

# Casino Control and Other Legislation Amendment Bill 2023

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Yvette D'ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the Casino Control and Other Legislation Amendment Bill 2023 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

### Gotterson Review recommendations

On 30 June 2022, the Honourable Robert Gotterson AO KC was appointed to conduct an independent external review of the Queensland operations of The Star Entertainment Group Limited (Gotterson Review) under the *Casino Control Act 1982* (Qld) (Casino Control Act).

The Gotterson Review made 12 recommendations for casino regulatory reform to enhance integrity, minimise the potential for harm, ensure probity and restore public confidence in casino operations.

In accordance with the recommendations, the Bill amends the Casino Control Act to:

- introduce the ability to prescribe mandatory carded play in Queensland casinos (*Recommendation 1*);
- implement cashless gambling for gambling transactions over a prescribed amount (*Recommendation 2*);
- require stated casinos to implement a pre-commitment system and enforce limits on expenditure and time spent gambling (*Recommendations 3 and 4*);
- provide for the collection of mandatory carded play data (*Recommendation 5*);
- make such data available for research and to inform casino supervision (*Recommendation 6*);
- update outdated “problem gambler” terminology to terms that better accord with modern understandings, such as “person who experiences gambling related harm” (*Recommendation 7*) (noting the Bill expands the application of this recommendation to the *Gaming Machine Act 1991*, Gaming Machine Regulation 2002, *Keno Act 1996*, and *Wagering Act 1998*);
- require casino licensees to comply with a prescribed code of conduct (*Recommendation 8*);
- require casino licensees to pay a supervision levy (*Recommendation 9*);

- provide for cost-recoverable periodic reviews of casino licences (*Recommendation 10*); and
- require casino operators to make reasonable endeavours to ascertain the persons subject to interstate police exclusions and take reasonable steps to exclude such persons from casinos they control (*Recommendation 11*).

*Recommendation 12*, to amend the Casino Control Act to allow for the appointment of a special manager, was implemented in October 2022 by the *Casino Control and Other Legislation Amendment Act 2022*.

### **Additional casino regulatory reforms**

The Bill also implements a range of reforms not recommended by the Gotterson Review but intended to enhance the casino regulatory framework by:

- solidifying the control on the use of cash and tickets for gambling in casinos by making cash payments and the use of tickets subject to chief executive approval;
- imposing a new duty on casino executive officers to encourage due diligence in the exercise of their duties, with a significant penalty for breach;
- increasing a large number of penalties under casino legislation;
- providing the chief executive with real time access to casino operators' electronic systems;
- modernising how inspectors obtain information;
- allowing minors and excluded persons found on casino premises to remain on premises if they are assisting a casino inspector or police officer with an investigation;
- removing redundant legislative references to casino based keno games; and
- permitting the sharing of certain information about exclusions among casino operators (related to *Recommendation 11*).

The reforms will increase accountability and promote cultural change in the industry as well as ensuring the Queensland casino framework remains fit for purpose.

## **Human Rights Issues**

### **Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

#### Human rights limited by the Bill

Several of the amendments being introduced by the Bill engage and limit rights protected by the HR Act.

Amendments related to mandatory carded play (*Recommendation 1*), cashless gambling (*Recommendation 2*), mandatory pre-commitment (*Recommendation 3*), mandatory breaks in play (*Recommendation 4*), and the collection and use of player card data (*Recommendations 5 and 6*) limit the right to privacy and reputation (section 25 of the HR Act).

Mandatory pre-commitment and breaks in play also raise issues related to the right to recognition and equality before the law (section 15 of the HR Act) and the right to freedom of movement (section 19 of the HR Act).

It should be noted that enactment of the Bill itself will not impact individual human rights in relation to mandatory carded play, cashless gambling, mandatory pre-commitment and breaks in play, and the collection and use of player card data (*Recommendations 1 to 6*). Limitations on rights will only come into effect when regulations are made under the new heads of power. The discussion below considers how individual rights may be affected based on the intent and purpose of the regulation making powers contained in the Bill. Further consideration of the impact on human rights will be undertaken as part of the regulation making process.

Features of the framework for periodic reviews of casino licensees (*Recommendation 10*) engage with the right to privacy and reputation, right to a fair hearing (section 31 of the HR Act) and rights in criminal proceedings (section 32 of the HR Act).

The amendments to introduce a new casino exclusion type based on interstate police exclusions (*Recommendation 11*) and to improve the exclusions framework raise several human rights issues related to the right to freedom of movement, right to peaceful assembly and freedom of association (section 22 of the HR Act), right to privacy and reputation, right to a fair hearing, and the right not to be tried or punished more than once (section 34 of the HR Act).

Finally, providing access to a casino operator's electronic systems also limits the right to privacy and reputation and rights in criminal proceedings. The new duties for casino officers may also raise concerns about the right not to be tried or punished more than once.

A discussion of why these limitations are reasonable and demonstrably justified in a free and democratic based on human dignity, equality and freedom follows below.

#### Human rights promoted by the Bill

Allowing minors and excluded persons to remain on casino premises to assist inspectors and police promotes the right to privacy and reputation. The Casino Control Act prohibits minors and excluded persons from entering or remaining on casino premises. In practice, this often means that minors and excluded persons found on the premises are interviewed by police or casino inspectors outside the casino entrance or within a non-licensed area of the casino. The Bill will allow minors and excluded persons to be interviewed in more secluded areas such as dedicated rooms within the casino, promoting the interviewee's right to privacy.

The amendments that update outdated "problem gambler" terminology in the Casino Control Act and other legislation may promote recognition and equality before the law, by using language that can help reduce stigma, shame, and the implication of personal irresponsibility for gambling behaviour.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

#### *Mandatory carded play and cashless gambling (Recommendations 1 and 2)*

##### (a) the nature of the right

Both mandatory carded play and cashless gambling limit the right to privacy and reputation.

*Right to privacy and reputation (section 25)*

The right to privacy and reputation is broad and covers a wide variety of potential interferences with a person's privacy, family, home, or correspondence. It covers personal information and data collection as well as intrusions into activities that are related to a person's autonomy. An interference with the right to privacy is permissible provided it is not arbitrary or unlawful. An arbitrary interference is one that is capricious, unpredictable, unjust, unreasonable, and disproportionate, regardless of whether it is authorised by law.

