

 22/5/13

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

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

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

Objectives of the Amendments

The objectives of the amendments to the *Liquor Act 1992* (Liquor Act) and *Gaming Machine Act 1991* (Gaming Machine Act) are to ensure that the original objectives of the Bill, as outlined in the Explanatory Notes, are achieved by:

- Providing adequate safeguards to ensure the safety and health of the community by prescribing that all persons (including entities) who have been convicted in the last five years of the offence of unauthorised sale of liquor or the selling of liquor to minors, cannot be exempted from requiring a permit to sell liquor at a fundraising event;
- Extending the exemption from requiring a permit under the Liquor Act to sell liquor at fundraising events to country shows if they are low risk, due to their size and nature;
- Ensuring the effectiveness and clarity of legislation by making minor technical changes so that references and definitions are accurate;
- Clarifying that a commercial special facility licensee who has entered into an agreement with another person to sublet licensed premises will not be in contravention of new section 155AD by not directly employing an approved manager.

The objective of the amendments to the *Body Corporate and Community Management Act 1997* (Body Corporate and Community Management Act) is to ensure that the original objectives of the Bill, as outlined in the Explanatory Notes, are achieved by clarifying particular provisions of the Bill relating to reviews of contribution schedule lot entitlements by specialist adjudicators and the Queensland Civil and Administrative Tribunal (QCAT), and also by clarifying the obligations of constructing authorities in relation to changes to community management statements requested by bodies corporate affected by an acquisition of land.

The objective of the amendments to the *Recording of Evidence Act 1962* and *Supreme Court Library Act 1968* are to ensure that certain sensitive transcripts are not included in the Queensland Sentencing Information Service (QSIS). The amendment reflects existing practice.

Achievement of the Objectives

Liquor and Gaming Machine Acts

The objects are achieved by amending the following clauses of the Bill:

- Clause 127, which inserts new section 13 of the Liquor Act to exempt particular entities or persons who hold fundraising events from requiring a licence or permit, to ensure that any entity or person, not just those who are licensees or have been licensed, who has been convicted of an offence of selling unauthorised liquor or selling liquor to a minor in the last five years, cannot sell liquor at a fundraising event without a permit.
- Clauses 127 and 121, to exempt low risk country shows from requiring a liquor permit to sell liquor. The exemption from the requirement to have a permit to sell liquor under the Liquor Act at fundraising events is limited in the Bill to events that start and end on one day, and where the sale of liquor is not for more than eight hours in one day. The amendment allows for small shows in regional areas to be exempted even if they do not meet these two restrictions, as long as they meet low risk criteria regarding size and nature as prescribed in a regulation. A consequential amendment is also made to Clause 2.
- Clause 132, which provides that subsidiary on-premises licences where the principal activity is entertainment under the Liquor Act can operate as restaurants during the day, so that the newly inserted subsection 67AA(3)(b) refers to 'subparagraph (a)' rather than 'subparagraph (i)'.
- Clause 152, which clarifies that a nominated approved manager under the Liquor Act must actually be acting in the capacity of an approved manager (rather than being at the premises for another purpose), to provide that if a commercial special facility licensee has entered into an approved arrangement with another person under section 153 (that is an arrangement between a commercial special facility licensee and another person to sell liquor under the licence), the requirements outlined in section 155AD(2) and 155AD(3) will apply to that other person and not the commercial special facility licensee. A consequential amendment is also made to clauses 121 and 144.
- Clause 92 so that the newly inserted section 349(3)(b) in the Gaming Machine Act refers to 'TITO system transactions' in sub-paragraph (iii) rather than 'TITO transactions'.

Body Corporate and Community Management Act

The objects are achieved by amending the following clauses of the Bill:

- Clause 4 inserts new section 47B(2A) in the Body Corporate and Community Management Act to provide for additional circumstances in which the owner of a lot included in a community titles scheme may apply for an order of a specialist adjudicator or QCAT for an adjustment of the contribution schedule lot

entitlements. The amendment to clause 4 clarifies that the grounds for making an application under new section 47B(2A) are limited to circumstances where a lot owner believes that as a result of changes made to the contribution schedule lot entitlements to reflect a formal acquisition, the lot entitlements are not consistent with the deciding principle for the lot entitlements for the scheme (or, if there is no deciding principle for the lot entitlements, are not just and equitable). Section 47B(2A) is not intended to provide lot owners with broader grounds for seeking an adjustment of contribution schedule lot entitlements, beyond adjustments necessary to ensure changes to the lot entitlements made to reflect a formal acquisition are consistent with the existing deciding principle for the scheme, or are otherwise just and equitable.

