

2014

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2014

EXPLANATORY STATEMENT

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Overview

The Red Tape Reduction Legislation Amendment Bill 2014 seeks to amend the following Acts and Regulations through an omnibus amendment Bill:

1. *Casino Control Act 2006*
2. *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
3. *Gaming Machine Act 2004*
4. *Hawkers Act 2003*
5. *Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012*
6. *Magistrates Court (Sale of Motor Vehicles Infringement Notices) Regulations 2005*
7. *Pawnbrokers Act 1902*
8. *Planning and Development Regulation 2008*
9. *Public Unleased Land Act 2013*
10. *Race and Sports Bookmaking Act 2001*
11. *Registration of Deeds Act 1957*
12. *Sale of Motor Vehicles Act 1977*
13. *Second-Hand Dealers Act 1906*
14. *Security Industry Act 2003*
15. *Tobacco Act 1927.*

The purpose of the proposed amendments is to reduce 'red tape' to the businesses and community through better regulatory processes by:

- streamlining of development application approvals for outdoor dining on public unleased land;
- extending the licence period from two to three years for casino and racing industry licences to harmonise with arrangements in the *Justice and Community Safety Legislation (Red Tape No1 – Licence Periods) Amendment Act 2013*;
- reducing the unnecessary regulatory framework for licensees relating to signage, display of licences and advertising; and
- removing the need for duplicate statutory declarations when lodging deeds for Powers of Attorney registration.

A. Policy Initiatives

1. Outdoor Dining Amendments

The proposed changes with the Bill provides for businesses intending to place semi-fixed objects in their outdoor dining area to be able to apply for a permit under the *Public Unleased Land Act 2013* which will be assessed by the Office of Regulatory Services (ORS).

More complex applications will still require a DA approval.

Currently, businesses are required to undertake a Development Application (DA) process and, liaise with multiple government agencies and incur significant financial costs to establish or locate minor objects in outdoor dining areas.

2. Licensing Terms

This Bill extends the licence periods from two to three years under *Casino Control Act 2006* and *Race and Sports Bookmaking Act 2001*.

This is consistent with the *Justice and Community Safety Legislation (Red Tape Reduction No.1- Licence Periods) Amendment Act 2013* which amended a number of Acts to extend the maximum length of various licence periods issued by ORS. These amendments were in response to a recommendation from the Red Tape Reduction Panel, which found that administration of annual licence renewals is time consuming and costly for businesses.

3. Business Signage

The proposed amendments focus is on removing the regulatory burden with regards to the display of licenses and conditions.

- Under the *Tobacco Act 1927*, licensees that sell tobacco products will only have to display the licence on the business premises and will not have to display conditions that accompany the licence;
- Under the *Gaming Machine Act 2004* , gaming machine licensee details will only need to be prominently displayed in the main entry of a gaming area and not at every entry and exit to a gaming area;
- Under the *Hawkers Act 2003*, hawkers will no longer be required to display their licence or an exemption to operate near a commercial business and will only have to produce the licence or exemption at the request of an authorised person;
- Under the *Pawnbrokers Act 1902*, *Sale of Motor Vehicles Act 1977* and *Second-Hand Dealers Act 1906*, the amendment removes requirements for the display of signage indicating that a licensee is a licensed dealer. A licensee will still be required to display the licence in a prominent place at premises where business is carried on under the licence;

- Under the *Security Industry Act 2003*, *Fair Trading (Motor Vehicle Repair Industry) Act 2010* and *Sale of Motor Vehicles Act 1977*, the amendment lifts the requirements for these businesses to display or state their licence number in all advertising materials.

4. **Registration of Deed**

This amendment removes the duplication of statutory declarations attached to the deed when lodging a deed for registration, if the power of attorney contains certification as required under the *Powers of Attorney Act 2006*.

Strict Liability Offences

The offences in the Bill are strict liability offences. A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Strict liability offences do not have a mental element, or mens rea. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For this reason, the general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

The strict liability offences arise in the regulatory context where for reasons such as public safety, and the interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know the requirements of the law. Subsequently, the mental or fault element can justifiably be excluded. The rationale is that people who carry out business as a Hawker or Security work as opposed to members of the general public can be expected to be aware of their duties and obligations to the wider public. Most offences will be subject to other qualifies such as reasonable practicability, due diligence and reasonable care.

The use of strict liability offences for example in the *Security Industry Act 2003* and *Hawkers Act 2003*, can be justified on the basis that offences will apply to people who choose to engage in regulated activity and are on notice that they are operating in a regulated context. It is on this basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives of minimising the risk of harm to the community, which is demonstrably justifiable and reasonable.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23

(3) of the Criminal Code provides that other defences may also be available for use for strict liability offences.

The inclusion of strict liability clauses for lesser offences in the Bill will support the application of an infringement notice scheme. Infringement notice schemes minimise the cost of litigation for the Territory while offering registrants a choice concerning whether to accept a lesser penalty without admitting the offence or to remain liable to prosecution.

The increasing prevalence of regulatory legislation, some of which contain strict liability offences, is also determined by community expectations of what activities should be regulated. As new research emerges concerning factors that may indicate a preventable risk of harm to community, governments are increasingly expected to ensure that minimum safeguards, at least, are in place to address these risks. It is generally accepted that the exclusion of people with a known history of inappropriate behaviour is a fundamental part of creating safe environments for the provision of services to community.

This is a regulatory Bill and people and companies who undertake work, under a permit or licence permit will be aware of their responsibilities and obligations in relation to the permit or licence. Compliance with the provisions of the bill is important to ensure the safety of the community. In this Bill, in all instances of strict liability offences, a person is provided with notice of the action required to comply with the law and opportunity to comply before an offence can be found. The penalty units for all strict liability offences in the Bill are within the acceptable range for a strict liability offence.

Human Rights

In respect of the use of strict liability offences in the Bill, a number of rights contained in the *Human Rights Act 2004* are engaged.

Section 28 of the *Human Rights Act 2004* provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

The Bill's aim in reducing regulatory burden while achieving greater protection of the community standards can be justified in a free and democratic society. The community expects that despite what types of business people engage themselves, to be operating in a community acceptable standard. Applying strict liability to clauses 8, 9 and 25 of this Bill can be considered a reasonable limit set by law that will assist in achieving the policy objective.

The necessity of this approach has resulted in a carefully considered position in relation to proportionality. An individual's rights and freedoms have, in some cases, been slightly fettered on the basis that it is in the wider public interest that the businesses be properly regulated. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

CLAUSE NOTES

Clause 1 Name of Act

This Act is the *Red Tape Reduction Legislation Amendment Bill 2014*.

Clause 2 Commencement

This Act commences on the day after its notification day.

Note: The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Clause 3 Legislation amended

This Act amends the following legislation:

1. *Casino Control Act 2006*
2. *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
3. *Gaming Machine Act 2004*
4. *Hawkers Act 2003*
5. *Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012*
6. *Magistrates Court (Sale of Motor Vehicles Infringement Notices) Regulations 2005*
7. *Pawnbrokers Act 1902*
8. *Planning and Development Regulation 2008*
9. *Public Unleased Land Act 2013*
10. *Race and Sports Bookmaking Act 2001*
11. *Registration of Deeds Act 1957*
12. *Sale of Motor Vehicles Act 1977*
13. *Second-Hand Dealers Act 1906*
14. *Security Industry Act 2003*
15. *Tobacco Act 1927*.

Casino Control Act 2006

Clause 4 section 45 (3)

The maximum period for which a casino employee licence can be issued or renewed is extended to three years. A casino employee licence is currently issued for a period of two years.

Clause 5 section 47 (4) (b)

The Commission requires the ability to issue a licence for a shorter period if deemed necessary.

Fair Trading (Motor Vehicle Repair Industry) Act 2010

Clause 6 section 47

Requirements under section 47 have been removed. Section 47 requires that advertisements must include the licensee's licence number and where the work will be performed.

Gaming Machine Act 2004

Clause 7 section 41 (1)

The provision is amended to provide that a licence must be prominently displayed at 1 entrance (the main entrance) to each gaming area only.

Subsection 41(1) provides that it is a condition of a licence that the licensee displays the licence, or a copy of the licence, at each entrance to each gaming area of the licensed premises.

Hawkers Act 2003

Clause 8 section 13

Clause 9 section 14 (1)

Clause 10 section 16

Requirements under sections 13 and 16 to display their licences and exemption at point of sale has now been removed. Similarly, restrictions under section 14 (1) on hawking near commercial premises have also been removed.

Due to the nature of a hawker's business it is considered more appropriate that a licensee or a person that is granted an exemption is only required to show their licence when requested to do so by an authorised person.

The requirement to show their licence when requested to do so by an authorised person does not create an additional offence. Hawkers are currently required to display their licences or an exemption for commercial premises at the point of sale. Failure to do is a strict liability offence with a maximum penalty of 10 penalty units. The removal of display of licence obligation is to remove unnecessary regulatory burden on hawkers businesses.

Clause 8 of the Bill creates a strict liability offence with a maximum penalty of 10 penalty units.

Clause 10 of the Bill creates a strict liability offence with a maximum penalty of 5 penalty units.

The penalty for clause 8 and clause 9 of the Bill is of the ordinarily acceptable range for strict liability offences because of the risk that a failure to comply may create for public safety.

**Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices)
Regulation 2012**

Clause 11 Schedule 1, item 4

This provision is amended to reflect the removal of offence provision under section 47 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*.

**Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices)
Regulation 2005**

Clause 12 Schedule 1, item 11

This provision is amended to reflect the removal of the offence provision under section 73 (4) of the *Sale of Motor Vehicles Act 1977*.

Pawnbrokers Act 1902

Clause 13 section 7

Given that there is no perceived benefit for the regulatory requirement under section, it has now been removed.

Section 7 creates an offence provision requiring a positive obligation on a licensee to clearly display on the outside of premises, where the pawnbroker carries on business, information identifying the licensee and that they are a 'licensed pawnbroker'.

Planning and Development Regulation 2008

Clause 14 Schedule 1, new division 1.3.4A

The category that will be exempt under the regulation are:

- a. objects that are semi-fixed and may be locked down or bolted into the ground, pavement or attached to a permanent building via a socket and sleeve, bracket or like system, but able to be disconnected or removed within 48 hours with limited mechanical assistance as well as returning that place to the condition it was immediately before the object was

installed. For example: an umbrella could be removed within 48 hours and the area could be restored within 48 hours to its original condition. A concrete barrier is not likely to be restored within 48 hours to the original condition.

Paragraph 133(a)(iii) of the *Planning and Development Act 2007* (the Act) provides a definition of exempt development and states that development can be exempt from development approval under the relevant development table in the territory plan or section 134 of the Act or under a regulation. Section 135 of the Act provides that an exempt development may be undertaken without a development application and development approval.

Under the *Planning and Development Regulation 2008* (the regulation), section 20 provides that development that complies with Schedule 1 is exempt from requiring development approval. Schedule 1, section 1.2 defines the meaning of the term *designated development*, in relation to land, for the purposes of Schedule 1.

The establishment of streamlining the approval of outdoor dining areas requires new provisions to be inserted in the regulation to include an exemption from development approval for outdoor dining. This exemption is modelled on the existing exemption for community gardens (Division 1.3.3A Exempt developments – community gardens) and is to be a ‘one stop shop’. A development must comply with the general exemption criteria, with the exception of section 1.18.

The definition of ‘outdoor dining’ will align and adopt the terminology of the definition in section 9A of the *Smoke-Free Public Places Act 2003* (Outdoor eating or drinking place).

The new exemption criteria will apply to unleased Territory land under a licence (as per section 1.73(1)(a)(i)) and to unleased Territory land for which a permit under the *Public Unleased Land Act 2013* has been issued.

Public Unleased Land Act 2013

Clause 15 section 45(2) (d)

Although the location plan submitted must be clear, drawn to scale and include dimensions, the amendment removes the mandatory requirement that a location plan is “professionally drafted”.

Race and Sports Bookmaking Act 2001

A race bookmaking, race bookmaker’s agent and sports bookmaker’s agent licence is extended to three years.

Currently, the Act do not specify the time period a licence is to be issued under the legislation. Currently under the provisions a licensee applies for the period of the licence to be granted. These provisions are inconsistent with the arrangements in place for other gaming licences.

As a matter of practice the Commission issues licences under the provisions for two years for consistency with other gaming licences. As casino employee licences are to be increased to a three year maximum term, it is considered appropriate for the same arrangements to apply under the *Race and Sports Bookmaking Act 2011*.

Clause 16 section 10

Section 10 is amended to provide that the Commission may issue a race bookmaking licence for a maximum period of three years.

Clause 17 section 16

Section 16 is amended to provide that the Commission may issue a race bookmaker's agent licence for a maximum period of three years.

Clause 18 section 38

Section 38 is amended to provide that the Commission may issue a sports bookmaker's agent licence for a maximum period of three years.

Clause 19 schedule 1, item 4

Schedule 1, item 4 is amended to remove sections 10, 16 and 38.

Registration of Deeds Act 1957

Clause 20 section 4, new subsection (2A)

This amendment will remove the duplication of statutory declarations attached to the deed when lodging a deed for registration of a power of attorney, if the power of attorney contains certification as required under the *Powers of Attorney Act 2006*.

The majority of deeds lodged for registration relate to Powers of Attorney. The *Registration of Deeds Act 1957* requires a deed have endorsed or attached to it a statutory declaration made by a party to it verifying its execution for registration. The *Powers of Attorney Act 2006* also requires that a power of attorney contain a certificate signed by witnesses to the signatures of the parties to the power of attorney.

These requirements lead to the need to provide two statutory declarations attached to the deed upon lodgement for registration. There is no apparent benefit to this process.

Therefore the *Registration of Deeds Act 1957* is amended to reflect that there is no need for a statutory declaration when lodging a deed for registration if the power of attorney contains the certification as required under the *Powers of Attorney Act 2006*.

Clause 21 new subsection 4 (6)

Paragraph 4(2)(a) of the Act is amended so that if a deed is a power of attorney and contains a certificate in accordance with section 22 of the *Powers of Attorney Act 2006*, a statutory declaration completed under the Act is not required.

Sale of Motor Vehicles Act 1977

Clause 22 section 73(4)

Subsection 73(4) creates an offence provision requiring a positive obligation on a licensee, where business is to be carried on under the licence, to display a notice consisting of letters not less than 7cm in height containing: the name of the licensee and whether the licensee is a dealer or operator. There is no perceived benefit for this regulatory requirement. Requirements under section 73 (4) has been removed.

Clause 23 section 73(5)

This is a consequential amendment following the removal of subsection 73 (4). Section 73 (5) refers to the subsection 4.

Clause 24 section 73(8)

This is a consequential amendment following the removal of subsection 73 (4). Section 73 (8) refers to the subsection 4.

Clause 25 section 79(1)

Requirements under subsection 79(1) are removed. Subsection 79(1) requires that advertisements must include that the licensee is licensed and where the licensee carries on business.

Clause 26 section 79 (4)

Requirements under subsection 79(4) are removed. Subsection 79(4) requires that advertisements must include the licensee's licence number.

Clause 27 section 79(A)

Requirements under subsection 79 (A) are removed. Subsection 79A requires that advertisements must include that the licensee is a licensed car market operator and where the licensee carries on business.

Second-hand Dealers Act 1906

Clause 28 section 5

There is no perceived benefit for the regulatory requirement under section 5 and this requirement has now been removed. Section 5 creates an offence provision requiring a licensed second-hand dealer to clearly display on the outside of each premises, where the dealer carries on business, in letters not smaller than the height prescribed under the regulations, their full name; and that they are licensed to sell second-hand goods.

Second-hand Regulation 2002

Clause 29 section 5B

There is no perceived benefit for this regulatory requirement and this requirement has now been removed.

Subsection 73(4) creates an offence provision requiring a positive obligation on a licensee, where business is to be carried on under the licence, to display a notice consisting of letters not less than 7cm in height containing: the name of the licensee and whether the licensee is a dealer or operator.

Security Industry Act 2003

Clause 30 section 40(1)

The requirement to include the licence number on advertising material has now been removed. Paragraph 40(1)(b) requires that a person who is licensed must include the person's licence number in all advertising. This is an offence provision.

However, if the person advertises and is not the holder of a licence that authorises to carry out the security activity this clause creates a strict liability offence with a maximum of penalty 30 penalty units. The penalty is of the ordinarily acceptable range for strict liability offences because of the risk that a failure to comply may create for public safety.

Tobacco Act 1927

Clause 31 section 64(4)

Conditions for licensees can be detailed and complex and it is not necessary for the conditions of a licence to be displayed as part of the licence. This requirement has now been removed.

Licensees that sell tobacco products are required to display their licence at a prominent place where the licensee carries on business. Paragraph 64(4)(c) specifically requires that any conditions imposed must also be displayed.