Parliamentary Committees

Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013

Report No. 30

Legal Affairs and Community Safety Committee

May 2013

Legal Affairs and Community Safety Committee

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	Ms Kelli Longworth, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Mrs Gail Easton, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Mr Karl Holden, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

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Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
AMA Queensland	Australian Medical Association, Queensland
Bill	Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013
BCCM Act	*Body Corporate and Community Management Act 1997*
Committee	Legal Affairs and Community Safety Committee
CIS	Community Impact Statement
CLP	Community liquor permit
Expert Panel	The Liquor and Gaming Red Tape Reduction Expert Panel appointed by the Government in September 2012 to review liquor licensing and gaming laws with a view to addressing red tape in the liquor and gaming industries
FARE	Foundation for Alcohol Research & Education
Gaming Machine Act	*Gaming Machine Act 1991*
Liquor Act	*Liquor Act 1992*
NAAA	National Alliance for Action on Alcohol
OLGR	Office of Liquor and Gaming Regulation
QNADA	Queensland Network of Alcohol and Other Drug Agencies Ltd
QPS	Queensland Police Service
QPUE	Queensland Police Union of Employees
QSIS	Queensland Sentencing Information Service
RSA	Responsible service of alcohol
RSG	Responsible service of gambling
RAMP	Risk assessed management plan
SCA (Qld)	Strata Community Australia, Queensland
SRBF	Sports and Recreation Benefit Fund

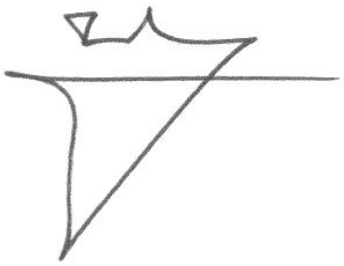
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat and the Department of Justice and Attorney-General.

I commend this Report to the House.



Mr Ian Berry MP

Chair

May 2013

Recommendations

The Committee recommends the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be passed.

The Committee recommends the Government prepare guidelines to clarify best practice in relation to the service and sale of alcohol at low risk community events and ensures the guidelines are publicly available on the Department's website.

The Committee recommends clause 152 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to ensure it is consistent with clause 144 of the Bill.

Specifically, it should be clear that for the purposes of section 155AD – in the case where the holder of commercial special facility licence has entered into an arrangement under section 153 of the *Liquor Act 1992* with another person - the approved manager that is required to be present or reasonably available should be an employee of the other person and not the commercial special facility licence holder.

The Committee recommends clause 4 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to clarify that a review under section 47B(2A)(b) of the *Body Corporate and Community Management Act 1997* is only available because of a formal acquisition affecting the scheme.

The Committee recommends clause 5 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to clarify that under sections 51(7) and 51A(6) of the *Body Corporate and Community Management Act 1997* – a constructing authority is required to include any changes to lot entitlements that have been requested by a body corporate under sections 51(5)(b) and 51A(4)(b) of that Act when lodging a new community management statement.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 (Bill) was introduced into the Legislative Assembly and referred to the Committee on 19 March 2013. By motion of the Legislative Assembly, and in accordance with the Standing Orders, the Committee was required to report back by 14 May 2013.

1.2 Inquiry process

On 20 March 2013, the Committee wrote to the Department of Justice and Attorney-General (the Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advices from the Department dated 26 March and 19 April 2013 and received 14 submissions from stakeholders. (see **Appendix A**). Further advice on particular technical issues with the Bill was also sought from the Department with their advice provided to the Committee on 30 April 2013.

1.3 Policy objectives of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013

The main objectives of the Bill are to:

- amend the legislative framework regulating the liquor and gaming industries to reduce the burden on these industries and ensure the legislature's original policy intent is upheld and that the laws are clear and effective;
- provide a legislative basis for the Queensland Sentencing Information Service;
- provide for the continuation of transitional arrangements regarding court appointed office holders under the *Civil Proceedings Act 2011*;

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

- defer the commencement of certain provisions of the *Work Health and Safety Act 2011* until 1 January 2014;
- abolish the Community Investment Fund as well as the Statutory Board of Trustees for the Funeral Benefit Trust Fund whose functions will be transferred to the administering Department;
- repeal the Queensland interest rate cap on consumer credit contracts; and
- close a gap in the *Body Corporate and Community Management Act 1997* through which a constructing authority registers its interest in land resumed from community titles schemes.[2]

As the title of the Bill suggests, the bulk of these amendments have been introduced to meet the Government's commitment to cut red tape and regulation in the liquor and gaming industries.[3]

1.4 Consultation on the Bill

In relation to the initiatives to reduce red tape and regulation in the liquor and gaming industries, the Government consulted with industry and community. This included the appointment of the Liquor and Gaming Red Tape Reduction Expert Panel (Expert Panel) to work with Government to identify reforms. This Bill is the first of a tranche of reforms, with at least one more phase to be introduced at a later date. Recent consultation was also undertaken in relation to other more significant aspects of the Bill.[4]

It is the Committee's view that consultation is beneficial in the development and implementation of legislation. Although some concern was raised with the Committee about the focus of the consultation,[5] the Committee is nonetheless pleased that appropriate planning and consultation has gone into the delivery of this Bill. This is evidenced through the quality of the Explanatory Notes, particularly in relation to the liquor and gaming amendments, and the type and quality of issues being raised by stakeholders.

1.5 Should the Bill be passed?

Standing order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed. The Bill delivers on the Government's election promise to cut red tape and regulation in the liquor and gaming industries as well as making other sensible and practical amendments.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the Department and from submitters, the Committee has no hesitation in recommending that this Bill be passed.

Recommendation 1

The Committee recommends the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be passed.

2 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 1.

3 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Transcript of Proceedings, 19 March 2013, page 673.

4 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 2 and 26; Letter from the Department of Justice and Attorney dated 26 March 2013, Attachment, pages 1 and 3-4.

5 See for example: Queensland Network of Alcohol and Other Drug Agencies Ltd, Submission No. 8; National Alliance for Action on Alcohol, Submission No. 9; Australian Medical Association, Queensland, Submission No. 12.

2. Examination of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013

The Bill deals with a number of diverse matters including amendments to the *Liquor Act 1992* (Liquor Act), *Gaming Machine Act 1991* (Gaming Machine Act); amendments to the *Body Corporate and Community Management Act 1997* (BCCM Act); and providing a legislative basis for the Queensland Sentencing Information Service.

The Committee has examined these matters under the broad headings below which do not necessarily follow the order in which they appear in the Bill.

2.1 Liquor and Gaming Amendments

Cutting red tape and regulation

Red tape reduction was a well-publicised election promise of the LNP Government prior to the 2012 Queensland State election.[6] The Bill proposes, among other things, to reduce red tape in the liquor and gaming industries and streamline processes for all Queenslanders.

In September 2012, the Government appointed the Expert Panel, comprising community and business representatives, to review liquor licensing and gaming laws with a view to addressing red tape in the liquor and gaming industries.[7] In February, 2013, the Department issued the '*Red tape reduction and other reform proposals for regulation of liquor and gaming Discussion Paper*' (Discussion Paper) and invited all licensed liquor and gambling operators, industry participants and members of the community to comment on the issues identified and the proposals presented in the Discussion Paper. The closing date for submissions on the Discussion Paper was 15 March 2013.

The Government plans to implement the proposed red tape reduction measures for the liquor and gaming industries in multiple phases. The measures outlined in the Bill represent the first phase of initiatives in this area. The Government plans to implement a second phase at a later date.[8]

The aspects of red tape reduction proposed in the Bill are wide and varying. They include:

- exempting low risk community organisations from requiring a permit to conduct not-for-profit events;
- ceasing advertising for certain liquor and gaming applications in the Government Gazette and newspapers;
- reducing the regulatory burden for low risk premises;
- removing renewal requirements for clubs and hotels with gaming machine licences;
- streamlining reporting on club and hotel executives to one annual submission;
- removing the obligation for casino operators to forward gaming chip purchase orders for approval;
- removing the need for approval of content, format and duration of casino training courses;

6 See LNP website.

7 "Expert panel to reduce gaming red tape", Joint Media Statement, issued by the Premier, the Honourable Campbell Newman and the Attorney-General and Minister for Justice, the Honourable Jarrod Bleijie on 20 September 2012.

8 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 2.

- exempting hospitals and nursing homes that sell a limited amount of liquor to patients and residents from requiring a liquor licence and other provisions in the Liquor Act;
- introducing ticket-in ticket-out technology;
- removing State approvals of trainers of responsible service of alcohol and responsible service of gambling courses;
- removing the requirement for an approved managers' register for liquor licensed premises;
- removing the requirement for gambling internal control systems to be approved;
- authorising clubs and hotels to acquire and dispose of gaming machines without Commissioner approval;
- removing the requirement that gaming machines must be installed within a specific period after an approval;
- granting clubs additional time to dispose of entitlements following a surrender/decrease in the approved number of gaming machines; and
- removing the prescriptive requirements for a gaming licence application under the Gaming Machine Act.[9]

Each of the proposed measures of red tape reduction in the liquor and gaming industries listed above are discussed in detail in the Explanatory Notes tabled with the Bill.[10] Given that the Explanatory Notes comprehensively explain each of the proposed red tape reduction measures, the Committee has only discussed in this Report, the key issues raised in the submissions in respect of certain measures rather than explaining each of the measures in detail.

Submissions

As stated above, the Bill covers a variety of aspects in addition to red tape reduction, however most of the 14 submissions received by the Committee focussed on the proposed red tape reduction proposals in the Bill. Most submissions were quite supportive of the proposals,[11] for example, Clubs Queensland submitted:

> *In summary, regulatory interventions in the past decade have introduced more than 100 separate changes to the policies, practices, guidelines, standards and compliance requirements. The imposition of these changes has been uncoordinated and at considerable cost to industry, operational efficiency and business certainty. The community clubs industry applauds the government's efforts to eliminate duplication and unnecessary compliance administration through meaningful reforms that can build business confidence without weakening the core harm minimisation requirements or general effectiveness of Queensland's liquor and gaming regulatory framework*.[12]

9 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 4-14.

10 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 4–15.

11 For example, Clubs Queensland, Submission No. 1 and Queensland Hotels Association, Submission No. 3.

12 Clubs Queensland, Submission No. 1 (Supplementary), page 4.

Similarly, Queensland Hotels Association submitted that it:

> *… strongly supports the Government's overall policy goals of reducing unnecessary red tape and administration, whilst retaining the core patron and harm minimization principles and provisions of the* Queensland Liquor Act 1992 *and the* Queensland Gaming Machine Act 1991. *…*
>
> *None of the liquor and gaming matters outlined in the Bill represents major policy initiatives or changes, and none of the proposals will weaken the best practice endeavours of industry in relation to patron care and responsible liquor and gaming practice. Indeed, the measures outlined in the Bill will serve to raise the morale and confidence of Queensland licensed industries as they represent a tangible and visible statement of intent and commitment by the Government in support of the licensed and tourism industries.*[13]

Conversely, there were also a number of submissions that were critical of the proposals.[14] For example, the Lives Lived Well submission included the following comment:

> *As currently proposed, the changes described in the discussion paper have the potential to weaken the integrity and effectiveness of the regulatory regime which seeks to manage the tension between the commercial viability of licenced premises and the prevention of alcohol and gambling related harms.*[15]

Exempting low risk community organisations from requiring a permit for not-for-profit events

The Bill proposes to amend the Liquor Act to remove the requirement for community liquor permits (CLP) for low risk fund raising events.

