanced regulation'.[72] The department continued:

> The casino integrity reforms contained in the Bill are considered to be examples of best practice casino regulation that will be applicable to all casinos and are not in response to any specific allegations or findings against Queensland casino operators.
>
> Many of the amendments will ensure appropriate action can be taken against casino entities if misconduct or breaches of the law have been substantiated such as the amendments to introduce new disciplinary fines and the ability to recoup the reasonable costs of taking disciplinary action against a casino entity.[73]

In response to QHA's comment about 'regulatory creep' into regulated hotel and club trading environments, the department stated that the amendments in the Bill relate to casino integrity and are specific to the Casino Control Act with key amendments relating to the process for taking disciplinary action against casino entities. The department noted that gambling in hotels and clubs primarily occurs via gaming machines, which is regulated under the Gaming Machine Act.[74]

2.2 Modernise gambling legislation

The Bill proposes amendments to various gambling legislation to reduce red tape and modernise the 'increasingly complex' legislative environment. The key amendments would facilitate the transition to safe cashless gambling. The Finkelstein Inquiry recommended that Crown Melbourne be directed to phase out the use of cash for gaming transactions over $1,000 as 'cash is a medium favoured by criminals and leaves casinos particularly vulnerable to money laundering'.[75]

In this regard, the Bill proposes to:

- remove any legislative barriers to considering and approving cashless payment methods (ie allow alternative payment methods such as EFT to be considered and approved)
- ensure that cashless systems and technology can be approved (with conditions if required) and made to undergo technical evaluation (if considered necessary) before their use in the gambling market
- provide a regulation making power dealing with the methods of payment that may be used in connection with the authorised gambling activity
- provide the chief executive with the ability to issue guidelines where there is no existing power under the relevant Act, which would allow guidance to be issued about the attitude the chief executive is likely to adopt on particular matters, such as the permitted functionalities of cashless gaming systems and payment methods
- provide a regulation making power to prescribe harm minimisation measures which must be implemented.[76]

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72 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 2.

73 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 2.

74 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 2.

75 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2.

76 Department of Justice and Attorney-General, written briefing, 8 June 2022, pp 2, 5, 6.

The Bill does not propose 'the immediate or mandatory use of cashless payments for gambling' but 'seeks to ensure cashless payment methods can be considered and authorised with appropriate control'.[77]

To address harm concerns, the cashless gambling element of the Bill 'is balanced by the introduction of broad conditioning powers to enable conditions to be placed on all equipment approvals'. The conditions that might be applied to such approvals may include:

- mandatory age verification requirements to ensure digital payment facilities are restricted to persons over 18
- limiting the amount of money that can be transferred to a gambling product via electronic means
- compulsory delay periods for accessing funds that can be used for gambling.[78]

To further address gambling related harms, the Bill also proposes a new regulation making power for each gambling Act:

> The power will allow the Minister to recommend a regulation be made that requires prescribed persons to implement a harm minimisation measure if the measure is necessary and appropriate to minimise potential harm from the relevant authorised gambling activity and is consistent with the objects of the relevant gambling Act, or if the measure is in the public interest. An example of how the power may potentially be used includes requiring licensed venues to install facial recognition technology to better identify self-excluders.[79]

Other proposed amendments include:

- removing the requirement for gambling rules to be published by gazette, instead requiring publication on a departmental website
- removing certain prescriptive employee licensing requirements under the Casino Control Act, sought by the casino sector, which will assist to facilitate a seamless online licensing process for individual casino employees
- removing a provision of the Casino Control Act that is incompatible with the HRA and the right to freedom of movement and the right to liberty and security. The provision currently permits a casino inspector or casino operator (including its servants or agents) to detain a person suspected of cheating or possessing unlawful equipment.[80]

2.2.1 Stakeholder comments

2.2.1.1 Approval process for cashless systems, technology and payment methods

In regards to introducing a cashless gambling framework that would allow alternative payment methods, ensure that cashless systems and technology can be approved and made to undergo technical evaluation if necessary, and provide a regulation making power dealing with the methods of payment, Clubs Queensland sought assurance that:

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77 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2.

78 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2.

79 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 2.

80 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 3.

- such approvals be done in consultation with peak industry bodies including Gaming Technologies Australia and club and hotel associations; and
- associated harm minimisation principles for such technology be developed:
    - in consultation with industry through the Technology and Environment working party formed to implement the Harm Minimisation Plan for Queensland 2021 – 2025 (the Plan); and
    - in accordance with the Regulatory Framework strategic pillar of the Plan, and be proportionate, risk based and led by agreed evidence.[81]

The department advised that developing harm minimisation principles for cashless technologies, including associated guidelines, would be undertaken in consultation with industry and the Responsible Gambling Advisory Committee (RGAC). The department noted that the RGAC is a tripartite industry, community and government advisory body to the Attorney-General on gambling-related issues and that the Regulatory Framework and Technology and Environment working party (working party) reports to the RGAC.[82]

QHA supported the amendments subject to appropriate consultation with industry.[83] The department advised:

> Consistent with the principles of regulatory best practice outlined in the Queensland Government Guide to Better Regulation, consultation with industry will ordinarily occur if the Government proposes to use the new regulation making powers under the Bill to amend subordinate legislation to regulate the methods of payment that may be used in connection with an authorised gambling activity.[84]

2.2.1.2 Regulation making power to prescribe harm minimisation measures

While Clubs Queensland was generally supportive of the proposed amendments that would allow the approval of cashless gaming systems, it did not support amendments to introduce a regulation making power about harm minimisation measures that licensees would be required to implement.[85] Clubs Queensland stated that such an amendment would not support the approach taken to harm minimisation as set out in the Gambling Harm Minimisation Plan for Queensland 2021-2025 (GHM Plan), which was developed in consultation with the RGAC and the working party.[86] Clubs Queensland was also of the view that the proposed amendment would 'not foster a collaborative approach to harm minimisation, especially since industry is funding, building and now trialling a MVSE [multi-venue self-exclusion] platform which will greatly enhance a licensee's ability to monitor excluded patrons'.[87] Both Clubs Queensland and QHA submitted that the amendment relating to harm minimisation is inconsistent with a proportionate, risk based and evidence led approach.[88]

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81 Submission 2, p 2.

82 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 11.

83 Submission 3, p 1.

84 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 10.

85 Submission 2, p 1.

86 See also, submission 3, p 3: QHA also expressed support for the GHM Plan, stating that it 'emphasizes the need for an increased focus on industry social responsibility and the adoption of technological, collaborative and systemic approaches to the minimisation of gambling-related harm'.

87 Submission 2, p 2. See also, submission 3, p 3: QHA and Clubs Queensland are currently investing in a MVSE system for the purpose of effectively managing problem gambling exclusions.

88 Submission 2, p 2.

Clubs Queensland also submitted that sufficient powers to implement harm minimisation measures exist under the Gaming Machine Act, and these align with the GHM Plan. Clubs Queensland explained:

> section 366 of the GM Act provides that the Minister may make regulations with respect to a wide range of matters, including the proper conduct of gaming. Further, the GM Act also provides an existing power to the Commissioner regarding conditioning licences and products. These existing powers and provisions are appropriate and provide a way in which regulation can be made by the Minister, in relation to harm minimisation, which is proportionate to risk.
>
> … it is important that the current procedure and power for the making of a regulation be maintained when considering the broad scope of what is being proposed. This includes relevant industry consultation, regulatory impact analysis and consideration by Cabinet.[89]

QHA agreed with the view that the current regulatory framework is sufficient to support the introduction of harm minimisation measures in a timely manner, providing the following explanation:

> The Queensland Government through the responsible Minister has successfully introduced a range of harm minimisation initiatives to minimise the potential for harm from gambling including requirements for gambling providers to offer self-exclusion; mandatory responsible service of gambling training for industry staff who perform gambling duties; caps on gaming machine numbers; and bans on certain wagering inducements. These have been successfully implemented across a class of licensees in a timely manner through amendments to the Gaming Act. In addition, harm minimisation measures have been implemented via licence conditions to specific licensed venues where the risk warrants a specific response.
>
> There is no barrier for the Minister via the existing legislative-change process (as required) to prescribe further licence conditions by regulation. Currently, the Queensland Government through the Minister has a broad power to make regulations under s366 of the Gaming Act. These include particular harm minimisation measures applicable to the activities of holders of gaming licences such as the management, use, supervision, operation and conduct of gaming.[90]

The committee notes the advice from Clubs Queensland and QHA that, while they were consulted in relation to the harm minimisation measures proposal, the Queensland Government did not consult them on any harm minimisation provisions relating to draft regulation.[91] Clubs Queensland stated:

> The harm minimisation plan for Queensland does specifically reference that any technology and harm minimisation measures need to be risk based, proportionate and led by evidence. The difficulty with a power such as this, as it stands, goes to the point made earlier: we still do not have sufficient information in relation to what that might look like.[92]

The department advised that it had consulted on the proposal to introduce harm minimisation measures, including that it had provided detailed written information to Clubs Queensland and QHA about the process for making subordinate legislation in Queensland. The department confirmed it had not:

> undertaken any consultation on specific harm minimisation measures to be prescribed under the proposed regulation making power… because the Government has no power to make such a regulation until the Bill is passed, and moreover, no specific measures have yet been identified to be prescribed…

89 Submission 2, pp 2-3.

90 Submission 3, p 2.

91 Public hearing transcript, Brisbane, 11 July 2022, pp 5, 10.

92 Public hearing transcript, Brisbane, 11 July 2022, p 7.

any harm minimisation regulation made under the proposed power will be developed in accordance with the consultation and regulatory impact analysis requirements of the *Queensland Government Guide to Better Regulation*.[93]

In responding to the issues raised by Clubs Queensland and QHA, the department firstly advised the following reasons why a specific regulation making power relating to harm minimisation is preferred:

1) Subordinate legislation is preferred over primary legislation where a matter is technical or detailed in nature as may be the case with particular harm minimisation measures. There are still however, accountability requirements associated with subordinate legislation as regulations:

- are drafted by the Office of the Queensland Parliamentary Counsel;
- must have sufficient regard to fundamental legislative principles as outlined under the *Legislative Standards Act 1992*;
- are subject to the notification, tabling and disallowance provisions of the *Statutory Instruments Act 1992* (Statutory Instruments Act);
- are subject to scrutiny by the appropriate parliamentary portfolio committee; and
- automatically expire after 10 years under the Statutory Instruments Act unless action is taken to remake them (which only usually occurs after a sunset review is undertaken to evaluate the continuing need, effectiveness and efficiency of the regulation).

2) Although venue licence conditions have been used in the past to address some harm minimisation issues, the proposed regulation making power relating specifically to harm minimisation would provide broader scope in that it allows for more effective and efficient implementation of harm minimisation measures that are generically appropriate to all licences or a class of licences, unlike the current licence conditioning process.

3) Relying on existing regulation making powers to implement harm minimisation measures would be restrictive as the measures would need to specifically relate to the matters covered under the existing regulation making head of power. For example, section 366 of the Gaming Machine Act enumerates the topics a regulation may be made about, including matters to enable the proper conduct of gaming (section 366(2)(j)), and supplying gaming equipment (section 366(2)(p)). While it may be argued that some harm minimisation measures could be prescribed under these heads of power, it is considered that it is clearer and more transparent to include a specific harm minimisation regulation making power that would allow harm minimisation measures to apply to any aspect of gaming regulation.

4) The proposed regulation making power under the Bill specifically requires that a harm minimisation measure must be necessary and appropriate to minimise potential gambling harm and be consistent with the objects of the Act, or in the public interest, before the Minister can recommend to the Governor in Council that a regulation be made. No such explicit limitations apply under existing regulation making powers including section 366 of the Gaming Machine Act.

5) It should be noted that the Bill proposes a consistent harm minimisation regulation making power for each gambling Act, not just the Gaming Machine Act. Other gambling Acts are more restrictive with respect to the topics a regulation may be about. For example, the Wagering Act allows a regulation to be made about fees (section 312(2)(a)), or investments, player accounts, vouchers used instead of money, outcomes of events, payouts, or setting aside and distributing part of the investments made using a totalisator (section 312(2)(c)(i)-(vi)). In this case, a specific harm minimisation power is required as the

[93] Department of Justice and Attorney-General, correspondence dated 15 July 2022.

existing regulation making power is not sufficient to enable the Government to require the wagering licensee under the Wagering Act to adopt necessary and appropriate harm minimisation measures.

6) The existing regulation making powers under the gambling Acts provide that a regulation may prescribe a maximum of 20 penalty units ($2,757) for a contravention of a regulation (see section 127(3) Casino Control Act, section 186(2)(b) Charitable and Non-Profit Gaming Act, section 366(3) Gaming Machine Act, section 263(2) Interactive Gambling (Player Protection) Act, section 243(2)(b) Keno Act, section 228(2)(b) Lotteries Act, section 312(2)(b) Wagering Act). By contrast, the Bill proposes a maximum penalty of 200 penalty units ($27,570) if a harm minimisation measure is not implemented as prescribed, to reflect the importance of ensuring the potential harms that may arise from gambling are addressed.[94]

In response to concerns that introducing a harm minimisation regulation making power would create uncertainty, potentially circumvent important protections and negatively impact confidence, industry investment and decrease gaming business values in Queensland, the department advised the Bill provides that 'a harm minimisation measure can only be prescribed if the measure is necessary and appropriate to address the risk of harm and it is consistent with the objects of the relevant authorising Acts, or it is otherwise in the public interest to prescribe the measure'. The department further noted that the object of each gambling Act is to ensure that, on balance, the State and the community as a whole benefit from the authorised gambling activity'. The department stated that as part of the regulatory impact analysis process, consideration must be given to the potential costs to business and the results of stakeholder consultation prior to implementing any regulatory proposal. Finally, the department considered 'that the ability to prescribe a class of persons that must implement a harm minimisation measure increases certainty by openly and clearly articulating the obligations of gambling providers with regards to harm minimisation'.[95]

In response to comments from Clubs Queensland and QHA that the proposed harm minimisation regulation making powers do not support the approach taken in the GHM Plan, the department advised that the proposed powers would be consistent with the GHM Plan because they:

- seek to bolster regulatory agility to deal with emerging technologies and any other trends that may increase the risk of gambling harm;
- provide the Government with the ability to strengthen harm minimisation controls where warranted;
- address community expectations that the Government can and will adequately protect Queenslanders from gambling harm; and
- are arguably more transparent and consistent than conditioning a decision or a licence for harm minimisation, as the process for making or amending a regulation is intended to ensure that adequate consultation and analysis will be given to a proposed measure.[96]

The department also advised that it intends to consult with the RGAC in relation to any future harm minimisation measure proposed to be prescribed under a regulation, as the RGAC has a lead role in implementing the GHM Plan.[97]

94 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 11-13.

95 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 16, 17.

96 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 17.

97 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 17.

In response to QHA's view that it was not difficult to pass legislation within the existing regulatory framework in a timely manner to address issues,[98] the department stated that 'the intent of the proposed regulation making power is to future proof the gambling Acts and provide greater regulatory agility to deal with emergent risks of harm arising from new gambling and payment technologies' and that 'regulation (subject to consultation and regulatory impact analysis) is considered an appropriate legislative instrument to give effect to this intent'.[99]

QHA also submitted that 'any regulation which is applicable to a class of licensees should be considered to be of significance (meeting the significant subordinate legislation test threshold) and therefore be subject to the appropriate protections such as consultation and consideration by Cabinet and Regulatory Impact Statement.[100] In response, the department advised the following about conducting a regulatory impact analysis (RIA) and what could be expected in terms of introducing a harm minimisation measure:

> In accordance with the *Queensland Government Guide to Better Regulation*, consultation and regulatory impact analysis must be undertaken for new regulatory proposals. The complexity and significance of the issue, and the size of the potential impact determine the extent of the consultation and analysis undertaken.
>
> Consistent with the Guide, a harm minimisation measure will likely require the preparation of a Preliminary Impact Assessment (PIA) for consideration by the Office of Best Practice Regulation (OBPR). Relevant considerations to be included in the PIA are:
>
> - whether there are viable alternatives to regulation;
> - the costs and benefits of the proposed measure;
> - whether the proposed measure is proportionate to the harm; and
> - stakeholder views.
>
> If OBPR determines from the PIA that a harm minimisation measure will likely result in significant adverse impacts, then further analysis and engagement with the community would be required through a Consultation Regulatory Impact Statement (RIS).
>
> OBPR assesses the adequacy of a Consultation RIS before it is submitted to Cabinet for approval. The consultation feedback is subsequently used to inform a Decision RIS which is also assessed by OBPR and approved by Cabinet.
>
> The application of the RIA process to all proposed significant harm minimisation measures will ensure that there is a systematic approach to consulting and assessing the impacts of a measure so that the measure is only introduced if it is necessary.
>
> <u>Cabinet approval</u>
>
> Significant subordinate legislation is defined by the *Cabinet Handbook* as subordinate legislation that:
>
> - requires a RIS;
> - affects a policy area that is politically sensitive;

98 Submission 3, pp 2, 3.

99 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 14.

100 Submission 3, p 3.

- involves major government expenditure; or
- the Office of Queensland Parliamentary Counsel has refused to certify.

If a proposed regulation prescribing a particular harm minimisation measure meets any of these criteria, it will be submitted to Cabinet prior to being forwarded to Executive Council (who makes the regulation), in accordance with the *Cabinet Handbook*.[101]

Clubs Queensland and QHA stated that the Bill would undercut the ability to self-regulate through the Responsible Gambling Code of Practice (RGCP), which is currently under review as part of the GHM Plan.[102] Clubs Queensland contended that 'the proposed amendments have the potential to render the RGCP redundant by creating a power which will result in mandated, specific harm minimisation measures', which is in conflict with the Plan and contrary to its view that the 'approach to harm minimisation should ensure the whole of the industry can and will implement and actively manage changes'.[103] QHA supported this view.[104]

In this regard, the department advised that the RGCP 'will still be maintained to encourage a proactive, collaborative, whole-of-industry and best practice approach to the promotion of responsible gambling practices'. However, the department advised that while the voluntary code of practice was useful for encouraging the proactive adoption of harm minimisation measures 'in the early years of the Government's public health strategy' for these measures, the RGCP does not enable harm minimisation measures to be mandated.[105] The department provided the following example:

By way of illustration, the proposed harm minimisation regulation making powers will allow for some future measures to be mandated where it is considered that a measure is necessary to minimise gambling related harm, but where it is unlikely to be voluntarily adopted by a number of licensees, leading to inequities and an unlevel playing field for responsible industry participants.[106]

Committee comment

The committee notes the concerns raised by Clubs Queensland and QHA in relation to the Bill's proposed introduction of a regulation making power to prescribe harm minimisation measures.

The committee is satisfied with the department's response to the concerns as summarised below:

1. A specific regulation making power relating to harm minimisation is preferred because—

   a) the scrutiny and accountability it affords and that subordinate legislation allows more readily for a matter that is technical/detailed in nature, as these measures could be, to be incorporated into law.

   b) it would allow more effective and efficient implementation of the measures that are generically appropriate to all licences/class of licence, unlike the current licence conditioning process.

101 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 14-16.

102 Submission 3, p 3; submission 2, p 3.

103 Submission 2, p 3.

104 Submission 3, p 3.

105 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 18.

106 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 18.

c) it would be clearer and more transparent and allow harm minimisation measures to apply to any aspect of gaming regulation.

d) the Bill specifically requires that any measure must be necessary and appropriate to minimise potential gambling harm and be consistent with the objects of the Act, or in the public interest, before the Minister can recommend that a regulation be made (no such explicit limitations currently exist).

e) the harm minimisation regulation making power would apply across each gambling Act, not just the Gaming Machine Ac.

f) the Bill would allow for a maximum penalty of 200 penalty units (currently 20 penalty units for a contravention of a regulation), which reflects the importance of addressing the potential harms that may arise from gambling.

2. In relation to the impact of a regulation making power on increasing uncertainty for industry, firstly, the measures can only be prescribed if necessary, as noted above, and as part of the RIA process, government must consider potential costs to business and consult with stakeholders.

3. The proposed harm minimisation regulation making power is consistent with the Gambling Harm Minimisation Plan.

4. While the voluntary Responsible Gambling Code of Practice encourages the proactive adoption of harm minimisation measures, it does not enable harm minimisation measures to be mandated, which could lead to inequity across the industry.

5. Through this regulation making power, the Bill aims to 'future proof' the gambling Acts by providing 'regulatory agility to deal with emergent risks of harm arising from new gambling and payment technologies'.[107]

2.2.2 Smoke-free gaming rooms

Cancer Council Queensland submitted that the Bill should be amended to remove sub-section 26R(2)(a) of the *Tobacco and Other Smoking Products Act 1998* that allows 'premium gaming rooms' to be the only public enclosed space that is not subject to smoke-free laws. Cancer Council Queensland argued that this amendment would align with the object of the Casino Control Act to minimise the potential for harm from casino gambling as exposing patrons and workers to tobacco smoke is harmful and a known cause of cancer.[108] The department advised that the submission is considered outside the scope of the Bill.[109]

Committee comment

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.

[107] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 14.

[108] Submission 7, p 2.

[109] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 29.

2.3 Introduce a framework for wagering on simulated events

The Bill proposes to amend the *Wagering Act 1998* (Wagering Act) to authorise the sports wagering licensee to conduct wagering on simulated sport and simulated racing events and related contingencies that are approved by the Minister. UBET Qld Limited (UBET), a subsidiary of Tabcorp Holdings Limited, is the exclusive Queensland sport and race wagering licensee under the Wagering Act.[110] The department explained the amendments further:

> The Bill confines the definition of 'simulated event' to a race or sporting event simulated by a computer where the outcome is solely determined by a random number generator. To ensure the fairness and integrity of the product, the simulated event random number generator will be brought within the existing regime under the Wagering Act and Wagering Regulation 1999 for technical evaluation and equipment approvals.
>
> The amendments proposed by the Bill will allow UBET to offer the same wagering products offered by Tabcorp subsidiaries in New South Wales, Victoria and the Australian Capital Territory, subject to Ministerial approval of those products.[111]

The Bill addresses the potential risk of gambling related harm as follows:

> the framework proposed by the Bill only allows bets to be taken on simulated events and contingencies from within approved wagering outlets and agencies. The Bill makes it an offence for a licence operator or a wagering agent to accept a wager on a simulated event or simulated contingency by phone, or other form of communication (e.g. online or via a betting app). Consistent with existing offence provisions in other gambling legislation, a maximum penalty of 200 penalty units will apply.[112]

2.3.1 Stakeholder comments

While QHA supported this aspect of the Bill,[113] RWA cautioned against the immediate implementation of the framework for simulated events under the Wagering Act as proposed in the Bill 'without further consideration of the unintended consequences and broader impact on the wagering industry'. RWA stated that the Bill would 'entrench' an unfair competitive advantage for one wagering operator.[114]

The department responded that the Bill 'does not automatically allow the sports wagering licensee to start offering wagering on simulated events or simulated contingencies in Queensland'. The Bill provides 'a framework for the detailed consideration and Ministerial approval of virtual wagering products' and 'for the evaluation and approval of underlying wagering equipment (i.e. the simulated event random number generator)'. The department considers this approach, which is intended to allow the impacts of specific virtual wagering products to be considered on a case by case basis, to adequately address RWA's concern.[115] The department also noted:

> The Bill provides additional safeguards by allowing the chief executive to condition equipment approvals. Additionally, Ministerial approval of a simulated event or simulated contingency may be withdrawn for any reason the Minister considers appropriate, including if the simulated event or simulated contingency is contrary to the public interest. A decision of the Minister to withdraw approval is not reviewable.

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110 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 3.

111 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 3.

112 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 3.

113 Submission 3, p 2.

114 Submission 4, p 2.

115 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 22.

> The Bill provides that amendments relating to the simulated events framework commence on a day to be fixed by proclamation. The delayed commencement will enable the development of appropriate administrative systems to assess and approve simulated events and associated equipment.
>
> Any impacts on the broader wagering industry are likely to be extremely minor given that a comparable form of virtual wagering already occurs under the Keno Act in the form of Keno Racing. The amendments contained in the Bill are necessary to allow an alternative to Keno Racing that is not reliant on the Keno draw.[116]

RWA also made the following comments in regards to this amendment:

- RWA queried how proposed changes to wagering taxation and racing industry contributions will support a fair market approach.
- RWA sought confirmation about the proposed tax treatment of simulated racing revenue as it would not generate Queensland race field fee payments for Racing Queensland.
- RWA recommended that the commercial performance of a licence holder be a key pillar of determining the fitness to hold a licence and queried whether poor commercial performance ought to be a trigger for considering broader reform to licensing arrangements that promotes greater competition and consumer choice.
- RWA considered a payment for a monopoly right to conduct wagering on simulated events should be paid in addition to the application of the point of consumption tax.
- RWA queried whether 'a system of exclusive monopoly licences' poses integrity risks for Queensland.[117]

In relation to RWA's comments about exclusive rights, the department advised that the Bill provides a framework for the approval of wagering on simulated events and simulated contingencies, but that matters relating to existing exclusivity arrangements for wagering in Queensland are outside the scope of the Bill.[118]

In relation to RWA's comments about the impact the changes to wagering taxation and racing industry contributions will have on key industry agreements between Racing Queensland and UBET, the department noted that on 6 June 2022, the Queensland Government announced a 'sustainable funding model for Queensland's racing industry' and that the proposed model is not given effect or affected by this Bill. Given this, matters relating to broader taxation and racing industry funding contributions were outside the scope of the Bill.[119]

The department advised the following in relation to RWA's query regarding the proposed tax treatment of simulated racing revenue:

> wagering on virtual events will be captured by the *Betting Tax Act 2018* and, as a result, wagering on virtual events will be subject to the place of consumption tax rate provided in that Act.

