

LIQUOR AND GAMING LEGISLATION AMENDMENT BILL 2006

Committee

Resumed from 21 November. The Deputy Chairman of Committees (Hon Louise Pratt) in the chair; Hon Ljiljanna Ravlich (Minister for Education and Training) in charge of the bill.

Clause 40: Section 50 amended -

Progress was reported after the clause had been partly considered.

Hon NORMAN MOORE: When we were last discussing this clause, I had asked the minister to explain to me how the government intended to implement the guidelines on the amount of food compared with the amount of liquor that could be sold in restaurants based upon the minister's explanation that the 60-40 per cent rule was only a guide. I want to know how this rule will be managed if people are told that they are not abiding by the guidelines. The minister indicated that the guidelines can vary, depending on the type of restaurant. Who will make those subjective judgments and what will happen to somebody who operates a restaurant outside the guidelines, bearing in mind that it appears the guidelines will have infinite flexibility?

Hon LJILJANNA RAVLICH: I thank the member for the question. The Director of Liquor Licensing and his or her staff will exercise their own judgment in determining the public interest in a range of circumstances in policing the requirements of the bill.

Hon Norman Moore: But there is nothing in the bill about the 60-40 rule.

Hon LJILJANNA RAVLICH: No, it will be dealt with by way of administration. As a general principle, the Director of Liquor Licensing is empowered under the act to impose conditions on a licence or a permit, having regard to the tenor of the licence or permit and the circumstances in which it is intended the business will operate. It is a power that the director has had since the act came into operation in 1988; therefore, there is nothing new in it, and it is a power that has been exercised faithfully and impartially since that time. As stated in Minister McGowan's second reading speech, it is intended that the conditions in these permits be imposed by the Director of Liquor Licensing as appropriate. However, the bill provides that, if necessary, these conditions can be prescribed by way of regulation.

In terms of the 60-40 split, under the Liquor Licensing Act the primary and predominant purpose of a restaurant must always be the sale and supply of meals; liquor is an ancillary service to that. There is no precise measure for quantifying the 60-40 rule. In fact, if we examined the operations of a restaurant over a week, they may well show that on one evening liquor sales were higher than 40 per cent and the meals component lower, but over a month they were close to 60-40 or some other configuration. The figure is there as a guide. It cannot be precise in the way the member might expect it to be precise in his own mind. There is a problem with it being precise in that a judgment on that could not be exercised. There would be so much red tape and reporting associated with ensuring that a quantitative measure was accounted for with the precision that the member seeks that it would end up being totally unworkable. That is the problem. I ask the honourable member what measure he would apply to the 60-40 per cent condition of the permit to ensure that it was totally quantifiable. Would that be a reasonable measure and would it not have a detrimental effect on the operations of one of these premises?

Hon NORMAN MOORE: I have never argued for 60-40 per cent. I thought it was a stupid idea, and I still do. It was put up by the Minister for Racing and Gaming, not by me or the opposition. A rule is already in place for restaurants to have a certain proportion of floor space set aside for people to have drinks without a meal. I understand that at the moment it is 20 per cent and there was talk about extending that to enable more people to enjoy a restaurant atmosphere without buying a meal. The government, not the opposition, decided not to extend the area of the floor space, but flagged the idea of 60-40 per cent. I have always thought that 60-40 was ridiculous. I was trying to find out what the government meant by it when it talked about it. I am happy for the minister to say that it will not be a requirement, but is a simple guideline.

It is difficult for me to put my point of view to the minister when she is trying to hear two or three people at the same time.

What measures will be put in place to ensure that restaurants do not become de facto bars? The new legislation allows for 100 per cent of customers to have a drink without a meal, but the minister is talking about a guideline that refers to 60 per cent and 40 per cent. The minister is now saying that it will not be enforced; it is simply a guideline. How will the government make sure that the intent of the legislation, which is to not allow restaurants to become bars, will be carried through if it does not have any regulations or rules? The minister said the conditions would go on the licence, but what are those conditions? I would be interested to know whether it is a flexible guideline. Will the guideline go on the licence and what will people have to know to make sure that they abide by the fundamental conditions of the act?

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Will a penalty be imposed on any restaurant that becomes a de facto bar? If there is a penalty, what is it and how will it be determined that it has become a de facto bar?

Hon LJILJANNA RAVLICH: Firstly, if there is a breach, it is at risk of losing its permit.

Hon Norman Moore: A breach of what?

Hon LJILJANNA RAVLICH: If there is a breach of the conditions of the permit.

Hon Norman Moore: Will the conditions say that a certain percentage should be for alcohol and a certain percentage for food? What are the conditions?

Hon LJILJANNA RAVLICH: I understand there is a list of eight conditions.

Hon Norman Moore: Will you read them out to the chamber?

Hon LJILJANNA RAVLICH: Yes, I can do that. The proposed conditions for permits allowing restaurants to sell liquor without a meal are -

1. Pursuant to section 50 of the Act, the purpose of the business carried on at the licensed premises must consist primarily and predominantly of the regular supply of meals (as defined by Section 3) to customers. In establishing the "primary purpose", regard is to be had to whether or not 60 per cent of the business turnover, takings or profits during the operation of the permit is derived from the supply of meals to customers.
2. For the purposes of establishing the primary purpose of the business under the licence, the licensee shall make and provide to the Director of Liquor Licensing a record of all transactions entered into by or on behalf of the licensee involving the sale or other disposal of liquor and food.
3. The kitchen situated on the licensed premises, together with kitchen and food service staff, must be open and operating with the restaurant's regular full meal menu being available at all times liquor is sold and supplied to patrons.
4. Liquor may only be consumed by patrons while seated at a table, or a fixed structure used as a table for the eating of food, and not elsewhere. Therefore, the sale and supply of liquor to patrons is restricted to table service by staff of the licensee.
5. The premises must always be set up and presented for dining and tables can not be removed or shifted in order to create dance floors or function areas.
6. The permit does not apply to any bar/servery area identified in the approved plans or to any external trading area that currently trades under an *al fresco* extended trading permit (i.e. over a local government controlled footpath area).
7. The licensee is prohibited from promoting and/or advertising the licensed premises as anything other than a restaurant.
8. The maximum permitted trading hours in respect of the permit are:
 - Monday to Saturday between the hours of 6am and 12 midnight, and on Sunday from 10 am to 10 pm;
 - No trading under the permit is authorised on Christmas Day, Good Friday or before noon on Anzac Day.

When undertaking an investigation into a potential breach of conditions, the licensing authority would not look at the question of 60-40 in isolation of a range of other conditions. Under the act, the WA Police are actually charged with the responsibility of enforcing the law. In addition to that, the Department of Racing, Gaming and Liquor has an establishment of 20 inspectors who are responsible for compliance of gaming and liquor activities. The government has committed to another five compliance officers, three of whom will be dedicated to inspecting licensed premises, including restaurants. Either the police or a licensed inspector will be able to investigate potential unlawful activity and instigate disciplinary action if they consider it to be an appropriate course of action. The licensing authority will have the power to cancel these permits if it is found that the licensee is not conducting the business in accordance with the law. A lot of these conditions have been in place for a long time - since 1988. The Department of Racing, Gaming and Liquor and its inspectors have undertaken that responsibility without any problems.

A new condition or guideline has been put in place. Having gone through that list of other conditions, if I were an inspector and came across a restaurant where people were hanging around the bar and not sitting at tables or

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the tables had been moved to a corner of the room, I would pick up on the fact that something fishy was going on and that it was not the intended purpose for which the licence was granted. An inspector would take the appropriate action. If there is an abuse of the power as it applies under the act, there is a strong risk that the licensee could have his permit withdrawn.

