

Casino Control and Other Legislation Amendment Bill 2022

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* (Human Rights Act), I, Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women 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 2022 (the Bill).

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

Overview of the Bill

The Bill implements a range of reforms relevant to the regulation of liquor, gaming and fair trading in Queensland. Broadly, the Bill amends:

- the *Casino Control Act 1982* (Casino Control Act) to introduce specific casino integrity reforms to strengthen casino regulation and oversight;
- Queensland's suite of gambling legislation to facilitate a transition to safe cashless gaming in Queensland;
- the *Wagering Act 1998* (Wagering Act) to provide a framework for wagering on approved simulated sports and racing events;
- the *Gaming Machine Act 1991* (Gaming Machine Act) to provide for extended gaming machine trading on New Year's Eve in line with extended liquor trading under the *Liquor Act 1992*; and
- the *Collections Act 1966* (Collections Act) to provide for a cross border recognition scheme for charitable fundraising, and to remove the ability to object to applications to register as a charity.

Further details about each of the reforms delivered by the Bill are provided below.

Specific casino integrity reforms

The Bill amends the Casino Control Act to ensure that Queensland casinos operate with the highest standards of integrity and accountability. The Bill has been informed by the recommendations and findings of public inquiries into Crown Resorts Limited (Crown), which operates casinos in New South Wales, Victoria, and Western Australia. While those completed inquiries have not examined an entity licensed to conduct casino gaming in Queensland, each inquiry identified specific concerns about casino integrity and casino regulation and prompted the Government's consideration of how those concerns could be addressed under Queensland's casino legislation.

As a result, the Bill contains a number of amendments to strengthen Queensland's regulatory casino framework in response to the conduct identified in other jurisdictions. Accordingly, the Bill introduces amendments to the Casino Control Act to:

- Introduce a pecuniary penalty as a form of disciplinary action available under section 31 of the Act. The Minister will have the ability to issue a fine to a casino licensee, lessee, or operator (a casino entity) of up to \$5 million, while the Governor in Council may issue a fine of up to \$50 million. Fines imposed by the Minister will be judicially reviewable;
- Increase key penalties – the penalty for a contravention of an approved control system will increase from a maximum of 200 penalty units to 400 penalty units and the penalty for interfering with an inspector will increase from a maximum of 40 penalty units to 160 penalty units;
- Introduce a general information seeking power that will allow the Minister or chief executive to request information relevant to the administration of the Act from a casino entity and its associates. The requested information must still be provided even if it is the subject of legal professional privilege;
- Introduce a new offence for casino entities and relevant associates that, when required to give information to the Minister or chief executive, give information that is false or misleading, subject to a maximum penalty of 160 penalty units;
- Impose a new duty to cooperate on casino entities and their associates. The duty involves complying with reasonable requests made by the Minister, chief executive, or an inspector, and doing everything necessary to ensure that casino operations are conducted honestly and fairly;
- Introduce a requirement for a casino entity or an associate of the casino entity to give written notice to the chief executive if it suspects it has breached the Act or the agreement Act for the casino licence relevant to the entity, certain agreements to which the entity is a party, or directions given to the entity by the chief executive or Minister;
- Introduce the ability to require a person to answer questions or provide information on oath or affirmation;
- Introduce a power to allow the reasonable costs incurred by the department in assisting the Minister or Governor in Council in preparing for and taking disciplinary action against a casino entity to be recovered from the entity. The decision to impose a cost order will be judicially reviewable;
- Introduce a power for the Minister to direct a casino entity to engage and pay for an approved external adviser, on terms approved by the Minister, to inquire into and report to the Minister on matters relevant to the conduct of casino operations, the conduct of the casino entity, the suitability of the casino entity and its associates, and the administration of the Act. To facilitate the performance of the adviser's functions, the adviser may require casino entities to provide information, including information that is subject to legal professional privilege;
- Introduce a contravention of the Act as a new ground for taking disciplinary action and clarify that the existing ground relating to a conviction for an indictable offence arises even if the conviction is not recorded;
- Lower the threshold for taking disciplinary action against a casino entity;
- Allow the Minister to undertake an ongoing suitability investigation under section 30 of the Act to satisfy himself or herself, rather than only the Governor in Council, of the suitability of a casino entity and its associates;

- Clarify the Minister’s ability to take into account the findings of other State or Commonwealth investigations (for example, a royal commission inquiry), or a report prepared by an external adviser, when determining the ongoing suitability of a casino entity and its associates; and
- Introduce a discretionary power for letters of censure issued to a casino entity as a disciplinary action to be published on the department’s website.