[116] Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 22-23.

[117] Submission 2, pp 2, 3.

[118] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 21.

[119] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 23.

> Any arrangements between the wagering provider and the Queensland Racing industry, in the absence of race field fees, may become a relevant consideration when the Minister is considering any proposed virtual wagering product.[120]

In regard to RWA's recommendation that commercial performance be a key consideration of fitness to hold a wagering licensee, with poor commercial performance triggering broader reform to licensing arrangements, the department advised this was outside the scope of the Bill but noted that the Wagering Act 'already contains probity and suitability requirements for wagering licensees, including business and executive associates, to ensure the ongoing suitability of the licensee'.[121]

In response to RWA's comment that consideration be given to a payment for a 'monopoly right' to conduct wagering on simulated events in addition to the application of the point of consumption tax, the department advised issues relating to taxation arrangements and exclusivity fees were outside the scope of the Bill; however, the department noted that 'revenue from wagering on simulated events and simulated contingencies will be taxed in the same way as other wagering products under the *Betting Tax Act 2018*'. In addition, the department advised that 'gambling exclusivity fees are generally commercial considerations and it remains open to the Government to negotiate such a fee for Tabcorp's limited expansion into wagering on virtual events'.[122]

The department advised that RWA's comment that the system of exclusive monopoly licences poses integrity risks for the State and an inherent conflict of interest was outside the scope of the Bill.[123]

RWA also recommended that a broader inquiry be conducted into wagering license holders in the gambling space for the purpose of supporting the enactment of the integrity measures across the sector, as proposed in the Bill.[124]

The department advised that the Bill aims to provide a framework for the approval of wagering on simulated events and simulated contingencies and that concerns relating to broadening the application of integrity measures to wagering licensees were considered outside the scope of the Bill. The department noted that 'wagering licensees, including business and executive associates, are already subject to existing probity and suitability requirements under the Wagering Act aimed at ensuring the ongoing suitability of the licensee to conduct wagering operations in Queensland'.[125] The department also noted:

> the enhancements to the Casino Control Act in the Bill are to ensure casinos operate with the highest standards of integrity and accountability at all times. The pre-emptive integrity amendments seek to ensure failings identified by inter-jurisdictional inquiries do not become prevalent in Queensland casinos. Given these inquiries related to casinos, specifically Crown Resorts Limited subsidiaries, it is not considered appropriate to expand their application to wagering licensees.[126]

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120 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 23-24

121 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 24.

122 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 23.

123 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 24.

124 Submission 4, p 2.

125 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 21-22.

126 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 21-22.

Committee comment

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.

2.4 Extend New Year's Eve gaming hours

Currently under existing provisions of the *Liquor Act 1992*, all liquor-licensed venues in Queensland may trade on New Year's Eve until 2am on New Year's Day, unless earlier trading hours are stated on a particular licence.[127] The department advised:

> Longstanding administrative arrangements have enabled licensees with gaming machine approval to continue gaming at the venue until 2am on New Year's Day as an ancillary service.
>
> To reduce unnecessary administrative burden, the Bill amends the Gaming Machine Act to align and fix gaming machine hours with automatic extended liquor trading hours for New Year's Eve. The amendments also meet public expectations regarding the availability of entertainment options on one of the most celebrated nights of the year.[128]

Clubs Queensland and QHA supported the extension of gaming hours on New Year's Eve.[129]

2.5 Introduce a cross-border recognition scheme for charitable fundraising

Charities and not-for-profits are increasingly operating across state borders and online. To reduce the regulatory burden to the sector in regards to compliance with fundraising requirements across jurisdictions, the Bill amends the *Collections Act 1966* (Collections Act) to introduce a cross-border recognition scheme for charitable fundraising. The department explained further:

> Under the scheme, referred to in the Bill as 'deemed registration', a charity's registration with the Australian Charities and Not-for-profits Commission (ACNC) will be recognised under the Collections Act, entitling the charity to fundraise in Queensland. The rules that govern how fundraising must be conducted in Queensland will continue to apply to deemed registrants.
>
> The cross-border recognition scheme was endorsed by the Council on Federal Financial Relations (comprising the Commonwealth and State Treasurers) in December 2020 and implementation in Queensland will broadly align with the approach of South Australia and Victoria.[130]

In addition, the Bill proposes to expedite fundraising authorisations for charities that are not registered with the ACNC by removing the ability for a member of the public to object to an application for charity registration. The amendment will remove the requirement for applications to be advertised for 28 days.[131] The department justified the removal of the requirement as follows:

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127 Department of Justice and Attorney-General, written briefing, 8 June 2022, pp 2, 3.

128 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 4.

129 Submission 2, p 1; submission 3, p 2.

130 Department of Justice and Attorney-General, written briefing, 8 June 2022, p 4.

131 Explanatory notes, p 7; Department of Justice and Attorney-General, written briefing, 8 June 2022, p 4.

> Public objections are considered to be of little efficacy with approximately less than 2% of charity applications receiving an objection each year. The Bill will not affect the ability for a member of the public to apply to have a charity removed from the register of charities, *post*-registration.[132]

2.5.1 Stakeholder comments

2.5.1.1 Cross-border recognition scheme

QLS supported the amendment to introduce a cross-border recognition scheme for charitable fundraising and also called for a 'complete review of fundraising legislation in Queensland and its harmonisation with other jurisdictions'. Although the scheme will include charities, QLS was concerned that it did not include the 'many community organisations that do not qualify for charity status, such as sporting bodies, service clubs, neighbourhood centres and interest associations that are regarded as charities, even though they are not for profit entities'.[133]

Justice Connect also supported the amendment but called for further reforms 'to harmonise and simplify laws for charities and not-for-profits across Australia' as regulation is out of date with how fundraising activities are conducted. Justice Connect encouraged the Queensland Government to participate in the process to develop a framework for charitable fundraising rules so a national principles-based approach can be implemented as a priority. In addition, Justice Connect endorsed the comments from QLS in its submission.[134]

During the public hearing, QLS and Justice Connect again called for a review of fundraising legislation, with Professor McGregor-Lowndes for QLS stating:

> I would underline that, although it is not in the scope of this bill, the parliament and the department should really consider overhauling fundraising legislation. We are at a time now when the Queensland government has agreed to harmonise with the other states. However, it is time for not only harmonisation but also a complete redraft of the act. The act is showing its age because it is not in the appropriate modern drafting style, which usually people can understand readily without having to go to a lawyer. It would be great to have an act that was user-friendly.
>
> It would also be great to have an act that took cognisance of the fact that we now have computers. Even the smallest organisations do not use impress cashbook carbon receipts. It has all changed. It would be a great service for the non-profit sector in Queensland to have all of that updated. It would also help the department. If you are trying to find a bit of carbon to make an impress cash receipt carbon copy and you cannot find any carbon paper in the newsagent, it tends to make you think that the rest of the act may not be worth complying with so you just give it away. It makes it very hard for the Office of Fair Trading to enforce and to nudge people into complying with a modern act. I really do beseech you to find a bit of time in the parliamentary calendar to do this bit of facilitation of non-profit enterprise in Queensland.[135]

Professor McGregor-Lowndes continued, stating 'a complete revamp of the whole Collections Act' was needed 'to bring it all together to include non-profits',[136] and provided the following example of how not-for-profits were being negatively impacted by the current legislation:

> The charities lodge their returns with the ACNC, so it will be a one-stop shop and they can all come over and get a fundraising licence. We are not quite sure on the regulations because they are not yet

[132] Department of Justice and Attorney-General, written briefing, 8 June 2022, p 4.

[133] Submission 1, pp 1, 2.

[134] Submission 5, pp 3, 4

[135] Public hearing transcript, Brisbane, 11 July 2022, p 2.

[136] Public hearing transcript, Brisbane, 11 July 2022, p 2.