Hon NORMAN MOORE: Fundamentally, the minister is telling me that under the existing law if a licensee wants a certain proportion of the floor space set aside for customers who were consuming alcohol without purchasing a meal, he would apply for a permit that has conditions attached to it. He will still have to apply for a permit if he wants to take advantage of the new requirements; that is, that 100 per cent of the customers can drink without any food, provided the licensee meets those fundamental conditions.

Under the new rules, closing time will be 12 midnight. Does the permit simply apply until 12 o'clock, when it can revert to a restaurant and a customer will not be able to drink without having a meal?

Hon Ljiljanna Ravlich: Yes.

Hon NORMAN MOORE: I appreciate that answer. Is it correct that a licensee who has a permit is required to have kitchen facilities and a chef on hand during the hours the permit operates?

Hon LJILJANNA RAVLICH: I understand that to be the case.

Hon GEORGE CASH: I am interested in the 60-40 rule also, because section 50 of the Liquor Licensing Act is certain in so much as it makes it clear in section 50(1a)(b) that not more than 20 per cent of the seating capacity for customers on the premises is to be available or to be used at any one time for persons to consume liquor other than ancillary to a meal. That is certain. However, the minister has now said that the 60-40 rule is not to apply. Is that right?

Hon Ljiljanna Ravlich: No.

Hon GEORGE CASH: The minister has not said that?

Hon Ljiljanna Ravlich: No.

Hon GEORGE CASH: So the 60-40 rule is to apply.

Hon Ljiljanna Ravlich: Yes.

Hon GEORGE CASH: Can the minister tell me how the certainty of that rule is to be applied? What I mean by "certainty" is that the minister has talked about people having their licences taken off them if they do not abide by the rule. However, one of the things that must be ensured is that if there is to be a rule, the rule must provide certainty so that people understand when they are in breach or not in breach. I am confused about whether the 60-40 rule is to be applied in very clear terms. There seems to be an opportunity for a significant amount of flexibility in the application of the rule, from what the minister has said in her various replies. I am interested in how a licensee is to understand the certainty of the conditions applicable to the 60-40 rule.

Hon LJILJANNA RAVLICH: In relation to this rule, I am advised that there is a need to exercise some flexibility. Certainly, one of the functions of the Department of Racing, Gaming and Liquor and its inspectors is to also ensure that they provide advice and educate licensees about their obligations when there may be a perceived breach. A person's licence probably would not be cancelled immediately. However, that person might be advised that his action is not acceptable and that it is hoped and expected that he will lift his game, because he would be put on notice that if he did not adhere to the requirements, and if he did not follow the guidance that may have been provided by one of the 20 inspectors or compliance officers, quite clearly his licence would be at risk. I believe that it would be very punitive, given the other seven conditions, for a licence to be suspended, let us say, when the 60-40 requirement is not adhered to, which is flexible in any event. However, if somebody consistently abuses the conditions of his licence, obviously there would be the threat of withdrawal of the licence.

Hon GEORGE CASH: Section 50 of the act is very certain about the 20 per cent rule. That clearly applies on a daily basis; that is to say, an inspector can walk into a restaurant and determine whether or not more than 20 per cent of the people are consuming liquor other than ancillary to a meal. Can the minister therefore tell me whether the 60-40 rule will be applied on a daily basis, a weekly basis or a monthly basis, or will it be on an annual basis? I ask that for a reason. What would happen if the 60 per cent target was reached in month nine? Would the liquor operations be suspended for the balance of the year? The minister is suggesting that there is so much flexibility that it becomes an uncertain proposition, and when it comes to licensing matters and vesting discretion in an inspector, it opens up all sorts of possibilities that could be very serious.

Hon LJILJANNA RAVLICH: I want to go back to section 50 of the act. Pursuant to that section, the business carried on at the licensed premises must consist primarily and predominantly of the regular supply of meals, as

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defined under section 3, to customers, and in establishing that primary purpose, regard is to be had to whether 60 per cent of the business turnover, takings or profit during the operation of that permit is derived from the supply of meals to the customers. That 20 per cent is not really that precise, because it does not say to which areas that 20 per cent applies.

Hon George Cash: What is the current rule in respect of that?

Hon LJILJANNA RAVLICH: I am advised that it is done by way of licence conditions.

Hon George Cash: Yes, I know, but how do you ascertain whether the 20 per cent has been breached?

Hon LJILJANNA RAVLICH: That is achieved, I understand, by setting the capacity and clearly defining an area from which the bar activity will take place.

Hon George Cash: Does that occur on a daily basis?

Hon LJILJANNA RAVLICH: I am advised that that is the case, yes.

Hon George Cash: Then is the 60-40 rule to be applied on a daily basis?

Hon LJILJANNA RAVLICH: Not necessarily. I am told that, given the nature of the activities that occur - for example, after a football match - the alcohol consumption might be higher than 40 per cent.

Hon George Cash: Is it on a weekly basis?

Hon LJILJANNA RAVLICH: It is over a period.

Hon George Cash: What is the period?

Hon LJILJANNA RAVLICH: That is for the director to determine. It has not been determined yet. It is a bit hard to determine, given that the legislation has not come into force. On what basis would it be determined? It would be too prescriptive to suggest that perhaps it should be done on a daily basis, as I have explained to Hon Norman Moore, and too much red tape would be involved in measuring whether the 60-40 requirement had been achieved. If it were done over a weekly period, the same argument could apply. I imagine that if we were to prescribe it as being a measure over a week or a month, the industry would not be particularly happy with that. However, I am sure that over time the authorities would be able to achieve something that satisfied not only the industry, but also the regulators. We must give some credit to the director and his staff, because in this matter they are the experts. They deal in this industry all the time.

Hon GEORGE CASH: I agree that we must give some credit to the director and his staff, and no-one denies that. However, there is a difference between giving credit to someone and providing someone with a blank cheque and accepting vague and general answers to propositions that are put forward. We are asking the minister for answers, and we are entitled to expect some certainty in the replies, not vague and general responses such as it may be this or it may be that, or it depends on this or it depends on that. I am interested from the point of view of a person who has a permit and who seeks to use that permit without finding himself in breach of the law. It seems to me that we are getting very vague and general answers in reply. If in fact the answer is that the government is asking for a blank cheque, I wish the minister would just say so, because that would explain why we are getting such vague and general replies.

Hon LJILJANNA RAVLICH: The reason for the vague and general responses is that the conditions would be negotiated on a case-by-case basis, depending on where the premises are located. Negotiation about conditions would take place at the time the application is made for the licence. It will be talked through. To have a blanket specification across the whole of the industry would be limiting as it would not enable the flexibility that can be achieved through a case-by-case approach.

Hon NORMAN MOORE: The questions asked by Hon George Cash are along the same lines on which I have been seeking information. With this proposal to decide what is appropriate on a case-by-case basis, the government is leaving itself and the director open to all sorts of litigation down the track. We should bear in mind that this whole issue is about people who might want to turn restaurants into de facto bars. People will be keeping an eye on that and asking whether an establishment is being run according to its permit, and there will be all sorts of pressure on the director as a result of the arbitrary nature of the decisions he or she can make. I will not argue the case much longer other than to say that the government is leaving itself wide open to all sorts of serious trouble down the track. We are going from a highly regulated industry to a situation in which the government seeks to deregulate in some areas and to provide flexibility in an industry that is fundamentally regulated. Because the industry has been regulated for such a long time, people have certain expectations about what can and cannot be done. When situations about what may or may not be able to be done arise, a level of uncertainty and the potential for litigation down the track are created, which I do not think the government has

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even vaguely considered. The minister can answer one final question for me, and then I will leave this clause. Does the 40-60 rule apply to turnover, takings or profits?

