

EDUCATION AND HEALTH STANDING COMMITTEE

**INQUIRY INTO THE ADEQUACY AND APPROPRIATENESS OF
PREVENTION AND TREATMENT SERVICES FOR ALCOHOL AND
ILLICIT DRUG PROBLEMS IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 12 MAY 2010**

SESSION ONE

Members

Dr J.M. Woollard (Chairman)
Ms L.L. Baker (Deputy Chairman)
Mr P.B. Watson
Mr I.C. Blayney
Mr P. Abetz

Hearing commenced at 10.55 am.

SARGEANT, MR BARRY

**Director General, Department of Racing, Gaming and Liquor,
examined:**

The DEPUTY CHAIRMAN: On behalf of the Education and Health Standing Committee, I would like to thank you for your interest and your appearance before us today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into the adequacy and appropriateness of prevention and treatment services for alcohol and illicit drug problems in Western Australia. You have been provided with a copy of the committee's specific terms of reference. At this stage I would like to formally introduce myself and the other members of the committee present today. I am Lisa Baker, MLA, the deputy chair; obviously Janet Woollard, our chair, is not here today, so I am taking the chair. My fellow member is Mr Peter Abetz, MLA; our research staff, Dr David Worth and Tim Hughes are on my immediate right; and our Hansard staff, Sandra and Liam.

The Education and Health Standing Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record. Before we proceed to the questions we have for you today, I need to ask you a series of questions. Have you completed the "Details of Witness" form?

Mr Sargeant: Yes.

The DEPUTY CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Mr Sargeant: Yes.

The DEPUTY CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

Mr Sargeant: Yes.

The DEPUTY CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

Mr Sargeant: No.

The DEPUTY CHAIRMAN: Thank you for your submission to this inquiry. Together with the information you provide today, your submission will form part of the evidence to this inquiry and may be made public. Are there any amendments you would like to make to this submission?

Mr Sargeant: No.

The DEPUTY CHAIRMAN: We have a series of questions to ask you today but before we do that, do you wish to provide the committee with any additional information, or would you like to make an opening statement?

Mr Sargeant: I would like to make an opening statement, if I could.

The DEPUTY CHAIRMAN: Certainly.

Mr Sargeant: When I was invited to attend the hearing, I was asked to give evidence in particular to reference 2 about the broad social cost to Western Australia of the consumption of alcohol and the associated drinking culture. I responded, indicating that I did not think I had the capacity to do that because, in my position as Director of Liquor Licensing, I rely very much on the information provided to me by more expert people, particularly the Executive Director of Public Health. We can look at any matter to do with alcohol. The National Drug Research Institute, which is funded by the commonwealth government Department of Health and Ageing, produced a report indicating that the estimated cost of alcohol to the Australian community was about \$15 billion a year in 2004–05 costs. Based on a methodology adopted by Victoria, which estimated the cost in 2007–08 to be about \$4 billion, I would put Western Australia's cost at about \$2 billion; that is for 2007–08. In that context, I know that there is harm, but I am not an expert in determining what the harm is.

The DEPUTY CHAIRMAN: We certainly appreciate your position and thank you very much for agreeing to come and present some evidence, Barry. I might start off with some questions. I think the committee would be very interested in the liquor restrictions in communities that have been piloted over the past few years. I start off by asking whether you have noticed an increasing demand from the communities to your agency for restricted area declarations, such as the Oombulgurri one?

Mr Sargeant: Yes, there has been quite an interest in those restrictions in particular, bearing in mind that those restrictions are not imposed by me as the Director of Liquor Licensing; they are actually imposed by the minister as a regulation. But there is growing interest in the ability to impose those conditions on communities. I must say, though, that there are communities where there is not always a unanimous wish to impose those restrictions. It also may impact on other communities very close by that do not wish to impose those conditions and know that it could mean the transference of problems from one community to another. But yes, there is more interest.