In its submission, Clubs Queensland was supportive of this proposal:

> *This is a pragmatic approach to regulation because it aligns with the risk-based assessment of community events where liquor is served or supplied to patrons. The events are generally fundraising events (e.g., weekend football or school fetes) and it is in the best interest of the community that the benefits, financial or otherwise, are maximised, rather than lost through fees and bureaucratic compliance measures which are often undertaken by volunteers. This approach also represents optimum use of scarce licensing resources of the regulator to only intervene if and when required (i.e., when set criteria for the exemption are not met by the event organisers). The facts that these events are low risk and conducted in a low risk environment necessitate a simpler approach and the above exemption represents a sensible compromise.*[16]

Queensland Police Union of Employees (QPUE) raised the concern that the proposed amendments do not provide for a '*designated area for the sale or consumption of alcohol*'.[17] The potential dangers that could stem from this outcome were highlighted in the QPUE's submission. For example, the proposal would allow:

- patrons to consume liquor throughout the whole of the space allocated to the event, such as a school fete or similar outdoor type gathering;

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13 Queensland Hotels Association, Submission No. 3, pages 2 and 3.

14 For example: Queensland Police Union of Employees, Submission No. 2; Independent Order of Rechabites Queensland District No. 87, Inc., Submission No. 4; Lives Lived Well, Submission No. 5; National Alliance for Action on Alcohol, No. 9; and Australian Medical Association, Queensland, Submission No. 12.

15 Lives Lived Well, Submission No. 5, page 2 of attachment.

16 Clubs Queensland, Submission No. 1 (Supplementary), page 2.

17 Queensland Police Union of Employees, Submission No. 2, page 1.

- a reduction in the ability to fully supervise the consumption of liquor and the safety of patrons;
- minors to be supplied liquor by others away from the service area; and
- bottles and containers (particularly if not completely empty) to be left around school grounds which would give rise to an associated danger to children from broken glass or access to half consumed drinks.[18]

QPUE recommended inserting a new section 13(1) comprising the following language in clause 127:

> *13(1)(h) in the case of an outdoors event, the eligible entity ensures there is a designated and clearly defined area for the sale and consumption of alcohol at the event and takes reasonable steps to prevent alcohol being removed from such area;*
>
> *13(1)(i) where subsection (h) does not apply, the eligible entity takes all reasonable steps to prevent the removal of alcohol from, or the consumption of alcohol outside, the premises or place used for the event.*[19]

P&Cs Queensland submitted that a designated area should be nominated for serving and consuming alcohol.[20] They also suggested that a guidance document be made available to schools which would include the following details:

- that Police be notified of an event where alcohol is to be sold;
- that the Principal and the P&C approve the event before it commences; and
- that a responsible service of alcohol (RSA) trained person be on school premises at all times when alcohol is served.[21]

In its response to submissions, the Department advised the Committee that it would consider preparing guidelines, "*in line with P&C Qld's recommendation*" to clarify best practice.[22] The Department also noted:

> *The Department recognises that the recommendations of P&Cs Qld provide a sound basis for best practice for the supply of liquor in schools. However, the Department believes this can be achieved without further prescription in the legislation, as the amendments in the Bill already provide an effective framework, with safeguards to protect minors and community amenity.*[23]

The Committee agrees that no amendment to the Bill is required, however supports the Department preparing guidelines, '*in line with P&C Qld's recommendation*' to clarify best practice. Specifically, the Committee supports the application and availability of these guidelines to all low risk community organisations.

Recommendation 2

The Committee recommends the Government prepare guidelines to clarify best practice in relation to the service and sale of alcohol at low risk community events and ensures the guidelines are publicly available on the Department's website.

18 Queensland Police Union of Employees, Submission No. 2, page 1.
19 Queensland Police Union of Employees, Submission No. 2, page 2.
20 P&Cs Queensland, Submission No. 6, page 1.
21 P&Cs Queensland, Submission No. 6, page 1.
22 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Attachment, page 6.
23 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Attachment, page 6.

A number of submissions took the view that alcohol should not be allowed to be sold at fund-raising events without a permit given that '*alcohol is a potentially harmful product and special controls on its sale and supply exist to reflect this.*'[24] The National Alliance for Action on Alcohol (NAAA) also outlined a number of concerns in regard to this proposal and pointed out:

> [Increasingly] *many schools and charitable organisations are rightly concerned about the adverse impacts of alcohol in their communities and many do not sell or supply alcohol at their fund raising events. When schools use alcohol as part of fundraising, this raises a whole range of health and social issues that have recently been highlighted in an information paper by the Australian National Council on Drugs (ANCD). The ANCD has written an open letter to all school principals in Australia to seek their assistance and co-operation in not permitting the use, sale or promotion of alcohol products in school fundraising activities. This action was prompted by community concerns raised with the ANCD, including:*
>
> - *Students being used as couriers between school and home for advertising material, forms and payment for the purchase of alcohol as a fundraising activity;*
> - *School newsletters being used to promote alcohol sales as part of a fundraising activity;*
> - *School administrative staff being involved in tasks such as copying, handling and collection of paperwork on alcohol related sales associated with fundraising activity;*
> - *Parents being advised to encourage friends, relatives and neighbours to support the alcohol related fundraising activity by purchasing alcohol;*
> - *Wine tasting events being organised on school premises;*
> - *Alcohol products being labelled with the school name and logo to encourage greater sales.*[25]

The Australian Medical Association, Queensland (AMA Queensland) also made a detailed submission. In regard to this proposal, AMA Queensland considered '*the proposed legislation fails to safeguard against the additional harm that increased access to alcohol will cause.*'[26]

In response to these and similar comments made in the submissions, the Department responded as follows:

> *The amendments are not contrary to the intent of public health programs as they do not increase the level of harm caused by alcohol in our communities, nor do they send a message that liquor is a safe product. The Bill does not necessarily increase the availability of liquor. Industry and community groups can sell or supply liquor currently with the appropriate authority. Rather the Bill eases unnecessary restrictions that are a burden on industry and community groups, while retaining safeguards to ensure liquor does not cause significant harm to the community. The Bill specifically targets only low risk areas of liquor operation.*[27]

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24 Queensland Network of Alcohol and other Drug Agencies Ltd, Submission No. 8, page 2.

25 National Alliance for Action on Alcohol, Submission No. 9, pages 3-4.

26 Australian Medical Association, Queensland, Submission No. 12, page 1.

27 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Attachment, page 8.

The Bill contains a provision that allows a police officer or investigator to issue a notice to cease the sale of liquor immediately because the organisation is not complying with the terms of the exemption and therefore selling liquor in an unauthorised capacity.[28]

The Committee discusses this aspect further in Part 3 of this Report – Fundamental Legislative Principles as these changes potentially breach the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker.

Raffle exemption

The amendments also include an exemption for the supply of liquor, not worth more than $1,000, as a prize in a raffle if conducted by a non-profit association and the proceeds from the raffle will be used to promote the objects of the association or the benefit of the community in general.[29] While '*clarification that a liquor permit is not required for alcohol that is a prize in a raffle*' was welcomed by P&Cs Queensland in its submission,[30] a number of organisations raised concern in their submissions that liquor as part of the prize reduces control and increases accessibility to liquor, which is a potentially harmful product.[31]

The Department responded:

> *There is no indication that the provision of liquor in raffles has resulted in significant adverse behaviour. The Department believes a comparison of the regulatory requirements in relation to irresponsible drinking practices and promotions at licensed premises is erroneous and is not a realistic comparison in regard to the conduct of the raffles subject this exemption.*[32]

The Committee is satisfied with the advice from the Department and does not consider any amendment to the Bill is required.

Ceasing advertising for liquor and gaming applications in the Government Gazette and newspapers

The Bill proposes to remove a requirement that some applications under the Liquor Act must advertise in the Government Gazette and newspapers and to replace it with a requirement that notification of the application be provided online instead.[33]

Queensland Hotels Association described the proposal as '*sensible*' and in line with the 21st century.[34] Clubs Queensland noted:

> *… given technological advancements such as the internet, there has been a shift in the way people seek information and news. Paper advertising now represents an expensive and largely redundant advertising mode for liquor and gaming applications*.[35]

28 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 127.
29 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 127.
30 P&Cs Queensland, Submission No. 6, page 1.
31 Queensland Network of Alcohol and Other Drug Agencies Ltd, Submission No. 8, page 2 and National Alliance for Action on Alcohol, Submission No. 9, page 3.
32 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 7.
33 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 6.
34 Queensland Hotels Association, Submission No. 3, page 4. See also Clubs Queensland, Submission No. 1 (Supplementary), page 2.
35 Clubs Queensland, Submission No. 1 (Supplementary), page 2.

There were also, however, a number of submissions that were not in favour of this proposal either expressly[36] or through their endorsement of the NAAA submission,[37] which commented as follows on this issue:

> *The NAAA does not support the proposed exemption of applications for certain types of licenses (cafes, restaurants, detached bottle shops) from the requirements in the Liquor Act to notify the local community through advertisements. …*
>
> *The NAAA is surprised and concerned by this proposed change to the Act, as it appears to be at odds with the proposal in the Government's own recent discussion paper on liquor regulation, which proposed that local communities be given a greater say in liquor licensing decisions. Clearly, the latter will be significantly undermined if large numbers of license applications are exempt from notifying the local community through advertisements and thus virtually denying local community members an opportunity to object. As per the NAAA's comments on the Queensland Government's discussion paper [see attached submission], we strongly support providing local communities in Queensland with a greater say in liquor licensing decisions [refer to section 2.6 of the discussion paper]. Local communities are often well placed to inform decision-making in relation to local alcohol matters, particularly liquor licensing, as they often have in-depth knowledge of the local circumstances and context.*[38]

Additionally, the Foundation for Alcohol Research & Education (FARE) submitted:

> *The Amendment Bill's proposal to reduce licence application advertisement requirements will lead Queensland down the path taken by the New South Wales Government. This is a path that favours the interests of the liquor industry and related industries – at the expense of the health, safety and amenity of local communities.*[39]

FARE also noted:

> *Only three years ago the Queensland's Legislative Assembly conducted a comprehensive inquiry into alcohol-related violence. The members of the Inquiry's Committee; which included the now Queensland Attorney General Mr Jarrod Bleijie MP, made a total of 68 recommendations to reduce alcohol-related violence. These recommendations included amending the* Liquor Act 1992*, to provide greater emphasis on community consultation in regards to liquor licence applications. It is ironic that, the provision of greater opportunity for community consultation is exactly what this Amendment Bill is proposing to remove, through the exemption of particular licenses from preparing community impact statements and removing the requirement to advertise new liquor licence applications in local newspapers.*[40]

In response to the above concerns, the Department made the following comments:

> *The removal of the requirements to advertise in newspapers and in the Government Gazette reduces red tape and modernises the process by requiring notifications online. The Department does not believe this decreases the ability for the community to have input, as the internet is widely available. On-site advertising will remain for all but those venues deemed low risk.*

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36 Queensland Network of Alcohol and Other Drug Agencies Ltd, Submission No. 8, page 2.