Hon LJILJANNA RAVLICH: It could include all three, and it will be negotiated with the licensee.

Hon NORMAN MOORE: Is this notion of negotiating a bit like a special facilities licence? Is the government trying to create a situation for restaurants in which a particular permit is tailored to a particular restaurant? Is that the sort of thing the government is trying to do here? I actually like special facility permits. There is some benefit in them because it is possible to create a licence that meets the particular circumstances of a particular business. Maybe that is all we should have for the whole of the liquor industry.

Hon Ljiljanna Ravlich: Then you should be happy with this.

Hon NORMAN MOORE: That is the problem. I have been arguing for a long time that I am happy to totally deregulate the liquor industry, provided that those people who are disadvantaged by the deregulation are compensated. However, the government is not prepared to provide that compensation. It is providing some deregulation in a totally regulated industry. Going down that path and providing flexibility would be a good thing if it extended across the whole industry, but the government is not doing that. It is saying that a person running a restaurant who applies for an extended trading permit can do all sorts of things by negotiation. How does a publican who may want to do something different negotiate a deal for his licence? That is not provided for. This legislation has regrettably become a dog's breakfast. Even though the government is perhaps heading in the right direction, it is not doing the whole job, which will create some serious problems down the track. I would rather have the present government create the problems and get itself into trouble than the next government.

Hon RAY HALLIGAN: There are some important issues here. I was under the impression that we would have a level playing field, as we often do in circumstances such as this, but I do not see clause 40 providing that. Is it the case that permits will be allocated and remain valid for only 12 months, or will it be for some longer period? If so, what period can they remain valid for? Can they be altered at any time during that period? If someone wanted to upgrade - I am thinking of the 60-40 rule - and start selling a better or more costly wine that could, because of the 60-40 rule, invalidate the permit, what would he do under those circumstances? Is this private enterprise in action, when people can be restricted not only through the public interest test, but also in what they can do within a business establishment?

Hon LJILJANNA RAVLICH: The permits will be valid for 12 months in the first instance, but they can be negotiated thereafter for a maximum period of five years at the discretion of the director. They can be altered by negotiation with the director, and the same applies to hotels and taverns.

Clause put and passed.

Clauses 41 and 42 put and passed.

Clause 43: Section 60 amended -

Hon GIZ WATSON: This clause amends section 60(1) of the principal act to provide that an extended trading permit is subject to any conditions imposed at the discretion of the director. In a minute I will formally move an amendment to the provision relating to extended trading permits. This amendment seeks to provide more flexibility for community clubs, and results from conversations I have had with Clubs WA, which is of the view that the key issue of a club being able to apply for an ongoing extended trading permit to conduct community functions is missing from this reform package. I have spent some time talking to various representatives from Clubs WA because it is an important group in the sector that provides service not for profit. They have convinced me that there is merit in allowing clubs to have the capacity to apply for extended trading permits over and above their current provisions. That is the purpose of this amendment. It is important that I say a little more about the rationale behind this major overhaul of liquor licensing in WA and the reasons we need to make it easier for clubs to apply for extended trading permits, because they provide a unique service. It is, I guess, the community sector in this industry, which is a very competitive industry, and there are good arguments for accommodating greater flexibility for clubs.

In support of this argument, Clubs WA has written to me saying that this is not something new as like clauses, definitions and outcomes already apply in other states. They repeat the following in support of this amendment -

Whilst a comparison . . . of Liquor Store Sunday trading and alcohol consumption in restaurants in other states was undertaken and acted upon no such comparison was conducted on the key issue of clubs conducting community functions.

The fact that clubs in other states obtain ongoing permits to conduct community functions was not investigated or overlooked.

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The fact that community functions is defined around Australia as: “allows persons who are not members and guests to attend, in a specified part of the clubs premises, a function associated with the celebration of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature” and is not seen as a profitability threat to other licensees in every other jurisdiction.

The fact that each club seeking to hold these type of community functions would obtain an ongoing permit and be subjected to public needs and scrutiny by the parties in the same way as suggested for restaurants serving alcohol without a meal, whether it be 20% as included in the current legislation or another figure that may now be agreed.

Clubs WA has clearly articulated a position to bring clubs trading opportunities with regards to liquor sales in line with good business practices that exist for the club movement elsewhere and we now formally seek legislative support for this amendment . . .

I understand this issue was debated in the other place and received at least some provisional support. Therefore, I move -

Page 45, after line 23 - To insert -

- (iii) for a function associated with the celebration of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature;

This amendment would provide that extended trading permits would apply as the bill states -

authorising the licensee of a club licence to sell liquor, despite section 48(2), to persons other than club members, or guests of members, of the club -

- (i) on a specified special occasion or specified special occasions; or
- (ii) on a day on which a specified function is, or on days on which specified functions are, held on, or on a specified part of, the licensed premises;

and proposed paragraph (iii) would come after that to provide the capacity for extended permits to be granted for those functions described in the amendment, such as cultural, educational or religious events. It would provide flexibility for events that are not on a specific day or for a specific occasion. It provides another opportunity for country clubs in particular to be granted those permits. I do not believe it will be competition for the local hotel. I think because these are community clubs there is every good reason to grant them this capacity to have extended trading permits. I seek the support of the chamber for this amendment.

Hon LJILJANNA RAVLICH: The government does not support the amendment. The amendment proposed by Hon Giz Watson will enable clubs to trade like taverns and that will have a broad impact. The passing of this amendment would mean that in excess of 900 additional tavern-like licences would operate in the community on a regular basis. Given the broad definition of a community function, the proposal would result in an expansion of club licences in such a way that clubs would be able to compete in the commercial market. Clubs would be able to sell liquor to the general public at any function that is of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature. Clubs would be given carte blanche. Any activity, meeting or gathering of people could fall under that wide definition. Under the Liquor Licensing Act, club licences are not commercial licences in the same sense that restaurant, tavern and liquor store licences are commercial licences. Therefore, club licences do not provide the same rights as retail licences. A club licence is granted for the sole purpose of enabling a club - generally they are sporting clubs - to provide an ancillary service to its members. A club has a liquor licence so that it can serve its members a drink after they have finished playing bowls or whatever sport they are playing. The sale of liquor is ancillary to the primary purpose of the club. The amendment is so broad that if it were to pass that would no longer be the case. By way of example, if the amendment were passed, a further three tavern-like licences would compete against the one hotel in Narembeen. Virtually any sporting club could trade in liquor and pretty much go unchecked. In Kalgoorlie it would mean a further eight tavern-like licences would compete against the 12 hotels, three taverns and three special facilities that also trade like taverns. If the amendment were to pass, it would mean that a further 10 tavern-type licences would compete against the five hotels and three taverns in Albany. The situation in Newman would be much the same. In Northam it would mean a further three tavern-like licences would compete against the existing five hotels and two taverns. The government cannot support the amendment. I know that Hon Giz Watson is driven by good intent and that she wants to please as many people as possible. However, this amendment is a significant risk to existing establishments in not only the metropolitan area, but also regional and rural Western Australia.

