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Member for Ginninderra

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Ms Elizabeth Lee MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

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Dear Ms Lee

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 18* published on 30 May 2018 in relation to the Casino and Other Gaming Legislation Amendment Bill 2018 (the Bill) and separately on certain Disallowable Instruments appointing persons to the Racing Appeals Tribunal.

Casino and Other Gaming Legislation Amendment Bill 2018

I thank the Committee for its comments on the Bill. I note the Committee's report draws the Assembly's attention to the analysis of the human rights implications of the Bill, namely the right to privacy and reputation (section 12 of the *Human Rights Act 2004* (the HRA)) and the right to the presumption of innocence (section 22 of the HRA).

The Committee has requested a response in relation new section 136C(1)(d), which the Committee has considered under subparagraph (3)(e) of its Terms of Reference – whether any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny. The Committee has indicated that further justification is required for providing the ability to extend by regulation the range of persons who may be required to provide information to a Casino Advisory Panel.

As outlined in the Explanatory Statement, a Casino Advisory Panel will be established when required to consider particular decisions under the *Casino Control Act 2006* and the *Casino (Electronic Gaming) Act 2017*. These decisions relate to the ownership or leasing of the casino, the grant or transfer of the casino licence, and the conversion of restricted authorisations to permit the operation of casino gaming machines and Fully Automated Table Game terminals.

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Section 136C(1)(d) does not provide a general power for a Casino Advisory Panel to request any information from anyone, it must be interpreted in its context, and it cannot be inconsistent with the principal Act. A Casino Advisory Panel can only request information from information holders that will assist the Panel to make a recommendation to the Minister about the decision that the Panel has been established to consider. Section 136C(1)(d) must be read in conjunction with the limitation in section 136B(2) that a Panel can ask for information to assist it to make a recommendation, a limitation that is repeated in section 136C(1).

It is important to the integrity of casino operations that information about the individuals potentially involved in owning or leasing the casino, or holding the casino licence, is available to a Casino Advisory Panel. Casino probity investigations can be complex, and involve information from a range of sources. It is not possible to anticipate in advance all the entities that may hold information relevant to Panel considerations, and information required will vary according to the decision under consideration by the Panel, and the specific circumstances of the applicant. For this reason, the flexibility and responsiveness provided by section 136C(1)(d) is important to the effective operation of a Casino Advisory Panel, and careful consideration was given to including the specific limitations noted above during drafting of the Bill.

Also as noted in the Explanatory Statement, any regulation made under section 136C(1)(d) could be disallowed by the Legislative Assembly. I note the Committee's concerns that disallowance may not take effect until after the information in question has been required and provided, however, the potential for disallowance is recognised as one of the 'safeguards' to address concerns around parliamentary scrutiny of delegated legislation being 'a powerful tool, which acts as a discipline on rule-makers'.¹

Racing Appeals Tribunal Appointments

I also note the Committee's comments in relation to the explanatory statements for Disallowable Instruments DI2018-57, DI2018-58, DI2018-59, DI2018-60 and DI2018-61, which appoint persons to the Racing Appeals Tribunal under the *Racing Act 1999*.

I can confirm that in each case, the proposed appointees are not public servants for the purposes of paragraph 227(2)(a) of the *Legislation Act 2001*.

My Directorate is aware of the Committee's technical and stylistic requirements and strives to meet these expectations. On this occasion, there was an inadvertent omission from the explanatory statements for these instruments.

I trust that these responses address the Committee's comments in relation to the Bill and the Racing Appeals Tribunal appointments.

Yours sincerely

Gordon Ramsay MLA

¹ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, chapter 3, *Scrutiny Mechanisms*, p 59, https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf.