

CAIRNS CASINO AGREEMENT BILL 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The objective of this Bill is to authorise the responsible Minister on behalf of the State to enter into an Agreement for the development and operation of the Cairns Casino. To prevent unnecessary delays which could be caused by persons seeking to oppose the establishment of the casino on a heritage listed site, the Bill deems the development of the Cairns Casino for the purposes of the Heritage Act to be a development being carried out by the State. The Bill also removes the possibility of a challenge by way of Judicial Review to any decision made regarding the development.

In this way the responsible Minister is given the responsibility to ensure that the heritage value of the site is preserved whilst permitting the development to proceed.

Reasons for the Bill

The establishment and operation of the Cairns Casino represents a major project for the tourist development of the State. This Bill will give to the responsible Minister the necessary authority to negotiate the casino agreement, and with the approval of the necessary regulation, to bind the State. This Bill will also fulfil the requirements of a variety of other Acts to permit the issue of the appropriate Casino Licence, Special Facility Licence, the Permit to Occupy and the Special Lease.

The Bill is designed so that the Minister may enter into the casino agreement with any of the applicants who submitted an application in response to the 1992 Brief to Applicants for the extension of Casino operations in Queensland. If the current preferred applicant is unable to meet the Government's requirements and is unable to enter into the

Agreement, it will lose preferred applicant status. The Minister will then be free to enter into the Agreement with another applicant with the approval of the necessary regulation.

However, as the Cairns Casino is intended to be developed on a site which is listed under the Heritage Act, some concerned persons may attempt to frustrate the project. The Bill therefore deems the development to be a project by the State under the provisions of the Heritage Act.

There are still potential difficulties with this approach, for example—

Recommendation of the Queensland Heritage Council

The Heritage Act specifies a procedure to be followed for Development applications by the State. This involves public scrutiny of the application with the Queensland Heritage Council (“the Heritage Council”) considering all objections received and making a recommendation to the Minister responsible for the proposed works.

To ensure that the proposed development is not delayed by judicial review, the Bill provides that any recommendation made by the Heritage Council in relation to a development of the Customs House Site will not be subject to any appeal.

Decision of Minister responsible for the Proposed Works

If the procedure for a development by the State is followed it will be the Minister responsible for the proposed works, who will need to consider the recommendation of the Heritage Council. However, as the Minister was a party to the Government acceptance of the Customs House Site for a proposed casino, this would leave any decision made by him to be open to claims of bias. This is despite any procedures which were taken to ensure all relevant matters were considered and an unbiased decision was made.

Section 37 of the Heritage Act imposes a statutory duty on the Minister to make a decision and this duty should not be frustrated because the Minister was a party to the initial decision of the Government in relation to the Customs House Site.

Accordingly, the Bill provides that the decision of the Minister responsible for the proposed works under section 37 of the Heritage Act for this site is not subject to review.

Estimated Cost for Government Implementation

As this project is to be developed by a private person, the only estimated cost to the Government will be the minimal cost of overseeing the project.

Consultation

Treasury Department, Administrative Services Department, the Department of Environment and Heritage and the Department of the Premier, Economic and Trade Development have carried out consultation in relation to the form of this legislation.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the citation of the Bill.

Clause 2 clarifies the Bill's application by defining a number of terms used in the Bill.

Clause 3 provides for a definition of the term "development" in relation to the Cairns Casino. This definition is used throughout the Bill and is primarily designed to extend the meaning of the word "development" which is used in the Heritage Act. In this way, the Bill will have a wider application to ensure that the casino project remains a development of the State and is not caught by the more general provisions of the Heritage Act which apply to private developments.

**PART 2—AUTHORITY TO AGREE TO DEVELOP
AND OPERATE CAIRNS CASINO**

Clause 4 authorises the Minister on behalf of the State to enter into an Agreement with a person to establish and operate the Cairns Casino. The Minister may only enter into the Agreement if it has first been approved by the Governor in Council by regulation. This is seen as an appropriate delegation of Parliament's law making powers as the Legislative Assembly will have the opportunity to disallow the regulation.

Clause 5 provides that the Agreement takes effect as if it were a part of the Bill. Any provision of the casino agreement which is inconsistent with any other Act will override the inconsistent provision of the other Act to the extent of the inconsistency.

Clause 6 specifies the procedure to be followed to amend the casino agreement. As with clause 4, the Minister may only amend the casino agreement if the amendment has first been approved by the Governor in Council by regulation.

PART 3—APPLICATION OF OTHER ACTS

Clause 7 specifies that if the Cairns Casino is to be developed in relation to a place which is registered under the Heritage Act, the development will be deemed to be a development by the Crown under section 37 of the Heritage Act and not a private development. In that situation, the Minister who is responsible for this Bill is declared to be the Minister responsible for the proposed development or works under section 37 of the Heritage Act. Any decision including those matters within the wide definition of “decision” under clause 2 of the Bill will not be able to be challenged under the provisions of the Judicial Review Act.

Clause 8 specifies that the casino agreement may provide for the grant of a permit to occupy the casino site for the construction of the complex. After construction has been completed, a Special Lease may be granted for a term up to 75 years for the operation of the casino. If any part of the site for the casino is a public reserve (for example Anzac Park), the Bill provides that, for the purposes of the Land Act, the use of the land for a casino will be consistent with that public reserve. The clause also recognises that the provisions in the Land Act dealing with rent for the Permit to Occupy and the Special Lease may be overridden.

Clause 9 recognises that the casino agreement may provide that the project site is appropriately zoned under the Cairns City Council’s planning scheme to permit the development and operation of the casino. The clause further provides that no planning application need be made to the Council unless required in the casino agreement.

Clause 10 provides that a special facility licence for the Cairns Casino may be granted under the Liquor Act for the Casino and recognises that the Casino forms part of the tourist development of Queensland. The Bill overrides the Liquor Act to enable the Casino to remain open for trading in accordance with the hours of operation for the Casino as determined under the Casino Control Act.

Clause 11 provides that the casino agreement is deemed by this provision to be ratified by Parliament in accordance with the requirements of section 19 of the Casino Control Act. That section specifies that any agreement in writing which has been entered into for the granting of a casino licence has no force or effect until it has been ratified by the Parliament.

Clause 12 specifies that nothing in Part 3 of the Bill limits what can be included in the casino agreement.

PART 4—MISCELLANEOUS

Clause 13 provides for the making of regulations by the Governor in Council for the purposes of giving effect to the Bill.