

# Charitable and Non-Profit Gaming (Two-Up) Amendment Bill 2011

## Explanatory Notes

### General Outline

### Policy Objective

The objective of the Charitable and Non-Profit Gaming (Two-Up) Amendment Bill 2011 (the Bill) is to allow for the responsible, not-for-profit conduct of two-up games by the Returned and Services League (RSL) and Services clubs on Anzac Day, Remembrance Day, and related days prescribed in a regulation.

### Reasons for the Bill

Two-up is a game played with two or three coins that are tossed into the air by the 'spinner'. Participants bet on the outcome of the toss: either two heads or two tails against the other participants or two tails against the spinner (who must throw heads to win the game).

Currently, casinos have an exclusive right to conduct two-up games in Queensland. This exclusivity was initially granted to casinos during the 1980s, when casinos were first established in Queensland. The playing of two-up is authorised by the respective Casino Agreements which are commercial agreements between the State and the relevant operators authorised by the *Casino Control Act 1982* and the relevant Casino Agreement Acts. However, no casino in Queensland currently operates two-up games.

Two-up is an unlawful game if played in a public place outside of a casino under sections 234 and 230A of the *Criminal Code Act 1899*. The Criminal Code is enforced by the Queensland Police Service.

Historically, two-up is believed to have been adapted from the existing game of 'pitch and toss' and is thought to have been first played by transported Australian convicts. Requiring only two coins and a level patch of ground, its essential simplicity and portability appealed to early

convicts, emancipists and military officers who were excluded from the card games of the colony's respectable elite.

There is evidence that by the 1850s two-up was being played extensively on the eastern states' goldfields where diggers had few other recreational outlets. Some individuals travelled between towns to conduct 'two-up schools' among pastoral workers and miners. By the late 19<sup>th</sup> century, two-up schools operated in most cities and towns in Australia.

However, during the 19<sup>th</sup> century, two-up was condemned by some churches, the press and various anti-gambling lobby groups. In addition to the moral and class arguments against two-up, there was strong opposition to profiteering from gambling. The various colonial governments were concerned with matters of taxation and control, and two-up's mobility and informal betting structures created particular difficulties for regulatory authorities.

As a result, the game was made illegal in Australian jurisdictions during the second half of the 19<sup>th</sup> century. Queensland's *Suppression of Gambling Act 1895* and the later *Vagrants, Gaming and Other Offences Act 1931* (both now repealed) explicitly identify two-up as an unlawful game.

Its illegality did not prevent two-up from being celebrated as Australia's national game during the First World War, when it became identified with the newly acquired sense of national identity, personified by the 'digger'. In the post-First World War period, despite continued illegality, two-up thrived as ex-soldiers shared again the comradeship of their war days. The two-up tradition was carried on by a new generation of Australian soldiers in Africa and New Guinea during the Second World War.

Significantly, the association between Australian diggers and two-up was institutionalised in ritualistic games of two-up held after the memorial service every Anzac Day. The annual Anzac Day two-up game became an important link which united and revitalised two generations of war veterans.

Because of this link with military tradition it has commonly been accepted in the Queensland community that, despite its illegality, two-up is played on Anzac Day and similar days such as Remembrance Day, as a mark of respect to those who have served their nation in wartime. In line with community expectation, the amendments in the Bill seek to make the conduct of the game legal if conducted by an RSL or Services club on Anzac Day, Remembrance Day, and related days prescribed in a regulation.

The Bill is not designed to remove the casinos' rights to exclusive conduct of two-up except for on days of historical significance, when Australians commemorate those who have served their country and those who have paid the ultimate sacrifice. Due to the RSL and Services clubs' close association with Australia's military tradition and returned service men and women, the Bill restricts the conduct of two-up on Anzac Day, Remembrance Day, and related days that are prescribed in a regulation, to RSL and Services clubs or to functions at other venues licensed under the *Liquor Act 1992*, if an RSL or Services club has approved the conduct in writing.

Provisions in the Bill prohibit minors from participating. To ensure two-up is not used for profit making, provisions within the Bill prohibit commissions on wagers by participants. However the Bill will allow an entry fee, if all money raised is donated to the RSL or Services club and is used for purposes to support ex-service men and women and their families. It is the intent of the Bill that all money raised will be used for this purpose, and not be used for club operating expenses or other administrative purposes.

Additionally, as casinos currently have an exclusive right to conduct two-up games in Queensland, amendments to the Casino Agreements between the State and casino owners will be made to reflect that RSL and Services clubs may now conduct the game on Anzac Day, Remembrance day and related days that are prescribed in a regulation.

It should be noted that the reference to RSL and Services clubs used in the Bill is consistent with the terms used in the Liquor Act when referring to clubs associated with current and ex-service men and women. This terminology ensures that the right to conduct two-up games is extended to all clubs that have been established for the use of ex-service men and women, but may not necessarily be associated with the RSL.

### **Achievement of the Objectives**

The Bill achieves the objectives by inserting provisions in the *Charitable and Non-Profit Gaming Act 1999* (the Act) that:

- define what is meant by two-up games;
- authorise RSL and Services clubs to conduct two-up games on Anzac Day, Remembrance Day, and related days that are prescribed in a regulation, either on their premises or at another liquor licensed premises;

- prohibit commissions on wagers by participants;
- allow an entry fee, if all money raised is donated to the RSL or Services club and is used for purposes to support ex-service men and women and their families;
- prohibit minors from participating in two-up games.