Amendments to modernise gambling legislation

Amendments to facilitate a transition to safe cashless gaming

The Bill amends the Casino Control Act, *Charitable and Non-Profit Gaming Act 1999* (Charitable and Non-Profit Gaming Act), Gaming Machine Act, *Interactive Gambling (Player Protection) Act 1998* (Interactive Gambling (Player Protection) Act), *Keno Act 1996* (Keno Act), *Lotteries Act 1997* (Lotteries Act), and the Wagering Act to facilitate the transition to safe cashless gaming. Where required, the Bill amends the gambling Acts to:

- Allow the chief executive to approve alternative payment methods (such as electronic funds transfer) where existing provisions are prescriptive as to what payment methods may be used for making a bet or paying out prizes;
- Provide a regulation-making power dealing with the methods of payment that may be used in connection with the gambling activity authorised by the relevant gambling Act; and
- Ensure that cashless systems and technology can be required to undergo technical evaluation and approval before their use in the gambling market.

Harm minimisation regulation and guideline power

The Bill amends all the gambling Acts, including the Casino Control Act, to insert a new harm-minimisation regulation making power. A regulation may mandate a harm minimisation measure that applies to prescribed persons if it is necessary and appropriate to minimise potential gambling harm, consistent with the objects of the Act, or otherwise in the public interest. A maximum penalty of 200 penalty units applies if the measure is not implemented.

Where it is not already provided, the Bill also inserts a guideline-making power under each gambling Act. The power will enable guidance to be issued about the attitude the chief executive is likely to adopt on a particular matter or how the chief executive administers the Act. Guidelines will be published on the department’s website.

Ability to condition gambling equipment approvals

The Bill amends the Charitable and Non-profit Gaming Act, Interactive Gambling (Player Protection) Act, Keno Act, Lotteries Act, and the Wagering Act to clarify that the chief executive may grant regulated gambling equipment approvals (including approvals to modify equipment) subject to conditions or impose conditions at any time after an approval is granted. Conditions may also be varied or withdrawn. The imposition of conditions will be subject to tribunal review and a maximum penalty of 200 penalty units applies if a condition is breached.

Publication of rules

For ease of use, the Bill amends the Charitable and Non-profit Gaming Act, Interactive Gambling (Player Protection) Act, Keno Act, Lotteries Act, and the Wagering Act to allow rules made under each Act to be published on the department's website, rather than by gazette.

Removal of redundant individual licensing and employee training requirements under the Casino Control Act

The Act requires applicants for a casino employee licence or key casino employee licence to agree to have their photo and fingerprints taken (section 35(2)) as part of their licence application. The Act also requires the chief executive to take the photo and fingerprints of these licence applicants (section 37(1)(a)). If the licence is not granted, the chief executive must destroy the fingerprints of the applicant (section 38(3)(b)). There is a further requirement for casino employee and key casino employee licences to include a recent photograph of the licensee (section 39A(2)(b)).

The Bill removes these provisions to facilitate the introduction of a seamless online licence application process. The requirements for fingerprints and photographs to be provided is not considered necessary as applicants are already required to provide sufficient evidence of identification to enable a criminal history check to be undertaken (such as a driver's licence). Further, the requirement for licences to be accompanied by a photo is redundant due to the requirement for all casino employees to always wear photo identification while at work.

To reduce unnecessary red tape, the Bill also removes requirements for casino operators to provide letters of intent to employ, licence applications to specify the type of employee licence being applied for, and chief executive approval of employee training providers.

Removal of detention power

The Bill removes section 105 of the Casino Control Act, which allows an inspector or a casino operator and its employees or agents to detain a person who is reasonably suspected of cheating or of using unlawful equipment in the casino. As it is no longer required the Bill also removes section 118, which protects inspectors and casino operators (including the operator's employees or agents) from liability if they act in good faith when detaining a person under section 105.

