

**Submission  
No 188**

**INQUIRY INTO THE CLOSURE OF CASINO TO  
MURWILLUMBAH RAIL SERVICES**

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**Date Received:** 04/06/2004

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**Subject:**

**Summary**



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**4 June 2004**

### **Re: Inquiry Submission : Closure Casino-Murwillumbah Line**

This submission is made in my individual capacity as a barrister at Lismore Chambers. It does not represent a view of the Lismore Bar as a collective group. The Lismore Bar have not been consulted in the preparation of this submission.

#### **1. Diminution of Regional Rail Infrastructure Preventing Future Expansion**

- (a) The primary concern with regard to closure of the line is that government will no longer maintain the infrastructure that will enable any future use. If the line is not being used it will become a reason to justify no expenditure on signals, stations, bridges and other requirements. As the line is deprecated it will no longer be functional.
- (b) This will prevent the line being used in future to either reinstate a government service or allow for provision of a private commuter service in the region.
- (c) As the Queensland Government is reopening train services to its southern border and the Federal Government displays an interest in creating services in the regions of south-east Queensland and northern rivers of NSW, any diminution in the capabilities of the infrastructure will mean such services can not be provided in the future or the cost of providing them will be very high.
- (d) This submission will outline current changes in the law that would mean that the possibility of having a strong commuter service on the current lines in the Northern Rivers region and an eventual link with the line in Queensland to provide a continuous service through to Brisbane is a real need to be met.

- (e) To avail oneself of legal services in the SE corner of Queensland or Brisbane at present one has to travel by car to Robina and then take the train to Brisbane. This is not a satisfactory outcome given the opportunities that exist to develop current infrastructure to create a continuous transport line giving access to legal services from Casino to Brisbane.

## 2. Changing Nature of Law in the Creative Northern Rivers

- (a) With recent changes to the law of negligence in the *Civil Liability Act 2002 NSW*, the amount of personal injury work in all courts is diminishing. As we move more and more to a digital world where many transactions are performed in cyberspace by Internet access, the ease and facility for copying and distributing digital works increases. This has seen a resultant growth in the amount of legal work and cases that relate to infringement of copyright and other intellectual property rights.
- (b) The increasing likelihood of legal issues surrounding intellectual property arising in the near future was attested by the The Copyright Law Review Committee that recognised that electronic trade in copyright material is different to non-electronic. The main differences are:
- i. contracts generally take the form of licences for access to copyright material;
  - ii. copyright material in electronic form is more vulnerable to unauthorised copying;
  - iii. copyright (and other) material can be protected by technological protection measures; mass direct contracting with end-users is possible; and
  - iv. contracts are more likely to be transacted across national borders.<sup>1</sup>
- (c) It is difficult for small business innovators and creative individuals to enforce their rights but such enforcement is crucial to the development of a creative digital economy. This problem was recognised by early Internet pioneer, John Perry Barlow:

*The enigma is this: if our property can be infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even*

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<sup>1</sup> Copyright Law Review Committee, *Copyright and Contract*, October 2002, p8  
[<http://sgeag001web.ag.gov.au/www/clrHome.nsf>]

*leaving our possession, how can we protect it? How are we going to get paid for the work we do with our minds? And, if we can't get paid, what will assure the continued creation and distribution of such work?*<sup>2</sup>

### **3. The Courts and Legal Services in the Northern Rivers of NSW and SE Queensland**

- (a) The NSW court system has been extended in 2004 to allow for a permanent District Court judge to sit at Lismore. The District Court and Supreme Court appear in Lismore, Byron Bay and elsewhere on the line for significant times during the year.
- (b) A particular hallmark of the magistrates' courts in the Northern Rivers regions is the very high proportion of matters that involve 'Prescribed Concentration of Alcohol' (PCA) driving offences. For example, on any day of hearings at Byron Bay the number of PCA matters may range from 45 to 65.
- (c) In 2003 the jurisdiction for copyright was transferred to the Federal Magistrates Court from the Federal Court of Australia. A central tent of this transfer of jurisdiction was to make the courts more accessible for parties of limited means who suffered infringement of their intellectual property rights with regard to digital property. The court is seen as a better venue than the Federal Court for independent copyright owners in small businesses that are not covered by legislation relating to licence collecting authorities. Small copyright owners expressed problems in enforcing copyright:

*In this regard it is important to bear in mind the relative scale of loss caused by copyright infringement. For a small business, infringement of the copyright in its products can spell financial ruin. The Committee received a submission from one individual, part of whose business was destroyed through infringement.*<sup>3</sup>

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<sup>2</sup> Barlow J P, "The Economy of Ideas: A framework for patents and copyrights in the Digital Age (Everything you know about intellectual property is wrong)", 2.03 *Wired* (March 1994) 84

<sup>3</sup> House of Representatives, Standing Committee on Legal and Constitutional Affairs, *Cracking down on copycats: enforcement of copyright in Australia*, November 2000, [<http://www.aph.gov.au/house/committee/laca/copyrightenforcement/contents.htm>], para 2.23

- (d) The Federal Magistrates Court (FMCA) sits in Brisbane for general division matters that incorporate copyright. The FMCA also has a court in Lismore that deals largely with family law matters but can hear matters in the general division. Legal representatives can apply to have FMCA general division matters heard at Lismore rather than Brisbane.
- (e) The extension of intellectual property matters to the FMCA and the need for access to courts that hear these matters is only likely to increase within the next few years. Of particular note is a recommendation to extend the enforcement of trade marks, designs and patents to the jurisdiction of the FMCA was published in November 2003 by the Advisory Council on Intellectual Property of the Federal Government.<sup>4</sup>
- (f) From July 1 2004 changes to the *Legal Profession Act 2004* Qld will come into force. This will mean Queensland barristers and solicitors will have practicing certificates. These certificates will allow them to appear in matters in the northern rivers region of NSW. Their clients and associated witness and other parties involved in litigation will also need to travel between these regions. Similarly, NSW based parties can appear in the courts of Queensland.
- (g) Being an area with a high incidence of single parents, unemployment and people living on or below the poverty line, access to the courts for the poor and underprivileged is a critical democratic issue.
- (h) Access to the courts for business people who have no need to commute in cars or no place to leave cars once they arrive at the destination from Casino to Brisbane is also a critical issue.
- (i) Such court access by public transport is readily available to people who live in the megapolis of Sydney, Newcastle and Wollongong.

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<sup>4</sup> Advisory Council on Intellectual Property, "Should the jurisdiction of the Federal Magistrates Service be extended to include patent, trade mark and design matters? ", November 2003 [[http://www.acip.gov.au/fms\\_submissions/finalreport.PDF](http://www.acip.gov.au/fms_submissions/finalreport.PDF)]

(j) People charged and convicted under PCA offences in a rural area suffer significant disadvantages compared to those who inhabit a megapolis with its extensive transport links.

(k) Recent research also indicates that family law matters requiring access to the FMCA are far more prominent in rural Australia. A recent legal study has highlighted:

*important differences between residents of rural, regional and remote NSW and those in urban areas. For example, as indicated in the Data Digest, requests to state-wide services relating to family law matters were substantially higher in rural, regional and remote areas. At this point we cannot state with any confidence why that might be.*<sup>5</sup>

#### **4. Conclusions**

(a) The diminution of services on a narrow cost analysis basis may not meet the legal obligations of NSW Rail which are, amongst others:

- i. to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner;
- ii. to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates;
- iii. to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates<sup>6</sup>

(b) Any closure may present an opportunity for a judicial review of the legal nexus between obligations that require financial responsibility on the one hand and a sense of social responsibility on the other.

(c) Removal of government support for maintaining a strong rail infrastructure in the Northern Rivers region of NSW will severely diminish access to justice and the court system for the

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<sup>5</sup> Law and Justice Foundation of NSW, Access to Justice and Legal Needs Project, 2002, [<http://www.lawfoundation.net.au/access/>]

<sup>6</sup> Transport Administration Act 1988 NSW; objectives 1(a), 2(d), 2(f)

underprivileged and the emerging creative class that engages in the development of digital property based on enforcement of intellectual property rights.

- (d) Even if the NSW Government does close the Casino-Murwillumbah line, it must be obligated to maintain and enhance the rail infrastructure in the Northern Rivers region and seek joint ventures with private or other government agencies, instrumentalities or statutory corporations for the provision of a localised train commuter service.
- (e) The NSW government should link with the Federal Government to examine ways of funding a link from the rail network of the Northern Rivers to that of SE Queensland to create a genuinely federal, yet comprehensively local service.

A handwritten signature in black ink, appearing to read 'Graham Bassett', with a stylized flourish at the end.

Graham Bassett