The DEPUTY CHAIRMAN: Do you feel confident about talking to us about the benefits that you have seen from your role in the restricted area declarations?

Mr Sargeant: It does not directly impact on me, because in those communities it is very much the people on the ground, particularly health professionals and the police, who are far better qualified to comment on those matters than I am. But as a recent example of enforcement, there were some people in a community, Wangkatjungka, who actually took alcohol in illegally—they were teachers—and the police prosecuted them. In the case of a place such as Wangkatjungka, we did it for 12 months initially, and they asked it to be extended for a much longer period. From that point of view, the community was helpful. In those areas, we only get positive feedback from the police and the people on the ground, but I do not go in there and do any particular assessment. There is no liquor licence in those areas, so therefore I have no responsibilities in regard to the enforcement of the liquor licensing act in those communities.

The DEPUTY CHAIRMAN: You mentioned the impact on other areas—neighbouring geographic areas. Do you have any comments about what feedback you have had about the effects on those other areas?

Mr Sargeant: Only in relation to those who are wanting to have them imposed. The minister has not imposed them on any area that has greatly impacted on local Aboriginal communities that are close by. For example, the committee has mentioned Oombulgurri; one of the impacts of the decision there was that people who wanted to access alcohol and drink would have moved to Wyndham. There were problems with management of some of those issues, but the police were quite prepared to take on the responsibility of managing the problem in Wyndham. Some of the people from Halls Creek might, at times, have gone into Kununurra or even as far as Wyndham to acquire alcohol. It is always a difficult one to make a decision in one area and know how it will impact another area. For some of the restrictions that are in place, particularly on licensed premises, there is quite a bit of criticism about transferring the problem. Nobody has ever produced any hard evidence to me to indicate that that is the case; there is anecdotal evidence. Sometimes, where we

have imposed those conditions, there have been other factors that affect people's movements—particularly the weather; whether it is the wet season or not. It is not necessarily an easy one to assess.

Mr P. ABETZ: What is the difference between a restricted area declaration and voluntary liquor accords? Can you explain for us the difference?

Mr Sargeant: The restrictions are imposed by the minister on areas. In theory, the minister could impose a restriction on this building, if he had been through the consultation process et cetera. An accord that emanated many years ago from Geelong was an example of local police trying to get the cooperation of local licensees in better managing the alcohol problems in their communities. It is an informal agreement between the various participants—particularly licensees and police; I should also mention that we are trying to encourage local authorities. As a department, we tend to not get involved in those; we would rather that people get the accords going in communities. There is one in the Northridge area, one in Fremantle; a lot of local communities have them, so there is a genuine commitment from the licensees to participate. If they do not participate, there is a mechanism whereby an accord can be formally recognised by me, if they approach me, and then I can actually enforce the accord conditions on every licence in that area, if that approach is made to me as the Director of Liquor Licensing.

Mr P. ABETZ: What is it called then?

Mr Sargeant: It would then go from being an accord agreement to a restriction placed on a licence. The advantage of an accord agreement is that if, for some reason, a licensee transgresses one of those conditions, there is no penalty; whereas if they transgress a condition of their licence, it is a different situation and therefore they are liable for prosecution. Either I or the police will have the authority to take them before the Liquor Commission on a disciplinary matter. There is quite a difference between those conditions.

The DEPUTY CHAIRMAN: When you raised the issue of checking compliance, do you have any staff based particularly around Oombulgurri or those communities that have restricted areas at the moment?

Mr Sargeant: No. We have to bear in mind that under the Liquor Control Act, the Commissioner of Police is actually responsible for administering that act and enforcing its provisions. I am not resourced to do that. I have approximately 21 inspectors, and those 21 inspectors have to pick up surveillance et cetera at the casino. We also do racing and wagering, all the bookmakers and we do the Lotto draws on a contract basis. We also do matters to do with liquor in relation to premises inspections et cetera. I have the same powers, effectively, as the police commissioner, but I am not resourced. This state is one of the few states that is not resourced that way. I can understand that is because historically, given the nature of the state, it is probably just as beneficial to have police officers, who are stationed all over the state, to carry out those functions than to have public servants doing them. We work very closely with the police.