Wagering framework for simulated events

The Bill amends the Wagering Act to provide a mechanism to allow wagering to be conducted by a sports wagering licensee on approved simulated events and simulated contingencies. A simulated event refers to a race or sporting event simulated by a computer, for which the outcome is solely determined by numbers selected by a random number generator (RNG). Customers or other involved parties are unable to alter or influence the outcome of a simulated event.

The Bill also ensures appropriate oversight and safeguards are in place to uphold the integrity of wagering in Queensland and minimise the potential risk of gambling-related harm in the community. In this regard, the Bill allows the Minister to:

- refuse to grant an approval if the proposed simulated event or simulated contingency is offensive or contrary to the public interest;
- impose conditions on an approved simulated event or simulated contingency;

- determine a timeframe for which an approval remains in place; and
- withdraw an approval of a simulated event or simulated contingency for any reason the Minister considers appropriate, provided the sports wagering licensee has been afforded an opportunity to respond to the Minister’s concerns.

The Bill allows the RNG used to conduct simulated sporting events to be evaluated by the chief executive and prohibits a licence operator or wagering agent from accepting wagers on simulated events or simulated contingencies other than at a terrestrial retail outlet or agency (maximum penalty 200 penalty units).

Formalise extended gaming hours for New Year’s Eve

The Bill amends the Gaming Machine Act to formalise longstanding administrative arrangements authorising extended gaming hours on New Year’s Eve. The amendments allow gaming machine licensees to automatically continue trade on New Year’s Eve until 2am on New Year’s Day.

Charitable fundraising cross-border recognition

The Bill implements a cross-border recognition model (referred to as ‘deemed registration’) for fundraising authorised under the Collections Act. The Bill inserts a new Part 6A of the Collections Act to provide for entities registered with the Australian Charities and Not-for-profits Commission (ACNC) to receive deemed registration as a charity upon notifying the Minister of an intention to fundraise in Queensland. The Bill prescribes ‘excluded entities’ that cannot be granted deemed registration due to already being granted automatic fundraising approval under the Collections Act or another Act, and captures entities such as religious bodies, and parents and citizens associations. The Bill ensures all the conduct requirements of the Collections Act apply to deemed registrants.

Separate from the ACNC registration process, the Bill also reduces regulatory burden and wait times before a charity can begin fundraising by removing the right of a person to object to an association’s application for registration as a charity under the Collections Act. Removing the pre-registration objection process will help further align Queensland’s charity regulation with other States. The amendment will have the flow on effect of removing a requirement for applications to be publicly advertised to allow objections to be lodged. The Bill does not affect a person’s right to apply to have a charity removed from the register once registration has been granted.

Human Rights Issues

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

Most of the provisions of the Bill are aimed at corporations or associations and thus do not engage human rights, which are afforded to individuals. While there is no express provision of the Casino Control Act that prevents an individual from holding a casino licence, all Queensland casino licensees, lessees, and operators are incorporated entities. The Wagering Act explicitly prevents individuals from obtaining a wagering authority. Further, individuals are not eligible to register as a charity under the Collections Act or the ACNC’s governing legislation (the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)). The

amendments to the Gaming Machine Act to formalise extended gaming hours for New Year's Eve also do not limit human rights.

However, some of the amendments in the Bill will affect individuals with protected human rights.

Human rights promoted by the Bill

The Bill removes section 105 of the Casino Control Act, which permits a casino inspector, and a casino operator or its servants or agents, to detain a person suspected of cheating or possessing unlawful equipment, or attempting to do so, until such time as police arrive. The detention power under section 105 has been identified as limiting the rights to freedom of movement (section 19) and liberty and security (section 29). The intent of the limitation is to enable persons caught cheating or suspected of cheating to remain on casino premises until they can be questioned by police. However, there are less restrictive ways this outcome can be achieved, for instance, by seeking a person's voluntary agreement to stay in the casino until a police officer arrives or confirming their identity so that they can be referred to police for subsequent investigation. Casino security footage can also be provided to police for further identification of the person. Accordingly, the limitation on the right to freedom of movement and liberty and security is not considered to be reasonable and demonstrably justifiable. The Bill therefore promotes the right to freedom of movement and the right to liberty and security by removing section 105 of the Act.

