

## LIQUOR CONTROL AMENDMENT REGULATIONS (NO. 10) 2011 — DISALLOWANCE

### *Motion*

Pursuant to standing order 66(3), the following motion by Hon Sally Talbot was moved pro forma on 24 May —

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Liquor Control Amendment Regulations (No. 10) 2011, published in the *Government Gazette* on 6 January 2012 and tabled in the Legislative Council on 6 March 2012 under the Liquor Control Act 1988, be and are hereby disallowed.

**HON SALLY TALBOT (South West)** [3.33 pm]: I understand that this disallowance motion and the associated report have caused a certain amount of concern to members, so I will just take a few minutes to outline the committee's concerns in a little more detail than I was able to do when, as deputy chair, I tabled the report a few weeks ago. The report is a little unusual in that the committee concedes from the outset that the matters that caused the committee its main concern are outside the committee's terms of reference. The purists amongst us might say that that should mean that the report should never have been written in the first place; nonetheless, the eight members of the committee are concerned to make a difference where we can, and this is one such opportunity to do so.

The committee has identified significant concerns with one small part of the legislation and the associated regulations, relating to the confiscation of passports under the Liquor Control Act 1988. This may come as a surprise to honourable members who have furrowed their brows when it came to working out the relevance of confiscating passports under the Liquor Control Act. In the absence of other identifying documents, when a young person goes to a place that comes under the Liquor Control Act they have to show proof of ID. If a young person does not have a driver's licence, they will often carry a passport with them. Hon Robyn McSweeney knows exactly what I am talking about!

Under the current regulations, if the person who is witnessing the ID has a problem with it, they can confiscate it. To cut to the chase, if they think it is a fake ID, they will take it away. The young person can then go and retrieve the passport or whatever document it is from the police station within the next 72 hours. The regulation that the committee was faced with proposed a change to that one particular provision, which was that in the case of a passport or something that was purported to be a passport, the person who confiscated it would then have to return it to the Department of Foreign Affairs and Trade. Clearly, if a person happens to live next door to DFAT, that will not be a problem because they can pop next door a day or two later and pick up their documentation, in much the same way as they would pop down to the post office. However, that is not going to be the case for the majority of Australians, particularly young people living in remote areas.

The committee has looked at this problem in some detail and we understand that, by and large, this provision applies to the Burswood Entertainment Complex. That is where kids are rocking up with passports and having them confiscated if the security staff think it is a bodgie job. However, there is nothing in the regulations to say that that provision is confined to Burswood; therefore, a young person in Fitzroy Crossing or Esperance could have their documentation confiscated and, under the new regulation, would have to go through the very lengthy process of getting the document back from DFAT. I just want to make something clear. I refer to footnote 1 on page 1 of the report. The people who are eligible to confiscate the document are not just police officers. Footnote 1 states —

“*Authorised person*” is defined in section 3(1) of the Act as being the licensee or occupier of the premises; the manager of the premises; an employee or agent of the licensee, occupier or manager; or a member of WA Police. Section 3(7) of the Act further confirms that “*employee*” extends to all employees at licensed premises: including bar staff, security guards or crowd controllers (bouncers), door staff and wait staff, whether employed on a fulltime, casual or contractual basis.

I put to honourable members on behalf of the committee that this potentially opens up a whole series of difficulties that the act never intended. I am sure the minister never intended it and I am sure the people who drafted the regulations never intended that to happen, but it is a bit of a mess. The committee is very concerned and is endeavouring to present the concern in a bipartisan way, as we think the majority of the members of this house would want us to present it.

The committee has had some protracted correspondence with the minister. The committee's concerns were many and varied and ranged from things like asking the minister: What sort of training in forensic document examination is provided to all authorised persons under section 126 of the act? What training is given to authorised persons to enable them to form a suspicion on reasonable grounds that a document is false, forged or counterfeit? The list of questions is summarised on page 3 of the report. Of course none of those questions relates directly to the terms of reference of the committee, so we freely admit that we have strayed outside those

terms of reference. Nevertheless, we were not able to get satisfactory answers to any of those questions. I think if we had, we may have gone back to consider the core question and we might have been in a position to reconsider our objection. What happened was that the committee felt uncomfortable with the ramifications of the new regulation. The more we looked into that question, the less we were satisfied that the new regulation was actually going to reflect the sort of provision that members of this house would want to put in place.