37 For example, Independent Order of Rechabites Queensland District No. 87, Inc., Submission No. 4 and Lives Lived Well, Submission No. 5.

38 National Alliance for Action on Alcohol, Submission No. 9, page 8.

39 Foundation for Alcohol Research & Education, Submission No. 13, page 10.

40 Foundation for Alcohol Research & Education, Submission No. 13, page 4.

> *The exemption from on-site advertising will only apply to venues in which the principal activity is the provision of meals, the premises do not trade beyond midnight and there is no amplified entertainment provided. These are low risk venues and are not generally associated with alcohol related problems more commonly associated with pubs and clubs.*
>
> *The Department notes the concerns of NAAA in relation to inconsistency between elements of the Discussion Paper and this amendment. However, the Department's view is that the burden imposed on these establishments by requiring them to advertise for public objection does not necessarily contribute to the amenity of the immediate community.*
>
> *…*
>
> *As a further risk mitigation strategy, the Commissioner will be granted a discretionary power to require otherwise exempt premises to advertise where it is considered appropriate, in order to ensure reasonable compliance with the Liquor Act or to minimise alcohol related disturbances.*[41]

The proposal to waive advertising requirements was also raised in the joint submission from Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals who raised the following concerns:

> *We support the broad intention to allow greater flexibility in waiving of advertising by the Commissioner especially for* [detached bottle shops] *and low risk restaurants. We are concerned the current proposed amendments do not allow for other low risk applications to be equally provided this flexibility and this perpetuates the confusion created by varying requirements for each application type. The objective of these amendments could be achieved by amending section 118 of the Act to provide for greater flexibility generally to be given to the Commissioner supported by a Guideline under s42A which would provide the clarity of this intent to* [detached bottle shops] *and low risk restaurant applications and other license types but maintain the base line standard requiring advertising of all relevant applications unless waived. The proposed s118AA would then not be required.* [42]

The Department responded to these specific concerns as follows:

> *In regards to advertising, as with the RAMPs amendment, the Bill exempts low risk cafes and restaurants from advertising requirements under section 118. It is not considered appropriate to extend an exemption from advertising on-site to all venues, as other venues can generally pose a greater degree of risk. The requirement, suggested by Liquor Industry Consultants, that the Commissioner make a discretionary decision on all applications would create significant regulatory cost and delays for industry.*
>
> *The Bill also removes requirements for advertising in newspapers and the Government Gazette for all licence applications, meaning all applicants benefit from some reduction in red tape in regard to advertising. However, it is considered that a total exemption should only apply to those venues deemed to be low risk. As with the RAMP amendments this is supported by the expert panel and the industry peak bodies who provided submissions to the Committee.*[43]

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41 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 14-15.

42 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 5.

43 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 15.

The Committee is satisfied with the advice from the Department and does not consider any amendment to the Bill is required. The Committee welcomes the actions taken by the Government to modernise these processes and considers the use of the internet, which is now widely available to the community, is appropriate.

Reducing the regulatory burden for low risk premises

To further reduce red tape, the Bill proposes to amend the Liquor Act to exempt low risk premises from requiring an approved risk assessed management plan (RAMP) if they trade during standard trading hours, though the Commissioner can still require a RAMP if a potential risk is identified to community safety or amenity. The proposed exemption is intended to only apply to low risk restaurants and cafes that do not trade past midnight, and where the sale of alcohol is of a secondary nature compared to the preparing and serving of meals during trading hours.[44]

Concerns about the proposal to remove the RAMP requirement were raised in a number of submissions. For example, NAAA stated:

> *The NAAA does not support exempting certain alcohol outlets (cafes/restaurants) from the requirement to prepare and submit a RAMP. Allowing some licenses an exemption from submitting a RAMP is akin to allowing some people to obtain a driver's license without ever demonstrating they know the basic road laws. Alcohol is a potentially harmful product and those who seek to obtain a license to sell, serve and supply alcohol should first demonstrate that they have the requisite knowledge to do so in the safest possible way. The NAAA believes that the amount of information that an applicant is required to compile and prepare into a RAMP is not unreasonable and does not constitute significant "red tape". Furthermore, RAMPs are an efficient way of identifying potential problems in a license application from the outset, rather than discovering these at a later time when it can be more difficult, time-consuming and costly to take steps to resolve. In other words, rather than being a source of "red tape" RAMPs serve to prevent unnecessary administrative burdens for licensed premises that can be avoided if RAMPs are prepared by all applicants and approved by the Commissioner in the first place.*[45]

Lives Lived Well also advocated for the retention of the requirements under the Liquor Act of a RAMP.[46] QNADA also noted in its submission that it had:

> *…strong support for the retention of the requirements to develop Risk-Assessed Management Plans (RAMPs) and Community Impact Statements as part of the licence application process.*[47]

Additionally, FARE noted strong objections in this regard:

> *Measures, such as Risk Assessment Management Plans (RAMPs) are in place because there is an acknowledgement by the community that alcohol is 'no ordinary commodity'. Alcohol is a drug which contributes to substantial harms throughout Queensland, this is why laws such as the* Liquor Act 1992 *are in place to regulate the sale and supply of such substance.*[48]

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44 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 11.

45 National Alliance for Action on Alcohol, Submission No. 9, pages 6-7.

46 Lives Lived Well, Submission No. 5, page 1.

47 Queensland Network of Alcohol and Other Drug Agencies Ltd, Submission No. 8, page 2.

48 Foundation for Alcohol Research & Education, Submission No. 13, page 4.

In response to these concerns, the Department commented as follows:

> *Typical cafe and restaurants are low risk operations and are generally not known as a source of alcohol related disturbances or public disorder and as such, have a minimal impact on the amenity of their local area.*
>
> *The proposed exemption is intended to only apply to low risk restaurants and cafes that do not trade past midnight, and where the sale of alcohol is of a secondary nature compared to the preparing and serving of meals during trading hours.*
>
> *The requirement for a RAMP is primarily focused on high impact venues and include provisions concerning the employment of security, suitability of lighting and noise mitigation on the premises, as well as the availability of public transport.*
>
> *Given this, it is considered that there is minimal risk in removing the need for these premises to submit a RAMP in conjunction with their application.*
>
> *The removal of this requirement will decrease the regulatory burden on these operators, many of whom are small businesses.*
>
> *As a further risk mitigation strategy, the Commissioner will be granted a discretionary power to require otherwise exempt premises to prepare a RAMP for the approval of the Commissioner where it is considered appropriate, in order to ensure reasonable compliance with the Liquor Act or to minimise alcohol related disturbances.*[49]

Further concerns about the appropriateness of the proposal to remove RAMPs were raised in the joint submission from Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals.[50] Their concerns included the following:

> *Whilst the vast majority of restaurant premises are low risk, the removal of easily achieved and best practice procedures such as a RAMP, strips away almost any deterrent to a rogue trader obtaining a restaurant license. ... One form of red tape is the inherent confusion created by a licensing scheme that allows wide and complexly varied requirements for various license types. A more consistent approach itself reduces red tape. We recommend the committee reject the proposed removal of RAMP requirements for meals licenses and instead recommend that sections 50-54 of the Liquor Act be amended such that a RAMP is required to form part of the accompanying documents to support OLGR consideration of a license, BUT that the requirement of the Commissioner to approve the RAMP for all license types is removed. … This approach is consistent with the current practice where a CIS is required but is not "approved" by the Commissioner.*[51]

The Department addressed these specific concerns as follows:

> *The Department is committed to reducing red tape in the liquor and gaming industries in accordance with the policy of the State Government. This is balanced by ensuring that potential harm from liquor and gaming is minimised via appropriate regulation. RAMPs are a useful regulatory tool in minimising risk for particular venues such as nightclubs, but are considered unnecessary for most restaurant and cafe operations that operate during standard trading hours, as there is little evidence that such premises pose significant risk*

[49] Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 11-12.

[50] Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11.

[51] Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 4.

to the community. For this reason the Bill removes the requirement for a RAMP for low risk restaurants and cafes but retains it for other premises.

The Department acknowledges the risk of rogue traders attempting to operate as nightclubs under a restaurant licence, but safeguards are in place to guard against this, as the exemption is restricted to operators who close before midnight, and the Bill allows the Commissioner to require a RAMP if there is a potential risk to public safety or amenity. These amendments were supported by the Liquor and Gaming Red Tape Reduction Expert Panel which is made up of key industry and community representatives. Clubs Queensland and Queensland Hotels Association have also expressed support for these amendments to the Committee.

The Department acknowledges the proposal that all applicants complete a RAMP which is not approved by the Commissioner. However, it is the Department's view that this is an unnecessary burden on low risk operators and it is not clear what benefit this would attain. As the RAMPs would not be approved, there could be no control of their quality or scope, so there is no guarantee that they would serve as a useful management tool.[52]

Similar concerns were also raised in relation to the proposal for the Commissioner to waive a Community Impact Statement (CIS) as evidenced in the submissions received from:

- Independent Order of Rechabites Queensland District No. 87 Inc;
- Lives Lived Well;
- Queensland Network of Alcohol and Other Drug Agencies Ltd;
- NAAA;
- FARE; and
- AMA Queensland.

The submissions either expressly, or through endorsement of the NAAA submission, express concern with the Commissioner being given the authority to waive the requirement for a CIS for restaurants and cafes. They contend those who sell liquor should be required to demonstrate they have properly considered the impact of their business upon the local community.[53]

The Department responded by stating that in order to reduce red tape, the proposed amendment allows the Commissioner to exempt low risk restaurants and cafes from completing a CIS if they do not trade past midnight, have no amplified entertainment, are surrounded by similar businesses and where the sale of alcohol is of secondary significance to the preparing and serving of meals during trading hours.[54]

The Department describes the CIS as a detailed submission lodged with an application, which comprehensively outlines whether the proposed operations of the premises would adversely impact the surrounding community. It requires detailed analysis of population demographics, socio-economic and health indicators for the locality, and the magnitude, duration and probability of any adverse health and social impacts.

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52 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 12-13.

53 See generally, Submission No.'s 5, 4, 8, 9, 12 & 13.

54 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 13.

> *For these operators, the preparation of a CIS can be a time consuming exercise; one where the benefits are not proportionate to the burden imposed given the environment in which they operate.*[55]

The Committee considers the proposed red tape reduction initiatives are sensible arrangements that will not lessen the risk to, or adversely affect, the surrounding community. Sufficient safeguards have been included and the Committee does not consider any amendments to the Bill are required.