The Bill also removes provisions of the Casino Control Act that require an applicant for a casino employee licence or a key casino employee licence to furnish fingerprints and a photograph as part of their application. The removal of these requirements will facilitate an online lodgement process for employee licence applications without compromising the integrity of the licensing framework. As potential casino employees will no longer be required to provide more personal information than is necessary to process their application, the Bill is considered to promote the right to privacy and reputation (section 25).

Human rights limited by the Bill

The following casino integrity reforms limit human rights to the extent they affect individuals—

- the discretionary power to publish letters of censure – right to privacy and reputation (section 25);
- the ability to appoint an external adviser to investigate the suitability of persons associated with a casino entity – right to privacy and reputation (section 25);
- the requirement to provide the Minister, chief executive, or an external adviser with certain information subject to legal professional privilege if requested – right to privacy and reputation (section 25);
- the ability of the Minister to have regard to the findings of other investigations or the report of an external adviser when determining the suitability of a person associated with the management and operation of a hotel-casino complex or casino – right to a fair hearing (section 31); and
- the ability for the Minister, chief executive or an inspector to require a person to provide information on oath or affirmation – right to privacy and reputation (section 25) and rights in criminal proceedings (section 32).

In addition, an amendment to the Collections Act to remove an individual's right to object to an association's application for registration as a charity limits the right to take part in public life (section 23).

Why the limitations on these rights are compatible with the Human Rights Act is discussed in more detail below.

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*)

Discretionary power to publish letters of censure – right to privacy and reputation (section 25)

(a) the nature of the right

The right to privacy in section 25(a) of the Human Rights Act is very broad and protects against 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. The right to privacy is qualified in that interferences with the right are permitted if they are not unlawful or arbitrary. An interference is arbitrary if it is capricious, unpredictable, unjust, unreasonable, and disproportionate, regardless of whether it is authorised by law. Whether an interference with privacy is arbitrary is considered as part of the justification process, below.

Section 25(b) of the Human Rights Act also protects against unlawful attacks on a person's reputation. 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 will enable a letter of censure issued to a casino entity as a form of disciplinary action to be published on the department's website. Whilst disciplinary action is taken against casino entities and not individuals, some of the grounds for taking disciplinary action may concern the suitability of individuals to be associated or connected with casino operations. Section 31(1) of the Casino Control Act provides that it is a ground for taking disciplinary action if a director, partner, trustee, executive officer, or person associated or connected with the ownership, administration, or management of the casino ceases to be a suitable person. Suitability is determined with regards to the factors listed in section 20 of the Casino Control Act, and may extend to a person's reputation, character, financial background, and their association with persons of ill repute, amongst other matters.

A letter of censure issued in connection with this ground that is made public engages the right to privacy and reputation if it contains personally identifying information about a person, such as a director or executive officer of a casino entity, that is found to be unsuitable following an investigation.

The purpose of publishing letters of censure is to promote transparency, public accountability, and integrity in casino operations. These aims reflect the object of the Casino Control Act to

ensure that, on balance, the State and the community as a whole benefit from casino gambling, including by ensuring the probity of persons involved in the conduct of casino gambling (section 3). The purpose 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

Many aspects of casino operations carry significant risks of harm. For example, casinos may be targeted by money launderers due to the high volume of cash transactions processed each day. Alternatively, the gambling products offered by casinos may put some patrons at risk of gambling related harm. Due to these risks, casinos are highly regulated and holding a casino licence is a privilege, not a right. Maintaining that privilege is dependent on the ongoing suitability of the persons associated or connected with the management and operation of the casino or the casino-hotel complex. This foundational aspect of casino regulation is reflected in the ability to conduct suitability investigations into persons (including individuals) associated or connected with casino operations, employee licensing requirements, and the grounds of disciplinary action against casino entities under section 31(1) of the Act.

A letter of censure may be issued as a form of disciplinary action when the Minister is satisfied that a ground for taking disciplinary action has arisen, in other words, when a casino entity has breached its obligations under the Casino Control Act. In this context, the greater transparency that arises when failures to meet the ongoing requirements for suitability are made public, also enhances integrity and public accountability. Accordingly, any limitation on an individual's right to privacy and reputation resulting from publishing the relevant letter is considered to be reasonable and demonstrably justifiable.

