



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: 32-12453
Our Ref: 3883.04

Hon Terry Waldron MLA
Minister for Racing and Gaming
Level 8 Dumas House
2 Havelock Street
WEST PERTH WA 6005

By fax: 6552 6101

22 May 2012

Dear Minister

Liquor Control Amendment Regulations (No. 10) 2011

Thank you for your letter dated 15 May 2012 regarding the amendment regulations above and providing the additional information requested by the Committee. The Committee considered your letter at its meeting on 21 May 2012 and resolved to write to you in the following regard.

Legal advice from State Solicitor's Office

The Committee can confirm that any advice prepared by the State Solicitor's Office which is forwarded to the Committee will be treated as a private submission under the Legislative Council Standing Orders and will not be published, reproduced, made available in any form, or form part of any report and will only be used to assist the Committee in its deliberations in this inquiry.

The Committee notes that it has been forwarded advice from the State Solicitor's Office in the past and has similarly resolved to keep that legal advice private.

Committee's ongoing concerns with regard to enforcement of regulation 18G(b)

The Committee has considered the information provided in your letter with regard to the practical effects of confiscating a passport under regulation 18G(b) of the *Liquor Regulations 1989*. The Committee draws your attention to the following three issues, which the Committee has previously raised with you and which the Committee continues to believe are problematic:

- No training provided to authorised persons in relation to forensic document examination;
- No information provided to persons whose passport has been confiscated under section 126(2a) of the *Liquor Control Act 1988* to enable them to claim their document from the relevant authority; and
- No arrangements in place for the transportation of suspected false, forged or counterfeit documents to the relevant authority (whether from regional/remote WA or from metropolitan Perth).

The Committee notes that there is provision under section 126(2b) of the Act for the regulations to set out how an authorised person must deal with a document confiscated under section 126(2a) of the Act. As the regulations (including the current amendment regulations) do not address the three issues outlined above, the Committee is of the view that the *Liquor Control Amendment Regulations (No. 10) 2011* are outside the scope of the Act and therefore not authorised by section 126(2b) of the Act.

The Committee continues to be of the preliminary view that regulation 18G as amended, the original wording of regulation 18G and section 126(2a) of the Act are inconsistent with two Commonwealth Acts¹ and therefore invalid to the extent of that inconsistency, according to section 109 of the *Australian Constitution*.

Disallowance

As the Notice of Motion to Disallow regarding the *Liquor Control Amendment Regulations (No. 10) 2011* was moved in the Legislative Council on 17 May 2012, the Committee requests that you forward the advice from the State Solicitor's Office by **5pm Thursday 31 May 2012** to enable the Committee to consider the information prior to the winter Parliamentary recess.

If you have any queries in relation to this letter, please contact the Committee's Advisory Officer (Legal), Ms Irina Lobeto-Ortega on ph: 9222 7302, fax: 9222 7805 or via email at delleg@parliament.wa.gov.au.

Yours sincerely



Mr Joe Francis MLA
Chairman

¹ That is, the *Australian Passports Act 2005 (Cth)* and the *Foreign Passports (Law Enforcement and Security) Act 2005*.