Exempting hospitals and nursing homes that sell a limited amount of liquor to patients and residents from requiring a liquor licence and other provisions in the Liquor Act

The Explanatory Notes provide:

> *As a red tape reduction, the Bill amends the Liquor Act to allow nursing homes to provide up to two standard drinks to residents and their guests per day, and to allow hospitals (except those in areas where alcohol may be restricted) to provide up to two standard drinks to patients per day, without a liquor licence. These amendments will be in line with the conditions currently in place for retirement villages and will clarify how much liquor these premises can provide before requiring a liquor licence.*
>
> *The amendments will provide clarity to operators about licensing requirements and reduce the regulatory burden of applying (and paying the associated fees) for a licence if they are only providing limited amounts of liquor as a subsidiary element of their operations.*[56]

A number of submissions raised concern regarding this proposal. For example, in its submission, NAAA noted as follows:

> *The NAAA is very alarmed by the proposal to exempt the supply and sale of liquor to hospital patients from the Liquor Act. Around 30,000 Queenslanders are hospitalised each year because of injuries and diseases attributable to alcohol consumption. The NAAA is astonished that, in the face of this enormous drain on the State's hospital system, the Queensland Government is considering ways to increase the access and availability of alcohol to hospital inpatients. This is a senseless proposal and should be abandoned.*[57]

Lives Lived Well also suggested 'caution in establishing greater access to alcohol in hospitals, particularly given the fact that a very significant number of hospital admissions are related to alcohol and/or other drug use.'[58]

QNADA was also concerned about 'the potential for permit exemptions for hospitals to lead to increased costs to our health system.'[59]

The Department responded to these comments concerning the proposed hospital and nursing exemption as follows:

> *The Bill does ease restrictions for hospitals and nursing homes so that they may supply patients, residents and their guests limited alcohol. This brings it in line with current legislative requirements for retirement villages and many other Australian jurisdictions. However, caution has been exercised by restricting the amount of liquor (2 standard drinks only) that can be supplied and who it can be supplied to. Many hospitals and nursing homes currently provide alcoholic beverages to patients, generally with meals. The*

55 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 13.
56 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 9.
57 National Alliance for Action on Alcohol, Submission No. 9, page 6.
58 Lives Lived Well, Submission No. 5, page 1.
59 Queensland Network of Alcohol and Other Drug Agencies Ltd, Submission No. 8, page 2.

> *amendments clarify exactly how much they can provide, and to whom, before they require a licence. The provision of any liquor to patients would also be subject to the determination of the administrating health professionals*.[60]

In relation to the 'two standard drink' restriction, Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals commented:

> *The "two standard drink" restriction on the new proposed exemption for hospitals and nursing homes and the current similar exemptions for hairdressers, limousines and retirement villages is in practice too low".*[61]

In this regard, the Department responded as follows:

> *The limit of two standard drinks is intended to allow business and other organisations to provide liquor as a subsidiary, incidental element of their business, such as a hairdresser providing champagne to a bridal party on their wedding day or a hospital providing a glass of wine with a meal to a patient. They are not intended to allow operators to set up quasi bars not regulated by the Act. For this reason, a limit to two standard drinks is currently considered appropriate.*[62]

The Committee agrees with the Department's assessment and considers this to be a sensible proposal bringing the treatment of hospitals and nursing homes in line with retirement villages and many other Australian jurisdictions. The Committee is satisfied no amendments are required to the Bill in this regard.

Removing State approvals of trainers of responsible service of alcohol and responsible service of gambling courses

Currently, persons employed in the gaming and liquor industries in service are required to complete training in RSA and responsible service of gambling (RSG) under the Liquor Act and Gaming Machine Act respectively. The administration of this mandatory training and the approval of trainers for the relevant courses is conducted by the Office of Liquor and Gaming Regulation (OLGR).[63]

The Explanatory Notes describes the chronology of events that have occurred at the federal level that have led Queensland to refer regulatory power to the Commonwealth in regard to the delivery of RSA and RSG courses. These events have resulted in the proposed removal of provisions relating to the approval of trainers. As noted in the Explanatory Notes:

> *Essentially, the legislative changes will result in the acceptance of the nationally accredited Statement of Attainment for RSA and RSG and their accredited course codes are to be included in the Liquor Regulation 2002 and Gaming Machine Regulation 2002 respectively.*[64]

60 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 7-8.
61 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 7.
62 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 10.
63 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 10.
64 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 11.

Concern about the appropriateness of this proposal was raised in the joint submission from Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals.[65] Their concerns were summarised as follows:

- *The amendments in their current form appear to remove the current requirement for refresher training every three years in these core competency mandatory courses and seek to transition the minimum training standard to the national competency which is effectively valid for life once obtained. This is a backwards step.*
- *No refresher or revalidation training obligations are currently provided for in the national RSA or RSG competencies.*
- *The Bill should be amended to ensure both the Liquor & Gaming Acts retain some form of currency and refresher or re-validation training to ensure the important gains made by the current three year mandatory training regime are not lost in the rush to reduce red tape.*
- *The introduction of mandatory RSA, RSG and RMLV training courses created a training industry that is currently regulated by OLGR under the Liquor and Gaming Acts and employs a wide range of industry service providers across Queensland and Australia that are likely to see adverse impacts on their businesses and employment if these issues are not properly and fully considered. …*
- *These amendments conflict with current considerations of the Liquor and Gaming Red Tape Reform Panel which is tasked to make recommendations about whether persons trained in Responsible Management of Licensed Venues (RMLV) should be taken to be trained in Responsible Service of Alcohol (RSA). This would not be permitted under the National Training Framework. This Bill seeks to change one piece of a complex jigsaw puzzle that is already being considered in more detail by a sitting established expert panel. Accordingly we recommend these amendments should be deferred to the expert industry panel.*[66]

Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals went on to state:

> *Mandatory RSA & RSG training is an essential building block for harm minimization in every State and Territory of Australia in some form or another. Transitioning to nationally accredited RSA & RSG training is generally supported by most stakeholders as a logical and necessary step and a red tape reduction in its own right. We do not however support bringing this amendment forward from that already foreshadowed by the Vocational Education and Training (Commonwealth Powers) Bill 2012 deadline of June 2014 without more detailed consultation. It is our submission these elements of the Bill should be deleted and instead referred to the currently established Liquor and Gaming Red Tape Reform Panel for more detailed consideration and consultation as part of phase two of the Government's red tape reduction strategies for Liquor & Gaming legislation.*[67]

[65] Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11.

[66] Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, pages 1 and 2.

[67] Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 2.

The response from the Department made the following points:

> [The] *Bill amends the Liquor Act and Gaming Machine Act in relation to RSG and RSA to align State legislation with Commonwealth legislation. For this reason, there is no requirement for refresher training, as this is not required in the Commonwealth framework.*
>
> *…*
>
> *The Department acknowledges that the changes will impact on training organisations. Communication will be provided to training organisations before the commencement of these provisions.* [68]

The Department confirmed that training organisations, if nationally accredited may still provide training in RSG and RSA. It is understood by the Department that most State approved RSA and RSG trainers are currently accredited.[69]

The Committee acknowledges the concerns raised in submissions relating to the transition of the state based training regime to a national model. The Committee agrees that a uniform training regime is a logical and necessary step. The Committee recommends that the relevant units from the national training package/s are retained as a minimum for RSA and RSG accreditation.

Removing the requirement for an approved managers' register for liquor licensed premises

FARE contends the approved manager's register should be retained as it ensures licenced premises are required to have responsible and qualified personnel at the premises at all times to manage the premises.[70]

The Department responded by stating the approved manager's register is a significant burden on industry, but not necessary to ensure licenced premises are managed by qualified people.

> *Legislative provisions that require approved managers to be present or readily available and identifiable remain in the Act. Additionally, it is considered that the licensees' employment records would be able to establish whether a person was employed to work at the premises at any given time.*[71]

Accordingly, the Department states the removal of the register will reduce regulatory burden while retaining safeguards to ensure qualified management of licenced premises.

Overall, the concerns raised in the submissions concerning the various red tape reduction measures contemplated by the Bill are noted. However, on balance, after evaluating the various submissions and the Department's advice on this issue, the Committee is satisfied that these changes are appropriate.

The Committee considers that sufficient safeguards have been built into the legislation, where relevant, to ensure that the amendments do not increase the level of harm caused by alcohol or gaming in the community.

The Committee is also satisfied that the Bill does not necessarily increase the availability of liquor or gaming in the community nor does it send the message that liquor is a safe product or that gaming is a safe past-time. The overall objective is to reduce the administrative burden of unnecessary red tape in the liquor and gaming industries and the Committee is of the opinion that the proposed framework meets this objective in a socially responsible manner.

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68 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 4.

69 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 4.

70 Foundation for Alcohol Research & Education, Submission No. 13, page 7.

71 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 17.

Other amendments

A number of miscellaneous amendments to the Liquor Act and Gaming Machine Act have been identified below. The Department states these amendments are minor and required to ensure effectiveness, clarity and original intent of the legislation.[72] The Committee has reviewed these amendments, however, only reports on those where issues have been raised.

Approved manager to be employed in the capacity of an approved manager

Clause 152 of the Bill seeks to amend section 155AD in relation to the role of an approved manager. At present an approved manager is required to be on the premises during the relevant times. However, the Bill seeks to ensure the approved manager is *acting in the capacity of an approved manager* during the relevant times. This amendment would not recognise the presence of an approved manager for the purposes of the Act if the approved manager was working in another capacity at the time (e.g. behind the bar), or on the premises for a social purpose.

The Bill also now requires the approved manager to be employed by the licensee or permit holder.

Two organisations made a submission commenting on this section. The submissions will be addressed in turn.

The joint submission from Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals (the joint submission) states clause 152 does not seek to reduce red tape but serves to create more red tape and remove necessary flexibility for industry. It is their view that the clause should be set aside in its entirety.[73]

They submit the clause does not consider the case of a small family restaurant or country hotelier where flexible arrangements enable business to operate effectively.[74] For example a restaurateur could take a weekend off and make arrangements for a second approved manager of a local licensed premise to act in that role whilst they took a short planned (or unplanned) break. It is submitted that state locum style licensed approved managers may be restricted under these proposed amendments as they may not be directly employed by the licensee.[75]

The joint submission rejects the proposed definition of when an approved manager is 'present' and indicate that a country publican:

> *…can surely be on the premises socially, even consuming a few drinks but not intoxicated, and still be in overall management and control of the premises'.* [76]

The joint submission goes on to argue that strictly defining what roles a licensed approved manager must be performing fails to reflect the broad tasks an approved manager may have to perform across the long hours of a shift.[77] Further, the proposed amendments expose licensees who are otherwise compliant to the risk of prosecution where there may be no other alcohol related harm or violence identified.

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72 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 15.

73 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 6.

74 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 6.

75 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 6.

76 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 6.

77 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 6.

The Department's response to the joint submission stated it did not agree with this view of the proposed amendments.[78] The Department states the amendment to ensure approved managers are employed in the capacity of approved managers, is simply a clarifying amendment to ensure the original intent of the legislation. The Department firmly states the Bill is not intended to change how the Act deals with employment practices for approved managers:[79]

> *If a licensee currently can engage a locum style approved manager under the Act, then the amendments in clause 152 should provide no impediment to them continuing to do so. As long as the licensee has entered into some sort of employment arrangement with another person to be an approved manager, it is intended that they be considered to be employed in that capacity for the purposes of this section.*

The Department further stipulates the Bill does not prescribe what the role of an approved manager is and does not remove the requirement that an approved manager need only be reasonably available during trading prior to midnight:[80]

> *…the approved manager could be doing multiple roles during their shift, such as working behind the bar in the restaurant, but their primary role should be as the approved manager. The amendment is simply intended to stop licensees from claiming there is an approved manager present simply because of a loophole such as one of the patrons is incidentally an accredited approved manager.*

The Department states the sectional definition of 'present' increases the clarity of the legislation and reduces the risk of misinterpretation of the section.