The right to privacy and reputation also protects against unlawful attacks on a person's reputation; however, there is no requirement for the interference not to be arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill amends the Casino Control Act to introduce a new regulation making power to facilitate mandatory carded play (***Recommendation 1***). Under the power, a regulation may require stated games and activities to be played in a stated casino only with a player card. Player cards must comply with any requirements prescribed by regulation, including how the card is issued (and requirements for identity verification), the cancellation and deactivation of cards, the information that must be collected by the card, and information that must be provided to players.

Mandatory carded play limits the right to privacy as it proposes to make identity-linked carded play in Queensland casinos mandatory. When the obligation to use a player card commences, a person will no longer be able to freely engage in the lawful activity of gambling on prescribed games and activities in a stated casino without a player card that is specifically linked to their identity.

The Bill also inserts a head of power in the Casino Control Act to prescribe a limit on the amount of physical cash a casino operator can accept from a person in a 24-hour period. This amendment also engages the right to privacy as it will limit the use of an anonymous payment method in favour of traceable non-cash payment methods.

According to the Gotterson Review, mandatory carded play will:

- assist with the detection of patterns and magnitudes of gambling that can be indicative of gambling harm;
- allow for the collection of data necessary to enable mandatory pre-commitment and breaks in play (***Recommendations 3 and 4***); and
- assist with identifying those patrons who are liable to be excluded (either as self-excluders, or persons excluded either by the casino operator or at the direction of police) and prevent them from gambling.

Requiring play in the casino to be tracked by an identity-linked card will also assist casino operators to meet their anti-money laundering/counter-terrorism financing (AML/CTF) obligations under Commonwealth legislation.

Limiting the amount of cash used throughout casinos is also expected to reduce criminal infiltration and money laundering. The Gotterson Review also noted that the limit on cash will

also afford those who do not wish to draw on cashless facilities a means of self-limited gambling, which may have harm-minimisation benefits.

These aims – to reduce gambling related harm and prevent criminal infiltration in casinos – are consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on privacy, imposed by requiring gamblers in a casino to use an identity linked card and limiting cash, help achieve the purposes of reducing gambling related harm and criminal infiltration and money laundering and gambling related harm in several ways.

Criminals have been known to take advantage of the cash intensive nature of casinos to launder illicit funds. This may entail inserting large amounts of cash into a gaming machine and engaging in minimal or no game play before cashing out; or offering to pay cash to a legitimate player in exchange for the player's winning tickets to claim as their own. According to the Gotterson Review, junket arrangements are also particularly known to involve enhanced probity risks, especially in relation to money laundering, due to the greater difficulty in identifying all junket participants, their sources of funds and their allocations of winnings.

Carded play linked with verified players will also assist casinos to meet their obligations as reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* and Anti-Money Laundering and Counter-Terrorism Financing Rules 2007, including the obligation to report suspicious transactions. This will help combat money laundering activity as every time a gambling transaction takes place, it can be traced back to a specific individual. Removing anonymity therefore increases the traceability of gambling transactions to help minimise money laundering.

Limiting the amount of physical cash that runs through the casino each day will also help combat money laundering. In 2019, media reports contained footage of an "Aldi bag" full of cash being presented to the cashier in the Suncity junket room at Crown Melbourne (Suncity has known or suspected links with organised crime groups). Suspiciously high-volume cash transactions will not be permitted under an enforced limit on the amount of cash a casino operator may accept from a person in a 24-hour period.

A mandatory player card is also essential to the success of key harm minimisation measures like mandatory pre-commitment and breaks in play. Pre-commitment requires an individual's expenditure to be isolated so it can be tracked towards the player's limit which is effectively facilitated through identity-linked carded play. The Gotterson Review noted that it is significantly more difficult and requires substantially more resources to monitor uncarded players. An identity linked player card can track a person's play and the collected data can be run through analytical programs to provide insight into players at risk of harm and aid successful interventions. The data collected by player cards will also be vital for gambling harm research and to improve harm minimisation strategies over time (see **Recommendation 6**, discussed below).

The use of mandatory identity linked cards will also enhance the exclusions framework under the Act, by preventing persons that are subject to an exclusion from gambling in the casino. Currently, the casino operator is responsible for identifying and removing any excluded persons

from the casino. With mandatory carded play, an excluded person can be prevented from gambling by having their identity linked card/gambling account deactivated for gambling purposes for the period of the exclusion. As mandatory carded play will require identity verification, it will also be more difficult for minors to gamble in casinos.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Currently, where card-based gaming is available in a Queensland licensed venue, players have the option to sign up for a registered card or unregistered card. A registered card may only be issued to a person if they are at least 18 years old, their identity and place of residence have been verified, and they are not subject to an exclusion order. An unregistered (i.e. anonymous) card may be issued to a person if they are at least 18 years of age and not subject to an exclusion order. The current voluntary system is less restrictive, but it is not effective at addressing money laundering as criminals can simply avoid registering for a card. It also fails to adequately address harm minimisation concerns as a person may easily choose not to use a voluntary card that monitors their gambling behaviour or provides pre-commitment functionality.

In addition, the Bill does not prohibit the use of cash and players that wish to use cash may still do so, subject to the prescribed limit and their pre-commitment limits. The limit recommended by the Gotterson Review of \$1,000 per day has been accepted in other jurisdictions (see below). Above this threshold the risk of the source of the cash being illegitimate is unacceptably high.

It should also be noted that the Australian Privacy Principles (APPs) under the *Privacy Act 1988* (Cth) apply to casino businesses that collect and store information about patrons. The APPs provide guidance around the collection, use, disclosure and security of personal information (APP 3, APP 6 and APP 11) and a range of other matters and offer some mitigation of the limitation on the right to privacy.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered the limitation on the right to privacy that will result from mandatory carded play and limits on cash is reasonable and proportionate given the importance of minimising gambling related harm and promoting safer gambling and reducing criminal influence and money laundering in casinos (which impacts overall casino integrity).

Requiring players who visit a stated Queensland casino to obtain and use an identity-linked card is an obvious incursion on individual privacy. While casino gambling is a lawful activity, due to the potential harms and integrity risks, it is required, under the Casino Control Act, to be subject to a system of regulation and control that ensures that on balance, it benefits the State and the community. The findings and the recommendations of the Gotterson Review indicate that measures such as mandatory carded play and limits on cash are required to ensure that casino gambling is appropriately regulated to achieve this outcome.