- Clause 5 amends section 51 to adjust the process undertaken by a constructing authority to correct land title following the formal acquisition of land from a community titles scheme. This process includes a constructing authority consulting with an affected body corporate about necessary changes to the community management statement for the scheme to reflect the formal acquisition. The amendment to clause 5 clarifies that a constructing authority is required to include changes requested by a body corporate in the community management statement lodged by the constructing authority with the Land Registry following a formal acquisition.
- Clause 6, amends section 51A in a similar way to clause 5, but pertains to specified two-lot schemes.

Recording of Evidence Act 1962 and Supreme Court Library Act 1968

The objective will be achieved by amending the *Recording of Evidence Act 1962* to provide that the following records or transcriptions must not be provided to the Supreme Court Library Committee for the purposes of maintaining and administering QGIS:

- Any part of a record under the Act of a criminal 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; or
- Any part of a record under the Act of a criminal proceeding if the court makes an order prohibiting access to, or the disclosure or publication of, the part.

The objective will also be achieved by amending the definition of ‘*sentencing information*’ in the *Supreme Court Library Act 1968* to ensure that it does not include the above records.

Alternative Ways of Achieving Policy Objectives

The proposed amendments to the Liquor and Gaming Machine Acts are generally technical in nature and are designed to ensure that the Bill’s policy objectives, as outlined in the original Explanatory Notes for the Bill, are achieved. Without legislative amendment, the Bill will not fully and clearly achieve its policy objectives, and the final legislation will lack clarity. Therefore, legislative amendment is the only way of achieving the policy objectives.

The proposed amendments to the Body Corporate and Community Management Act are technical in nature and will serve to clarify the reading of the provisions being amended so as to ensure that the policy objectives of the Bill are clearly met. The amendments are required to ensure the amended provisions do not provide too broad an interpretation beyond the intention of the Bill.

There are no alternative ways of achieving the policy objective for amendments to the *Recording of Evidence Act 1962* and *Supreme Court Library Act 1968*.

Estimated Cost for Government Implementation

The proposed amendments will not impose any additional cost on Government to what was outlined in the original Explanatory Notes.

Consistency with Fundamental Legislative Principles

The proposed amendments are consistent with the objectives and intent of the original Bill and create no additional inconsistencies with fundamental legislative principles other than those outlined in the original Explanatory Notes.

Consultation

Amendments to clause 152 were informed by the public submissions to the Legal Affairs and Community Safety Committee. Other amendments to the Liquor and Gaming Machine Acts did not require additional consultation, as they are consistent with the objectives and intent of the original Bill.

The amendments to clauses 4 – 6 were informed by a submission to the Legal Affairs and Community Safety Committee by Strata Community Australia (Qld) and included as recommendations of the Committee in its report on the Bill.

The amendments to the *Recording of Evidence Act 1962* and *Supreme Court Library Act 1968* have arisen from consultation with the Chief Justice.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 to identify that amendments relating to exemptions for low risk fundraising events will commence 1 July 2013.

Amendment 2 amends clause 4, which inserts new section 47B(2A) into the Body Corporate and Community Management Act to introduce a new circumstance in which a lot owner may make an application to a specialist adjudicator or QCAT for an adjustment of the contribution schedule lot entitlements for a community titles scheme.

The new circumstance inserted by clause 4 of the Bill is created where an adjustment was made to the contribution schedule lot entitlements as a result of a formal acquisition. The amendment in clause 1 clarifies that the grounds for making an application under new section 47B(2A) are limited to circumstances where a lot owner believes that as a result of changes made to the contribution schedule lot entitlements to reflect a formal acquisition, the lot entitlements are not consistent with the deciding principle for the lot entitlements for the scheme (or, if there is no deciding principle for the lot entitlements, are not just and equitable).

The amendment to clause 4 clarifies that section 47B(2A) is not intended to provide lot owners with broader grounds for seeking an adjustment of contribution schedule lot entitlements, beyond adjustments necessary to ensure changes to the lot entitlements made to reflect a formal

acquisition are consistent with the existing deciding principle for the scheme, or are otherwise just and equitable.

Amendment 3 amends clause 5, which amends section 51 of the Body Corporate and Community Management Act. Clause 5 inserts a new subsection (7) to provide that after four months have passed, if the body corporate has not given the constructing authority an endorsed new community management statement under amended section 51(5)(a), the constructing authority may lodge a request to record a new community management statement. New subsection (7)(a) provides that the new community management statement that is lodged with the request to record a new community management statement must be the same as the proposed new community management statement that was given to the body corporate under new section 51(1) if no changes have been advised by the body corporate. Changes of no substance, as explained in the Explanatory Notes to the Bill, are the exception and may be made. If changes have been advised by the body corporate and provided in writing to the constructing authority, the new community management statement that is lodged with the request to record a new community management statement must include those changes. As noted earlier, changes of no substance may also be made.