Norton Rose submitted that an amendment is required to the proposed section 155AD for different reasons. Norton Rose states the Bill should ensure holders of commercial special facility licences are provided an explicit exemption to comply with the obligation imposed under section 155AD, if approval is given by the Commissioner to an arrangement under section 153.[81]

Norton Rose argue that in cases where an approval is given to the licensee under section 153 to lease or sub-lease part(s) of the licensed premises, the licensee in these circumstances may not have direct employment responsibilities and therefore should not be required to employ an approved manager for the sub-let premises.[82]

The Department acknowledged Norton Rose's submission and notes that greater clarification may be useful to ensure the amendment to section 155AD is read consistently with the amendment to section 141:

> *In that where an arrangement exists, commercial special facility licensees should not be responsible for ensuring the approved mangers are employed in the role of approved mangers. Rather this would potentially be the responsibility of a person who has entered into an arrangement with the licensee under section 153.*[83]

78 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 16-17.

79 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 16.

80 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 16.

81 Norton Rose, Submission No. 14.

82 Norton Rose, Submission No. 14; Letter from the Department of Justice and Attorney-General dated 19 April 2013, Attachment, page 9 and Addendum page 17.

83 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 17.

Committee Comment

The Committee is satisfied with the Department's clarification of the issues raised by Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals and supports the assertion that it is not intended the Bill will change how the Act deals with employment practices or prescribe the role of an approved manager as stated in the Department's response.

In relation to the submission by Norton Rose to amend section 155AD of the Bill, the Committee accepts that further clarification on the operation of the provision is required to ensure that it adequately deals with commercial special facility licences.

The Committee notes that the submission from Norton Rose is not attempting to shift the responsibility of who needs to employ an approved manager for licenced premises and agrees that in those instances where the holder of commercial special facility licence has entered into an arrangement under section 153 of the Liquor Act with another person, it is in the interests of both the commercial special facility licence holder and the sub-lessee to ensure that the contractual employment arrangement lies with the sub-lessee.

The commercial special facility licence holder should not be required to enter into an employment arrangement with an approved manager (for each of its sub-lease arrangements) who will be employed exclusively for the operational purposes of the sub-lessee's business. Similarly, the sub-lessee business should not be in the position where any part of its operations are subject to the direction and control of an approved manager who is an employee of the commercial special facility licence holder and has no vested interest in the running of the sub-lessee business.

The Committee therefore makes the following recommendation.

Recommendation 3

The Committee recommends clause 152 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to ensure it is consistent with clause 144 of the Bill.

Specifically, it should be clear that for the purposes of section 155AD – in the case where the holder of commercial special facility licence has entered into an arrangement under section 153 of the *Liquor Act 1992* with another person - the approved manager that is required to be present or reasonably available should be an employee of the other person and not the commercial special facility licence holder.

Further minor amendments

The Bill contains minor amendments to the following sections to ensure accuracy of legislative references:

- Section 96, *Casino Control Act 1982*; and
- Sections 107D, 118A, 121, 153 and 309 of the Liquor Act.

NAAA submitted that it does not support amendment to sections 118A and 121 of the Liquor Act.[84] These amendments are however consequential amendments relating to other substantive clauses in the Bill concerning CIS, RAMPs and advertising in the local community.

These substantive issues are discussed elsewhere in this report.

[84] National Alliance for Action on Alcohol, Submission No. 9, pages 7-8.

Section 12 Liquor Act

The Bill seeks to amend the Act to allow the sale and service of liquor in Parliament House to reflect current practice. Currently, the supply of alcohol is permitted in a refreshment room of Parliament House. The amendments will allow the sale of liquor in the Parliament House gift shop and other areas of Parliament. The amendment will allow functions to take place in areas including verandas, rooftops and lawns of Parliament House without a licence.

The Committee did not receive any submissions on this part of the amendment and does not identify any significant issues. The Committee whole heartedly supports the proposed amendment.

Section 67AA Liquor Act

The Bill amends section 67AA to reinstate licensees with the right to act as a restaurant during the day that were previously granted under the on-premises (cabaret) licence. The Department states the previous provisions were unintentionally removed in 2008 and the current Bill seeks to rectify this.

In their joint submission, Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals support the move to reintroduce the provisions that were 'unintentionally' removed from the legislation. However, they also submit that in amending this section consideration should be given to what defines 'in association with a person being provided entertainment.' The joint submission states similar definitions under section 10 allow for one hour before, during and after a meal. It is argued a strict interpretation of the proposed section:[85]

> *a licensee would not be authorised to supply liquor to a patron if a band or DJ was on a break and the background music of a jukebox was provided, even if entertainment was provided for the majority of the premises trading hours after 5pm.*

The joint submission suggests section 4AA (Meaning of Entertainment) or 67AA(2) could be amended to clarify the issue.[86]

The Department acknowledged this recommendation but did not agree the current wording would create the issues suggested. The Department stated the current drafting, together with the Explanatory Notes, achieves the required intent, whilst maintaining legislative simplicity. The Department believes further amendment, as suggested in the submission would unnecessarily complicate the legislation.[87]

The Committee is satisfied with the Department's response and supports the amendment.

Section 141 Liquor Act

The Department states this is a minor amendment to achieve the original intent of the legislation. The provision relates to section 153 in relation to commercial special facility licensees and agreements to sublet. For example: multiple bar areas at airports.

The Committee did not receive any submissions commenting specifically on this proposed amendment. Commentary on the obligation to employ an approved manager in relation to commercial special facility licensees is discussed elsewhere in this report.

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85 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 7.

86 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 7.

87 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 10-11.

The Committee is satisfied the amendment does not pose any significant issues and supports the proposed amendment.

Section 155 Liquor Act

The Bill seeks to add 'Community other licence' to the types of licences that are exempt from the provisions relating to minors on premises.

The Department states the amendments reflect the original intent of the legislation. Another licence type that is exempt is the 'Community club licence' which includes clubs such as RSL's.

The Committee did not receive any submissions on this proposed amendment. The Committee is satisfied the amendment does not pose any significant issues and accordingly supports the proposed amendment.

Abolition of the Community Investment Fund and the Sport and Recreation Benefit Fund

The Bill will also abolish the Community Investment Fund (CIF) and the Sport and Recreation Benefit Fund (SRBF).[88]

The CIF was established under section 314 of the Gaming Machine Act and collects a percentage of gaming machine taxes from licensees. The money collected in the CIF is available for distribution to fund, for example, research into gambling and social issues arising from gambling, community groups and major public sporting facilities. The CIF also provides funding for the liquor and gaming regulatory and harm minimisation operations of the Office of Regulatory Policy and OLGR.[89]

Upon its abolition, moneys will instead be distributed from the Consolidated Fund. It has been explained the abolition of the CIF will '*enable better management of the Government's finances, with no impact on the outcomes or deliverables of Government*' and '*not affect the continuance of activities funded by CIF*'.[90]

In its joint submission, Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals raised concerns regarding the impact of this amendment. In particular, these organisations considered the current mechanism whereby monies are paid into the CIF ensures the administration of OLGR is not '*left to the vagaries of "Whole of Government" budgetary considerations*' and ensures the OLGR is sufficient staffed and resourced with monies used in a '*defined manner to benefit the industry and community*.' It is their view that where monies are '*absorbed into consolidate revenue*' they 'are likely never to be returned to the current system'.[91]

Included in this submission is a recommendation that these amendments be deferred while the Expert Panel is considering matters of funding.[92]

In its response, the Department reiterated the Attorney-General's commitment that existing CIF commitments, including funding for the Office of Regulatory Policy and OLGR, will continue and

88 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 88.

89 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 2.

90 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 16-17.

91 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, pages 2-3.

92 Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals, Submission No. 11, page 4.

community groups who receive funding from the CIF will not be impacted.[93] The Department also considered the suggestion to defer this matter. However, it responded that as this amendment is an internal government matter aimed at streamlining process, it does not consider it appropriate to refer this issue to the Expert Panel.[94]

Although the Explanatory Notes do not elaborate on the abolition of the SRBF, the Department separately advised the SRBF is no longer in use and is not currently used for revenue collection. The Department further explained it has been advised by the Department of Treasury and Trade that the abolition of the SRBF will not affect the continuance of funded activities in the area of sport and recreation.[95]

Committee comment

The Committee is satisfied from the Attorney-General's commitment to all Queenslanders that there will be no impact to community groups and existing CIF commitments, including funding for the Office of Regulatory Policy and OLGR.

The Committee is satisfied these amendments simply reflect an internal streamlining of these processes, which is a function of good governments. The Committee sees no reason why these amendments should not proceed in the current form.

2.2 Amendments to the *Body Corporate and Community Management Act 1997*

The Bill makes a small number of specific amendments to the BCCM Act.

Currently, where a constructing authority[96] intends to resume particular land under the *Acquisition of Land Act 1967*, it must obtain the endorsement of the relevant body corporate to record a new community management statement. The BCCM Act sets out the process to be followed by the body corporate in these circumstances, including obtaining independent professional advice (at the cost of the constructing authority) and holding a meeting or entering into a lot owner agreement (in the case of a specified two-lot scheme, or duplex) to decide any changes – all within specified timeframes.[97]

Under the current regime, there is potential for problems to arise if a body corporate fails to comply with this process and thereby prevents the final step of the registration process from being carried out by the constructing authority.[98] There is no enforcement mechanism contained in the BCCM Act if a body corporate fails to comply with its obligations.[99]

93 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 3. See also the letter from the Department of Justice and Attorney-General dated 30 April 2013, Attachment, pages 3-4.

94 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Attachment, page 4 and Addendum, page 3.

95 Letter from the Department of Justice and Attorney-General dated 30 April 2013, Attachment, page 3.

96 Constructing authorities include the Department of Transport and Main Roads, Department of Natural Resources and Mines, the Co-ordinator-General, some local government councils, Energex, Powerlink and Ergon Energy (as per Explanatory Notes, page 3).

97 *Body Corporate and Community Management Act 1997*, sections 51 and 51A.

98 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 17.

99 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 18.

It has been stated this issue frustrates the delivery and operation of infrastructure facilities; is critical for the integrity of the Queensland land title system; and creates uncertainty with respect to land information mapping.[100]

The objectives of the amendments in Part 2 (clauses 3-11) of the Bill are to close this 'gap' by permitting a constructing authority to proceed with registering a new community management statement where a body corporate fails to comply with the legislative process.

In addition, the Bill will also permit the constructing authority to lodge a new community management statement in circumstances where the body corporate decides not to endorse any part or parts of it. This will ensure that major infrastructure projects are not frustrated or delayed by a single body corporate failing to carry out required steps under the Act. By way of example, *The Airport Link*, *Gold Coast Rapid Transit* and *Cross River Rail* projects all pass through community title scheme land, affecting between 18 and 79 community title schemes.[101] Therefore, it would only take one body corporate out of the 79 affected to frustrate the process through non-compliance.