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Hon NORMAN MOORE: It is my understanding that under section 48(2) of the Liquor Licensing Act, clubs are fundamentally run for the benefit of members and guests. However, the bill will authorise the licensee of a club to sell liquor, despite section 48(2), to persons who are not members of a club, or guests of members, on a specified special occasion or “on a day on which a specified function is, or on days on which specified functions are, held on, or on a specified part of, the licensed premises”. Good grief! That is an interesting sentence; everything is specified. That provides more flexibility for clubs. Hon Giz Watson wants us to give clubs far more flexibility; she wants clubs to be able to hold a function that relates to the celebration of a cultural, educational, religious, patriotic, professional, charitable, political, literary, sporting, athletic, industrial or community nature. Hon Giz Watson’s amendment covers just about every possibility. Basically it means, as I understand it, that clubs can hold functions that relate to those activities, and persons can occupy the premises of those clubs even though they are not members or the guests of members. The minister’s explanation of why the government opposes this amendment meets my interest, because although I have a lot of empathy for clubs, the fundamental purpose of a club is to provide a benefit for its members and their guests. The members of a club have a common interest. That is why they join a particular club. In my view, to turn clubs into taverns or pseudo hotels is against the best interests of the current system. As I keep saying, one of these days there will be total deregulation and people will be able to do whatever they like. That will be very good, provided we compensate those people who have been disadvantaged. As far as I am concerned, not having been briefed by the opposition spokesperson on this amendment, we will not be supporting the amendment.

Hon MURRAY CRIDDLE: The scope of proposed subsection (3a), as outlined in subclause (2) on page 45, and of proposed paragraph (cb), as outlined in subclause (3) on that same page, is pretty broad. What is the difference between the words contained in those provisions, and this amendment? In my part of the world, a wake is occasionally held at a bowling club, and it is attended by everyone. That would probably fall within the scope of the amendment moved by Hon Giz Watson. It would probably also fall within the scope of proposed subsection (3a) and proposed paragraph (cb). Therefore, what Hon Giz Watson is proposing in her amendment is probably already covered.

Hon LJILJANNA RAVLICH: The difference is that sporting clubs are limited in the number of non-member functions they can hold. They need to apply for a special permit every time they want to hold a non-member function. They also need to specify the particular special occasion or occasions for which the permit is sought. Under the proposal that has been put by Hon Giz Watson, that would no longer be required. That would open it up entirely and make it almost impossible to regulate.

Hon MURRAY CRIDDLE: I understand that. However, I do not agree with the minister. Proposed paragraph (cb) states in part, “authorising the licensee of a club licence to sell liquor”. I believe the amendment is just adding something to the process that is already outlined in that proposed paragraph. If that is not correct, that is fine. Can these types of functions be held if this amendment is not passed?

Hon Ljiljanna Ravlich: Yes, but the club would need to apply for a special permit.

Hon MURRAY CRIDDLE: In that case, how many permits can be applied for in a year? If a club has held 15 wakes in a year, will it run out of luck for the next one?

Hon LJILJANNA RAVLICH: The policy is about 12.

Hon GIZ WATSON: I seek further clarification. My understanding is that similar provisions exist in other states. Is that correct?

Hon LJILJANNA RAVLICH: They are totally different circumstances because many of those clubs have special licences for gaming machines, whereas that is not the case in Western Australia.

Hon GIZ WATSON: I am not sure what gaming machines have to do with licences for functions.

Hon LJILJANNA RAVLICH: As I understand it, in other jurisdictions many sporting clubs are permitted to have poker machines. To make those poker machines viable, and thereby generate revenue for the sporting clubs, members of the public are encouraged to go to those sporting venues. There is a very broad definition that enables people to go to those clubs on the pretext that the function is a cultural, educational or religious function. The broad definition serves a very important purpose: it enables sporting clubs to attract people to the clubs to use the poker machines and to generate income for the sporting venue. We do not have pokies in our sporting clubs, and therefore there is a different set of circumstances in Western Australia. The member might like to argue that we should introduce pokies and thereby achieve parity with what happens in other states through her amendment. However, I am told that that is why other states have provisions such as that put forward by the member, as opposed to the position that the government has taken on this matter.

Hon GIZ WATSON: The minister has been somewhat disingenuous in suggesting that I proposed anything to do with pokies. She introduced the idea of pokies. I thought that pokies worked the other way; I thought that

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they attracted people to clubs and then they were sold the products. The short answer is that other states have provisions that are similar to this one.

Hon Ljiljanna Ravlich: I am not an expert, but the director general advises me that pokies attract people. We do not have pokies, so I do not know.

Hon GIZ WATSON: I have listened to the government's response to this amendment. I am disappointed that there is no support for it. I think it is a little unreasonable to suggest that the amendment will create the equivalent of a tavern licence, because a tavern licence does not have a proviso about who can go to the tavern. People do not have to attend a particular function; they can just go to the tavern. I will not pursue this matter further. However, if this reform package is about providing a range of services to the community, which I understood it to be - that is, levelling the playing field for competition and broadening the opportunities for people to socialise - then an extended trading permit for a club in this case is part of the same logic. That is all I am saying. It seems strange to me that in this major review of liquor licensing in Western Australia we are not accommodating the many community-based clubs throughout the country. They have certainly persuaded me that they should not be arbitrarily limited by a protocol that lays down that they will get only 12 of these permits a year. If a country town has a great club, people may like to hold their weddings or wakes there. It is not in the legislation, but I understand from the answers I have heard this evening, that clubs will get only 12 such permits a year, which means that the thirteenth or fourteenth wedding in, say, Widgiemooltha will have to be held somewhere else.

Hon Ljiljanna Ravlich: It is only policy. The position is flexible.

Amendment put and negatived.

Clause put and passed.

Clause 44: Section 61A inserted -

Hon NORMAN MOORE: I want the minister to explain what this clause actually means. The clause is to insert new section 61A relating to permits for extended hours. It reads -

The regulations may limit the permitted hours that may be authorised by an extended trading permit issued for the purpose referred to in section 60(4)(g).

It is providing for regulations limiting permitted hours under 60(4)(g). Section 60(4)(g) basically states that the purposes for which an extended trading permit may be issued include extended hours authorising the licensee to sell liquor under the licence at specified hours that would not otherwise be permitted hours on such days, other than Good Friday, as may be specified, and which remains in force for the period specified. The word "specified" seems to be regularly used in this legislation. Why is there a need to have regulations to limit those permitted hours? Are the permitted hours contained somewhere else in legislation and does the minister want to give herself power to change those by way of regulation? Will the minister explain what this clause is all about?

Hon LJILJANNA RAVLICH: I am advised that this clause applies only to extended trading permits. I am also advised that industry groups have argued for many years that there is a lack of certainty about what additional hours will or will not be granted under an extended trading permit. The licensing authority has also expressed concern in the past that no direction is provided in the statute about the extent of hours that may be granted under the permit. The Department of Health has also expressed its concerns in that it does not support any extension of trading hours. WA Police certainly does not support any extension of trading hours, because police also have to mop up after the abuse of alcohol by some patrons. This clause therefore inserts the provision that the regulations may limit the hours that may be authorised by way of extended trading permits. It applies only to extended trading permits. This will then constrain the licensing authority to not grant a licence beyond those hours.

Hon NORMAN MOORE: I hope the minister will forgive me if I am now getting a little confused about the intent of this legislation. I thought it was about getting rid of Dullsville and to provide for a liquor-led recovery; we would allow liquor outlets to open longer because tourists wanted them to be open longer and we wanted more flexibility in the access to liquor outlets. In this instance the minister is now saying that she wants to limit the capacity of outlets to have extended trading permits for the extended hours in which they want to operate. The minister is now talking about the health lobby and the police having concerns about extended hours. I thought the whole intention of the legislation was to deregulate and open up the hours that people may be able to access liquor outlets. If we are to go down the path that the police do not want anybody to drink alcohol after nine o'clock at night and the health lobby does not want people to drink at all, what is the purpose of the so-called deregulated industry that is supposed to be coming out of this legislation? Can the minister give me some idea about what the government intends by way of regulation for extended trading hours? Does the government

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have some idea of the extra time that will be available for extended hours in the regulations it is proposing to bring down?