These provisions prescribe lawful two-up under the Act. If a person does not comply with these provisions (or the provisions of any other Act that authorises two-up) when conducting two-up, they commit an offence under section 234 of the Criminal Code.

### **Alternatives to the Bill**

An alternative to the Bill is for the status quo to remain, where two-up remains an exclusive game for casinos. As this retains the status quo, no legislative amendments would be required. However, there is a historical link between two-up and Australia's military which has led to widespread community acceptance for two-up games being played on Anzac Day by RSL and Services clubs. The proposed legislative amendments therefore reflect this community acceptance, but ensure that the game is played in a responsible manner and stipulate the circumstances in which it is allowed.

Another alternative to the Bill is to make further legislative amendment to extend the authority to conduct two-up games to all clubs and hotels, without any association to the RSL or Services clubs. However, this option has the potential to erode the links two-up has with Australia's military tradition, which is the basis for community acceptance for the playing of the game.

### **Estimated Cost for Government Implementation**

There is no estimated cost for Government implementation. RSL and Services clubs will have legal authority to conduct not-for-profit two-up games on Anzac Day, Remembrance Day, and related days that are prescribed in a regulation, but no additional regulatory processes are required. The Queensland Police Service will continue to administer the Criminal Code and ensure that unauthorised two-up games are not conducted and enforce penalties where appropriate.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles. The amendments do not take away any rights and liberties of individuals, nor do they erode the institution of Parliament.

## **Consultation**

Consultation has been undertaken with relevant stakeholders, including the owners of Queensland casinos and RSL (Queensland Branch).

## **Notes on Provisions**

Clause 1 states the short title of the Act.

Clause 2 states that the Bill amends the *Charitable and Non-Profit Gaming Act 1999* (the Act).

Clause 3 inserts a new part 8A titled ‘Two-up on a designated day’ into the Act.

Part 8A contains the following sections:

- Section 178, which defines the meaning of ‘two-up’. This section prescribes key roles, acts and implements used in two-up. A person conducting two-up must comply with the provisions in this section, although they may also require players to abide by additional rules if those rules are in the spirit of the traditional rules of two-up and made readily available to players, in accordance with provisions in the new section 179 inserted into the Act by this Bill.
- Section 179, which prescribes the nature of lawful two-up under the Act:
  - Subsection 179(1) states that two-up which complies with this section is lawful;
  - Subsection 179(2) contains the following paragraphs:
    - 179(2)(a) prescribes who can conduct two-up under the Act and where it can be conducted. RSL and Services clubs are able to conduct two-up on their licensed premises under the

*Liquor Act 1992*. In addition, RSL and Services clubs can approve a person in writing to conduct two-up at a function in other premises licensed under the Liquor Act.

- 179(2)(b) ensures that the conduct of two-up under the Act is on a designated day (that is, Anzac Day, Remembrance Day, and any other day significant to the remembrance of the sacrifice for the nation by the men and women of its Defence Force and that is prescribed in a regulation) as part of activities that commemorate the designated day.
- 179(2)(c) ensures that minors cannot participate in two-up, as it is not appropriate for persons under 18 to participate in gambling.
- 179(2)(d) provides that rules of two-up by which players are expected to abide by, should be made readily available to be read before playing. The RSL or Services club or approved person conducting the two-up game is also responsible for making the rules readily available to participants. The decision as to how to make them available (such as having them on clear display) is to be decided by the responsible person or club.
- 179(2)(e) provides that any rules that players must abide by are in the spirit of the traditional rules of two-up. This is designed to ensure that the game remains true to tradition and maintains its links to Australia's military history.
- 179(2)(f) ensures that any entry fees charged are donated to the RSL or Services club for the support of ex-service men and women and their families. It is the intent of this provision that all money raised will be used for this purpose, and not be used for club operating expenses or other administrative purposes.
- 179(2)(g) ensures that money wagered by players must be returned to players (the person or venue conducting the game cannot take a commission).
- Section 180 ensures that two-up is not categorised as a category 1, 2, 3, or 4 game under the Act. This ensures that provisions that apply to these categories do not apply to two-up.

- Section 181 provides that two-up, as authorised under part 8A of the Act (that is, conducted on a designated day at RSL and Services clubs or premises licensed under the Liquor Act where the person conducting the two-up is approved in writing by an RSL or Services club), is lawful despite any provisions in the Casino Agreement Acts (*Breakwater Island Casino Agreement Act 1984*, *Brisbane Casino Agreement Act 1992*, *Cairns Casino Agreement Act 1993* and *Jupiters Casino Agreement Act 1983*) or in the Casino Agreements made under the Casino Agreement Acts.

This section (s.181) clarifies that the Bill is not intended to remove the casinos' rights to exclusive conduct of two-up except when it is conducted by an RSL or Services club or a person approved in writing by an RSL or Services club as a not-for-profit game on Anzac Day, Remembrance Day or another day significant to the remembrance of the sacrifice for the nation by the men and women of its Defence Force.

Clause 4 amends Schedule 2, the definition of rule, to ensure that references to rules under Part 8A cannot be considered to be rules as made by the Minister under section 72 of the Act. It also inserts a definition of two-up in Schedule 2, which is a reference to the definition provided under the new section 178. It also inserts a definition of designated day.