The new process contained in the Bill introduces new and retains some existing safeguards. For example, the amendments allow for a range of different scenarios; a body corporate can agree to the new community management statement in full, with changes, or not at all. However, importantly, the registration process will not be frustrated or delayed as the constructing authority will, in all scenarios, be able to lodge the new community management statement. However, the body corporate can use existing provisions in the Act if it does not agree with the new schedule lot entitlements in the community management statement.[102] In addition, and consistent with existing rights, the Bill also provides for individual lot owners to apply, on certain grounds,[103] to the Queensland Civil and Administrative Tribunal (QCAT) or a specialist adjudicator if they disagree with the new schedule lot entitlements in the community management statement.[104]

Further, and more detailed explanation of the requirement for these amendments is contained in the Explanatory Notes.[105] There are also transitional provisions for acquisitions happening before commencement of this Part of the Bill.[106]

Issues raised in submissions

It has been suggested in submissions that, as currently drafted, a lot owner may be able to seek a review, through QCAT or a specialist adjudicator, of the entire contribution schedule lot entitlement (rather than a review limited to the changes resulting from the formal acquisition) and that this is not the intention of the Bill.[107]

100 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 3.

101 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 3.

102 *Body Corporate and Community Management Act 1997*, sections 55 and 111G.

103 Where a new community management statement is recorded to reflect a formal acquisition and the owner of a lot in the scheme considers that the schedule lot entitlements are not consistent with the deciding principle or where there is no apparent deciding principle, are not just and equitable; Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 4.

104 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 4.

105 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 3 and 17-19.

106 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 10.

107 Strata Community Australia, Queensland, Submission No. 10, pages 1-2.

In support of its position, Strata Community Australia, Queensland (SCA (Qld)) referred to the current provision which makes it clear that a review is only available on the specific and narrow ground specified.

The Committee has reviewed the relevant section (47B) and agrees that as currently drafted there is potential for unintended consequences to result. The Department has also agreed that greater clarification may be useful in order to avoid this unintended consequence.[108]

On this basis, the Committee endorses the suggestion made by SCA (Qld) and makes the following recommendation.

Recommendation 4

The Committee recommends clause 4 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to clarify that a review under section 47B(2A)(b) of the *Body Corporate and Community Management Act 1997* is only available because of a formal acquisition affecting the scheme.

SCA (Qld) also made some other practical suggestions including:

- requiring the notice given by the constructing authority to state that the body corporate has a right to seek its own obtain independent professional advice and that it can recover the costs of obtaining that advice under the *Acquisition of Land Act 1967*;
- extending the time, or allowing for it to be extended, under which the body corporate must call and hold a general meeting to decide any changes to the proposed new community management statement. In support of this suggestion, SCA (Qld) included a timetable which indicated it would take a body corporate about 4.5 months to take the required steps to hold the general meeting. The Bill currently provides 3 months for this process to be undertaken; and
- compelling the constructing authority to include a body corporate's requested changes when lodging the new community management statement. [109]

In relation to the first point, the Committee sympathises with the position put forth by SCA (Qld), particularly if one accepts that the day-to-day governance of bodies corporate is often managed by laypersons who may find the legislation difficult to understand.[110] However, the Committee also recognises that the aim of this objective is to reduce the burden on bodies corporate, and agrees with the Department that any difficulty posed by the new process can be overcome through discussion and negotiation between the affected body corporate and the constructing authority.[111] On this basis, the Committee does not endorse these suggestions.

In relation to the second point, SCA (Qld) accepts the 3 months provided in the Bill mirrors the existing provision, however considers that this timeframe '*requires greater focus*' given the objective of the Bill is to enforce compliance with legislative process.[112] Although the enforcement mechanism is not a penalty provision, the Committee accepts that a failure to comply with the timeframe will

108 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 17-18.

109 Strata Community Australia, Queensland, Submission No. 10, pages 3-5.

110 Strata Community Australia, Queensland, Submission No. 10, page 3.

111 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 18-19.

112 Strata Community Australia, Queensland, Submission No. 10, page 4.

give the constructing authority an entitlement to lodge a new community management statement regardless.

However, the Committee also notes one further month is required to pass before this entitlement arises and considers it reasonable to expect a constructing authority to seek to resolve the issue by negotiation before exercising its discretion to lodge the new statement. Such cooperation would also be in the interests of a body corporate, who is likely taking immediate steps on receiving a notice that land affecting the scheme is to be compulsorily acquired. This cooperative approach is also contemplated in the Explanatory Notes to the Bill.[113]

In considering this suggestion, the Department advised '*the amendments provide a reasonable time for bodies corporate to deal with a notice given by a constructing authority … balanced with the need to ensure Land Registry records are corrected as quickly as possible following a formal acquisition*.'[114] The Committee thanks SCA (Qld) for raising this issue, however for the reasons discussed above does not endorse this suggestion.

The third point is suggested by SCA (Qld) to overcome the potential for a constructing authority to avoid incorporating changes in the community management statement which have been requested by the body corporate. SCA (Qld) therefore suggest the Bill ought to be amended to expressly compel the constructing authority to include the requested changes.[115]

In its response, the Department agreed the drafting of this section '*is not intended to provide constructing authorities with an option of deciding not to include lot entitlement changes requested by the body corporate*' and is therefore 'considering seeking the view of the Attorney-General on this matter.'[116]

The Committee thanks SCA (Qld) for identifying this potential unintended consequence and endorses its suggestion on the basis that it will clarify the intended policy intent of the proposed sections.[117]

Recommendation 5

The Committee recommends clause 5 of the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 be amended to clarify that under sections 51(7) and 51A(6) of the *Body Corporate and Community Management Act 1997* – a constructing authority is required to include any changes to lot entitlements that have been requested by a body corporate under sections 51(5)(b) and 51A(4)(b) of that Act when lodging a new community management statement.

The Committee also considered whether the amendments to the BCCM Act are inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.[118] Further discussion on this aspect of the amendments is set out in Part 3 of this Report.

113 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 18-19.

114 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 20-21.

115 Strata Community Australia, Queensland, Submission No. 10, pages 4-5.

116 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 20-21.

117 This suggestion also applies to the proposed provisions for specified two-lot schemes.

118 *Legislative Standards Act 1992*, section 4(2)(a) and (g).

2.3 Queensland Sentencing Information Service

The Bill also amends the *Recording of Evidence Act 1962* and *Supreme Court Library Act 1968* to provide a legislative basis for the Queensland Sentencing Information Service (QSIS). The QSIS has been developed in conjunction with the Judicial Commission of New South Wales. It is an internet based research tool designed to assist legal research in relation to criminal sentencing.

The aim of QSIS is to promote greater consistency in sentencing by providing parties appearing before a sentencing court with information to support well reasoned submissions on appropriate sentence range.[119]

In terms of some of the mechanics behind the amendments, part 13 of the Bill, and in particular clauses 177 and 178, transfer responsibility for QSIS to the Supreme Court Library; extend access to QSIS to certain entities including prosecuting agencies, community legal centres and legal practitioners; protect staff involved in the collation of the QSIS database from liability for any offence; and ensure that access and use of personal information available on QSIS is restricted.[120]

Not only will the amendments expand, significantly, the current persons who have access to QSIS, it will transfer responsibility of QSIS to the primary Government legal information provider in Queensland, the Supreme Court of Queensland Library.[121]

It was explained the amendments are required '*to overcome the effect of existing legislative restrictions and prohibitions on access to or publication of certain information related to criminal proceedings*.'[122] By way of example, the Department advised that provisions of the *Criminal Law (Rehabilitation of Offender) Act 1986* prohibit the disclosure of a conviction after the rehabilitation period has expired.[123] The effect of these provisions therefore will be to enable information to be accessed by named persons, or categories of persons, for specified purposes.[124]

In its submission, the Queensland Law Society supported the amendments to QSIS and '[applauded] *the decision*' to extend access to QSIS to certain entities. The Queensland Law Society suggested consideration be given to enabling the Queensland Law Society, its members, and educational and research bodies to also have access '*to undertake much needed research on sentencing matters in the area of criminal justice*.'[125]

In response, the Department stated:

> *Access to QSIS will be a matter for the Supreme Court Library Committee. Should the Supreme Court Library Committee consider it appropriate, section 17(2) will facilitate the approval by the Committee of access by the QLS, as an entity, to all parts of the QSIS database that do not contain restricted information. The committee may allow full access (including access to restricted information contained in the sentencing remarks collection) to individual members of the QLS who fall within the categories in section 19(2) and under a written agreement mentioned in section 20.*

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119 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 19.

120 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 19.

121 Letter from the Department of Justice and Attorney-General dated 30 April 2013, Attachment, pages 5 and 7.

122 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 21.

123 Letter from the Department of Justice and Attorney-General dated 30 April 2013, Attachment, pages 6-7. Other examples are provided in this letter.

124 See proposed section 20(3) in clause 178.

125 Queensland Law Society, Submission No. 7, pages 1- 2.

> *Universities, libraries, researchers and members of the media may be provided with access to any part of the QSIS database that does not contain restricted information.*[126]

The Committee is satisfied with this explanation and notes that access will be a discretionary matter for the Supreme Court Library Committee, on a case by case basis. This is appropriate, and the Library Committee is well placed to make such determinations.

Additionally, the Queensland Law Society noted that proposed section 18(5)[127] permits access to 'restricted information'[128] 'despite any other Act that restricts or prohibits the disclosure of sentencing information.' In this regard, the Queensland Law Society expressed concern that restricted information '*could include or make apparent among other things, the names and details of child defendants or victims*' and recommended that '*information of this nature, if made available by QSIS, should be de-identified*.'[129]

Addressing these concerns, the Department stated:

> *Inclusion of restricted information in the QSIS database is both necessary and reasonable because:*
>
> - *only specified categories of entities will be given access to restricted information on the database;*
> - *access to the database will only be granted for limited purposes and will be subject to a written agreement;*
> - *misuse of information obtained from the database will be an offence; and*
> - *it would be administratively difficult for the information to be reliably de-identified.*
>
> *Furthermore, aspects of the identifying information will in many cases be directly relevant to the research that is being undertaken.*
>
> *As per existing arrangements, it is not expected that the QSIS database will contain:*
>
> - *any part of the record of a proceeding that has been made while the court is closed under a provision of an Act, or an order made under a provision of an Act, requiring the court to be closed; and*
> - *any part of the record of a proceeding if a court makes an order prohibiting access to, or the disclosure or publication of, the record, or a document or information that is part of the record.*[130]

The Committee has considered the suggestion made by the Queensland Law Society but does not support it. Having regard to the Department's response, the Committee considers there are sufficient measures in place to ensure restricted information is properly protected. In addition, the Committee considers this suggestion would also be inconsistent with the policy objective of the amendments to overcome current legislative restrictions and prohibitions. The Committee supports the policy objective and amendments.

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126 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 24.

127 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, clause 178.

128 Namely, "sentencing information in the QSIS database, the disclosure of which is prohibited under an Act or order of a court" (Clause 174, new section 2(2)).

129 Queensland Law Society, Submission No. 7, page 2.

130 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 24-25.

The Committee also considered whether the amendment to override existing legislative restrictions and prohibitions on access to or publication of information is inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.[131] Further discussion on this aspect of the amendment is set out in Part 3 of this Report.

2.4 Other amendments

Work Health and Safety Act 2011

The Bill amends the *Work Health and Safety Act 2011* to defer uncommenced amendments to the *Electrical Safety Act 2002*.[132] These provisions are due to commence on 7 June 2013,[133] which under this Bill will be deferred until 1 January 2014.[134] Based on information available to the Committee, this decision has been made to ensure consistency between the Act and pending (and presently unknown) changes to the Electrical Safety Regulation 2002.