(f) any other relevant factors

In implementing mandatory carded play and limits on cash, the Bill brings Queensland casino legislation in line with both Victoria and New South Wales. Both the Royal Commission into

the Casino Operator and Licence (Crown Melbourne – October 2021) and the Review of The Star Pty Ltd, Inquiry under sections 143 and 143A of the *Casino Control Act 1992* (NSW) (Star Sydney – August 2022) recommended mandatory carded play and limits on cash (\$1,000 per person per day) to address casino integrity issues and promote safer gambling. Subsequently, both Victoria and New South Wales have introduced legislation that will make carded play mandatory and limit the use of cash in casinos, commencing on 1 December 2023 and 19 August 2024, respectively.

***Mandatory pre-commitment and breaks in play (Recommendations 3 and 4)***

(a) the nature of the right

The amendments that facilitate mandatory pre-commitment and mandatory breaks in play via the introduction of a regulation-making power engage multiple human rights protected by the HR Act: the right to recognition and equality before the law, the right to freedom of movement, and the right to privacy and reputation.

*Recognition and equality before the law (section 15)*

The right to recognition and equality before the law is a standalone right as well as forming part of all other rights protected by the HR Act. There are several different aspects to the right. Firstly, it provides that every person has the right to recognition as a person before the law, i.e. every individual has a legal personality. It also ensures individuals are all able to enjoy human rights without discrimination (on broader grounds than are provided under the *Anti-Discrimination Act 1991*). The right also encompasses the right to equality and the equal application of law and polices without discriminatory effect. Individuals are also to be provided with a positive right to be equally and effectively protected against discrimination. Finally, the right makes it clear that special measures (i.e. measures that are taken to assist people that have been disadvantaged due to discrimination) are not taken to be discrimination.

*Freedom of movement (section 19)*

The right to freedom of movement protects the right of every person lawfully in Queensland to move freely within, enter and leave the state as they choose. It also protects a person's right to choose where they will live. Freedom of movement means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. However, the right protects against undue restrictions on freedom of movement rather than requiring public entities to actively promote free movement.

*Privacy and reputation (section 25)*

The right to privacy and reputation is described above (for mandatory carded play and cashless gambling).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill amends the Casino Control Act to introduce a new regulation making powers related to mandatory pre-commitment and breaks in play (***Recommendations 3 and 4***). Under the new

provisions, a regulation may require stated games and activities in a stated casino to be conducted under a pre-commitment system. A regulation may also prescribe matters such as pre-commitment limits, obligations of the casino operator to ensure safer gambling in relation to the pre-commitment system (e.g., how to interact with a person that has reached a limit), ways of accessing the system, and other matters.

Mandatory pre-commitment and breaks in play limit the right to privacy and reputation by placing certain restrictions on how some people would otherwise freely choose to spend their money and time. The measures may annoy or upset people who do not wish their gaming to be interrupted (particularly if they themselves feel there is no problem) and could make them feel as if they are being judged or accused of engaging in problematic behaviour.

Whilst the Bill itself does not require casino staff to intervene when a player has reached a limit, under the regulation making powers, it is possible that a player that has reached a defined limit may be approached by a casino staff member to encourage them to take a break. This also has a potential impact on privacy and reputation, especially if it occurs in a public gaming area.

Mandatory pre-commitment and breaks in play may also limit the right to freedom of movement by potentially restricting access to gaming areas of a casino when a limit is reached so the person cannot continue to gamble.

The measures may also limit the right to recognition and equality before the law. Although pre-commitment and breaks in play will apply to everyone who wishes to gamble on prescribed games or carry out prescribed activities in a stated casino, there is potential for people with a particular attribute (i.e. those who experience from gambling harm or who are at risk of gambling harm) to be disproportionately impacted. For instance, it may be more likely a person who is experiencing gambling harm will be approached by casino staff to take a break more often than another player.

The purpose of these limits on rights is to minimise the harm caused by casino gambling. This purpose is considered to be consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Mandatory pre-commitment and breaks in play, facilitated by a player's card, are crucial harm minimisation tools. The Gotterson Review heard evidence from three witnesses with lived experience of gambling harm that illustrated the lengths to which a compulsive gambler might go to continue to gamble. The Review noted that setting parameters, at least for compulsive gamblers, is of critical importance to reduce the harms some people experience from gambling. In the evidence of one gambler, meaningful limits are required as compulsive gamblers will often be determined to continue gambling long after harm has materialised and persisted. The Gotterson Review also heard that people who experience gambling harm might initially intend to limit the time and money they spend on gambling but go on to make impulsive choices that contradict those intentions.

For those that do have issues with certain gambling behaviours, it is anticipated that staff intervention, including being politely asked to leave a gambling area, may have a significant but beneficial impact on the level of harm experienced by that person. It is also important to

note that staff interaction with a patron because of genuine concerns about their gambling will only be carried out by highly trained gambling staff.

The Gotterson Review acknowledged that rigorous academic studies of the effectiveness of limits on gambling are limited. However, the Gotterson Review noted that the evidence and recommendations of similar casino inquiries in Victoria, New South Wales and Western Australia, indicated that the absence of limits is likely to expose patrons to the risk of gambling related harm.

A Policy and Practice Paper released by the Australian Gambling Research Centre (AGRC) in September 2017 found that gaming machine users often underestimate their gambling expenditure by significant amounts and that pre-commitment can provide gamblers with tools to safely manage how much they spend on gambling. Stakeholder feedback on the Bill from academic and community representatives also generally supported the introduction of mandatory pre-commitment and breaks in play as important harm minimisation measures.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is currently no requirement in Queensland for a card-based gaming system to have pre-commitment functionality and sign up is voluntary for players. As the Gotterson Review noted, voluntary systems have consistently demonstrated very low uptake, and to be effective, a pre-commitment system must be mandatory. Therefore, the less restrictive option of voluntary pre-commitment has not been able to achieve the harm minimisation purpose of the Bill.