[11.10 am]

The DEPUTY CHAIRMAN: You have 21 inspectors on the ground at the moment to cover all those areas that you referred to. There is a difference in the way that it is monitored in WA compared with other states. You indicated that you thought this was okay. How does the effectiveness of our monitoring compare with the other states?

Mr Sargeant: From my perspective, it is very effective. It is a matter of government policy and how it funds it. Victoria was in a similar situation to WA but it recently made a decision to create an enforcement division within the equivalent agency in Victoria. Queensland, New South Wales and South Australia have their own enforcement offices and they have quite a large inspectorate component of their activities, but we have not done that in Western Australia.

The DEPUTY CHAIRMAN: Do the police get involved in those instances?

Mr Sargeant: Not as much but they can do. In a lot of matters we work hand in hand with the police. For instance, in some situations it is safer for my officers to be accompanied by a person in uniform than to go out in their own right. We also have a policy that my staff do not work alone; we always have two people working in those environments to make people feel safer. Overall, I think the police do a very good job, particularly since they established the licensing enforcement division.

Mr P. ABETZ: Is that a separate section within the police force?

Mr Sargeant: Yes. Many years ago they used to have a liquor and gaming branch within the police. Through various models and principles of modern policing, they took the view that every police officer should be able to enforce all aspects of policing, including liquor. They used to have alcohol advisory officers stationed in various police offices. In my opinion, it did not work very well and I was pleased when Commissioner O'Callaghan established the licensing enforcement division, of which liquor licensing is a part. The relationship between the two agencies is very good.

The DEPUTY CHAIRMAN: Before we move off the liquor restricted areas, I think you mentioned in your submission that liquor restrictions operate in the Pilbara and that liquor restrictions were under way for the Mid West or Gascoyne area. Is that right? Could you comment on how both of those are faring?

Mr Sargeant: We have imposed restrictions on those areas after consultation with the licensees, the local authority and the police. If they were not working effectively, I would be amending them. In my opinion, they are working. I have not been approached to vary them to any extent so far. My answer to that question is yes, they are effective. That depends a lot on who you talk to at times. If you are talking to a licensee whose business has been impacted adversely, they would not necessarily be supportive of them. Generally, they put their point of view and they accept the decision of the umpire. My public position when I talk to anybody is that I would rather not get involved. I would rather rely on the accord system; that is, you have a local problem, you have local licensees, local police and a local authority so you should be able to sort out your own issues. If you cannot, I will intervene and I will make a decision but quite often it is not necessarily a decision that anybody particularly likes.

The DEPUTY CHAIRMAN: What are the locations of those areas you were just referring to? There is one in the Pilbara.

Mr Sargeant: I think it was the Leonora area and those places out there. Again, you have to assess to what extent you move the problem and to what extent it helps solve a local issue. One of the concerns was whether the problem would move. I have not received evidence to indicate that the problem has moved dramatically from one location to another.

The DEPUTY CHAIRMAN: Where is the restricted area in the Mid West – Gascoyne?

Mr Sargeant: It was a while ago now and I cannot recall. I can give you that information by way of a supplementary submission if it is of interest to you.

The DEPUTY CHAIRMAN: Thank you. That would be helpful.

Mr Sargeant: I forget the exact locations.

Mr P. ABETZ: Do you keep a register of the voluntary liquor accords that are in place?

Mr Sargeant: No.

Mr P. ABETZ: Who would have a list of those or keep track of those?

Mr Sargeant: Sometimes the Drug and Alcohol Office has been involved but the police have the more persistent membership of the accords that they have established across the state. As I said, I have taken a hands-off approach mainly because I want them to own it and I do not want to be seen to be enforcing it all the time. As human beings, we are better off if we own a solution than if a solution is forced on us.