This regulation is due to expire on 1 September 2013 and the Government is in the process of considering whether this regulation ought to be remade or replaced.[135] Essentially, the Government has foreshadowed that changes to the Regulation may impact upon key concepts and terminology within the Act.[136]

The Bill will also make a minor amendment to correct a drafting error in the *Electrical Safety Act 2002*.[137]

The Committee considers the deferral of these provisions is sensible and to the benefit of the industry. Deferring commencement of these provisions for this short period of time will avoid possible confusion in circumstances where changes to the Regulation will impact on consistency with concepts and terminology in the Act. The Committee supports these amendments.

Consumer credit contracts

In 2008, there was agreement by the Council of Australian Governments (COAG) that the Commonwealth would take responsibility for the regulation of consumer credit.[138]

In accordance with this agreement, Queensland referred power to the Commonwealth under the *Credit (Commonwealth Powers) Act 2010*, although retained legislative and enforcement responsibility for interest rate caps for 'existing' credit contracts.[139] The decision to keep the Queensland cap was made '*while consideration by the Commonwealth Government was undertaken as to the merits of a national capping regime*'.[140]

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131 *Legislative Standards Act 1992*, section 4(2)(a).

132 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 189.

133 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 20.

134 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Part 15 (clauses 188-190).

135 http://www.justice.qld.gov.au/fair-and-safe-work/electrical-safety/law-and-penalties/electrical-safety-regulation-review, accessed 10 April 2013.

136 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 20.

137 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, clause 190; Explanatory Notes, page 55.

138 Council of Australian Governments, Communique, 3 July 2008.

139 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 17 and 35.

140 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 35.

On 17 September 2012, the Commonwealth Parliament passed the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Cth) which introduces a national capping regime on 1 July 2013.[141] The Bill will therefore repeal the Queensland cap (other than for 'existing' credit contracts entered into prior to its repeal) thus ensuring that, for consumer credit contracts entered into from 1 July 2013, only the Commonwealth interest rate cap regime will apply.

In the event the Bill does not obtain assent by 1 July 2013, these amendments will need to commence retrospectively. In circumstances where legislation has retrospective application, there is potential for it to be inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.[142] However, the Committee considers retrospective application is justified in these circumstances as it will provide certainty to consumers and the industry in understanding their rights and responsibilities regarding the maximum cost chargeable under a consumer credit contract from 1 July 2013.

As well as fulfilling its commitment to national regulatory reform in this area, this amendment will also benefit industry and consumers, while still preserving the rights and obligations under 'existing' credit contracts. The Committee therefore supports these amendments.

Funeral Benefit Trust Fund

Part 6 (clauses 33-41) of the Bill amends the *Funeral Benefit Business Act 1982* to abolish the Board of Trustees for the Funeral Benefit Trust Fund and transfer its functions to the administering department. Administration of the fund is to transfer to the 'registrar', who is also the chief executive.[143] It has been explained that this amendment is made in accordance with the recommendation of the Webbe-Weller Review (a review of Queensland Government boards, committees and statutory authorities conducted between July 2008 and March 2009).[144] Based on information publicly available, it is understood the then Government supported this recommendation in principle.[145]

There are also transitional provisions to provide for the smooth transition of the functions of the Board of Trustees to the administering department such as allowing the registrar to deal with existing matters.[146]

The Board currently consists of the registrar (also the Director-General of the Department), State Actuary (or their representative), a representative of the Treasurer and an industry representative.[147] The Department provided further information regarding the fees paid in the last financial year. In 2011-12, a total of $1,135.00 was paid in meeting fees to the industry representative. There were 12 formal meetings of the Board.[148]

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141 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 35.

142 *Legislative Standards Act 1992*, section 4(2)(a) and section 4(3)(g). See also Scrutiny of Legislation Committee, *Alert Digest No. 12 of 2003*, paragraph 14, page 19.

143 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, clause 34; *Funeral Benefit Business Act 1982*, section 6.

144 Letter from the Department of Justice and Attorney dated 26 March 2013, Attachment, page 3.

145 http://www.premiers.qld.gov.au/publications/categories/reviews/assets/government-response-to-part-b-report.pdf, accessed 9 April 2013.

146 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Clause 41.

147 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 25.

148 Letter from the Department of Justice and Attorney dated 26 March 2013, Attachment, page 5.

As the Bill provides for the cessation of their roles at commencement and expressly excludes compensation,[149] the Committee considered whether these amendments are inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.[150] Further discussion on this aspect is set out in Part 3 of this Report.

The Committee supports these amendments and recommends their adoption without further delay.

Civil Proceedings Act 2011 – *continuation of transitional arrangements*

Part 4 (clauses 25-28) of the Bill provides for the continuation of transitional arrangements made under the Civil Proceedings (Transitional) Regulation 2012. This regulation expires on 1 September 2013.[151]

This amendment will therefore continue transitional arrangements for office holders (such as registrars), previously appointed under the now repealed *Supreme Court Act 1995*, to positions under the *Civil Proceedings Act 2011* and in relation to process issued but not yet returned and appeal rights accrued at the time that the relevant provisions of the *Civil Proceedings Act 2011* come into force.[152]

The Committee considers these are practical and necessary amendments to protect existing rights. Accordingly, the Committee supports the amendments.

149 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, clause 41.

150 *Legislative Standards Act 1992*, section 4(2)(a).

151 *Civil Proceedings Act 2011*, section 109(4).

152 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 19-20.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the Legislative Assembly.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Natural Justice - Section 4(3)(b) *Legislative Standards Act 1992*

Is the Bill consistent with the principles of natural justice?

Clause 127 of the Bill allows a police officer or investigator to issue a notice to cease the sale of liquor immediately because the organisation is not complying with the terms of the exemption and therefore selling liquor in an unauthorised capacity.

As these changes potentially breach the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker, the Committee considered whether these amendments are inconsistent with the fundamental legislative principle that legislation should be consistent with the principles of natural justice and ensure administrative powers are subject to review.[153]

In this regard, the commentary in the Explanatory Notes is instructive:

> *Part 10 of the Bill amends the Liquor Act to remove the requirement for particular organisations to apply for a CLP when conducting a fundraising event if they meet particular criteria. The amendments potentially breach the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker.*
>
> *A provision is included in this clause which allows a police officer or investigator to issue a notice to cease the sale of liquor immediately because the organisation is not complying with the terms of the exemption and therefore selling liquor in an unauthorised capacity. A further provision provides that the organisation, if given such a notice, cannot conduct an exempted event for six months (they would have to apply for a permit).*
>
> *…*
>
> *In being prevented from holding an exempted event for six months after the issue of the original breach notice, the entity is not given the right of appeal and this could conceivably be inconsistent with natural justice principles. However, DJAG believes this is appropriate to ensure that entities that do not do the right thing by not complying with the terms of*

[153] *Legislative Standards Act 1992*, section 4(2)(a) and (g).

> *the exemption are prevented from selling liquor without a permit at the time and for a period after the event.*
>
> *The restriction on holding exempted events is only for six months and organisations can still apply for a CLP during that period and might receive a conditional approval. Additionally, it is* ***intended*** *that investigators and police officers will not initially issue a notice to cease the sale of liquor, unless there is a serious issue, but rather issue a notice to rectify certain matters inconsistent with the legislation. This would allow organisations that intend to do the right thing to rectify matters so as to comply with the exemption and therefore still retain their ability to hold exempted events.*[154] *(emphasis added)*

Additional clarification was sought from the Department in relation to the statement that, unless there is a serious issue, the intention is not to issue a notice to cease but to issue a notice to rectify (see part in bold above). In particular, the Committee asked the Department about the steps that were being taken to ensure its officers understand and abide by this intention, and what coordination or communication was happening with the QPS.[155]

The Department responded as follows:

> *Compliance officers within OLGR have a broad discretion under the existing enforcement framework regarding the appropriate form of action to take. Options available to a compliance officer can include issuing a warning, undertaking consultation or commencing enforcement action. What constitutes appropriate action will depend on a full assessment of facts and circumstances by the compliance officer. The existing liquor enforcement policy adopts an escalation model for enforcement to ensure compliance strategies adopted are appropriate to the situation and facilitate consistency and equity. In instances where the infraction is minimal, it would be expected that the compliance officer, under the existing enforcement protocol, would issue a notice under the proposed section 14C of the Liquor Act to take immediate steps to fall within the exemption. Such action would be undertaken according to the existing liquor enforcement policy.*
>
> *At this stage, no specific communication has been undertaken with QPS regarding instances where a notice may be provided to an organiser of an event under section 14C. However, OLGR will develop internal guidelines, consistent with the Explanatory Notes, regarding appropriate action to be taken in relation to this exemption and these will be communicated with the QPS. It is also anticipated that QPS officers will exercise their existing discretion by taking into account the nature of the breach of the exemption and the likelihood of the breach being successfully remedied. The Explanatory Notes will also provide guidance to the QPS regarding the intention of the provision.*[156]

The Committee is satisfied with the explanation provided by the Department and considers that the development of internal guidelines by the OLGR will assist the QPS in undertaking their duties under the Act.

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154 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 22-23.

155 E-mail from the Committee Secretariat to the Department of Justice and the Attorney-General dated 18 April 2013.

156 Letter from the Department of Justice and the Attorney-General dated 30 April 2013, Attachment, pages 4-5.

Delegation of administrative power – Section 4(3)(c) *Legislative Standards Act 1992*

Does the bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?

Clause 45 of the Bill amends section 50(5) of the Gaming Machine Act. Section 50(3) of that Act allows the Commissioner for Liquor and Gaming (the Commissioner) to delegate his 'designated powers' to an appropriately qualified public service employee or an appropriately qualified inspector.

A delegation under subsection (3) permits the sub-delegation of the power to an appropriately qualified public service employee.

Designated powers of the Commissioner are defined in section 50(5) to mean the powers of the Commissioner under the Gaming Machine Act, other than (the therefore non-delegable) powers under sections 97(12), 97(13), 98, 147 and 336.

The amendment under clause 45 removes section 336 from that list making it a designated (and therefore) delegable power. Section 336 authorises, under specified circumstances, the termination of leases, agreements or arrangements to which a gaming licensee is a party, and carries significant (200 penalty units) maximum penalties under certain enforcement provisions.

The Committee is satisfied that the delegation is appropriate.

Rights and liberties – Section 4(3)(g) *Legislative Standards Act 1992*

Does the bill adversely affect rights and liberties, or impose obligations, retrospectively?

Acquisitions affecting a community titles scheme prior to commencement

Clause 10 of the Bill inserts new section 435 into the BCCM Act to state that where a formal acquisition affecting a community titles scheme happened before the commencement, and, at the commencement, the constructing authority for the acquisition has not given the body corporate for the scheme the advice about the acquisition required under former sections 51(1) or 51A(1), new sections 51 or 51A will apply in relation to the formal acquisition.