Members will notice in the report that there are actually three recommendations. I understand from the Leader of the House that the government intends to support all three. A close look at the three recommendations will tell members just how far outside its remit the committee has actually strayed. Recommendation 1 is fairly straightforward —

**The Committee recommends that clause 6 of the *Liquor Control Amendment Regulations (No. 10) 2011* be disallowed.**

Recommendation 2 is —

**The Committee recommends that the Minister for Racing and Gaming amend the previous wording of regulation 18G, once it is revived by the disallowance of clause 6 ... in line with any amendments to section 126(2b) of the *Liquor Control Act 1988*.**

That takes us to the third and final recommendation, which is that the Liquor Control Act 1988 should be amended by the minister. There are two parts to that recommendation on page ii of the report. With that slightly more lengthy explanation than I was able to give in the tabling statement, I commend the report to the house. I urge members to have a look at the report, think about the issues the committee has raised and support the disallowance.

**HON NORMAN MOORE (Mining and Pastoral — Leader of the House)** [3.43 pm]: As the honourable member has mentioned, the government will support the disallowance. I just need to make the point that the government does not necessarily support recommendations 2 and 3 but supports the proposition that they be considered by the Minister for Racing and Gaming and that he take into account the issues raised in the report. I should make the point that this report has drawn attention to a potential problem with the act and not with the regulations. The potential problem with the act is that it is inconsistent with commonwealth legislation in relation to passports. The legal advice provided to the government is that this is arguable. Indeed, the State Solicitor is of the view that it is more likely to be consistent than it is likely to be inconsistent. However, there is a doubt in his mind. As the Minister for Racing and Gaming has made a decision to look at the liquor control legislation, this will be considered in that context.

The report itself is quite interesting because most of it relates to the act and not to the regulations. Having read the report, I could not work out why the committee is recommending the disallowance of clause 6 of the regulations because no explanation is given as to why that should happen, other than that it offends the terms of reference of the committee. If, however, we disallow clause 6, that will then revive the previous wording of the regulations and we will still have the same problem as it will still offend the same terms of reference. I have thought about this from the point of view of the practicality of the new regulation and the old regulation. As Hon Sally Talbot has indicated, from a practical perspective, if a person has their passport confiscated and in fact it is a legitimate passport and they seek to retrieve it and it has been sent off to the Department of Foreign Affairs and Trade, retrieval of the passport may well be quite difficult and problematic for somebody who might need it in the short term. Being able to go to the nearest police station to collect a legitimate passport would be much easier for a person in those circumstances. I am advised that the police really do not want to be a collection depot for passports that might be fraudulent or, indeed, might be legitimate. It believes, as does DFAT, that DFAT is the organisation that ought to be dealing with passports. However, on the basis that we agree to this disallowance, the police will continue to retrieve the passports and I expect they will then forward them to DFAT, once they have given the person a chance to come and retrieve it if it is a legitimate passport. We are prepared to agree to the disallowance, bearing in mind that what we will go back to in terms of the regulations is still as offensive to the committee as the new regulation. However, again, I just add that we will have a look at section 126 of the Liquor Control Act, and, if necessary, that can be changed to take into account the concerns raised by the committee.

Just as an aside, it is my personal view—having been here in 2006 I actually voted for this clause in the legislation—that we ought to revisit the notion that anybody who happens to be an owner or employee of a licensed premise is able to confiscate somebody's passport on the basis that they believe it to be fraudulent. How they would ever know is beyond me. There is no training provided for that. Passports are of such significance as a document that they should be able to be confiscated only by a police officer or an officer authorised under the commonwealth legislation, and not by somebody who happens to be a bouncer at a bar somewhere. When the government reviews this legislation, I will be inclined to recommend that it goes down the path of changing the law so that passports cannot be confiscated by anybody other than a police officer or an authorised officer under

the commonwealth legislation. That would then overcome the problems raised by the committee in its report. We are prepared to go along with the disallowance.

Question put and passed.