

Night-Life Economy Commissioner Bill 2024

Explanatory Notes

Short title

The Short title of the Bill is the Night-Life Economy Commissioner Bill 2024.

Policy objectives and the reasons for them

Policy objectives

The policy objective of the Night-Life Economy Commissioner Bill 2024 (the Bill) is to establish the Night-Life Economy Commissioner (the Commissioner). The proposed legislation will provide a statutory basis for the Commissioner's functions.

The Commissioner will bring together state and local governments, industry and key stakeholders to support Queensland's night-life economy, with an emphasis on partnerships that promote the growth, sustainability and vibrancy of this important sector.

Background

On 10 June 2024, the Premier and Minister for Employment and Small Business and Minister for Training and Skills Development announced that a Commissioner is to be appointed to support the night-life economy sector. The decision to appoint a Commissioner was made in response to increasing awareness of the economic challenges faced by businesses operating in the sector, including small live music and other arts businesses, and in recognition that the growth of the sector will not only support businesses operating in the night life economy, but also support communities more broadly through the jobs created across the state.

Achievement of policy objectives

The Bill will achieve these broad policy objectives by establishing the Commissioner in standalone legislation with the powers to work with the night-life economy sector and conduct inquiries about issues affecting the night-life economy.

The Bill will achieve its objectives by:

- providing the power to appoint a Commissioner;
- providing the functions and powers of the Commissioner; and
- providing other miscellaneous provisions to support the operation of the Act.

Provide for the appointment of a Night-Life Economy Commissioner

The Bill:

- provides that there is to be a Commissioner and provides the detail of the Commissioner appointment process and appointment term;

- provides the Minister for Employment and Small Business and Minister for Training and Skills Development with authority to appoint an acting Commissioner if the role is or becomes vacant; and
- provides for the resignation and removal of the Commissioner.

Provide for the functions and powers of the Night-Life Economy Commissioner

The Bill:

- provides the functions of the Commissioner, which are broadly to advocate for and provide information and advice relating to the night-life economy sector;
- provides that the Commissioner can conduct inquiries into issues affecting the night-life economy sector upon approval by the Minister;
- specifies that the Minister can give the Commissioner a direction relating to the functions and activities of the Commissioner;
- provides that the Minister can issue the Commissioner with a written statement of expectations about the Minister's expectations for the Commissioner's performance of its functions and activities; and
- provides the reporting required of the Commissioner, which includes regular reporting to the Minister and tabling of an annual report in the Legislative Assembly.

Miscellaneous provisions

The Bill provides for miscellaneous matters:

- provides that the Commissioner must not disclose confidential information unless certain circumstances are met; and
- provides the Act must be reviewed after three years.

The powers and functions of the Commissioner as proposed in the Bill are similar to that of like Commissioners in other jurisdictions. A desktop review of those Commissioners demonstrates that a statutory appointment is reasonable and appropriate.

Alternative ways of achieving policy objectives

Alternative ways of achieving the policy objectives included consideration of appointing a Commissioner as a non-statutory position. This option would involve appointing the Commissioner under the *Public Service Act 2022* as an officer within the Department of Employment, Small Business and Training, or engaging the Commissioner through a professional services contract for a specified term. This option carried the risk, either real or perceived, of the Commissioner lacking appropriate independence from government, an outcome considered incompatible with the Commissioner's effective execution of their proposed functions. Further, engaging the Commissioner through a professional services contract for a specified term was considered to be a more costly option.

A non-statutory Commissioner model was not found to be directly comparable to contemporary models within Queensland. Further, no other state or territory has a non-statutory Commissioner.

On this basis, this option was not considered suitable to achieve intended policy objectives in a reasonable, appropriate and effective manner. Implementation of the Commissioner model through legislation was considered the only feasible way to achieve the policy objectives.

Estimated cost for government implementation

The State Government will incur an additional cost in the implementation and support of the statutory appointment. Initial funding of \$0.24 million has been allocated in the 2024-25 State Budget to support the establishment of the Commissioner. All other initial costs associated with the establishment of the role, including resourcing for the Office of the Commissioner and other operational functions, will be met within existing Department of Employment, Small Business and Training budget allocations. Further and ongoing funding to support the operations of the Commissioner will be sought as required, informed by the outcomes of the Commissioner's initial work program.