It should also be noted there are existing provisions of the Casino Control Act that prohibit a person from entering or remaining in the casino if the casino operator or manager believes on reasonable grounds that the person is a problem gambler. Casino operators may also withdraw a person's licence to enter the casino for any reason under common law. In other words, entry to a casino is not 'as of right'. Under mandatory pre-commitment, a person's ability to gamble or enter a gaming area will be directly linked to a verifiable fact, such as a time limit being reached. Patrons will agree to the terms of their entry when signing up for a mandatory card under a pre-commitment system.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that the importance of reducing the risk of gambling related harm outweighs the limitations on the right to privacy and reputation, freedom of movement and recognition and equality before the law that arise as a result of mandatory pre-commitment and breaks in play.

Whilst all players engaging in prescribed games and activities at stated casinos will be required to set pre-commitment limits and take breaks, many players will not reach their pre-commitment limit or gamble for long enough that taking an enforced break is required. It is anticipated that the changes will primarily impact those players who are experiencing gambling harm or at risk of gambling related harm. This is considered to be reasonable and proportionate as the intent is to limit or prevent gambling harm.

(f) any other relevant factors

As for mandatory carded play and limits on cash, the introduction of new provisions in the Casino Control Act to allow mandatory pre-commitment and breaks in play to be prescribed by regulation aligns Queensland's casino framework with Victoria and New South Wales. Following the recommendations of casino inquiries in those states, mandatory pre-commitment will be required from 1 December 2023 under the *Casino Control Act 1991* (Vic) and from 19 August 2024 under the *Casino Control Act 1992* (NSW) (Casino Control Act (NSW)).

***Collection and use of player card data (Recommendations 5 and 6)***

(a) the nature of the right

*Privacy and reputation*

The right to privacy and reputation is described above (for mandatory carded play and cashless gambling).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The new powers introduced by the Bill related to mandatory carded play will allow a regulation to prescribe data that player cards must collect. The Gotterson Review recommended that such data include a player's buy-in and buy-out time, play periods, player turnover, player losses and wins, gambling product and such further information as may be required to implement AML/CTF strategies and promote safer gambling. This information is personal information and collecting it via a mandatory, identity-linked player card limits the right to privacy and reputation.

The Bill also amends the Casino Control Act to provide that deidentified data collected by player cards must be reported to the chief executive and can then be disseminated for research purposes. The Bill will also allow the chief executive to require a casino operator to ensure player cards can record information relevant to the administration or enforcement of the Casino Control Act in relation to a casino or research into gambling harm. A casino operator may then be required to provide the chief executive with carded play data for those purposes. While the chief executive may only request de-identified data for research purposes, identifying data may be requested for administration and enforcement purposes. These amendments limit the right to privacy and reputation as they require the collection of data and the provision of information, including identifying information, to the chief executive.

The purpose of the limitation on human rights is to promote research and harm minimisation and improve the regulatory oversight of casinos. These purposes are considered to be consistent with a free and democratic society based on human dignity, equality, and freedom

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The collection and use of carded play data will deliver several harm minimisation benefits. Firstly, the successful implementation of mandatory pre-commitment and breaks in play

*(Recommendations 3 and 4)* is dependent on an appropriate system that collects real-time data to monitor gambling harm and assist casino staff to better recognise gambling related harm in large venues.

As noted by the Gotterson Review, the data collected by player cards can be analysed by casino operators to detect play indicative of gambling harm. As technology develops, data analytics may also be used to determine the likelihood a person will experience gambling harm, by looking at the nuances of their patterns of gambling behaviour rather than simply the duration of play.

The collection and use of carded play data will also enable researchers to investigate the prevalence of gambling-related harm at casinos. Further research built upon accurate, state-wide data for an entire gambling sector will aid understandings of gambling related harm and contribute to the development of future harm minimisation strategies.

The limitation on the right to privacy and reputation will also result in the regulator having access to enhanced information that will achieve the purpose of improving regulatory oversight. For example, the information recorded by a player card may assist the regulator to determine if persons that should have been excluded from the casino (e.g. at the direction of police) have nevertheless been permitted to gamble in the casino, better monitor the conduct of junkets by providing visibility of the amount an individual in a junket group has spent gambling, and assess whether the casino operator has enough floor staff relative to the number of patrons to provide a safer gambling environment.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

It is considered that there is no less restrictive way to achieve the purpose of the Bill and existing protections for personal information go some way to mitigate the impact of the incursion on privacy.

It is necessary for mandatory player cards to collect personal, real-time information for key harm minimisation strategies such as mandatory pre-commitment and breaks in play to be effective. There is also no way that researchers can be provided with carded play data that can be used for gambling harm research without collecting and disseminating that data. To ensure there is informed consent to the collection and potential use of player card data, the new regulation making powers related to carded play are broad enough to allow a regulation to require casino operators to provide patrons with information about the collection and use of their data. As an additional protection, the Bill provides that, if a request for player card data is for research purposes, the chief executive may only request anonymous data. The chief executive is authorised to share deidentified data with researchers, however there is no authority for the chief executive to provide player card data to an entity for research purposes in contravention of the confidentiality requirements in section 14 of the Casino Control Act.

It is important to note that casino operators already collect personal information from individuals – for example, when a casino patron signs up for a loyalty card, or when the casino operator takes a copy of a junket participant’s passport as required by the Casino Control Regulation. The collection, use and storage of this information by casino operators is already regulated under the *Privacy Act 1988* (Cth) and the Australian Privacy Principles. Information

about a player's gambling activity recorded on their player card will be subject to the same legislative protections.

The Bill provisions that allow the regulator to request identifiable data from the casino operator by written direction are more limiting on the right to privacy. However, this is still considered the least restrictive way to achieve the purpose of the Bill as there are many matters relevant to casino oversight that relate to specific individuals, including the examples given above relating to exclusions and junkets. These matters are fundamental to casino integrity and protecting against criminal infiltration in casinos.

How the regulator collects, stores, uses, and discloses carded play data will be subject to the *Information Privacy Act 2009* (Qld), which recognises the importance of protecting the personal information of individuals. Under the information privacy principles (IPP), the regulator must only collect and use information that is relevant to the purpose for which it is collected (IPP 3 and IPP 9). There are also limits on the use and disclosure of personal information (IPP 10 and IPP 11) which also protect an individual's right to privacy.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, it is considered that the limitations on the right to privacy that result from the collection and use of carded play data are reasonable and justified. The data collected by player cards is necessary to deliver transformational harm minimisation measures such as mandatory carded play and represents an opportunity to better understand the nature of casino gambling and gain insight into the prevalence of gambling related harm. The ability for carded to play data to assist with regulatory oversight will also provide benefits to the community by ensuring Queensland casinos operate with the upmost integrity.