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

There is no less restrictive way to achieve the purpose of the Bill. However, it should be noted that the publication of a letter of censure is discretionary, allowing in appropriate circumstances for certain details to be redacted or for the letter to not be published.

(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

Most grounds of disciplinary action for which a letter of censure could be issued and published do not concern individuals. Therefore, the potential breach of the right to privacy and reputation can only occur in narrow circumstances where the ground relates to an individual's suitability. Further, a letter of censure is issued to address incidents that constitute grounds for disciplinary action. The grounds for disciplinary action set out clear standards of conduct for casino entities and their associates, which offers protection against actions which are unpredictable or unjust.

Casinos are privileged businesses and a high level of regulatory scrutiny necessarily extends to the individuals that are associated or connected with casino operations. Accordingly, the limitation on the right to privacy and reputation is considered relatively minor and is consistent with the existing ongoing obligation for relevant persons to remain suitable for involvement or association with casino operations.

For these reasons, it is considered that the limitation on the right to privacy and reputation is neither arbitrary nor unlawful and is reasonable and demonstrably justifiable.

(f) any other relevant factors

Nil.

Appoint an external adviser to investigate persons associated with casino operations – right to privacy and reputation (section 25)

Provide the Minister, chief executive, or an external adviser with information subject to legal professional privilege – right to privacy and reputation (section 25)

(a) the nature of the right

As noted above, the right to privacy and reputation is broad and protects an individual's right to their personal information and data, as well as activities relevant to a person's autonomy. An interference with the right to privacy may be permitted if it is lawful and not 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 introduces the ability for Minister to direct a casino entity to engage and pay for a suitably qualified person as an external adviser on terms approved by the Minister. External advisers may be engaged to investigate and report on matters related to casino operations, including the suitability of a person (including a natural person) the Minister believes is associated or connected with the casino entity or the management and operations of the casino.

As noted in the discussion above, factors that are considered when determining suitability may be private in nature, extending to a person's character, finances, and relationships. The appointment of an external adviser to conduct an investigation into an individual therefore limits the right to privacy. However, the limitation is necessary to ensure the probity of the individuals involved in casino gambling in the State, noting that suitability investigations into relevant individuals may already be undertaken by the Minister under existing provisions of the Act.

The Bill also introduces a new power for the Minister or chief executive to require a casino entity or its associate to provide any information or documents the Minister or chief executive reasonably requires to administer the Casino Control Act. An external adviser may also request all information reasonably required to perform their functions from a casino entity.

For the purpose of ensuring the integrity of the conduct of casino gaming by allowing the Minister, chief executive, or an external adviser access to all necessary information, casino entities will not be excused from providing information even if that information is subject to legal professional privilege. This limits the right to privacy by allowing the Minister, chief executive, or an external adviser access to information that would otherwise be confidential.

Information, including privileged information, may pertain to how individuals have performed their roles in compliance with the obligations imposed by the Casino Control Act.

In this regard, while legal professional privilege is an important safeguard in democratic societies, it is not appropriate for it to be used a shield to prevent proper scrutiny of the highly regulated, privileged but high-risk activity of conducting casino operations. Therefore, for the reasons outlined, the limitation on the right to privacy that arises is considered to be consistent with a free and democratic society.

(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 purpose of the limitations on the right to privacy is to ensure casinos operate with integrity for the overall benefit of the people of Queensland. This purpose is achieved by ensuring that entities empowered to investigate complex matters related to casino operations and administer the Act have access to all information relevant to those functions.

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

A suitability investigation into an individual can only be conducted with reference to personal information about that person and there is no less restrictive way to achieve the purpose of the Bill. Information that is requested from a casino entity in the course of such an investigation must be reasonably required for the adviser to carry out their functions.

There is no less restrictive way to ensure that the Minister, chief executive, or an external adviser has access to all relevant information required to administer the Act or perform their functions than to require the information be provided, including if that information is subject to legal professional privilege. However, the limitation on the right to privacy in regard to legal professional privilege is suitably moderated by a further clarification that legal professional privilege continues to attach to the documents provided to the Minister, chief executive, or adviser. Further, the protection against self-incrimination in section 88A of the Casino Control Act remains unaffected by the Bill.