Mr P. ABETZ: Is there one place we can go and get a list of the voluntary ones that are in place at this point?

Mr Sargeant: The best place would be the licensing enforcement division of the WA Police. I can take a note of that and see if I can facilitate that for you.

The DEPUTY CHAIRMAN: Thank you. That would be great. Staying with the area of Indigenous alcohol issues, are you or is your department aware of or familiar with Queensland's Indigenous community's alcohol management plans?

Mr Sargeant: Yes.

The DEPUTY CHAIRMAN: Do you think that that type of program is the integrated approach that your department would feel would sustain some short-term benefits of the restrictions?

Mr Sargeant: You have to remember that the Queensland model was based around the fact that those communities had a liquor licence. We do not have them in WA. No community in WA has a liquor licence so the starting point is totally different. They had to close them. Talking to my counterparts in Queensland, they found that the councils in those local communities were very dependent on revenue from their liquor sales. It was a vicious circle for them. It was not an easy one for them to implement. There is a fundamental difference between WA and Queensland.

The DEPUTY CHAIRMAN: Do you have any messages or lessons from what has happened in Queensland using that model, outside the fact that there is a different starting point in the way it has been rolled out and implemented? Are there any lessons for us over here that you would consider relevant?

Mr Sargeant: They have the same problem as we have. It is very hard to stop the supply of alcohol totally. Even though it is not as easy to acquire, alcohol is still taken into those areas. Even if they do have restrictions, people may want to break them. It is the reverse; they have followed our model and tried to create a situation where there are no liquor licences in those communities. Some people would argue a contrary view, saying that we should allow those communities to have liquor licences so it is local and so they can manage and monitor the way that they drink alcohol. The Queensland experience has shown that that does not necessarily follow. In principle, it might sound good but in practice I do not think it has worked out that way.

The DEPUTY CHAIRMAN: I now turn to the educational side of managing alcohol. In your submission you talked about an increasing demand on government to deliver more alcohol and other drug education, prevention and treatment services as well as services that support social reconstruction. I am hoping that you might have some views about some strategies or what kind of an integrated support strategy might work and what kind of costings, if any, you might have thought about around that. Could you talk about what your ideal would be?

Mr Sargeant: My ideal would be that I would not have a job.

The DEPUTY CHAIRMAN: How are we going to get there?

Mr Sargeant: I do not think you will solve it in five years when I will be retiring. That statement is very easy to make. In principle, that is what the ideal should be. In practice, how do we deliver? I think the Department of Indigenous Affairs has experienced it. A lot of government agencies work very much in silos at times, and that is probably the problem that we do have. Some of the issues that people have raised after the imposition of restrictions in Fitzroy Crossing relate to the support services that come in behind and try to educate people about the abuse of alcohol. One of the things that the people in Halls Creek and Fitzroy Crossing have experienced in relation to those restrictions is the growth deficiency caused by foetal alcohol syndrome that children experience. How do you present that education? If I had the answer, I would probably be consulting rather than being a director general of a department. I really do not have the answer other than saying that it is

an integral part of the solution. The problem is that it is long term; it will not be solved in the short term.

There was a debate on *Lateline* on the ABC between someone representing the licensees and a local representative from Halls Creek about the imposition of the alcohol restrictions. One of the health persons took a glass of vodka—it was filled to about the same level as my glass of water in front of me—and put two eggs in it to see how the vodka curdled the eggs. From an education point of view, that demonstration gave a very powerful message. That part of the education showed the problem that alcohol can have on a foetus.

I cannot give you the silver bullet. I do not have that expertise, other than the fact that the ideal would be that the resources are there when you need them so that you can educate people so that they have a fair chance of making the choice. The problem in the remote areas is the time that staff, not only government people, spend travelling. I was at a seminar a few weeks ago and people from the non-government sector spoke of the time spent in vehicles getting from A to B. Some people spoke about going to the Gascoyne area and driving for seven hours. They did not feel like working very much. They might work for a day or two and then they have to drive back. The real issue is about getting people at a place at a time when they are actually needed. It is a difficult one for the people who have to resource it. I would not say that I have the solution.