Consistency with fundamental legislative principles

The Bill is consistent with the fundamental legislative principles. No potential breaches of fundamental legislative principles have been identified.

Consultation

No consultation with key stakeholders occurred, due to the urgent nature of the Bill as a means of providing immediate support to the night-life economy sector.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth. However, New South Wales has a statutory appointed 24-Hour Economy Commissioner to advocate for, and promote the interests of, the night-time economy across New South Wales.

The proposed functions and powers of the Commissioner included in the Bill are consistent with the New South Wales's 24-Hour Economy Commissioner established under the *24-Hour Economy Commissioner Act 2023* (NSW).

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Night-Life Economy Commissioner Act 2024* (the Act).

2 Main object

Clause 2 provides the main objects of the Act are to establish the office of the night-life economy Commissioner (the Commissioner) to:

- work with night-life businesses to create a vibrant and safe night-life environment; and
- support, promote and advocate for key aspects of the night-life economy, with an emphasis on partnerships that encourage the growth, sustainability and vibrancy of night-life businesses.

3 Definitions

Clause 3 provides definitions for particular words used in the Act. The intention is that this will provide the sector with certainty of the scope of application of the Commissioner's functions.

Part 2 Night-Life Economy Commissioner

Division 1 Establishment

Clause 4 provides that there is to be a night-life economy Commissioner.

Clause 5 provides for the main functions of the Commissioner, which are:

- to provide a central point of contact in relation to matters affecting the night-life economy; and
- to provide information and advice to night-life businesses and to refer night-life businesses to entities that provide advisory or support services; and
- to raise awareness about:
 - issues affecting the night-life economy; and
 - compliance with legislation affecting the night-life economy; and
 - best practice in relation to other matters affecting the night-life economy; and
- to conduct inquiries as the Minister directs into matters affecting the night-life economy; and
- to advocate on behalf of night-life economy businesses to:
 - the State, the Commonwealth, another State or a local government; or
 - any other entity involved in administering a matter relevant to the night-life economy; and
- to work collaboratively with other persons appointed on behalf of the State who are involved in administering matters relevant to night-life businesses; and
- to work collaboratively with the equivalent of the Commissioner in other States or the Commonwealth to enhance conditions for night-life businesses; and

- to report to the Minister about a particular issue or a general matter relating to the night-life economy or the Commissioner's functions; and
- to perform any other function given to the Commissioner under this or another Act.

The main functions of the Commissioner allow the Commissioner to work with industry and key stakeholders to support, promote, and advocate for key aspects of the night-life economy, to build partnerships that encourage the growth, sustainability, and vibrancy of the local businesses that underpin this important sector. The Commissioner is also to collaborate with other persons appointed on behalf of the State who are involved in administering matters relevant to night-life businesses, to ensure consideration is given to the powers and administrative responsibilities of those persons in undertaking the Commissioner's functions.

Clause 6 provides that the Commissioner has all the powers necessary or convenient for performing the Commissioner's functions provided under the Act.

Clause 7 provides that the Commissioner may perform the Commissioner's functions inside and outside Queensland. This will enable the Commissioner to work across all Queensland regions, and to work with other states where appropriate.

Clause 8 provides that the Commissioner may delegate a power of the Commissioner under this Act or another Act to a public service officer as long as that officer is appropriately qualified to exercise the power delegated.

Division 2 Appointment

Clause 9 provides that Governor in Council is to appoint the Commissioner upon recommendation by the Minister, and the Minister may only recommend a person if that person is appropriately qualified to perform the functions of the Commissioner.

Clause 10 provides that the Commissioner holds the office for a term of not more than three years. It further provides that a person can be reappointed as the Commissioner only once for a further term of not more than three years.

Clause 11 provides the Commissioner is to be paid the remuneration, allowances and holds the office on conditions decided by Governor in Council. It further provides that the Commissioner is appointed under this Act and not the *Public Sector Act 2022* to provide independence to the Commissioner.

Clause 12 only applies if a person who is a public service officer is appointed as Commissioner. Clause 12 provides that if a public service officer is appointed as Commissioner, they will keep all rights accrued, such as long service leave, and continue to accrue rights while in the Commissioner position. The effect of this clause is that at the end of the person's term or resignation as Commissioner, the person's service as the Commissioner is taken to be service of a like nature in the public service.

Clause 13 provides that if the office of Commissioner becomes vacant if the Commissioner resigns under clause 14 or is removed by Governor in Council under clause 15.

