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The Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email: fac@parliament.qld.gov.au

Dear Research Director

CHARITABLE AND NON-PROFIT GAMING (TWO-UP) AMENDMENT BILL 2011 AND CRIMINAL CODE (ANZAC DAY BETTING) AMENDMENT BILL 2011

Thank you for inviting the Queensland Law Society to make comments on the *Charitable and Non-Profit Gaming (Two-up) Amendment Bill 2011* (the Charitable Bill) and *Criminal Code (Anzac Day Betting) Amendment Bill 2011* (the Criminal Code Bill). The Society has considered the different approaches of both Bills and finds merit in aspects of each. In our view, however neither Bill is the ideal solution for the legalisation of two-up games in Queensland on specific days.

1. Consultation

The Society has not been consulted previously on either the Charitable Bill or the Criminal Code Bill.

2. *Charitable and Non-Profit Gaming (Two-up) Amendment Bill 2011 provisions*

The Society generally supports the approach taken in the Charitable Bill. In particular, we highlight that there are a number of issues addressed in proposed clause 179 of the Charitable Bill which are important considerations in the authorisation of two-up for specific purposes:

- Two-up games must be conducted by a licensed operator with a traditional cultural connection with two-up on days of veterans remembrance (clause 179(2)(a));
- Two-up must not be played by a minor (clause 179(2)(c));
- Two-up should be played with respect to set rules and generally in the spirit of the traditional rules (clause 179(2)(d) and (e)); and
- The operator makes no gambling revenue from the playing of two-up, although an entry fee can be levied to play and funds generated must be used for the benefit of ex-service men and women and their families (clause 179(2)(f) and (g)).

We are also supportive of the proposed definition of 'designated day', as it provides flexibility in the assignment of days on which two-up can be played legally.

The Society acknowledges that proposed clause 181 authorising two-up games on designated days, despite the exclusive right given to casinos to conduct two-up games, is a necessary element to this reform.

3. Charitable and Non-Profit Gaming Act 1999

The Society is cognisant that there is a series of gaming Acts dealing with various forms of permitted gambling. We are not convinced that the *Charitable and Non-Profit Gaming Act 1999* is the appropriate location for these provisions as the object and intention of that Act is inconsistent with the aim of the Charitable Bill.

The object of the *Charitable and Non-Profit Gaming Act 1999* is defined in section 3:

(1) The overarching object of this Act is to ensure that, on balance, the State and the community as a whole benefit from general gaming.

(2) The balance is achieved by allowing general gaming subject to a system of regulation and control designed to protect players and the community through:

(a) ensuring the integrity and fairness of games; and

(b) ensuring the probity of those involved in the conduct of general gaming; and

(c) minimising the potential for harm from general gaming.

(3) Within the overarching object, the following objects are included:

(a) to set and maintain appropriate standards and levels of accountability for the conduct of general gaming;

(b) to ensure the public obtains reasonable net benefits from the conduct of general gaming;

(c) to prevent individuals engaged in conducting general gaming from deriving personal gain from it;

(d) to maintain and protect the integrity of general gaming;

(e) to maintain public confidence and trust in buying general gaming tickets as a worthwhile way of supporting fundraising activities.

General gaming, which is the main focus of the *Charitable and Non-Profit Gaming Act 1999*, is defined in Schedule 2 as "the playing of a game".

More specifically, the *Charitable and Non-Profit Gaming Act 1999* has a clear definition in section 11(1) of what constitutes 'a game':

A game is a game, scheme or arrangement offering prizes, whether or not tickets are sold or distributed, in which the winners are decided:

(a) entirely or partly by chance; or

(b) by a competition or other activity having an outcome depending on chance, for example, a guessing competition.

Two-up does not fit easily into the definition of 'a game', as there is no offer of "prizes" in the playing of the game, rather the game is played to wager upon the outcome of the toss of the coins. Examples of

games for the purpose of the *Charitable and Non-Profit Gaming Act 1999* include bingo, Calcutta sweep and lucky envelopes. The operation of these games is heavily reliant upon the involvement of the organisation e.g. - producing and distributing tickets and provision of prizes. The organisation also hosts these games in order to raise revenue for their operations. In our view, the approach to permitted wagering in the Charitable Bill does not fit well with the nature of the games regulated by the *Charitable and Non-Profit Gaming Act 1999*, indeed if it were not for proposed clause 179(2)(f) there would be no revenue of any kind flowing to the hosting RSL or Services Club.

It is clear that the *Charitable and Non-Profit Gaming Act 1999* is intended to provide regulation for organisations that engage in gaming activities for the purpose of fundraising for charitable or non-profit purposes. The Society considers that it would not be appropriate to include provisions relating to the playing of two-up here, as one of the stated intents of the Charitable Bill is to ensure two-up is not used for “profit making”.¹

In essence the proposal is for the limited legalisation of two-up as a cultural activity on designated days rather than as an exercise in charitable and non-profit gaming.

The Society is of the view that the primary purpose of the Charitable Bill is to make permissible wagering on the outcome of two up games. For this reason, we considered that the *Wagering Act 1998* could provide the right framework for the provisions drafted in the Charitable Bill.

4. Wagering Act 1998

The object defined in the *Wagering Act 1998* is directly related to the regulation of the wagering aspect of games:

(1) *The object of this Act is to ensure that, on balance, the State and the community as a whole benefit from wagering.*

(2) *The balance is achieved by allowing wagering subject to a system of regulation and control designed to protect players and the community through—*

(a) *ensuring the integrity and fairness of games; and*

(b) *ensuring the probity of those involved in the conduct of wagering; and*

(c) *minimising the potential for harm from wagering.*²

However, the actual content of the *Wagering Act 1998* is focused on issues such as licensing, permits and the regulation of totalisator and fixed odd schemes.

While the amendments proposed in the Charitable Bill fit within the objects and purpose of the *Wagering Act 1998*, the substance of the amendments does not fit well with the existing provisions of that Act.

5. Criminal Code Act 1899

Consequently if none of the existing gaming Acts are the appropriate place to locate the substance of the Charitable Bill the Society recommends that the most appropriate location for the two-up provisions is the *Criminal Code Act 1899*. The Criminal Code creates the general prohibition with respect to unlawful gaming and it would be advantageous to have this limited exception to the general rule placed here in terms substantially reproducing the Charitable Bill.

¹ 2nd reading speech found at : <http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/110907/charitable.pdf>

² Section 2A of the *Wagering Act 1998*

Further, it seems logical that if wagering on two-up makes the game unlawful the proposed limited exemption to the offence should be located within the Act that creates the offence.

6. Criminal Code (Anzac Day Betting) Amendment Bill 2011 provisions

For the reasons outlined above, the Society proposes locating the relevant provisions within the Criminal Code, as in our view the substance of the proposal does not fit within the scope of any of the existing gaming Acts.

With respect to the Criminal Code Bill, however, the Society is keen to see that the final amendments contain the important particulars, such as the prohibition of minors and the restriction of legal two-up games to be conducted only by appropriately licensed RSL and Service Clubs, as proposed in the Charitable Bill.

Thank for you providing the Society with the opportunity to make comments. If you have any questions on the content of this letter, please contact Mr Matt Dunn, Principal Policy Solicitor on (07) 3842 5889 or m.dunn@qls.com.au.

Yours faithfully

Bruce Doyle
President