The DEPUTY CHAIRMAN: In your experience so far, having watched the development of these voluntary accords and also the restricted areas, you talked a bit about human resourcing around the enforcement or the education support for communities. Are there any other resources that you think communities are lacking in being able to make these voluntary accords and the restricted situations more effective?

[11.20 am]

Mr Sargeant: The accords are only intended to apply in communities, like Kalgoorlie and Albany—there have been some in Halls Creek and Perth in the community; they do not actually apply to the communities outside, like you are talking about the Aboriginal communities. The accords do not apply there at all, so the accords do not work in those environments. In some places, it works well; in other places, it breaks down, and that is when we have to get more involved. To some extent Northbridge was an example of that during the recent summer. They could not get a unanimous position from an accord point of view; there were some groups agreeing to something and some were not. So I thought it was in the public interest to impose those conditions on Northbridge for the summer period. From that point of view, liquor accords have an application and are used in communities, like towns et cetera. When you come to the restrictions, they are totally independent. Some communities do not need restrictions; their by-laws could apply for it themselves. But sometimes the by-laws are not clear enough and some by-laws allow limited access to alcohol, whereas if a restriction is put in, then the police and everyone know quite categorically what the rules are and they can be applied. Actually, I got a bit lost; I forgot your part of the question about the community side. So put aside the accords, what was that question in relation to the communities?

The DEPUTY CHAIRMAN: Let me just clarify first: the by-laws you are referring to are the community's operational by-laws, how they run in Oombulgurri. I was just asking whether you had any idea about extra resources that would help communities to do the educational support around running this kind of restricted access.

Mr Sargeant: There is no doubt that those communities that have strong leadership are the ones that perform best. So whether that means employing people to empower the communities to run them, there is no doubt that those that have that sort of leadership are the ones that are most successful. I suggest that if you have to do anything, a first step would be looking at how you can empower them to understand what is going on. Because it is quite frightening for a community to actually approach me or the minister to do something and they are unsure, whereas sometimes the

drug and alcohol officers are very good who are out in the community and might help them to proceed or you might get a strong officer within a community council or even a good chairman who is actually quite confident in speaking to people and raising matters with them. I do not know what the resourcing levels are at all. I am not saying that they are inadequately resourced or that they could be resourced more; what I am saying is from observation that has always been one critical point in the success or otherwise of something being implemented in a community.

Mr P. ABETZ: I guess just creating the vacuum of less alcohol does not actually solve all the problems of a community; you need those extra structures coming in.

Mr Sargeant: I think in fairness I would not be misquoting the minister here, and I take the view that it is really a stop-the-clock sort of exercise; it is an opportunity for people to readdress. Because when we have imposed liquor restrictions and even when the commonwealth moved into the Northern Territory, there was an immediate reduction in alcohol consumption, but as people got familiar with it, got to know what the ground rules were and knew how to get around it, then the consumption started to increase. So there is only a small window of opportunity to do something; otherwise, whilst I get some very good anecdotal evidence about people who have said, "If it hadn't been for the restriction, I would've still been drinking", which is good, fundamentally there is always a possibility that some of the benefits start to erode as people start getting around those restrictions. They can still drink in other areas and they will go into other communities. They can still have fights outside the restricted areas and then they will still end up in either police custody or hospitals et cetera. So, it is not "the" solution, but it is a very good kick-start to a possible solution, if the community raises it.

Mr P. ABETZ: My understanding of section 64 of the act is that it gives you as the director sort of the power to impose restrictions in the public interest. I think that is the term that is used. Is that something that you have used often and how often has it been used? Are there particular circumstances where you have used that? Could you tell us little about that?