(f) any other relevant factors

Nil.

### ***Periodic reviews (Recommendation 10)***

(a) the nature of the right

The Bill amendments that mandate periodic reviews of casino licences and enhance inquiry powers under the Casino Control Act limit the right to privacy and reputation, the right to a fair hearing, and rights in criminal proceedings.

#### *Privacy and reputation (section 25)*

The right to privacy and reputation is described above (for mandatory carded play and cashless gambling).

#### *Right to a fair hearing (section 31)*

The right to a fair hearing provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have their proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. It encompasses procedural

fairness, however, whether a hearing is fair or not ultimately rests on the facts and circumstances of each specific matter and any relevant public interest considerations. Whilst the right states that judgements and decisions must be public, international law and the explanatory notes to the HR Act acknowledge that in some circumstances a private hearing or suppressing some details in a judgement may be justified. The right is complementary to rights in criminal proceedings, discussed below.

*Rights in criminal proceedings (section 32)*

The protection of rights in criminal proceeding enshrines certain minimum procedural guarantees in criminal trials. The minimum guarantees relevantly include matters such as ensuring individuals have adequate time and facilities to prepare their defence, can communicate with a lawyer or advisor of their choice, can defend themselves personally or through legal assistance chosen by the person or through legal aid (if eligible), and are not to be compelled to testify against themselves or to confess guilt. The application of the right extends beyond those persons who have already been charged with a criminal offence and has been found to apply more generally to the compulsion of persons to give evidence on oath and have that evidence subsequently used against them.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill amends the Casino Control Act to provide that the chief executive must cause periodic reviews to be conducted for each casino licence, at intervals of at least five years. The Bill provides that a person appointed to preside over a review may exercise all the powers, rights, privileges, protection and jurisdiction of a commission of inquiry under the *Commissions of Inquiry Act 1950* (COI Act). Under section 5(1) of the COI Act, a chairperson of an inquiry may summon a person to attend before the commission and give evidence, require a person to produce documents, records, writings etc. to the commission, and require a person to give information and answer questions either in writing or at a specified time and place. The Bill therefore limits the right to privacy and reputation as it will allow a reviewer to compel people to appear or to provide access to information pertaining to how a person performed their role at a casino. The Bill also provides for review proceedings to be held in public or in private. The impact on privacy may be greater for a public proceeding, for example, if a witness's testimony is live-streamed.

Further, the Bill amends the Casino Control Act to provide that the chief executive may publish a report of a review, or part of the report or a redacted version of the report, to the public if the chief executive considers it appropriate. A report may contain personal information about an individual, for example, their employment at the casino and how they carried out their role. A report may also inform findings that close individual associates are either suitable or not suitable to be associated with a casino licence, which may impact on that person's reputation and future employment, were those details to be made public.

The Bill also amends the Casino Control Act to provide that for the purpose of section 14(1)(b) of the COI Act, the ground of legal professional privilege is not considered to be a reasonable excuse for refusing to provide a document or other thing to the review. The Bill also removes the ground of legal professional privilege for not doing a thing, such as remaining silent or

refusing to answer a question, under section 14(1A) of the COI Act. The exclusion of legal professional privilege also limits the right to privacy as it provides a casino review with information that may relate to individuals that work at the casino or that have visited the casino that would otherwise be confidential. The exclusion of legal professional privilege may also limit the right to a fair hearing and rights in criminal proceedings. A casino review does not establish criminal liability, however information and documents provided to it may indicate that offences under the legislation that govern casinos have been committed by the licensee, operator, or a staff member, which may be relevant in later proceedings.

The overall purpose of each of these amendments is primarily to enhance casino integrity and accountability and ensure the probity of persons involved in casino operations. It is considered critical to a successful casino regulatory framework that appropriately empowered, regular reviews can be undertaken in relation to casinos to maintain public confidence and identify emerging issues before they manifest as systemic non-compliance. These aims are consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limitations on privacy and reputation are necessary to conduct fulsome inquiries into casino operations, governance and other matters. It is necessary for the review to call witnesses with personal knowledge of relevant matters, and to be furnished with all relevant information (including information that may relate to specific individuals) to enable it to make a fair and complete report about suitability and other matters. In some cases, it will also be necessary for transparency and the public interest for a casino review to be held in public or for the report of the review to be published.

In relation to excluding legal professional privilege, the 2022 NSW Review of The Star Pty Ltd found The Star had erroneously claimed legal professional privilege, including in relation to consultant's reports that highlighted serious shortcomings in The Star's AML/CTF program. According to the NSW Report, inappropriate claims for privilege increase the likelihood that documents are not produced to regulators and others, when they should instead be disclosed. The Bill amendments are intended to address this issue and prevent the misuse of legal professional privilege to avoid regulatory scrutiny.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Some incursions on individual privacy and reputation are a necessary consequence of ensuring casino reviews with full commission of inquiry powers can be conducted under the Casino Control Act. Notably, the Bill provides discretion for reviews to be held in public or private. As noted above, there is also discretion for the chief executive to publish a report in full or in part, or to redact information from a report before publication. The Bill further protects privacy by prohibiting the chief executive from publishing information about an individual's personal affairs. These measures protect individuals against unjustified incursions on their privacy or reputation by keeping personal details out of the public domain.

It may be noted that the Casino Control Act currently permits the Minister to, under section 30, undertake such investigations as are necessary to satisfy the Governor in Council or Minister

that a casino entity and its associates are suitable persons. The Casino Control Act also currently permits, under section 91, the establishment of an inquiry into the operation of a casino. Both sections 30 and 91 already engage with the right to privacy and reputation but are similarly justifiable on the grounds that they are necessary for ensuring the integrity of casino operations, and the probity of those involved in such operations.

There are also legislative safeguards in place to limit and appropriately protect any intrusion on privacy and reputation. A person chairing a casino review will be able to order that any evidence given before the review shall not be published (under section 16 of the COI Act). There are also other protections in place for witnesses. For example:

- it is an offence for an employer to dismiss an employee from employment, or prejudice the employee in employment, for or on account of the employee having appeared as a witness (section 23);
- every witness summoned to attend before a commission has the same protection as a witness in any action or trial in the Supreme Court (section 14B); and
- a statement or disclosure made by any witness in answer to any question put to the witness by a commission will not (except in proceedings in respect of contempt or of an offence, or a conspiracy by the witness with another person to commit an offence, against certain sections of the Criminal Code) be admissible in evidence against the witness in any civil or criminal proceedings (section 14A).

Legal professional privilege is an important safeguard against State overreach. Casinos and key casino employees must be able to seek advice about their criminal liability. There is a small risk excluding legal professional privilege as a reasonable excuse for not providing information to a review or answering a reviewer's questions could deprive a person of a fulsome criminal defence if proceedings are later brought against that individual. However, it is nevertheless considered necessary to exclude legal professional privilege given the evidence it has been misused in the past by casino operators. The Bill clarifies that legal professional privilege continues to attach to any information provided to the review.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Despite the limits imposed on the right to privacy and reputation, right to a fair hearing, and rights in criminal proceedings, the Bill is considered reasonable and proportionate. It is critically important to ensure casino reviews conducted in Queensland are fully equipped to properly investigate matters that relate to casino integrity and probity.

This is because the risk of harm posed by casinos if they are not operated with integrity are immense, including gambling related harm, criminal infiltration, and the facilitation of money laundering. These risks have clearly manifested based on the findings of the Gotterson Review and other interstate inquiries and the conclusion that the casino licensees in Queensland, New South Wales, Victoria and Western Australia were unsuitable. It is considered that those individuals that seek employment in the privileged business of a casino should be required to account for their actions in ensuring casinos are operated in accordance with the law, despite the incursion on their privacy and reputation. Additionally, given the risks, it is considered

appropriate not to allow casino entities to rely on legal professional privilege as a shield against regulatory oversight and public accountability.

(f) any other relevant factors

Nil.

***Casino exclusions (interstate police exclusions (Recommendation 11), sharing casino exclusion information and review rights)***

(a) the nature of the right

The Bill provides a framework under which a casino operator must exclude a person from its Queensland casino/s if the person is subject to an exclusion direction of a police commissioner in another Australian jurisdiction. Additionally, the Bill requires casino operators to share certain exclusions information. The Bill also does not provide for exclusions based on interstate police exclusions to be reviewed in the Tribunal under section 91A of the Casino Control Act. These amendments engage a number of rights protected by the HR Act.

*Right to freedom of movement (section 19)*

The right to freedom of movement is described above (for mandatory pre-commitment and breaks in play).

*Right to peaceful assembly and freedom of association (section 22)*

The right to peaceful assembly and freedom of association protected under section 22 of the HR Act has two aspects. Relevantly to this analysis, it encompasses freedom of association, which extends to all forms of association with others whether for political or other purposes. A common example is a person's right to join a trade union. It is considered that the right to freely associate with others is a vehicle for the exercise of other civil, cultural, economic, political and social rights.

*Right to privacy and reputation (section 25)*

The right to privacy and reputation is described above (for mandatory carded play and cashless gambling).

*Right to a fair hearing (section 31)*

The right to a fair hearing is described above (for periodic reviews).

*Right not to be tried or punished more than once (section 34)*

The right enshrined in section 34 of the HR Act is essentially protection against double jeopardy and it applies to criminal, quasi-criminal, and regulatory offences. It is considered that the right does not protect against non-criminal consequences arising from the same conduct or circumstances. For example, a decision to disbar a person professional practice on the basis of a criminal conviction would not offend the right as the purpose of the disciplinary outcome is not punitive but the protection of the public.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*New exclusion type (exclusion based on interstate exclusion)*

The Bill amends the Casino Control Act to require casino operators to exclude a person from their casino if the operator is aware the person has been directed not to enter an interstate casino by an interstate police commissioner. The amendments are in direct response to findings of the Gotterson Review that The Star did not routinely exclude persons from its Queensland casinos (The Star Gold Coast and Treasury Brisbane) that were known to be subject to exclusions from the New South Wales police commissioner.

As with other exclusion types, a person that has been excluded from a Queensland casino based on an interstate police exclusion will be unable to enter or remain in a casino. The casino operator or an employee or agent will have the power currently prescribed under section 100B of the Casino Control Act to use necessary and reasonable force to prevent the person from entering or remaining in the casino. These aspects of the framework interfere with a person's right to freedom of movement.

The right to freedom of association may also be indirectly limited by the amendments depending on the reason the interstate police commissioner has determined to ban a person from a casino. The Australian and New Zealand Policing Advisory Agency 'Casino Exclusion Order – A National Protocol for Law Enforcement Agencies' (the National Protocol) is in use in Queensland and provides some guidance as to the grounds upon which an interstate police commissioner may exclude a person from a casino, including that the person is suspected of being connected with espionage or foreign interference related activities or is suspected of associations with organised crime groups and/or outlaw motorcycle gangs.

The National Protocol also outlines that a person's criminal history, or a conviction for an offence that would significantly impact on the integrity of gaming operations, are grounds for excluding a person from a casino. It is arguable that if an interstate exclusion based on such grounds is given effect in Queensland, the right not to be punished more than once may be limited. However, exclusion from a casino is not a punishment, but intended to protect the integrity of Queensland casinos by refusing access to individuals assessed as being high-risk by an interstate police commissioner. Therefore, it is considered that the right not to be punished more than once is not limited by the amendments.

The right to privacy and reputation is limited by the Bill in a number of ways. To give effect to an interstate exclusion, casino operators will need to review personal information (e.g. name, date of birth, address), record the exclusion in a register and, if practicable, issue an exclusion notice to the person. Whilst the Bill places the onus on casino operators to give effect to an interstate police exclusion, the Bill also allows the Queensland police commissioner to give an operator notice if the commissioner is aware of an exclusion issued by another police commissioner for a person. This notification will also include personal information.

Casino operators will also be required to transmit personal information when informing the police commissioner appropriate action has been taken to give effect to an interstate exclusion. Where the Bill allows the exclusion to be revoked (i.e., when there is no longer any interstate police exclusion in effect for the person) casino operators will also be required to share

information about the person with the Queensland police commissioner under a notification requirement. The right to privacy is also limited by a new obligation on casino operators to notify the Queensland police commissioner when a person under an exclusion directed by the Queensland police commissioner, or an exclusion notice issued by the operator to the person on the basis of an interstate police exclusion, is found on casino premises. The excluded person's reputation may also be impacted because of their exclusion from a Queensland casino.