Hon LJILJANNA RAVLICH: The provision is simply to put in a head of power in case there is a situation, but it is not expected that it will necessarily be used. The Leader of the Opposition has raised some issues. This legislation attempts to encourage responsible drinking; it does not attempt to deregulate the whole market. We want the ability to limit, if necessary. That is why the head of power is in the legislation. The legislation is about balanced reform. Freemantle recommended that the act be amended to restrict the granting of extended trading permits beyond 2.00 am but the government thought that was too harsh.

Hon NORMAN MOORE: Can the minister give me some idea of what she has in mind? If the health lobby and the police have told the government that they want the government to control the number of hours that can be granted under an extended trading permit, what sort of things does the government have in mind? The minister has just said that Freemantle did not want to go beyond 2.00 am but that the government thought that that was too restrictive. Will the government allow hotels to trade until 3.00 am? What does the minister have in mind?

Hon LJILJANNA RAVLICH: We do not have anything in mind at this stage. We want to be able to pull back an extended trading permit if there is a need to do so. The head of power provision will give the government the power to do that.

Hon NORMAN MOORE: Are there some circumstances that exist at the moment that have caused the government enough concern to want to have the head of power? We should bear in mind that the Director of Liquor Licensing grants the extended trading hours. Is the minister saying that there are problems with what is happening at the moment? If there are problems, what are they, bearing in mind that the government has control as it is?

Hon LJILJANNA RAVLICH: If antisocial behaviour were at such a level that it could not be controlled, quite clearly the head of power provision within the bill could be applied. However, at this stage we do not have - apart from a general view of where it might be applied - a specific case in which it would be applied immediately once the bill passes through the Parliament.

Hon NORMAN MOORE: Will it be possible under the regulation-making power to differentiate between some parts of the state and others or from some licensed premises to others or will the regulation be a blanket regulation for the whole industry?

Hon LJILJANNA RAVLICH: It is quite possible that it does not have to be uniformly applied. It could be applied to some areas as opposed to others.

Hon NORMAN MOORE: I understand that there are already powers available to the Director of Liquor Licensing to restrict the number of hours that are available for the sale of liquor and so on, without the need for this regulation-making power.

I conclude by saying again that this is one of these open-ended provisions in this legislation, giving all sorts of responsibilities and powers to the bureaucracy for making regulations. The minister says she wants them "just in case", but she let the cat out of the bag when she said it was in response to the health lobby and the police. I have no doubt that the government will use this provision in due course to restrict the number of hours that are available to hotels and other licensed premises in respect of their applications for extended trading permits. Contrary to all the rhetoric surrounding this bill, when the government talks about getting rid of restrictions on the sale of liquor and the label of "Dullsville", I have a sneaking suspicion that the intent of this provision is to limit the number of hours that liquor will be available to people who want it.

Clause put and passed.

Clauses 45 to 66 put and passed.

Clause 67: Section 97 amended -

Hon MURRAY CRIDDLE: I know that I am beating my head against a brick wall, because obviously the agreement on trading hours has been made. However, the National Party quite clearly is opposed to Sunday trading and I understand that opposing this clause will have an impact on the following clause 68, which in proposed section 98D contains the provision that allows trading hours to be extended. I therefore put that opposition on the record.

Clause put and passed.

Clause 68: Sections 98 to 98H inserted -

Hon NORMAN MOORE: On behalf of Hon Barry House, I move -

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Page 58, line 21 - To delete "10 p.m." and insert instead -

12 midnight

This proposed amendment by Hon Barry House would allow a hotel licensee to trade on Sunday from 10.00 pm until midnight, instead of until 10.00 pm. In support of this proposal I say that as a general rule in my view this legislation will impact adversely on hotel licensees. That view may be subject to debate but it is my general opinion on the ultimate outcome of this legislation. The hotel lobby has suggested to the opposition that closing hotels at 10.00 pm on Sunday night will be a contributing factor to the "Dullsville" label and that people who visit Western Australia and people who take advantage of the holiday nature of weekends would like to access hotels until midnight on Sunday night, as opposed to 10.00 pm now. They have also argued that now that we will have daylight saving, the sun will be shining at nine o'clock and they will not want to go home at 10 o'clock, which may or may not be a good argument; I do not know. However, it seems worth raising anyway. I am also told that in most other parts of Australia people can access hotels at 12 midnight; Mr Chairman might tell me if that is not correct. I am told that other parts of the world have 24-hour trading in hotels and many other parts trade until 3.00 am and 5.00 am. Western Australia, with a 10.00 pm closure on Sunday nights, is probably the most conservative of most comparable parts of the world when it comes to these sorts of matters. I understand that the health lobby has been very active in its opposition to extending these hours to midnight. The Australian Hotels Association gave me some information from the National Drug Research Institute, which has argued against extended hours for trading. I have read its research. It fundamentally relates to the effect of trading after 12 midnight, and not until 12 midnight. The evidence was prepared on behalf of the Western Australian Executive Director of Public Health regarding an application by the Duckstein Brewery in Margaret River, Wilyabrup, for a special facility licence and extended trading hours for premises to be located at lot 2, Caves Road, Wilyabrup. I have an expert witness's statement on that proposal. Although I have not read it as carefully as I might, in view of the time I have had, it fundamentally applies to trading beyond 12 midnight. The evidence relates to the extra trading beyond 12 midnight, as opposed to extra trading before 12 midnight. The arguments contained in this witness statement, which suggest that trading should not occur beyond 12 midnight, are not relevant to the proposal that has been presented. The current proposal is to extend trading on Sundays from 10.00 pm to 12 midnight, which would make Sunday night the same as any other night. If members want to argue that trading between 10.00 pm and 12 midnight on Sundays is a bad thing, I could argue that trading from 10.00 pm until 12 midnight on any other day is also bad. There is no difference. Increasingly, Sundays are no different from any other day for most people. Indeed, for many people there is no such thing as the traditional weekend because of their occupation as fly in, fly out operators and for others who might work variable hours. Increasingly, Saturdays and Sundays are not the weekend for many people; their weekend is effectively on other days because of the nature of their employment. It is suggested that for historical reasons late night trading of liquor should cease earlier on Sundays. That has less relevance these days than it used to. If one argues that trading from 10.00 pm until 12 midnight on Sundays is bad, one must acknowledge that trading between 10.00 pm and 12 midnight on the other days is also bad. If the government is not going to agree to this amendment, it should take away the capacity to trade from 10.00 pm until 12 midnight on every other night.

If we are to look at the strategy the government has used to promote this legislation - that is, to provide more flexibility and more opportunities for people to access liquor - it makes a lot of sense that it is appropriate and proper and fair and reasonable in the circumstances to allow liquor trading for an extra couple of hours on a Sunday night, bearing in mind the changing nature of our society.

Hon LJILJANNA RAVLICH: The government will oppose this amendment because of the social impact that would result. Currently, hospital emergency departments are telling us that they are pretty full six days a week. This amendment would ensure that the emergency departments would be full for seven days a week. The Freemantle committee acknowledged that most of the health advocates were opposed to longer trading hours because of the negative impact it would have on the community. Further, the Department of Health does not support an extension of trading hours because of that negative impact and the strain that it would place on community resources, particularly the resources of hospitals and of police, who must now respond to an increasing numbers of problems. The Western Australian police service has stated that the proliferation of late-night trading venues over the past 10 years has placed an additional strain on police resources. There is no doubt that police officers spend a significant amount of their time dealing with drunks, and the damage and injury that those drunks cause, together with other unlawful behaviour. Also, there is no doubt that this policy would, in my view, and no doubt in the view of the police and health professionals, lead to increased assaults, domestic violence, property crimes and drink driving. It is estimated that alcohol misuse costs the Western Australian community more than \$750 million a year. The social costs of this amendment would far outweigh any benefits of including it in the legislation.