In respect of the potential retrospectivity arising from having a new scheme apply to a pre-commencement situation, the Explanatory Notes state:

> *Part 2 includes transitional provisions which have a retrospective effect where, before commencement, a constructing authority has advised a body corporate of its intention to lodge a request to record a new community management statement for the scheme under the current section 51(1)(a) or the current section 51A(1)(a) (for specified two-lot schemes). The purpose of the transitional provisions is to enable the constructing authority to continue a project under the amended section 51 or section 51A which follows the new process. Where an already ongoing process has not reached a timely conclusion under the existing section 51 or section 51A, the proposed transitional provision enables a transition to the amended section 51 or section 51A so that the process can be completed within a suitable timeframe.*
>
> *The amendments are required to be retrospective as the amendments are curative, and do not impose any further obligations nor remove rights. The purpose behind the amendments is to create a reasonable, closed timeframe for existing obligations to be performed within. The absence of the retrospective provisions would render the proposed amendments of no use.*
>
> *Providing that the amendments are retrospective also improves the equity of treatment of bodies corporate where land has been resumed from multiple CTS for an infrastructure project undertaken by a constructing authority. Without retrospective application, bodies corporate impacted by a project may have different timeframes by which they are*

> *required to comply. For example, without retrospective transitional provisions, where a constructing authority is providing advice of its intention to lodge a new plan of subdivision and a new CMS to a number of bodies corporate over the period before and after the amendments to sections 51 and 51A commence, some bodies corporate must comply within four months and other bodies corporate will have a minimum of five months, but no maximum time specified. For bodies corporate where the advice was given prior to commencement of the amendments and a body corporate does not comply, the constructing authority will be prevented from being able to lodge a new CMS. For bodies corporate where the notice was given after commencement of these amendments and a body corporate does not comply, the constructing authority will be able to lodge a new CMS.*
>
> *Also, only those bodies corporate that have been notified after commencement of the amended sections 51 or 51A will have independent professional advice on any lot entitlement adjustments (the lot entitlement adjustment advice) obtained on their behalf by the constructing authority. Bodies corporate advised prior to commencement of the amendments will have to obtain their own lot entitlements adjustment advice. In both circumstances, however, the advice is paid for by the constructing authority. On this point, the transitional provisions include a specific provision which allows the body corporate to choose to request that the lot entitlement adjustment advice be obtained by the constructing authority where neither party has obtained the advice as at the date of commencement. If the body corporate makes this request of the constructing authority, the constructing authority must obtain and provide the lot entitlement adjustment advice as soon as possible.*[157]

The Committee is satisfied with the explanation provided and considers the retrospective application of the provisions is justified.

Lodgment of new CMS without consideration

The Bill also contains amendments which will permit a constructing authority to lodge a new community management statement regardless of whether the body corporate has considered or endorsed the new community management statement.[158]

It has been suggested these amendments can be justified on the basis that '*very significant infrastructure projects … may be delayed or put at risk when even one body corporate has not completed the processes required of it in a timely manner*' and that sufficient time is given to the body corporate in which to advise the constructing authority of its decision.[159]

The Committee considers it is not difficult to envisage delay or risk to projects where there are multiple community title schemes involved, and refers to the examples cited in part 2 of this Report. Another adverse consequence cited by the Department is unit owners being required to pay contributions that do not reflect the current composition of a scheme following a formal acquisition.[160]

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157 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 23-24.

158 See also the submission from Strata Community Australia, Queensland, Submission No. 10, page 5.

159 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 25.

160 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, page 22.

The Committee agrees these amendments are justified in the circumstances. In arriving at this decision, the Committee has considered sufficient safeguards and mechanisms are in place which outweighs any incursion on the rights and liberties of individuals. These include:

- requiring the constructing authority to obtain and pay for independent professional advice in relation to whether any adjustments might be needed to lot entitlements as a result of the resumption of the land, to assist the body corporate in arriving at their decision;
- the constructing authority is responsible for the costs of preparing and recording a new community management statement;
- the body corporate still retains the right to seek changes to the community management statement;
- individual lot owners continue to have rights to apply to QCAT or a specialist adjudicator on certain grounds.

In addition, the Committee does not consider the Bill should be amended to provide that a lot owner should be entitled to compensation for any loss suffered where an order is made by QCAT or a specialist adjudicator.[161] This is because the body corporate still retains the right to seek changes to the community management statement, as noted in Part 2 of this Report.[162]

The Bill also includes transitional provisions which have a retrospective effect where, before commencement, a constructing authority has advised a body corporate of its intention to lodge a new community management statement. These provisions will enable the constructing authority to continue the project under the new process, or transition to the new process so it can be completed within a suitable timeframe.[163]

The transitional provisions will also ensure equity of treatment of bodies corporate and include provisions for obtaining independent professional advice.[164] The Department advised that '*very few bodies corporate*' will be impacted by the retrospective application of transitional provisions.[165] It is also understood these changes will be communicated to affected bodies corporate to mitigate any impact.[166] The Committee acknowledges the submission made by SCA (Qld) which recommends parties should be given at least one month notice of a constructing authority's intention to lodge the new community management statement and of the body corporate's right to request lot entitlement adjustment advice. However, for reasons already discussed, the Committee cannot not endorse this suggestion.

The Committee is satisfied the retrospective application is justified in these circumstances; the transitional provisions will ensure the timely conclusion of existing obligations in an appropriate manner and in line, where possible, with the new process.

161 Strata Community Australia, Queensland, Submission No. 10, page 5.

162 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 22-23.

163 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 23.

164 For further information, see Explanatory Notes, page 24.

165 Letter from the Department of Justice and Attorney dated 26 March 2013, Attachment, page 6.

166 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 24.

The Committee agrees with the Department that there does not appear to be a need for an additional one month's notice.[167]

Immunity from proceedings – Section 4(3)(h) *Legislative Standards Act 1992*

Does the bill confer immunity from proceeding or prosecution without adequate justification?

Clause 178 of the Bill inserts, inter alia, section 23 into the *Supreme Court Library Act 1968* to provide immunity to a person who, acting honestly, makes information in the QSIS database available to an entity who is authorised to access information from the database. Proposed new section 23 provides that the person is not liable civilly, criminally or under an administrative process, for making the information available, nor can they be held to have breached any code of professional ethics or departed from the accepted standards of professional conduct.

Further, in a proceeding for defamation the person has a defence of absolute privilege for making the information available and if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person does not contravene the Act, oath or rule of law or practice by making the information available and is not liable to disciplinary action for doing so.

Frequently, provisions offering immunity to officers in public sector roles require that they have acted honestly and *without* negligence.[168] In these circumstances, the Committee considers the immunity provisions to be appropriate.

Compulsory acquisition of property – Section 4(3)(i) Legislative Standards Act 1992

Does the bill provide for the compulsory acquisition of property only with fair compensation?

In relation to the abolition of the Board of Trustees of the Funeral Benefit Trust Fund, the Committee considered whether these amendments are inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals, particularly as the Bill provides that no compensation is payable to a (former) member of the Board of Trustees on abolition and cessation of membership.

This issue was addressed in the Explanatory Notes:

> *As the board of trustees is largely composed of Queensland Government employees, the abolition of the trustee positions does not have any significant effect on position holders. The impact on the (one) industry representative does not have a significant effect on employment as only a small meeting fee is paid to the industry representative trustee and the trustees only meet once a month.*[169]

The Committee has considered the above explanation and further information provided by the Department (see Part 2 of this Report). The Committee supports these amendments.

General matters

Clause 178 of the Bill inserts new section 18(5) into the *Supreme Court Library Act 1968*. That section states new section 18 'applies despite any other Act that restricts or prohibits the disclosure of sentencing information'.

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167 Letter from the Department of Justice and Attorney-General dated 19 April 2013, Addendum, pages 23-24.

168 See also Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, available at http://www.legislation.qld.gov.au/Leg_Info/publications/FLPNotebook.pdf, page 64, accessed 6 May 2013.

169 Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, page 25.

Similarly, clause 178 also inserts new section 22 into the *Supreme Court Library Act 1968* to provide that 'an entity, or persons within the entity, to whom restricted information obtained under section 19(1) or (2) is disclosed, may use the information for the purpose for which it was obtained, despite any other Act restricting or prohibiting the use of the information.'

These amendments raise two issues. First, the Committee considered whether access to or publication of information which is likely to be inherently private or confidential is inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals. This was addressed in the Explanatory Notes:

> *This potential breach of fundamental legislative principles is justified on the basis that: only specified categories of entities will be given access to restricted information on the database; access to the database will only be granted for limited purposes; and misuse of the information is an offence. Furthermore, and in any event, it is administratively difficult for the information to be reliably de-identified and aspects of the identifying information may be directly relevant to the research being undertaken.*
>
> *In summary, the community as a whole will benefit from greater consistency in sentencing and the improved administration of the criminal justice system. It is considered that the amendments to the Supreme Court Library Act 1968 adequately balance the need for well informed sentencing submissions with the privacy of the individuals concerned.*[170]

Notwithstanding that information included in the QSIS database will contain private and confidential information of persons, drawn from their experience in the criminal justice system, the Committee has considered that, on balance, the benefit to the community outweighs the right of privacy and confidentiality of an individual. In forming this view, the Committee has also considered that sufficient safeguards have been included in the proposed legislation which will provide individuals with some assurance regarding access and use of that information.

Secondly, while it is acceptable for a Queensland Act to set aside the operation of an earlier Queensland Act, section 109 of the Commonwealth Constitution provides that when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. Accordingly, an assertion by a state law that it prevails over 'any other Act that restricts or prohibits the disclosure of sentencing information' fails to acknowledge that any conflicting operation of a federal statute will render the state law invalid to the extent of its inconsistency with the federal law.

Whilst the exact nature of the sentencing information that will be kept on QSIS is not fully known at this stage, some federal statutes deal with the handling of identifying information for particular types of offenders and thus there is potential for conflict between the state and federal provisions. If a federal Act 'restricted or prohibited the use of sentencing information' in a way that made it inconsistent with section 22, then section 22 would be invalid to the extent of the inconsistency.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill.

[170] Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013, Explanatory Notes, pages 24-25.

The Committee considers the notes are prepared to a high standard contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. It is pleasing to note the high quality of the explanatory notes, particularly in relation to the liquor and gaming amendments.

Appendix A – List of Submissions

Sub #	Submitter
1	Clubs Queensland
2	Queensland Police Union of Employees
3	Queensland Hotels Association
4	Independent Order of Rechabites Queensland District No. 87 Inc.
5	Lives Lived Well
6	P&Cs Qld
7	Queensland Law Society
8	Queensland Network of Alcohol and Other Drug Agencies Ltd
9	National Alliance for Action on Alcohol
10	Strata Community Australia, Queensland
11	Bars Consultants, Commercial Licensing Specialists and RSA Liquor Professionals
12	Australian Medical Association, Queensland
13	Foundation for Alcohol Research & Education
14	Norton Rose

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

13 May 2013

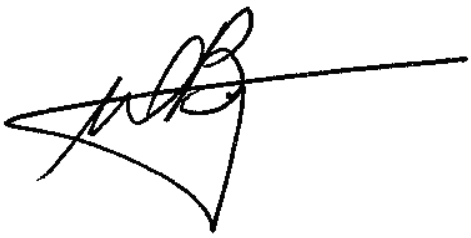
Mr Brook Hastie
Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hastie

Re: *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013* - Statement of reservation

The Opposition wishes to notify the committee of its reservations about aspects of Report No. 30 of the Legal Affairs and Community Safety Committee into the *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013*. We will detail the reasons for our concern during the parliamentary debate on the Bill.

Yours sincerely



Bill Byrne MP
Member for Rockhampton