Clause 14 provides that the Commissioner may resign by way of letter to the Minister, and this resignation takes effect when the Minister receives the resignation or if a later day is stated in the letter, the later day.

Clause 15 provides that Governor in Council may remove a person from office as the Commissioner upon recommendation of the Minister. Clause 15 also provides that the Minister may recommend the removal of the person from office as the Commissioner if they are satisfied that the person is guilty of misconduct of a type that could warrant dismissal from the public service if the Commissioner were an officer of the public service; is incapable of performing the functions of the Commissioner; or has neglected the duties of the Commissioner, or performed the duties of the Commissioner incompetently.

This clause does not limit section 25 of the *Acts Interpretation Act 1954*.

Clause 16 provides that when there is a vacancy in the office of Commissioner or a period when the Commissioner is absent from duty, or cannot, for another reason, perform the functions of the office, the Minister may appoint a person to act in the office of Commissioner during this time. The intent of this provision is to ensure a continuity of support and advocacy to businesses in the night-life economy sector.

Division 3 Role of Minister and reporting requirements

Clause 17 provides that the Minister may give the Commissioner a written direction about a matter relevant to the performance of the Commissioner's functions and that the Commissioner must comply with this direction.

The clause further provides that if the Minister gives the Commissioner a written direction under subclause (1), the Commissioner must include details in their annual report including the actions taken by the Commissioner as a result of the direction.

Clause 18 provides that in addition to and without limiting clause 17, the Minister may at any time give the Commissioner a written direction to conduct an inquiry into a particular issue or a general matter relating to the night-life economy. To provide absolute clarity, the Commissioner is unable to conduct an inquiry without the written direction of the Minister.

For the purposes of an inquiry, the Minister may request the attendance or advice of representatives of government agencies. This could include requesting the advice of a representative of government agencies on the need for an inquiry. The intent of this subclause is to ensure the Commissioner is able to consult relevant stakeholders to conduct an informed inquiry.

Clause 18 further provides that as soon as practicable after conducting the inquiry, the Commissioner must prepare a report about the inquiry and give a copy of the report to the Minister. The intent of this subclause is to ensure the government receives timely advice on issues impacting the night-life economy.

Clause 19 provides that the Minister may give the Commissioner a written statement of expectations for the performance of the Commissioner's functions. This statement may state a particular period for which the statement applies; and provide for the nature and scope of the Commissioner's activities for a particular period. It further provides that the

Commissioner must have regard to the statement of expectations in performing the Commissioner's functions.

The intent of this clause is to ensure that the Commissioner is able to respond effectively to emerging issues impacting the night-life economy and in turn, that the government is able to receive timely advice.

Clause 20 requires the Commissioner to keep the Minister reasonably informed about the functions the Commissioner has performed. It further provides that the Commissioner must comply with a reasonable request by the Minister to give the Minister stated information at a stated time about the functions performed or inquiries conducted by the Commissioner.

The effect of this clause is that the Commissioner will report to the Minister and will be separate to the department.

Clause 21 provides that the Commissioner must prepare and give to the Minister, within 3 months after the end of each financial year, a report that outlines the functions performed, including the inquiries conducted by the Commissioner during the financial year. It further provides that the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

The intent of this clause is to ensure there is transparency for Queenslanders on the functions that the Commissioner has undertaken and the directions the Minister has given to the Commissioner for each financial year. The requirement to table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report ensures there is timeliness to this transparency.

Part 3 Miscellaneous

Clause 22 applies to a person who is, or has been performing functions under or relating to the administration of this Act and in doing so, has acquired or has access to personal information about another person.

Clause 22 provides that it is an offence to disclose confidential information to anyone else or use the information unless it is:

- necessary to perform a function under or relating to the administration of this Act; or
- otherwise required or permitted by this Act or another law; or
- with the consent of the person to whom the information relates; or
- in compliance with a lawful process requiring documents or evidence be given to a court or tribunal.

A maximum penalty of 50 penalty units is provided.

This clause is intended to protect confidential information obtained in performing functions under the Act.

Clause 23 provides that the Act must be reviewed as soon as practicable after the day that is three years after commencement. It further provides that the Minister must table a report about the outcome of the review in the Legislative Assembly.

This clause is intended to ensure the effectiveness of the Act is considered.

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