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Reference has been made to the midnight closing time as opposed to 10.00 pm and the situation in other jurisdictions. It is not right to say that in other jurisdictions the closing time is midnight. In fact, in New South Wales trading is from 10.00 am to 10.00 pm; in Victoria, from 10.00 am to 11.00 pm; and in South Australia, from 11.00 am to 8.00 pm. The opposition believes that this adjustment from 10.00 am to midnight should be made because of the introduction of daylight saving. It is almost as though some members believe that we will get an extra hour in the day that will need to be accounted for. The government will vehemently oppose this amendment. It does not reflect the agreement that we reached with the opposition. We had an undertaking from the Leader of the Opposition that this bill would go through this place unamended.

Hon Norman Moore: The Leader of the Opposition? You have not had an agreement from me.

Hon LJILJANNA RAVLICH: In the Assembly.

Hon Norman Moore: He does not make decisions for the Legislative Council.

Hon LJILJANNA RAVLICH: Obviously he does not. We also had an agreement with the opposition spokesperson.

Hon Norman Moore: As a matter of interest, he doesn't make decisions for this house either.

Hon LJILJANNA RAVLICH: He obviously does not.

Hon Norman Moore: You are quite right.

Hon LJILJANNA RAVLICH: I am surprised that, having reached agreement with the Liberal Party on this bill, we find significant amendments on the notice paper and that this amendment, one that is not easily accommodated by the government, is before the chamber. We will oppose it. It is regrettable that it has found its way onto the notice paper.

Hon GIZ WATSON: Members must be clear about the reason for this amendment. The Australian Hotels Association, as it should and as is its right, has lobbied long and hard on this reform package because it is opposed to the extended sale of liquor on Sundays. Unfortunately, it lost that argument, despite the fact it had anticipated that the Liberal Party would stay with its stated position and would oppose extended Sunday trading. This amendment is unashamedly an olive branch to the Australian Hotels Association to compensate for the fact that it did not win the argument on Sunday trading.

When this amendment was proposed yesterday, I had a conversation with Hon Barry House. I have some sympathy for it because I think the Australian Hotels Association has been kicked in the shins very hard. It understood that with the support of the Greens (WA), the Nationals and the Liberal Party, Sunday trading would not be opened up and we would not have a turnaround of the result of the referendum that was held at the last state election. That will not happen for various reasons; therefore, the Australian Hotels Association was very keen to gain an extra two hours trading on Sunday night. It is absolutely correct to say that I was sympathetic to that view. However, since then I have had several conversations with people whose primary concern is harm minimisation. They have told me that extended trading hours for hotels on Sundays was one aspect to which they were very much opposed. I take their word on that. It is ironic, because, on the one hand, this bill is about making alcohol available in more places to more people for longer periods, but, on the other hand, it contains bits about harm minimisation. It is a very difficult balancing act. Certainly, I sympathise with what the Leader of the Opposition has said. Why is this bit of harm minimisation more important than any of the other bits? I have some sympathy for the view that it does not stack up. However, at this point I choose to take the advice of those who are putting the case that, in their view, extended drinking hours on Sunday nights would have more ramifications than would extended drinking hours on other days.

Unfortunately, this all arose in a fairly short space of time, so I could take advice in only a fairly limited way. However, I would rather err on the side of caution. Therefore, the Greens (WA) will not support this amendment. However, we will certainly seek in the debate on this clause to address the other issue, which is a fundamental opposition to the extension of the sale of packaged liquor on Sundays to all the liquor outlets, but that will come next. Despite my earlier sympathy for this amendment, we will not support it.

Hon NORMAN MOORE: I am astonished at the argument put forward by the minister. This bill provides for liquor stores in the metropolitan area of Western Australia to trade on Sundays. That will make available to the community of Western Australia - I do not know how many liquor stores there are in Perth; let us say there are 500 - extra outlets from which people can buy liquor on Sundays, and that is not expected to have any health effect; however, if hotels are allowed to trade between 10.00 pm and 12 midnight, the cost will be \$750 million. That is absolute rubbish. The social impact about which the minister talked and the so-called view of the Department of Health are of such a nature that we should not stop hotels from trading between 10 o'clock and 12 o'clock on any night. Why is the government not getting rid of the hours if it is so concerned about the so-called social impacts of these things? Why is Sunday night different from any other night? Is it because people

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drink more on Sunday nights and they must be kept at home so that they do not, and places must be closed so that they cannot? What hypocrisy it is for the minister to say that extended trading for two hours on Sunday nights for hotels is terrible because of its social impact in Western Australia, when the bill provides for, say, another 500 liquor outlets to open on Sunday in the metropolitan area. What absolute drivel. Maybe the minister will say that it is okay for liquor stores to open on Sundays because people buy the liquor and go home and drink it, and that is not such a bad thing. It is pretty bad if people drink liquor at home and consume vast quantities of it.

In the context of this whole bill, the health lobby has been surprisingly quiet. Where was it when the government was in the community promoting the notion that we should have much more flexibility and much greater access to different types of liquor outlets? What is the health lobby's position on small bar licences, which could result in the proliferation of small bars across the state? What is the health lobby's position on liquor stores trading on Sundays? What is its comment about that? All it, and the police I might add, seems to have said is that hotels cannot trade for the extra two hours on Sundays because that will cause immeasurable social impacts. That is just beyond comprehension. Therefore, I will not argue anymore.

If the Leader of the Opposition or the opposition spokesperson in another place says that certain things will or will not happen in this place, we can be absolutely certain that that is not binding on anybody. This amendment was placed on the supplementary notice paper by the opposition spokesperson in this house, Hon Barry House, and it is part of the decision of the Liberal Party on this legislation. We have agreed that that is what should happen. I am putting forward the proposition. I find the position of the government on this to be quite extraordinary, and I would like the minister to explain to me why Sunday night is any different from any other night, and why Sunday night trading between 10.00 pm and midnight is any worse than trading between 10.00 pm and midnight on any other night of the week.

Hon MURRAY CRIDDLE: In keeping with the Nationals' policy, which is for no Sunday trading, and for a referendum and so forth - we will come to that clause shortly - it is consistent for me to oppose this amendment. I understand the argument that Hon Norman Moore is using, but I am looking at the contrary point of view from our party members. They have been very strong in opposing Sunday trading, and in keeping with that I will not agree to this amendment. One follows the other, and it seems clear to me that the argument stands as it follows.

Hon Norman Moore: Are you against hotels trading on Sunday?

Hon MURRAY CRIDDLE: I oppose the Sunday trading for liquor stores.

Hon Norman Moore: This is about hotels.

Hon MURRAY CRIDDLE: I know it is about hotels, but I think the principle stands. If we do not support Sunday trading, we can run the argument against extended hours. This is quite an interesting argument, in some ways, to do with work on Monday morning and those sorts of issues. The same sort of principle can be run, and I think I am running that principle. I understand the argument of the Leader of Opposition, but I am putting the contrary view.