These moderating factors ensure the limitations on the right to privacy are reasonable and proportionate, as they extend no further than is necessary for the Minister, chief executive, or an external adviser to properly perform their functions.

(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 individuals involved or associated with casino operations expect a high level of scrutiny about their personal dealings from regulatory agencies. This fact has been highlighted by the recent interstate casino inquiries and findings that Crown had carried on associations with unsuitable persons, such as junket operators with connections to organised crime. In this context it is considered that the necessity for the Minister to be fully apprised of the suitability of such persons, via the engagement of an external adviser if necessary, outweighs the limitation on the right to privacy.

It is anticipated that most legally privileged documents requested under the new provisions will only relate to legal advice provided to and about casino entities. Accordingly, given the narrow circumstances in which a natural person's right to privacy in regard to legal professional

privilege may be affected, and the moderating factors listed above, it is considered that the limitation on the right to privacy in regard to legal professional privilege is relatively minor.

The overall limitation on the right to privacy is considered justified when compared to the overall goal of empowering the Minister, chief executive, and where relevant, external experts, to obtain information required to make assessments about the risks, compliance, efficacy, and safety of casino operations. These assessments are integral to ensuring that appropriate systems of regulation and control are in place so that the community benefits from casino gambling. On balance, ensuring casinos are appropriately regulated and that decision makers are appropriately informed outweighs the breaches of privacy introduced by the Bill.

(f) any other relevant factors

Nil.

Allow the Minister to have regard to the findings of other investigations or the report of an external adviser when determining the suitability of a person associated with the management and operation of a hotel-casino complex or casino – right to a fair hearing (section 31)

(a) the nature of the right

Under the right to a fair hearing in section 31 of the Human Rights Act, a person charged with a criminal offence or party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. The right protects procedural fairness, however, what is fair depends on the facts of the case and often requires balancing a number of public interest factors.

The right to a fair hearing applies in criminal trials and civil suits. The right may also extend to acts with sanctions that, regardless of their qualification in domestic law, should be regarded as punitive because of their purpose, character, or severity. It may also extend beyond judicial determinations to equivalent procedures in administrative law.¹

Suitability investigations undertaken under section 30 of the Casino Control Act may form the basis for taking disciplinary action against a casino entity as well as determine whether an individual may be involved in casino operations. Taking a broad view, the ability for the Minister to have regard to the outcome of other investigations, or a report prepared by an external adviser, when determining suitability engages the right to a fair hearing by raising questions about independence and impartiality.

(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

Section 30 of the Casino Control Act provides that the Minister may cause an investigation into the suitability of a casino entity. The power extends to all persons (whether natural persons or not) associated or connected with the management and operation of a casino or hotel-casino complex.

¹ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32 (2007).

The Bill amends section 30 to allow the Minister to have regard to the findings of an investigation into a casino entity or an associated person if the investigation has been carried out by a State authority or under the laws of another State or the Commonwealth. The Minister may also have regard to a report prepared by an external adviser (discussed above).

Reliance on previous suitability investigations and findings, to the extent those investigations and findings relate to individuals involved in casino operations, may limit the right to a fair hearing by creating the perception that the Minister is not exercising independence or acting impartially. However, it should be noted that the outcome of other State or Commonwealth investigations, or a report prepared by an external adviser, are but some of that matters the Minister may have regard to when considering the suitability of casino entities. The Minister is not obligated to make a finding in any particular way based on the findings of another investigation or an external adviser's report.

Examples of the kind of investigations that may be captured by the new provisions include investigations such as the Bergin Inquiry² (established to determine the suitability of Crown to hold its Sydney casino licence), the Finkelstein Inquiry³ (established to determine the suitability of Crown to hold its Melbourne casino licence), and the Owen Inquiry⁴ (established to determine the suitability of Crown to hold its Perth casino licence), where those inquiries were relevant to the operation of a casino in Queensland.

Such inquiries were led by prominent former and serving judges and involved multiple months of investigation and testimony. Not allowing regard to such investigations where they are relevant to Queensland casino entities and their associates would be an inefficient use of public resources. Similarly, the Bill provides that an external adviser must be suitably qualified and that the relevant casino entity is liable for all costs and expenses associated with the external adviser's engagement. To then not allow the Minister to have regard to the adviser's findings would undermine the purpose of the Bill to ensure the integrity of casino operations.