> promulgated, but there will be some dispensations for charities that non-profits will not have. We are not exactly sure what they will be, but there will be some differences. Every time you have a difference it makes it difficult for people on the ground to work out whether they are a charity or whether they are a non-profit and what provisions they are going to have to comply with. Our suggestion is that after this is passed, because it is time sensitive to align it with the returns for lodging with the ACNC, you have a look at the whole act and make sure that non-profits are dealt with basically in the same way as charities will be under the new regulations, which I believe are going to come out in August.[137]

Sue Woodward from Justice Connect also gave an example of the impact it has on fundraising organisations:

> I wanted to give you a tangible example of the impact of the time wasted. One state peak life body estimated that complying with the seven different state fundraising regulations cost the equivalent of 25 to 30 rescue boats or 10,000 lifeguard hours per year. I think that is a really easy way to summarise the impact we are concerned about. I think it is also really important to remember that this red tape has to be deciphered by volunteers sitting at their laptop, usually after they have put their kids in bed. They have to fathom the Queensland Collections Act and regulations that predate man landing on the moon and predate the internet, and they do not even anticipate the acceleration of online fundraising that has occurred, as we all know, since face-to-face activities have not been possible during COVID. They were written prior to the Australian Consumer Law, and that is a law that we know protects donors. It already applies to donations. If you are misled, deceived or coerced, you have remedies under the Australian Consumer Law. It also predates the establishment of the specialist regulator, the national charity regulator, the Australian Charities and Not-for-profits Commission, the ACNC. The ACNC already registers charities and collects and shares information on their activities and finances. Importantly, its role is to help follow the money to make sure it is being used for charitable purposes. Remember, this is a volunteer, after the kids are in bed, who is just working out what the laws are in Queensland. They then have to think what applies in other jurisdictions, simply because they have a 'donate' button on their website.[138]

In response, the department advised that a review of the Collections Act is outside the scope of the Bill; however, the department is participating in inter-jurisdictional discussions aimed at further harmonising fundraising laws across Australia.[139]

Committee comment

The committee notes the support and arguments from key organisations and experts regarding a review of fundraising legislation. While the committee acknowledges a review of fundraising legislation is outside the scope of the Bill, it is of the view that consideration be given to a review in the future and, for this reason, makes the following recommendation.

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.

[137] Public hearing transcript, Brisbane, 11 July 2022, p 2.

[138] Public hearing transcript, Brisbane, 11 July 2022, p 14.

[139] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 25.

2.5.1.2 Definition of an 'excluded entity' and the scope of the term 'religious denomination'

Clause 52 inserts new Part 6A into the Collections Act to provide for the registration of Commonwealth registered entities under the Collections Act. New section 23A(1), which provides the foundation of the deemed registration framework, identifies that Commonwealth registered entities (which are defined in schedule 2), other than excluded entities, will be subject to the deemed registration framework. 'Excluded entities' are those that cannot obtain deemed registration due to already being subject to specific fundraising provisions or exemptions under the Collections Act or another Act.[140]

QLS expressed concern about how the definition of *excluded entity* as it relates to a 'religious denomination' will be interpreted if the Bill is passed, noting that the current departmental practice is 'to give a wide meaning to the term' of *religious denomination* as it is defined in the Collections Act as to 'include a denomination's social welfare agencies, which may be separate legal and tax entities, such as schools, hospitals, aged care and community welfare organisations'.[141] QLS noted that these organisations are generally separately registered with the ACNC as charities in their own right.[142]

In this regard, QLS recommended the definition of *excluded entity* be amended to reflect the current practice, or that assurance be given that the current approach is intended to continue.[143]

The department advised that the status quo would be maintained, stating:

> Clause 52 of the Bill provides for *excluded entities*, which are unable to obtain deemed registration. This is necessary to ensure entities that already have a statutory authority to conduct fundraising (such as Parent and Citizen Associations), and entities that are exempt from the Collections Act (such as religious denominations), are not inadvertently captured by the scheme.
>
> Were a religious entity able to obtain deemed registration, there would be confusion as to whether the entity was to be regulated as a deemed registrant, or whether the entity remained exempt from the Act. The intention of prescribing 'religious denominations' as an excluded entity is therefore to maintain the status quo and ensure that these entities are not required to obtain fundraising authorisation under the Collections Act, and that the Act is not applied to appeals for support conducted by the entity.
>
> It is intended the Department's current treatment of religious denominations under the Collections Act will be maintained following commencement of the deemed registration provisions. However, the Department notes individual matters will continue to be considered on their circumstances.[144]

2.5.1.3 Other matters

Justice Connect recommended that the scheme be extended to recognise the annual reports provided to the ACNC as satisfying the annual reporting requirements under the Collections Act for those ACNC registered charities. Justice Connect explained that this approach, also adopted in South Australia, Victoria and the Australian Capital Territory, would 'reduce the regulatory burden for charitable fundraisers and increase regulatory harmonisation across jurisdictions'.[145]

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140 Explanatory notes, p 55.

141 Submission 1, p 2. Section 5 of the Collections Act defines religious denomination as meaning: A religious body or religious organisation declared by the Governor-General by proclamation pursuant to the *Marriage Act 1961* (Cth) to be a recognised denomination for the purposes of the Commonwealth Act.

142 Submission 1, p 2.

143 Submission 1, p 2.

144 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 25-26.

145 Submission 5, p 2.

Justice Connect acknowledged the government's view that the 'state should still have oversight over the conduct of fundraising' but advised:

> we do not consider that adopting a 'report once, use often' model in relation to financial reporting will detract from the regulator's ability to regulate improper conduct. Information sharing arrangements between the ACNC and state regulators are in place in South Australia, Victoria, the ACT and NSW and we do not see why a similar arrangement cannot be implemented in Queensland. Further, the power for the Chief Executive to require preparation and lodgement of a financial return (section 33A) can be used if there is any case of concern, without requiring it of every charity every year.
>
> **In our view, a scheme which eases the burdens on charities at the point of registration but not reporting is a missed opportunity to harmonise fundraising laws in step with other jurisdictions and ease the burden for charities.**
>
> Implementing the cross-border recognition model in a way that is not entirely consistent with the other states and the ACT can add to confusion, especially for small volunteer run groups trying to simply put a donate button on their website.[146] [Emphasis in original source]

In response to Justice Connect's recommendation that the scheme be extended to recognise annual reporting to the ACNC as satisfying reporting requirements under the Collections Act, the department advised that this matter was outside the scope of the Bill but noted the following in relation to this and Justice Connect's request for further reform:

- the Queensland Government has committed to exempting ACNC registrants from the reporting requirements of both the Associations Incorporation and Collections Acts and has passed legislation to allow these exemptions to occur by regulation. Work on the necessary regulations is proceeding separately to the Bill.
- The Department is participating in an interjurisdictional working group that is examining opportunities to harmonise fundraising conduct requirements.[147]

QLS also raised 3 further points for consideration:

1. Development of an administrative process so an organisation can provide evidence to the Office of Fair Trading (OFT) to demonstrate that the organisation is the same one as on the OFT Collections Act register, so that the organisation can benefit from the amendments proposed in the Bill.
2. Consideration be given to the adoption of the Australian Business Number (ABN) as a unique identifier of charities on the register – all ACNC registered charities are required to have and maintain an ABN.
3. Expectation that the Collections Regulations 2008 will need to be updated to reflect the amendments in the Bill and that government will consult with industry on the updates.[148]

In response to 1 and 2 above, the department advised it:

> is currently considering operational and administrative arrangements for the implementation of the proposed amendments and will continue to engage with the ACNC to ensure the deemed registration

[146] Submission 5, p 3.

[147] Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 29.

[148] Submission 1, p 2.

> process is as seamless as possible for charities. The Department will communicate with stakeholders regarding operational processes, prior to commencement, to further streamline implementation.[149]

In response to 3 above, the department advised that consultation with industry and stakeholders will continue as necessary and notes that QLS is willing to work with the OFT in this process.[150]

QLS queried whether there would be a separate set of regulations for ACNC charities that will result in ACNC charities being dealt with separately.[151] The department advised that, subject to matters noted below, 'deemed registrants will be subject to the existing fundraising conduct requirements of the Collections Act and Regulation and no separate set of regulations for deemed registrants is implied by the Bill'.[152]

QLS queried whether regulations will be applied by way of conditions to the registrant's 'deemed registration' proposed under new section 23D.[153] The department advised:

> New section 23D inserted by clause 52 of the Bill provides a power for the Minister to impose conditions on a deemed registration by giving written notice to the deemed registrant.
>
> The conditions may be about a particular appeal for support or may be applied to all appeals for support made by the deemed registrant in Queensland.
>
> The power to condition a deemed registration in this way is necessary to ensure that proper oversight of fundraising conducted by a deemed registrant in Queensland can be maintained, if required.
>
> The conditioning power inserted by new section 23D is not intended to allow conditions to be imposed by Regulation.[154]

QLS suggested that:

a) section 30 (financial records) of the Collections Regulation 2008 is outdated in the digital world and should be reviewed

b) deemed registrants should not automatically be subject to the recording requirements under section 30 of the Collections Regulation 2008, given that some of the entities will be large and sophisticated, with appropriately sophisticated accounting and record keeping.[155]

In response, the department advised:

> The Bill provides for a deemed registration scheme and does not deal with financial records for authorised fundraisers. At face value, deemed registrants will be required to comply with section 30 of the Regulation as a result of the new section 23L inserted by clause 52.
>
> However, the Deemed Registration scheme will not commence until amendments to the Collections Regulation are made and it can be noted that section 23L of the Act allows for "excluded provisions" that

149 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 26.