Hon NORMAN MOORE: The electorate that I represent includes places such as Tom Price and Newman, which are mining towns where Saturdays and Sundays are no different from any other days. People work flexible hours and often work in such a way that their days off are other than Saturdays and Sundays. That is one of the problems in those towns, I might add, because of the way in which weekends are no longer what they used to be, when the vast majority of people did not work on Saturday or Sunday. Now Saturdays and Sundays, for all intents and purposes, are exactly the same as any other days of the week. Why should those people whose weekends in Tom Price happen to be Tuesday and Wednesday be denied access to a hotel between 10.00 pm and 12 midnight on Sunday night? Why is Sunday any different from any other day? I can understand the historical reasons for this. There was a time when we could not do anything on Sunday in terms of liquor. Then we brought in the two-bottle rule, which was a great rule! We also had a rule that people had to be 40 kilometres outside the city to get a drink, so everybody would get in their cars, drive up to the session, fill themselves up with grog and drive home again. We had some quite extraordinary and stupid rules about Sundays. At last we have a bit of commonsense on Sunday liquor trading, and increasingly the religious and cultural significance of Sunday trading has diminished. Now, for many people, Sunday is no different from any other day. I gave the example of workers in the iron ore industry. I would like the minister to explain to me why Sunday night is any different from any other night.

Hon LJILJANNA RAVLICH: Sunday is, to many people, a very different day. Sunday has historically been a day of rest. That is one reason Sunday may be different from other days. Another reason might be that Sunday is a day on which many people go to church. They do not often go to church on Mondays and Tuesdays; some do, but most of them do not.

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Hon Simon O'Brien: Do they go to church between 10.00 pm and 12 midnight?

Hon LJILJANNA RAVLICH: The honourable member asked me why Sunday is a different day from any other day. I have given two reasons for Sunday being a different day. Essentially, in respect of liquor trading, it is not different from any other day. However, we do not want to add to the considerable harm of alcohol consumption. The Minister for Health not long ago put out a media release in which he said he was shocked to learn that in 2005-06 it was estimated that metropolitan hospital emergency departments treated 33 850 people who were sick, injured or assaulted as a result of excessive alcohol consumption. I guess the point is that it would allow for an additional two hours of alcohol consumption. That really is the main reason -

Hon Norman Moore: So why don't you get rid of the two hours' trading on every other night if it is such a terrible thing? Why don't you reduce it to 10 o'clock?

Hon LJILJANNA RAVLICH: Why do we not just close hotels?

Hon Norman Moore: Good question.

Hon LJILJANNA RAVLICH: I have provided the Leader of the Opposition with the answer. He may not like my answer, but the point is he asked me the question and insisted I respond to why Sunday is different from any other day. I think I have done that. Then the Leader of the Opposition said it was not about that, but it was about hotels, and so I have explained that. The Leader of the Opposition may not like the answer I gave but that is the answer I chose to give. It may not satisfy the honourable member because I am not he, nor do I want to be, but that is my answer.

Hon Norman Moore: The feeling is absolutely mutual!

The CHAIRMAN: Order, members!

Hon NORMAN MOORE: The dismissive approach of the Minister for Education and Training to anybody who has a view that is different from hers, or what she has been told to say, is beginning to irritate me. I am seeking to have a proper debate about a serious issue. I have asked the minister about liquor trading, not about Sundays in the context of going to church, but in the context of trading hours, which is what we are about. I asked why liquor trading hours on a Sunday night were different from liquor trading hours on any other night and the minister replied that the Minister for Health said everybody is going to finish up in hospital. Then I asked rhetorically why the minister did not get rid of the last two hours of trading every night, and if the Minister for Health is so concerned, why do we not go back to the three referendums we had in the 1920s and 1930s, which were about prohibition? Let us just not have any grog at all. Perhaps we could have a grog-free recovery in Western Australia as opposed to what the minister was telling us we would have by way of extended trading hours and more flexibility. The government's hypocrisy and inconsistency on this bill is breathtaking.

Amendment put and a division taken with the following result -

Ayes (11)

Hon Ken Baston
Hon George Cash
Hon Donna Faragher

Hon Anthony Fels
Hon Nigel Hallett
Hon Ray Halligan

Hon Robyn McSweeney
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Bruce Donaldson (*Teller*)

Noes (14)

Hon Shelley Archer
Hon Murray Criddle
Hon Kate Doust
Hon Sue Ellery

Hon Adele Farina
Hon Jon Ford
Hon Graham Giffard
Hon Paul Llewellyn

Hon Louise Pratt
Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Ed Dermer (*Teller*)

Pairs

Hon Barry House
Hon Peter Collier
Hon Barbara Scott
Hon Margaret Rowe

Hon Matt Benson-Lidholm
Hon Vincent Catania
Hon Sheila Mills
Hon Kim Chance

Amendment thus negatived.

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Hon NORMAN MOORE: I have a sneaking suspicion that what is proposed under amendment 9/68, which is in the name of Hon Barry House, is covered by proposed section 98A(1)(a). Will the minister advise whether that is the case? Hon Barry House's amendment reads -

- (e) on a Monday public holiday not being Christmas Day or ANZAC Day - from immediately after 12 midnight on the previous day to 3.00 a.m.;

However, proposed section 98A(1)(a) reads -

- on a Monday, Tuesday, Wednesday or Thursday - from 6 p.m. to 12 midnight and then continuing to 5 a.m. on the next day . . .

Does that not cover what Hon Barry House is trying to achieve?

Hon LJILJANNA RAVLICH: I am told that it does not.

The CHAIRMAN: Does the Leader of the Opposition wish to proceed with amendment 9/68?

Hon NORMAN MOORE: No.

Hon GIZ WATSON: I move -

- Page 60, lines 20 to 24 - To delete the lines.

The effect of the amendment will be to remove the provision that allows liquor store licence trading on Sundays. If this amendment is passed, the bill would reflect the outcome of the referendum that was held at the last state election. It would also reflect what I understand to be the position of the majority of the political parties in this state; namely, the National and Liberal Parties and the Greens (WA). This has been a long-running and hard fought issue. We firmly oppose extending liquor store licences to not only small liquor stores, but also Coles and Woolies. We have just had a discussion about harm minimisation. If members need an example to be influenced by the harm minimisation argument, this is it. We are talking about extending the ability of all liquor shops, including the big players, to trade liquor. I predict that the big players will in their usual fashion move to buy out or rub out small traders, particularly those bottle shops that make an effort to market Western Australian products. The Coles and Woolies of this world do not care about them. All they care about is making a profit. I believe that this legislation will have serious consequences for the Western Australian wine industry. I am deeply disappointed that there has been a change of heart on this aspect of the legislation. The lines that are proposed to be deleted are in proposed section 98D, "Permitted hours under a liquor store licence". I am proposing to delete the following paragraphs from proposed subsection (1) -

- (b) on a Sunday that is not ANZAC Day - subject to subsection (2), from 8 a.m. to 10 p.m.;
- (c) on ANZAC day - from 12 noon to 10 p.m.

Proposed subsection (2) states -

- Subsection (1)(b) applies only to liquor stores in the metropolitan area.

The deletion of those lines would take this legislation back to a position in which only hotels would be permitted to sell packaged liquor on Sundays. That is our position.

Hon LJILJANNA RAVLICH: I move -

- That further consideration of this clause be postponed until after consideration of clause 117.

Hon NORMAN MOORE: Can the minister tell us why?

Hon LJILJANNA RAVLICH: I need to get some clarification from the responsible minister.

Question put and passed.

Clauses 69 and 70 put and passed.