The amendment to clause 5 clarifies that a constructing authority is not given an option as to which form the new community management statement can take. Specifically, if changes have been notified to the constructing authority by the body corporate, then those changes must be included in the new community management statement before it is recorded with the Land Registry. If no changes have been advised, then the community management statement must be the same as the community management statement that was given to the body corporate under section 51(1). The only exception, in either case, being that changes of no substance may be made to the community management statement if needed.

Amendment 4 amends clause 6, which amends section 51A of the Body Corporate and Community Management Act. Clause 6 inserts a new subsection 51A(6) which acts in the same way as the new section 51(7) described above, but pertains to specified two-lot schemes. The amendments in clause 3 provide the same clarity to new section 51A(6) as clause 2 does to new section 51(7).

Amendment 5 amends clause 92, which amends section 349 of the *Gaming Machine Act 1991* to clarify that the provision relates to TITO system transactions, by inserting the word 'system'.

Amendment 6 amends clause 121 of the Bill to insert a definition in section 4 of the *Liquor Act 1992* (Liquor Act) 'Definitions' for an 'approved arrangement' to apply to commercial special facility licensees that have approval to enter into an agreement to sublet licensed premises to another person under section 153. A sectional definition of an 'approved arrangement' was previously to be provided in section 141 (clause 144 of the Bill), but as this definition now also applies to Part 6, Division 1A, the definition has been placed in section 4, which provides definitions for the entire Act. The definition of 'approved arrangement' has been slightly amended to be more consistent with the wording in section 153.

Amendment 7 amends clause 121 of the Bill to amend the definition of fundraising event so that it applies to a small regional show that is held over more than one day.

Amendment 8 also amends clause 121 to insert a definition in section 4 of the Liquor Act for 'small regional show' to allow for low risk agricultural, horticultural, pastoral or industrial shows or exhibitions in rural Queensland to be exempted from requiring a liquor permit if they meet the criteria regarding the size and nature of the show as prescribed under a regulation, relevant to minimising adverse effects on the health and safety of members of the public and the amenity of the community.

Amendment 9 amends clause 127 so that a small regional show, as defined in section 4, may still be exempted if liquor is sold for more than eight hours in any one day.

Amendment 10 amends clause 127, which inserts new sections 13-14B into the Liquor Act, to clarify that non-profit associations cannot hold a fundraising event that is exempted from the Bill if it, or an executive officer, has been convicted in the last five years of an offence of selling or supplying liquor to a minor (either in a licensed premises, public place or private home) under section 155A, 156 or 156A. Additionally, they will not be exempted if they, or an executive officer, has been convicted in the last five years of an unauthorised sale of liquor (as a licensee or otherwise) under section 169. The current provisions only apply to convictions for these offences if the person is a current or former licensee or permit holder.

Amendment 11 makes a minor amendment to clause 132, which amends section 67AA of the Liquor Act, to correct a minor drafting error so that subparagraph (i) is now paragraph (a).

Amendment 12 makes a minor technical amendment to clause 144, which amends section 141 of the Liquor Act, to provide for the insertion of new subsections in clause 9.

Amendment 13 amends clause 144, which amends section 141 of the Liquor Act, by omitting and replacing subsections to the effect that a sectional definition of 'approved arrangement' is removed. This is now included in section 4 'Definitions' as it will apply to more than one section in the Act. The clause also provides for the consequential renumbering of subsections.

Amendment 14 inserts new clause 151A, inserting a new subsection 2 into section 155AC of the Liquor Act, to clarify that if a commercial special facility licensee has entered into an approved arrangement with another person under section 153, references to a 'licensee' in Division 1A of Part 6 also apply to the other person. The other person will therefore be responsible for ensuring that an approved manager is either present or reasonably available on premises, in accordance with the provisions of the Liquor Act.

Amendments 15-17 amend clause 171 of the Bill to insert a new section 5B(3B) in the *Recording of Evidence Act 1962*. It also corrects a minor drafting error and renumbering in the section.

New section 5B(3B) prohibits provision of the following records or transcriptions to the Supreme Court Library Committee:

- Any part of a record under the Act of a criminal 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; or
- Any part of a record under the Act of a criminal proceeding if the court makes an order prohibiting access to, or the disclosure or publication of, the part.

By way of example, new section 5B(3B) would prohibit provision of a record or transcription of proceedings under section 13A of the *Penalties and Sentences Act 1992*.

Amendment 18 amends clause 174 of the Bill to ensure that the term '*sentencing information*' under the *Supreme Court Library Act 1968* does not include any part of a record or transcript that can not be provided to the Supreme Court Library Committee under section 5B(5) of the *Recording of Evidence Act 1962*, as section 5B(3B), as inserted, is renumbered by Amendments 15-17.

Under the Bill, the Supreme Court Library Committee may only provide sentencing information to the information technology service provider for inclusion in QGIS.

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