150 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 26.

151 Submission 1, p 3.

152 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 26.

153 Submission 1, p 3.

154 Department of Justice and Attorney-General, briefing paper, 7 July 2022, pp 26-27.

155 Submission 1, p 3.

> will not apply to deemed registrants. Excluded provisions include "*a provision of a regulation made under this Act declared by the regulation to be a provision to which section 23L of this Act does not apply*."
>
> In developing regulation amendments to give effect to the deemed registration scheme, the Department will consider, after appropriate consultation, whether section 30 should be an excluded provision. The Department will make the appropriate recommendations to Government.[156]

Finally, QLS queried how it was proposed that the obligations under sections 31 (investing assets) and 33 (approval of agreements with third-party fundraisers), and schedule 2 (accounting requirements) of the Collections Regulation 2008 will be applied to a deemed registrant.[157] The department advised:

> The new section 23L, as inserted by clause 52 of the Bill, provides that deemed registrants are taken to be registered as a charity under the Collections Act. Unless otherwise provided, deemed registrants are to comply with any legislation that typically applies to charities in Queensland. Accordingly, deemed registrants will at face value be required to comply with sections 31 and 33, and schedule 2 of the Collections Regulation 2008 in the same manner as non-ACNC registered entities. However:
>
> - The Deemed Registration scheme will not commence until amendments to the Collections Regulation are made. Section 23L allows the Regulation to prescribe sections of the Regulation that will not apply to deemed registrants. The efficacy of sections 31 and 33 and aspects of Schedule 2 in the context of deemed registration will be considered in the development of an amendment Regulation. The Department has already sought and obtained views from the Queensland Law Society in regard to section 33 (approval of agreements) and further consultation will be undertaken as necessary.
> - The ongoing need for approval of agreements is also being considered in a national context as part of ongoing inter-jurisdictional work on the harmonisation of fundraising conduct requirements.[158]

During the public hearing, the QLS advised that the department had 'satisfactorily' addressed the practical issues QLS had identified and that it 'look[s] forward to working with the department and the Office of Fair Trading on the formulation of the regulations and particularly the regulations for the Associations Incorporation Act, which will need to dovetail in because the two do go together'.[159]

156 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 27.

157 Submission 1, p 3.

158 Department of Justice and Attorney-General, briefing paper, 7 July 2022, p 28.

159 Public hearing transcript, Brisbane, 11 July 2022, p 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLPs) 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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Right to privacy and confidentiality

Clause 9 amends section 31 of the Casino Control Act, which currently provides for cancellation or suspension of casino licenses to introduce letters of censure to undertake the disciplinary action against a 'casino entity'. The Bill provides:

- that the Minister may institute a show cause process or issue a letter of censure, where there are grounds for taking disciplinary action against a casino entity.
- for a right of reply to a show cause notice, and that the Minister may give a letter of censure, and/or a written direction to rectify a matter, and/or direct the payment of a penalty no more than $5 million.
- that, alternatively, the Minister may recommend to the Governor in Council (GiC): a penalty of more than $5 million, that the casino licence be cancelled or suspended, or that the casino lease or management agreement be terminated. The GiC may take one or more of the specified actions in relation to the casino entity, including to order the payment of a penalty of not more than $50 million.
- that a GiC decision to take disciplinary action against a casino entity is final and may not be appealed.

The Bill raises FLP issues relating to an individual's right to privacy and confidentiality, including by proposing to amend the Casino Control Act to provide that a letter of censure may be published on the department's website.

According to the explanatory notes, publication of such a letter may be a breach of privacy if the letter concerns or contains information about an individual associated with a casino entity (as there is a need to undertake probity investigations in relation to persons associated or connected to casinos, it may result in publishing an unsuitable person's identity).

Committee comment

As the policy objective of the Bill is to strengthen casino integrity and modernise gambling legislation, the committee considers that sufficient regard has been had to the privacy of individuals, noting the reasons for the potential breach of privacy and confidentiality.

3.1.1.2 Appropriate review of administrative power, and right to a fair hearing and procedural fairness

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review, and is consistent with principles of natural justice.

Generally, it is inappropriate to provide for administrative decision making in legislation without providing for a review process, particularly if the decision can lead to serious consequences. The explanatory notes acknowledge that some GiC decisions have significant ramifications and should therefore be reviewable.

However, the explanatory notes state that the GiC is required to decide whether or not to take disciplinary action only in the significant circumstances where the Minister makes a recommendation for action to be taken against a casino entity, or for a high pecuniary penalty, after having considered submissions and responses received as part of the show cause process. The Minister would only make such a recommendation where the disciplinary measures available would not adequately address the casino entity's conduct.

The explanatory notes observe that where an act or omission by a casino entity is so serious that it warrants disciplinary action by the GiC, it is necessary, on public interest grounds, for the GiC's decision to be final and non-reviewable, so that the casino entity can be disciplined as quickly as possible and with certainty.

Committee comment

As these powers are likely to be exercised only in limited and extraordinary circumstances and a show cause process will have already been undertaken, the committee considers that the omission of review rights for Governor in Council decisions is reasonable and appropriate in the public interest.

3.1.1.3 Appropriate review of administrative power, and right to a fair hearing and procedural fairness

Clause 51 amends the Collections Act to remove the right for a member of the public to object to an organisation's application to register as a charity. **Clause 52** inserts new provisions into the Collections Act that apply to an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The Bill provides for these registered entities to be taken as registered as a charity under the Collections Act (deemed registrant).

Under the Bill, the Minister may impose conditions on the deemed registration and may amend or revoke a condition of the deemed registration. The Bill provides for deemed conditions and empowers the Minister to end the Commonwealth registered entity's deemed registration, and to reinstate a pre-existing registration or sanction.

Administrative power that is not subject to appropriate review, or is inconsistent with principles of natural justice, can impact the rights and liberties of individuals. The explanatory notes observe that the Bill does not provide for a review of a Minister's decision to end a deemed registration.

The explanatory notes state that the absence of an express review or appeal process for ending a deemed registration broadly mirrors existing provisions in the existing collections legislation. The Bill does provide for a show cause process when the Minister is considering ending a deemed registrant's deemed registration, and individuals can instigate a judicial review of the Minister's decision.

Committee comment

The committee notes that the absence of an express review or appeal process for ending a deemed registration broadly mirrors provisions in the existing collections legislation. In addition, the Bill would provide for a show cause process when the Minister is considering ending a deemed registrant's deemed registration, and individuals can also instigate a judicial review of the Minister's decision. In light of this, the committee considers these clauses have sufficient regard to the rights and liberties of individuals.

3.1.1.4 Right to privacy and confidentiality

Clause 4 amends section 14 of the Casino Control Act to broaden the existing exemption from confidentiality requirements to include where the disclosure is made to an external adviser exercising the adviser's function.

Clause 8 inserts a new provision into the Casino Control Act requiring information from particular entities.

Various clauses insert new harm minimisation measures into a range of legislation that allow regulations to prescribe such measures.

Clause 29 provides that the Minister may direct a casino entity to engage an external adviser who may investigate and report to the Minister on the suitability of a person—who the Minister believes is associated or connected with the ownership, administration or management of the operations or business of a casino entity—to be associated or connected with the management and operations of a hotel-casino complex or casino.

Regarding **clause 4**, the committee notes existing exemptions to the confidentiality requirements in the Casino Control Act, which provide exemptions in certain circumstances. Regarding **clause 8**, the committee notes that the Bill limits this new section to information or documents the Minister or chief executive reasonably requires to administer the Act.