Mr Sargeant: Everything that I have done in relation to the question I was asked about the Pilbara, the Gascoyne, the Kimberley, Fitzroy Crossing, Halls Creek and Northbridge has all been done under section 64. That is where I derive my power. That section empowers me as the Director of Liquor Licensing or the Liquor Commission, if it is sitting and making a decision, to actually impose conditions on licences when they are granted. Once a licence has been granted, it empowers me to actually give notice that I am going to impose a condition, which is what I have done in those circumstances. Alternatively, it is also a mechanism by which a licensee who wants to change something can actually request that things be varied as well. Section 64 is a very powerful and very important part of the act in administering the liquor legislation of Western Australia.

Mr P. ABETZ: So how often would you have used that, say, in the past year or two? Is that a very frequent thing?

Mr Sargeant: I do not know how many times, but I could say very frequent.

The DEPUTY CHAIRMAN: Can you just elaborate a bit, if you will, on the conditions around when you would make that kind of a call? You have said that it can be at the request of the people who are operating in that area, are there any other factors that come into the focus?

Mr Sargeant: If I use Fitzroy Crossing and Halls Creek, they are probably the best examples. In the case of Fitzroy Crossing, there were three very courageous Aboriginal women who wrote to me and the Premier and I think they might have written to the Commissioner of Police, but I could not be sure of that. I act independent of the Premier and the government; I am a statutory officer. My response was that I visited Fitzroy Crossing and I held a community meeting with the people involved. Interestingly, there had not been a meeting where the licensees and the community had come together with are two community people who did not want any restrictions, not because of the licensee point of view, but of course the restrictions would impose on them. So, basically I left that

particular meeting and said, “Look, I’ll give you six weeks to see if you can come up with an accord sort of solution.” There was an accord in Fitzroy Crossing. “Otherwise,” I said, “I’ll be back and I’ll make my decision from my office viewing down St Georges Terrace.” In other words, I would make a decision remote from them, and that is what happened. As a result of the submissions that they made, what information I had had from the health department, the coroner’s reports as well on the area—and the licensees made some very good submissions in the sense that they indicated what they had been doing voluntarily over time in addressing it—in my opinion and balancing all the considerations, I thought it was in the public interest to impose the condition. So that came from them.

Similarly, in Halls Creek there was a group of community people—not necessarily Aboriginal people, there were some senior white people there—who wrote and asked for that to happen. I was delayed in looking at the Halls Creek one because I had made a decision in relation to an application from the hotel for a variation of their area to incorporate a bottle shop area. I had refused and that application was appealed to the commission, so I delayed doing anything in Halls Creek until that particular appeal had worked itself through the commission. Subsequently, I think the applicant withdrew the appeal so I then proceeded to look at it, and I did visit Halls Creek et cetera. So you get that circumstance.

In the case of Northbridge, there had been some discussion for quite some time around the discussions with the government, what the accord had been trying to do, so I initiated that very much probably on my own initiative, rather than relying on a particular person or a particular group to write to me. We have had occasions when local authorities have written to me to respond to their concerns and we can use the powers there. So under the act, it would be possible for the minister or even a member of Parliament, if they so saw and if I was to respond accordingly, to initiate that, or I can initiate on my own. There is no hard and fast rule; it just says that if I do decide for any reason in the public interest that there should be some sort of restriction imposed on a liquor licence, natural justice has to prevail. We give the licensee an opportunity to put their case and to show cause why it should or should not be imposed. If they are dissatisfied with my decision, as has happened on a few occasions, they have the right to appeal that to the commission. If the person on whom a condition has been imposed is unsuccessful at the commission level, they have the right to appeal to the Supreme Court, but only on a question of law. The commission hearing is basically a de novo hearing in the sense that they can get a re-look at everything. The applicant does not have to find fault in my decision; they just ask for the decision to be reviewed. The only restriction on the commission is that they can only put forward information for review that was before me.