#### *Sharing information about exclusions*

The Bill also requires Queensland casino operators to notify each other about persons that have been excluded from the casino, either under section 92 of the Casino Control Act or via a withdrawal of licence under common law. Under section 92, an operator may exclude a person on grounds including: the person has engaged in dishonest acts in relation to gaming; the person is acting in a way that affects the integrity of gaming or the safety of other patrons; or the safety of a dependent of the person is at risk because of the person's presence in the casino. It is considered there will be an overall benefit to the community in another operator being made aware of an exclusion based on these factors and being asked to consider whether a similar exclusion is warranted at their premises. However, achieving that benefit will limit privacy and potentially reputation (as personal information about a person will be transmitted between operators) and may result in the right to move freely being limited if the receiving operator also initiates a ban.

The Bill also obligates a casino operator to notify other operators if it is aware a person is the subject of an interstate police exclusion. This notification requirement will trigger the other operators' obligation (discussed above) to also exclude the person. This amendment limits the right to privacy and reputation as information about the person's identity will be shared. The amendment will ultimately result in the person not being permitted to enter any Queensland casino, affecting their right to freedom of movement. However, the amendment is considered necessary to ensure exclusions based on interstate police exclusions are implemented consistently and the risk of criminal influence is reduced.

#### *Review rights*

Consistent with the existing approach to casino exclusions directed by the Queensland police commissioner under the Casino Control Act, the Bill does not provide for exclusions based on interstate police exclusions to be reviewed by a Tribunal. The Bill limits the right to a fair hearing by not providing for Tribunal review.

The purposes of the Bill are to prevent persons that have been banned by police from an interstate casino from gambling in Queensland casinos, minimise criminal influence, and improve a casino operator's ability to identify individuals that should be excluded from the casino. These purposes are consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The primary purpose of the amendments is to respond to the serious failings highlighted by the Gotterson Review regarding the effective management by Queensland casino operators of known interstate exclusions. Maintaining the status quo leaves open the possibility that persons

banned from interstate casinos by police can gamble in Queensland casinos, bringing with them an increased risk of criminal behaviour and influence. As outlined by the Gotterson Review in its analysis of The Star's handling of interstate exclusions:

*“The fact that the most senior police officer had formed the view under statute that particular persons ought not be permitted entry to the casino there had cogency. Certainly, there was no basis (and The Star offered none) for thinking that the circumstances that led to the exclusion of such persons in another state would have any less importance in a Queensland context.”*

Restricting a person's movement is the only way to achieve the purpose of preventing a person that is subject to an interstate police exclusion from entering a Queensland casino. A restriction on freedom of association is also necessary where police appropriately assess individuals as posing too high a risk to allow them to gamble in casinos, given that casinos have been historically targeted by criminals seeking to launder money.

In addition, it is necessary for personal and identifying information about an excluded person to be shared for the exclusions framework to operate effectively. This is relevant to exclusions based on interstate police exclusions, operators sharing information about casino exclusions, and the ability for the Queensland police commissioner to notify casino operators and interstate police about various exclusion types.

It is not considered appropriate for the Bill to provide for Tribunal review of exclusions based on interstate police exclusions for a number of reasons. The Bill simply obligates a casino operator to implement an exclusion when it becomes aware of an interstate police exclusion for a person. The reasons for the initiating exclusion are not likely to be known to the operator, meaning the review may be impractical and ineffectual. In the alternative, there is also the risk that Tribunal review could expose sensitive police information in cases where that information was known. Excluding Tribunal review will also provide certainty and ensure that high-risk individuals are not able to gamble or be present in Queensland casinos, which is vital to casino integrity.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

It is considered there are no less restrictive and reasonably available ways to achieve the purpose of the Bill. However, there are a number of considerations that lessen the impact of the limitations on rights, or which contextualise the limitations in the casino regulatory framework.

The impact on privacy and reputation is mitigated as the proposed amendments involve only the minimum use of personal information necessary for a casino operator to implement an exclusion. A person's excluded status is not published publicly and is only made known to persons that need to know about the exclusion, such as relevant casino employees.

In terms of Tribunal review rights, as noted above, the approach to exclusions based on interstate police exclusions is consistent with the current approach to Queensland police commissioner casino exclusions, which are not reviewable by Tribunal. It may also be noted that Tribunal review is not a general right and can only be conferred by an enabling Act.

As a further mitigating factor, it may also be noted that casinos are private property, not public spaces. Entry to a casino is not as of right, but is at the discretion of the casino operator (see section 92(1) of the Casino Control Act). It should also be noted that while an excluded person may not enter or remain on casino premises, there is no restriction in the Bill on the person's movement outside the casino premises.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the limitations the human rights of individuals are considered justified to prevent criminal influence in Queensland casinos, ensure casinos remain safe for the Queensland community. This is especially given the existing exclusions framework under the Casino Control Act that allows for persons subject to an exclusion to be removed from the casino, the fact that casinos are not public spaces but highly regulated private property, and the casino operator's common law right to exclude a person from the casino at any time for any reason.

(f) any other relevant factors

Nil.

#### *Access to casino operator's electronic systems*

(a) the nature of the right

##### *Privacy and reputation (section 25)*

The right to privacy and reputation is described above (for mandatory carded play and cashless gambling).

##### *Rights in criminal proceedings (section 32)*

Rights in criminal proceedings are described above (for periodic reviews).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill enhances the regulator's ability to access a casino operator's electronic systems by providing the chief executive independent and as close to real time as practicable access to systems that monitor the conduct of gaming, gaming machines, junkets, and other aspects of casino operations. As these systems may contain personal information about individuals, such as a player's identity and mandatory carded play data, the amendment limits the right to privacy and reputation.

The Bill also clarifies that information obtained under the new provision is admissible as evidence in a proceeding against the casino operator for an offence. This amendment is intended to ensure that the regulator can take appropriate enforcement action when the Casino Control Act is contravened. While the provision applies to casino operators, which are corporations without human rights, access to the casino's systems may expose information about the activities of individuals, including information that might tend to incriminate them.