Clause 71: Part 4 Division 3A inserted -

Hon KEN BASTON: This clause deals with the training of staff. One of the issues in remote areas, such as Halls Creek or Fitzroy Crossing, is the difficulty of training staff, or even in getting staff. Proposed section 103A(1) states that the regulations may require persons, or persons of a specified class, who are employed or engaged in the sale, supply or service of liquor on or from licensed premises to be trained. Proposed subsection (2) states that the director may approve exemptions from those regulations. Will any exemptions be granted to hotels in remote areas?

Hon LJILJANNA RAVLICH: The director has a discretion to take account of issues in remote areas.

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Hon KEN BASTON: Many of these premises rely on backpacker staff who are travelling around the tourist regions and may work there for only a month or so. If this bill is passed, will all the staff behind the bar need to be trained, or only the manager?

Hon LJILJANNA RAVLICH: I understand that they do not need the training if they are there for fewer than four weeks. If they are there for three weeks, there is no requirement for that training. However, the director general will be empowered to waive or modify a requirement if the circumstances in a particular case warrant such an approach. There is some flexibility there.

Clause put and passed.

Clauses 72 to 74 put and passed.

Clause 75: Section 108 replaced -

Hon BRUCE DONALDSON: Proposed section 108 states -

108. Certain licensees to exhibit charges for meals and liquor

At a time when -

- (a) a licensee is authorised to sell liquor only with or ancillary to a meal; or
- (b) a licensee of a restaurant licence is authorised to sell liquor whether or not ancillary to a meal,

the licensee is to cause to be exhibited in the place where that liquor is sold, for the use of and clearly visible to customers, a price list showing the charges made for meals and for the various types of liquor supplied ancillary to meals or otherwise.

Why does a licensee have to do this? What is the reason for, or logic behind, this replacement of section 108? At present, menus are provided on the tables of restaurants, there are blackboard specials or the waiters and waitresses explain the specials of the day. Now licensees that sell liquor only with or ancillary to a meal will have to set up a notice board. It will be like fish shops that have boards indicating that a piece of gummy shark is \$7 and a piece of red emperor is \$9. Talk about overregulation! I believe it is a nonsense. What does it really mean? What benefit will it provide to anyone? People go to restaurants or licensed premises where meals are provided and they have a few drinks. Will they need to have a blackboard shoved under their noses to make sure that they know how much they will have to pay?

Hon LJILJANNA RAVLICH: Section 108 has always had a requirement that the licensee exhibit the charges for meals. This is not a new provision. However, with the removal of the obligation on hotel licensees to receive people, which was in part included in the section, section 108 had to be amended. Therefore, clause 75 simply removes the provision relating to the obligations on hoteliers to receive people and retains the existing provision relating to charges for meals. The provision applies to all licensees, including restaurants, hotels and taverns, that sell and supply meals for consumption on the premises. I think it is a good idea. It is fair enough for tourists to know up front what they might have to pay. Local people in a small country town might be familiar with the price structure at the local hotel, but this is a good requirement if licensees want to attract tourists. It is not a new requirement, because it has always been in the act.

Hon BRUCE DONALDSON: This is most interesting. It has always been a requirement in the act, yet there has been no compliance with that provision. If the minister is correct, how many compliance inspections have been carried out? Practically none, obviously.

Hon Ljiljanna Ravlich: We do not police it, but when complaints are made, the agency would act.

Hon BRUCE DONALDSON: If a licensee happens not to be the favourite or the friend of someone, he will be dobbed in and the compliance provisions will be applied. I believe this is open to graft and corruption, quite frankly.

Hon Ljiljanna Ravlich: Have you had a complaint about this?

Hon BRUCE DONALDSON: No, but it is nonsense. Once the minister indicated that the provision has always been there, I thought there had been no compliance with it anyway. If these types of things are not going to be policed, why have them? Quite frankly, this is rubbish.

Clause put and passed.

Clauses 76 to 103 put and passed.

Clause 104: Schedule 1A inserted -

Extract from Hansard

[COUNCIL - Wednesday, 22 November 2006]

p8583b-8598a

Hon Norman Moore; Hon Ljiljanna Ravlich; Hon George Cash; Hon Ray Halligan; Hon Giz Watson; Hon Murray Criddle; Chairman; Hon Ken Baston; Hon Bruce Donaldson

Hon GIZ WATSON: This clause relates to a number of matters, but the part I am particularly interested in is the one that deals with the Liquor Licensing Court judge, which is set out at the top of page 98 in clause 3 of proposed schedule 1A, which reads -

The person holding office, immediately before the commencement day, as the Liquor Licensing Court judge referred to in section 9 of the former Act ceases to hold that office on the abolition of the Court under clause 2.

This part of the bill goes to the issue that Hon George Cash and I have raised; that is, the separation of powers and the fact that this part of the schedule is in breach of the Beijing statement of principles, which we both talked about during our contribution to the second reading debate. I intend to ensure that the Beijing statement of principles is not transgressed in this bill. It is essential that Parliament maintain the principle that no judge should be dismissed from his position without either being provided with an equivalent position in an equivalent court or being fully compensated. I move -

Page 98, lines 4 and 5 - To delete “ceases to hold that office on the abolition of the Court under clause 2” and insert instead -

is to be deemed to be appointed to and hold office as chairperson of the Commission.

- (2) Notwithstanding any other provision of this Act, the person referred to in subsection (1) is to continue to enjoy the status, tenure and entitlements, including accrued pension rights, of a District Court Judge.

This amendment will clearly ensure that the current judge of the Liquor Licensing Court would continue to enjoy the status, tenure and entitlements of an equivalent position if he was not appointed to hold the position of a new chairperson of the commission. I think that this is the clearest way to ensure that the Beijing principle is upheld and not broken. I seek the support of the committee for this amendment.

Hon LJILJANNA RAVLICH: First of all, I have given an assurance that the Beijing principles will not be transgressed. I gave that undertaking at clause 11. I do not think that the amendment will sit well within the context of the legislation because of the adjustment to the position of the judge of the Liquor Licensing Court in that the court will be superseded by a new commission. As such, the provisions contained within the amendment should not be enshrined in the bill. We have already made it clear that the new chairperson will not have a position that is equal to that of a District Court judge. For those reasons we will not support the amendment.

Hon NORMAN MOORE: Hon George Cash spent some time during the second reading debate on this matter outlining the opposition’s point of view. We have accepted the assurance of the minister that the judge of the Liquor Licensing Court will be properly compensated for the fact that the position will be abolished. As Hon George Cash explained to the chamber, two options are available to the government. One is to appoint the judge to a similar judicial position. If that is not possible, he should be compensated for the circumstances in which he will find himself. On the basis of the assurance given by the minister that the judge will be treated in either of those two ways, the opposition will not support the amendment moved by Hon Giz Watson. That is not because we do not think it has merit but because, following the assurance of the minister, we no longer think it is necessary. I advise the minister that if it turns out that the Attorney General or anybody else who happens to have some involvement in this reneges on the deal, people’s words will not be taken for anything other than nothing in the future.

Hon GIZ WATSON: I appreciate that the minister has given some assurance in her previous responses on this matter. I am concerned that we are being asked to pass the bill without the outcome being delivered. The government is well aware that this legislation has had a long gestation and has been in the Parliament for quite a while. It would have been entirely possible to negotiate with the current judge of the Liquor Licensing Court some compensation. That would have then been known and understood by the Parliament before it voted on the bill. That would have been a much more satisfactory situation than the Parliament having to raise this issue in this way. I acknowledge that the minister has given as much assurance as is possible. I am pleased with that as far as it goes.

I have one further question on the clause. What would be the consequence of deleting proposed clause 3 in schedule 1A, which is titled “Liquor Licensing Court judge”?

Progress reported and leave granted to sit again, pursuant to sessional orders.