The committee also notes that the Minister may recommend the making of a regulation about a harm minimisation measure if the Minister is satisfied the measure is necessary and appropriate, and is consistent with the objects of the applicable Casino Control Act, or it is in the public interest.

Regarding **clause 29**, the explanatory notes observe that the confidential information required to be disclosed to an external advisor may include information about a person's personal or business affairs, criminal history, financial position or character. According to the explanatory notes, although the Bill may limit the right to privacy by allowing an external adviser access to information that the adviser may not otherwise have been able to access due to confidentiality reasons and professional privilege, it is necessary that external advisers have access to all necessary information.

Committee comment

The committee is satisfied these clauses have sufficient regard to an individual's right to privacy and confidentiality.

3.1.1.5 Abrogation of the common law right of legal professional privilege

Clauses 8 and 29 provide that an entity is not excused from complying with an information requirement or request for information on the ground that the information is the subject of legal professional privilege. The proposed sections further provide that information does not cease to be

the subject of legal professional privilege only because it is given in accordance with an information requirement (or request).

The proposed sections involve an abrogation of legal professional privilege, a common law right. Legislation should not abrogate common law rights without sufficient justification.

The explanatory notes justify clause 29 on the basis that external advisers may report on matters relating to casino operations, such as a casino licensee's compliance with anti-money laundering and counterterrorism financing laws, and therefore they need access to information that is confidential and/or subject to legal professional privilege.

Committee comment

Given the purpose of the clause (providing external advisors with the capacity to access information, which may be confidential and/or subject to legal professional privilege, for reporting on matters relating to casino operations), the committee considers the breach of FLP is sufficiently justified.

3.1.1.6 Appropriate review of administrative power, and right to a fair hearing and procedural fairness

Clauses 102 and 103 introduce a framework for wagering on simulated events.

Whether legislation has sufficient regard to FLPs depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review, and whether the legislation is consistent with principles of natural justice.

The explanatory notes state that neither the initial decision of the Minister to give or refuse an approval for a simulated event or simulated contingency, nor a subsequent decision to withdraw an approval, are reviewable by the Queensland Civil and Administrative Tribunal (QCAT). However, this is considered necessary, given the potential harm inherent in approving new wagering products, particularly in an emerging field such as simulated events.

The Bill is said to limit the Minister's administrative power by linking the refusal of an approval to whether the Minister considers the event or contingency to be offensive or contrary to the public interest. The Minister must also provide reasons for the decision.

Committee comment

The committee notes the ousting of review rights to QCAT but also notes the exercise of the Minister's administrative power is appropriately curtailed to those particular circumstances where a simulated event or contingency is offensive or contrary to the public interest and also that the Minister must have provided reasons for their decision.

Given these limits on the exercise of the Minister's power, the committee considers that the absence of judicial review is a justifiable breach of fundamental legislative principle.

3.1.1.7 Clear and precise

Clause 8 imposes on a casino a duty to cooperate (new section 30A). Failure to comply with this duty attracts a maximum penalty of 160 penalty units. A casino entity must comply with all reasonable requests made by the Minister, the chief executive or an inspector; and do everything necessary to ensure that the management and casino operations of the relevant casino operator are conducted in a manner that is fair and honest.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way.

According to the explanatory notes, although this obligation to cooperate may be considered vague, defining the obligation more specifically would unnecessarily fix its scope and risk the obligation becoming obsolete. The explanatory notes further state:

> The test of whether a casino entity or a casino entity's associate is doing everything necessary to ensure the management and casino operations of a casino operator is being conducted in a manner that is honest and fair has been drafted in plain English to allow it to evolve to reflect community expectations, industry standards, and cover any new situations in the casino environment. The lay meaning of 'honest' encompasses notions of being open, sincere, truthful, honourable, upright, candid, credible, respectable and virtuous. It can capture conduct which may not be illegal but which is nevertheless, morally wrong. The lay meaning of 'fair' includes being just, equitable, free from dishonesty and bias, and actions being carried out properly under a rule or law.[160]

Committee comment

The committees notes the explanation provided in the explanatory notes for the genesis of this wording of the duty and considers that the provision is drafted in a sufficiently clear and precise way.

3.1.1.8 Proportion and relevance of penalties, and offence provisions to be justified and appropriate

The Bill amends several existing offences and creates several new offences.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.

Clause 9 proposes high pecuniary penalties. **Clauses 8, 22 and 26-29** propose to amend the Casino Control Act to impose new casino offence provisions.

Clause 105 proposes to amend the *Wagering Act 1998* to prohibit a licence operator or wagering agent from accepting wagers by phone, if the wager relates to a simulated event or contingency.

Various clauses amend several Acts to impose a penalty on a range of entities, prohibiting the use of specified gaming equipment unless the use is consistent with an approval or modification; and to insert new harm minimisation measures into a range of legislation. The Bill contains several other new or expanded penalties, with maximum penalties ranging from 40 to 200 penalty units (calculated as $5,750 to $28,000 from 1 July 2022).

Regarding **clause 9**, the explanatory notes state that an upper limit of $50 million as a pecuniary penalty may be disproportionate, but is in the public interest, and ensures that casino entities can be disciplined appropriately and quickly for serious acts or omissions, without those entities regarding the disciplinary action process merely as a 'cost of doing business'.

In addressing **clauses 8, 22 and 26-29**, the explanatory notes consider any potential breaches of individual rights and liberties initiated by the new casino offence provisions as justified and appropriate, and commensurate with the nature of the offence and the harm that may arise from a breach.

[160] Explanatory notes, p 31.

With respect to **clauses 105 and 116**, the explanatory notes consider that any potential breaches of individual rights and liberties are justified and appropriate and align with similar offence provisions within the same (or associated) legislation.

In relation to **clause 105**, the explanatory notes observe that prohibiting the taking of bets via phone or online for simulated events or simulated contingencies is a key harm minimisation measure.

Committee comment

The committee notes that, while there is scope for some penalties to apply to associated persons or to smaller operators, many of the penalties proposed by the Bill predominantly apply to large business enterprises or individuals who hold office at an executive level in such organisations. The committee considers that the higher penalty in clause 9 should act to deter casino entities from committing a serious breach. Where casinos have not been deterred from wrongful behaviour, the committee considers the potential penalty to be an appropriate sanction for significantly wrongful conduct.

3.1.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power

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.

Committee comment

The committee considers that introducing harm minimisation measures through regulation will enable a rapid legislative response to emerging technologies in the gaming industry and to related issues as they arise.

3.2 Explanatory notes

Part 4 of LSA requires an explanatory note to be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it is arguable that the explanatory notes could

have been more fulsome in their identification, and consideration, of potential breaches of fundamental legislative principle.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[161]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[162]

The HRA protects fundamental human rights drawn from international human rights law.[163] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

The statement of compatibility observes that most of the provisions of the Bill are aimed at corporations or associations and thus do not engage human rights, per se.[164] However, this does not remove the need to consider whether human rights may be adversely affected when corporate officers are directly implicated by provisions affecting corporations, and the statement addresses this within its analysis (e.g. when a letter of censure issued in respect of a casino entity reflects on the reputation of an officer of that entity—see further below).

4.1.1 Human rights enhanced by the Bill

The removal of section 105 of the Casino Control Act, a provision that enables a casino inspector to detain a person suspected of cheating or possessing unlawful equipment, or attempting to do so, is a reform measure that identifies and adopts a less restrictive way to achieve the outcome of policing cheating, etc., viz., by allowing the Queensland Police to undertake that role. The statement reaches the correct conclusion that this reform enhances human rights.

Likewise, the removal of provisions of the Casino Control Act that require the provision of fingerprints and a photograph to apply for a casino employee licence or a key casino employee licence. The statement again reaches the correct conclusion that this reform enhances human rights.

161 HRA, s 39.

162 HRA, s 8.

163 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

164 Statement of compatibility, p 5.

4.1.2 Human rights affected by the Bill

The first provision considered in the statement is the discretionary power to publish a letter of censure. By its very nature, a letter of censure directed toward such an entity is likely to reflect negatively on the key leaders of the entity concerned, and, as the Attorney-General has noted, may concern the suitability of individuals to be associated with or connected to casino operations. This could have a significant and conceivably irreversible negative impact on the reputation of individuals, and, depending on the format of the letter, also implicates their right to privacy.

The committee notes that the Minister retains a discretion to redact part of a letter of censure, or not to publish such a letter. Dealing with these in reverse order, it is arguable that the decision not to publish a letter of censure does not engage any human rights concerns at all. On the other hand, it does draw attention to a way the legislation could be changed to enhance the protection of the human rights of privacy and reputation, by having an interceding process which flags the intention of the Minister to issue a letter and providing the person(s) concerned with an opportunity to show cause. The same logic can be applied to redactions. Redactions of a letter could remove references to person(s), protecting their privacy and reputation.