Therefore, allowing the Minister to have regard to the outcome of relevant investigations and reports prepared by an external adviser (if relevant to individuals) promotes the integrity of casino gaming in Queensland, national consistency in casino regulation and ensures Queensland is not the jurisdiction of last resort for unscrupulous operators. Accordingly, the purpose of the limitation is considered to be consistent with a free and democratic society.

(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 is a consequence of ensuring the integrity of the conduct of casino gaming, achieved in part by allowing the Minister to consider similar investigations and relevant reports when making a suitability finding under section 30 of the Act. It is not possible to allow the Minister to consider the findings in other relevant investigations or relevant reports without prima facie limiting the right to a fair hearing in the abovementioned manner.

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

² New South Wales, Inquiry under section 143 of the Casino Control Act 1992 (NSW), *Report* (February 2021).

³ Victoria, Royal Commission into the casino operator and licence, *The Report* (October 2021).

⁴ Western Australia, Perth Casino Royal Commission, *Final Report* (March 2022).

There is no less restrictive way to achieve the purpose. The restrictions ensure that only lawful and legitimate investigations and reports may be considered, which protects against unreasonable interferences with the right to a fair hearing.

(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 purpose of the Bill is to ensure that casinos operate with integrity and for the overall benefit of Queenslanders. It does not benefit Queensland if extensive and lawful suitability investigations carried out in other jurisdictions or by an external adviser engaged specifically for that purpose cannot be used to inform the Minister's decision about whether a casino entity (or individuals associated or connected with that entity's business) should be allowed to own, administer, or manage Queensland casinos. The limitation on human rights (which only arises in narrow circumstances where the person being investigated by the Minister is a natural person) is therefore considered to be reasonable and demonstrably justified.

(f) any other relevant factors

Nil.

Ability to require a person to provide information on oath or affirmation – right to privacy and reputation (section 25) and rights in criminal proceedings (section 32)

(a) the nature of the right

Section 32 of the Human Rights Act protects the right to certain minimum procedural guarantees in criminal trials. Relevantly, section 32(2)(k) states that a person must not be compelled to testify against themselves or to confess guilt. This right against self-incrimination is a fundamental component of the right to a fair trial as well as a deeply rooted common law right. Its likely scope includes the right not to be compelled to answer questions, or produce documents, or things, if to do so might tend to incriminate the person. 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.⁵

The right to privacy and reputation has been outlined above.

(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

Recent interstate inquiries into Crown found that the regulator's investigations were unnecessarily hampered by a deliberate lack of cooperation and candour by Crown executives. The failures included providing incorrect information, unreasonably redacting information, failing to produce documents when required, and providing submissions with little evidentiary support.

⁵ See *Re an application under the Major Crime (Investigative Powers) Act 2004* (2009) 24 VR 415.

The Bill provides that, if a person must give information or a document to the Minister, chief executive or inspector, then the Minister, chief executive or inspector may require the information to be given on oath or the information or document to be verified by statutory declaration. A maximum penalty of 160 penalty units applies if a person fails to comply with the requirement without a reasonable excuse. The purpose of the provision is to prevent the behaviour substantiated by interstate inquiries from occurring in Queensland by putting people on notice that the information they provide must be the whole truth.

However, the requirement may be perceived to be encroaching upon a person's protection against self-incrimination. The Casino Control Act contains some offences which apply to persons generally, rather than just casino entities. It is conceivable that a person may be compelled to provide information or documents that could then be used as part of a prosecution under the Act. The requirement may also limit a person's right to privacy under section 25 of the Human Rights Act by compelling them to disclose information they may otherwise have not disclosed.

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

(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 Bill provides the power for information to be requested on oath or to be verified by statutory declaration. As noted above, while the power may create a perception that the right against self-incrimination is limited, this right is in fact still protected under an existing provision of the Act. A consequence of the exercise of this power may also be the limitation of an individual's right to privacy. However given the abovementioned purpose of the provision, the limitation helps to achieve that purpose.