As access to the information is being accessed independently and in real time, the person may not be provided with the right to refuse to provide the information. This may impact the person's rights in criminal proceedings were proceedings later to be brought against that individual.

The purpose of providing real time access to systems and to allow that information to be used as evidence is to improve regulatory oversight of casinos and ultimately promote casino integrity. These aims are considered to be consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy achieves the purpose of providing the regulator with access to all information it requires to administer and enforce the Casino Control Act. Casino operators are sometimes already required (or will be required) by the Act and the casino's approved internal controls to operate systems that store or use personal information (e.g. an exclusions database, or systems to deliver mandatory carded play). Casino operators also have obligations that relate to specific individuals (e.g. a requirement to prevent a certain person from entering or remaining in the casino).

The Bill will improve regulatory oversight by ensuring that the regulator has the most accurate and up to date information on which to determine whether the casino is operating in compliance with its regulatory obligations. The ability to use this information as evidence when non-compliance has been found will ensure that breaches of the law can be dealt with swiftly and accurately.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

It may be noted that in certain cases, some of the personal information contained in the system accessed by the regulator under the new power may already have been disclosed or available via another route. For example, under existing provisions of the Casino Control Regulation, operators are required to provide copies of junket agreements that include the name of each participant, the period of their visit, the amount agreed to be committed by participants under the agreement, and other personal information, to the regulator for approval. The regulator is also to be provided with copies of participants' passports. While accessing the system that monitors the conduct of the junket may expose personal information about junket participants to the regulator, it is not necessarily always going to be new information.

It is also relevant that personal information accessed by the regulator under the new power is confidential information that is covered by the protections in section 14 of the Casino Control Act. As discussed above, confidential information must not be disclosed by departmental officers other than in accordance with the exceptions provided. Further, the regulator will also be bound by IPPs which require the regulator to only collect and use information for the purpose it is collected and which limit the disclosure of personal information by public entities.

With regards to rights in criminal proceedings, most, if not all, of the proceedings commenced by the regulator will be for breaches of casino legislation that have been committed by casino operators. Casino operators are all corporations which are not covered by the HR Act. It is also

important to note that the protection against self-incrimination for individuals under section 88A of the Casino Control Act is not affected by the Bill.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Enhancing the regulator's access to information and data will assist the regulator to determine if the casino is operating in accordance with its regulatory obligations. It is considered that, encouraging compliance with these obligations – by allowing the regulator access to the systems that monitor the casino operator's own compliance – outweighs the impacts on individual privacy and reputation and rights in criminal proceedings, given the findings of the Gotterson Review and other interstate casino inquiries.

- (f) any other relevant factors

The amendment is consistent with section 125 of the Casino Control Act (NSW) which provides the NSW Independent Casino Commission with independent, real-time access to casino systems.

### ***Obligations for casinos officers***

- (a) the nature of the right

#### *Right not to be tried or punished more than once (section 34)*

The right not to be tried or punished more than once is described above (for interstate police exclusions).

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill introduces new duties for officers of a casino operator and officers of the operator's holding company to ensure that the casino is compliant with its regulatory obligations, for example by ensuring appropriate procedures are in place and training available. It is an offence if an officer fails to take reasonable steps to ensure there are appropriate controls and procedures in place for the casino.

The new provision potentially engages the right not to be tried or punished more than once protected under section 34 of the HR Act, due to a potential overlap with the general duty of corporate officers to exercise due care and diligence under section 180 *the Corporations Act 2001* (Cth) (Corporations Act) and its related offence provision (section 184).

The purpose of the limitation is to ensure that those with key responsibilities proactively ensure casinos operate in good faith and compliance with the law. This purpose is considered fundamental to achieving object of the Casino Control Act that the State and the community as a whole benefit from casino gambling and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The Gotterson Review acknowledged that many people in senior management roles at The Star who were responsible for poor decision-making regarding risk have subsequently resigned, offering an opportunity for a fresh start. However, the Review went on to note that it is one thing to improve documented standards, policies and frameworks, and another to see they are implemented in practice by the development of a good culture of compliance.

Though not a recommendation of the Gotterson Review, the new obligations on officers will help build a positive and cooperative culture in Queensland casinos by ensuring those persons with ultimate responsibility for corporate conduct take proactive steps to ensure compliance.

To this end, the potential limitation on human rights arising due to the overlap with the Corporations Act offence is considered justified for the following reasons:

- the duty under the Casino Control Act will provide specificity around what is expected of officers in a casino specific context, compared to the general duty under the Corporations Act;
- the duty under the Casino Control Act will allow the Queensland Government to proactively engage the industry to ensure the duty is being met, rather than rely on the Commonwealth corporate regulator to react when there are high profile failures of directors and others to carry out their duties; and
- the offence under the Corporations Act only applies where the officer of a corporation is reckless and dishonest and has failed to either exercise their powers and discharge their duties in good faith in the best interests of the corporation, or for a proper purpose. The intent of the duty under the Casino Control Act is to promote a culture of compliance by requiring officers to take reasonable steps to ensure casino entities meet their regulatory obligations, rather than focusing only on behaviour that is reckless or dishonest.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

It is considered there is no less restrictive way to achieve the purpose of the Bill. An alternative way to achieve the purpose may be to hold officers of casino corporations directly liable for any offences committed by a corporate casino entity (referred to as a “director’s liability provision”). However, this type of offence reverses the onus of proof and may therefore be more limiting on human rights (rights in criminal proceedings).

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits human rights by potentially exposing an officer of a casino corporation to two offences under both Queensland and Commonwealth law related to the same or similar factual circumstances. However, the offences are separate, and this is highlighted by section 185 of the Corporations Act which provides that section 180 and 184 of the Act have effect in addition to (not in derogation of) any rule of law relating the duty or liability of a person because of their office or employment in relation to a corporation, and do not prevent the commencement

of civil proceedings for a breach of a duty under that other law. Accordingly, the potential limitation on human rights is not considered to be significant in contrast with the purpose of ensuring casinos are operated in accordance with the law.

(f) any other relevant factors

Nil.

## **Conclusion**

In my opinion, the Casino Control and Other Legislation Amendment Bill 2023 is compatible with human rights under the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**YVETTE D'ATH MP**  
Attorney-General and Minister for Justice  
Minister for the Prevention of Domestic and Family Violence  
Leader of the House

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