That said, this impact must be balanced against the need to ensure probity and integrity in casino operations, and the legislation creates a framework that provides for a range of responses to the need for probity and integrity that do not impermissibly burden the human right. The framework is compatible with the HRA. That conclusion does not foreclose the possibility that in an individual case a person or persons may be aggrieved, and even justifiably aggrieved, by the publication of a letter of censure. However, in those circumstances, judicial review would be available to enable a court to ensure a balancing of rights within the context of the operation of the legislation. There is an extensive Australian jurisprudence relating to the key concepts to which regard could be had in courts to protect the reputation of aggrieved persons. Requiring a person to be a fit and proper person to enjoy a statutory privilege or right is well-travelled terrain.

Notwithstanding this analysis, the question is whether this Bill in this form is compatible with human rights and the answer is yes, and for the reasons set out in the statement of compatibility. The framework of the legislation is designed to enhance probity and integrity within casino operating entities for the benefit of the public, and person(s) in key roles in such entities can properly be expected to have regard to their legislated professional obligations when taking on these roles, as do company directors, and professionals in many other fields.

4.1.3 Enabling an external adviser to have access to confidential information, including information that is protected by legal professional privilege, and the impact of this on a fair hearing, and the right against self-incrimination

There is nothing in the reform provisions creating the *role* of external adviser that raises any human rights issues, per se. However, in regard to the provisions relating to access to legally privileged information, the implications this can have for the fairness of a fitness hearing and the impact on the right against self-incrimination require a more detailed analysis. The legal professional privilege and fair hearing dimensions of the reforms have been considered separately in the statement, but they need to be considered together as they would operate together.

Legal professional privilege is indeed an important safeguard in democratic societies, as the statement of compatibility records. Legal professional privilege is not merely a device that makes settlement of disputes more likely but is a vital source of protection of the human right of people to a fair trial. Such proceedings are themselves protected by a suite of rights in the HRA, and internationally, in the International Covenant on Civil and Political Rights.

The present analysis is conducted having regard to the decisions of the High Court in *Sorby v The Commonwealth* (1983) 152 CLR 281, 288 and *Pyneboard Pty Ltd v Trade Practice Commission* (1983) 152 CLR 328, and the literature referring to and the decisions applying those decisions. These decisions draw attention to the significance of the privilege against self-incrimination as an aspect of the right to silence.

The historical pedigree and enduring contemporary significance of these common law rights is clear. It is notable that there are international materials that indicate that the right to silence is an incident of the international human right to a fair trial, and there is no reason to doubt that these principles would also apply in any judicial construction of that right under the HRA.

It must be permissible for casinos, like any other business, to seek legal advice with respect to their criminal liability if criminal proceedings against those entities are brought. Likewise, individual people holding key roles in casinos must retain this right. If casino personnel take legal advice in those circumstances, and that material is made available to agents of the executive government, there is a danger that this could practically deprive those personnel of what might be legitimately available criminal defences.

The statement of compatibility addresses these concerns and repeatedly draws attention to section 88A of the Casino Control Act, and the protection against self-incrimination it affords.

The statement of compatibility addresses the rights issue directly:

> … it should be noted that important safeguards against self-incrimination in section 88A of the Casino Control Act will continue to apply despite the ability (of a Minister, chief executive or inspector) to require sworn or verified information. Further, the provision also clarifies that a person may not be required to swear an oath or affirm a document if they have a reasonable excuse. *Accordingly*, there is *no* limitation on the right against self-incrimination and, given the provision's purpose of preventing behaviour inconsistent with ensuring the integrity of casino gaming, any residual limitation on the right to privacy is considered to be reasonable and consistent with a free and democratic society.[165] [Emphasis added]

This is a powerful statement of the purpose of the Bill, and on this basis, the committee is satisfied the proposed legislation aptly balances the competing interests and human rights concerned.

The committee also considers the human rights implications of removing public objections provisions under proposed amendments to charities legislation are capably and accurately addressed by the statement and no further analysis is required.

4.1.4 Committee comment

The committee is satisfied that the human rights limitations identified are reasonable and are demonstrably justified, having regard to section 13 of HRA. In this regard, the committee considers the Bill is compatible with the HRA.

[165] Statement of compatibility, p 14.

4.2 Statement of compatibility

The statement of compatibility tabled with the introduction of the Bill provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Law Society
002	Clubs Queensland
003	Responsible Wagering Australia
004	Queensland Hotels Association
005	Justice Connect
006	The Star Entertainment Group
007	Cancer Council Queensland
008	Confidential

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Mr David McKarzel, Executive Director, Office of Regulatory Policy – Liquor, Gaming and Fair Trading
- Ms Eunice Chai, Principal Advisor, Office of Regulatory Policy, – Liquor, Gaming and Fair Trading

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Kara Thomson, President
- Mr Myles McGregor-Lowndes, Member, Queensland Law Society Not for profit Law Committee
- Ms Wendy Devine, Principal Policy Solicitor, Queensland Law Society

Clubs Queensland

- Mr Daniel Nipperess, General Manager

Queensland Hotels Association

- Mr Bernie Hogan, Chief Executive
- Mr Damian Steele, Industry Engagement Manager

Justice Connect

- Ms Alice Husband, Lawyer, Justice Connect Not-for-Profit Law
- Ms Sue Woodward, Chief Adviser, Justice Connect Not-for-Profit Law (via videoconference)

The Star Entertainment Group

- Mr Geoff Hogg, Interim CEO

Cancer Council Queensland

- Mr James Farrell, General Manager, Advocacy

Statements of Reservation

Statement of Reservation – Casino Control and Other Legislation Amendment Bill

The LNP supports legislation that is modern, informed by best practice and evidence and ensures Queensland's casino industry is above reproach, thwarts criminal activity and money laundering and meets community expectations.

This Bill is rushed and represents a missed opportunity to enhance Queensland's casino regulatory framework. Having been forced by revelations of misconduct in New South Wales, the Government has belatedly commenced an inquiry into the operations of Star Entertainment Group Ltd in Queensland. In light of the independent external review being conducted by the Honourable Robert Gotterson AO QC ('the Gotterson Review') which is not due to report to the Government until 30 September 2022 this legislation is premature.

The explicit remit in Part C of the terms of reference of the Gotterson Review is to consider and make recommendations, about whether improvements should be made to casino procedures, regulations, and legislation.

There is no good reason why having failed to take action for so long the Government is now rushing to proceed with this Bill without the benefit of the recommendations from the Gotterson Review or for that matter, the benefit of the final report of the independent review of The Star Pty Ltd by Adam Bell SC, which is due to be delivered to the New South Wales Government on 31 August 2022. Indeed evidence to the Committee indicated officers of the department clearly contemplate further legislative change. It serves no good purpose to have rushed amendments moved to this bill during debate given there will be no opportunity for this committee to consider or enquire into those amendments.

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.

Queenslanders must be assured that the State's casino industry is free from any taint of illegality, misconduct, or undue influence.

Laura Gerber MP
Deputy Chair
Member for Currumbin

Jon Krause MP
Member for Scenic Rim

Casino Control and Other Amendment Bill 2022

Statement of Reservation **Sandy Bolton MP Member for Noosa**

The Casino Control and Other Amendment Bill 2022 aims to strengthen gambling regulation by providing greater investigation and enforcement powers in the Casino Control Act. Whilst supporting the intent of the Bill there are two main areas of concern: it introduces a potential expansion of gambling through the introduction of a cashless gambling regime without commensurate harm minimisation controls and what appears as an expansion of simulated sporting and racing events in venues throughout Queensland.

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.

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 in not accompanied by a risk assessment or harm minimisation measures or approaches.

Gambling is a large part of the Queensland economy; however, it has the ability to do irreparable harm to Queenslanders through irresponsible gambling. It would have been appropriate that when any changes, or expansion to gambling, is being considered by Government, a comprehensive and fully explained package of measures be included, as well consideration of any recommendations from the upcoming Gotterson independent external review. Neither of these have been provided, hence this Statement of Reservation.

Even though there were not any submissions from the public or advocacy groups addressing these concerns, that should not stop the Government from doing so and I trust that these will be addressed as a priority.

Thank you to my fellow Committee members, our secretariat, submitters and hearing participants for their work in this inquiry.

Sandy Bolton MP Date – 21 July 2022

Member for Noosa