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

There is no less restrictive way to ensure that the Minister, chief executive or inspectors can require sworn or verified information, noting that the explicit protection against self-incrimination under section 88A of the Casino Control Act remains unaffected 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

The perceived limit on the right against self-incrimination and the limit on the right to privacy are outweighed by the need to ensure effective regulatory oversight of casinos, in accordance with the integrity based objects of the Casino Control Act. Crucially, individuals will still be

protected against self-incrimination and may decline to comply if they have a reasonable excuse. The Bill therefore strikes an appropriate balance between the preservation of individual rights and the purpose of ensuring that the entities responsible for regulating casinos for the benefit of the community have access to relevant and truthful information about casino operations.

(f) any other relevant factors

Nil.

Removing public objections to applications to register as a charity under the Collections Act 1966

(a) the nature of the right

The right to take part in public life provides every person in Queensland with a right to participate in the conduct of public affairs without discrimination. The right can be exercised directly or through freely chosen representatives. The conduct of public affairs is not defined in the Human Rights Act. However, the UN Human Rights Committee interprets the concept broadly as covering "...all aspects of public administration, and the formulation and implementation of policy at international, national, regional, and local levels".⁶

Whether to register an association as a charity is an administrative decision that determines whether an association can lawfully conduct fundraising in Queensland. The Bill arguably limits the right to take part in public life and participate in the conduct of public affairs by removing a process that gives individuals a say about what associations can collect public donations in Queensland.

(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 purpose of the limitation imposed by the Bill is to expedite the charity registration process and to harmonise this aspect of Queensland's fundraising legislation with other Australian jurisdictions.

The ability to object to applications to register as a charity impliedly requires all applications to be publicly advertised. Accordingly, the *Collections Regulation 2008* (Collections Regulation) requires applications to register as a charity to be published on the department's website and allows one month for any objections to be lodged. A further seven days is allowed for an objector to serve a copy of the objection on the association. These timeframes and requirements prevent immediate fundraising in Queensland by charities established to deal with urgent issues such as disaster relief.

It is estimated that less than 2% of applications to register as a charity each year receive objections, and there is no record of an application being refused on this basis. The delays

⁶ UN Human Rights Committee, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 2 [5].

imposed by the implied advertising requirement have an outsized impact given the small number of objections and their influence on approvals.

In this context, the limitation, which has the purpose of facilitating urgent fundraising, as well as reducing red tape for charitable associations that deliver aid and other services to the community, 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 limitation to be imposed by the Bill will achieve the purpose of expediting the charity registration applications process and make commencing fundraising easier by allowing the timeframes for publicly advertising applications under the Collections Regulation to be removed. The limitation will also achieve the purpose of reducing red tape by promoting greater national harmonisation of fundraising laws, as the right to object to an application is only available under Queensland legislation.

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

Removing the right to object to applications to register as a charity is the only way to achieve the purposes of the amendments to the Collections Act, which are to make commencing fundraising easier by simplifying and accelerating the charity registration process and reducing red tape for charities by achieve greater national harmonisation of fundraising laws.

(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 benefits of making the commencement of fundraising easier by simplifying and accelerating the charity registration process and reducing red tape for charities by achieving greater national harmonisation of fundraising laws outweigh the limitation on the right to take part in public life imposed by the Bill. This is especially the case given the small number of objections that are received each year and the continued ability for a person affected by the registration of a charity to apply to have it removed from the charities register, *post*-registration.

(f) any other relevant factors

Public objections must be made on certain grounds articulated in the Collections Act and Collections Regulation. These grounds include that an association seeking registration is not a charity, has not been established in good faith, or will not be properly administered. The prescribed grounds are intended to protect the integrity of fundraising in Queensland by ensuring only legitimate charities are registered.

This objective will still be achieved under provisions of the Collections Act that will not be affected by the Bill. The grounds for public objections generally replicate the factors the Minister must still consider when deciding to approve an application for registration as a charity under section 19 of the Collections Act. The Minister also has the power to make any inquiries into the association seeking registration to ensure it is properly administered.

Conclusion

In my opinion, the Bill is compatible with human rights under the Human Rights Act because although it limits a human right, it is only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

SHANNON FENTIMAN MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE,
MINISTER FOR WOMEN AND MINISTER FOR THE PREVENTION OF
DOMESTIC AND FAMILY VIOLENCE

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