[11.30 am]

Prior to our 2007 amendments, we had a Liquor Licensing Court and the judge of that court could hear things de novo. But what used to happen is that applicants would apply for a licence in particular, basically to field out what the opposition was to the application. If any party was unsuccessful, they would then appeal that to the court and then they would start bringing in more information, and it would not be the same sort of material that the director had before him. That was amended in 2007. Whilst the court was abolished and the commission was created, we also made it such that the commission could hear only the same material that the director had. That is a long-handed way of answering your question, I am afraid.

The DEPUTY CHAIRMAN: But very technically explicit; thank you. I have a couple of questions before we move off the topic of liquor restrictions in communities, Barry. You mentioned Northbridge a couple of times. Are you in a position to make any comments about the success of those limitations over the summer period?

Mr Sargeant: Evidence from the police would indicate that it was successful, but because the restrictions were imposed largely as a result of the police report and, in turn, some information that the health department provided to the police in regard to hospitalisations et cetera, what I have

asked for and what they have agreed to is that both the police and the Executive Director of Public Health will provide me with a report on the statistics regarding policing, hospitalisations and other harm indicators in that period during which the restrictions were imposed, and I expect to get that around July. I will then provide that to all the stakeholders and they can make submissions, and we will see where we go from there. You must appreciate that there are a number of licensees, particularly in Northbridge, who recognise that there is a problem there and who want to address the concerns because, as members of the community, they want to see that nobody in any way incurs any harm. They have their financial interests as well. There has been a very broad spectrum of initiatives done in the area. The City of Perth has initiatives. The state government has been doing initiatives through EPRA. I think liquor licensing matters are only one part of that.

The DEPUTY CHAIRMAN: I have a final question in relation to the submissions you received about the Fitzroy section 64 restrictions. I do not know whether it is possible for our committee to be allowed to look at the submissions, if they are not confidential. It would be very helpful and interesting for our committee to be able to read some of the submissions on those restrictions that came to you. If possible, can I ask you to take that on notice?

Mr Sargeant: I have no problem; you can have a copy of the report that was prepared by the Drug and Alcohol Office, but I am not sure that I have the power to release that information to you. There are very restrictive secrecy provisions within the act. Whilst I can release information to some of my equivalent authorities, I do not think it goes beyond that. If you let me have a look at it, and if it is within my power, I have no problem. I will take that question on notice. I might not be able to respond as quickly as I can in relation to some of the other matters. On my first reading of it, I would indicate no, but I will double-check that.

The DEPUTY CHAIRMAN: Thank you very much. Can we perhaps look at the Liquor Control Act that you are in charge of enforcing? Can you tell us for the record about the limits that are currently placed on the density of liquor outlets in the city, suburbs and communities, and about how that process works and how the limits might be viewed?

Mr Sargeant: There are no limits imposed under the act at all.

Mr P. ABETZ: Some of the research evidence that has been presented to us indicates that the greater the density of liquor outlets, the greater the associated problems that flow from alcohol, such as violence et cetera. For example, in my electorate of Southern River, we have a bottle shop and an application has been made for a big tavern with a drive-through bottle shop less than 50 metres away. We have another quite big bottle shop that is half a kilometre away. Friday and Saturday nights are becoming a real issue for residents because of drunkenness and yahooping when people leave the premises. How does that work in assessing whether to grant an application?

Mr Sargeant: I can assure you with great difficulty, because that is what you have to weigh and balance under the act. You will probably recall that, through the commonwealth government, there was a national competition policy that looked at restrictions within legislation on, for instance, granting new liquor licences. It was one matter that was addressed through the 2007 amendments. We had in there a needs test, which was a barrier. It is basically similar to a density issue. It really said that an applicant had to demonstrate that there was a need for that new licence. In particular, it said that, in relation to liquor store licence applications, we as the licensing authority had to address specifically whether there was a need for that packaged liquor outlet and whether there was no licensee in the prescribed area that could meet that need. So there was that barrier to entry, and that was removed in 2007 largely as a result of national competition policy issues.

All I can say is that that is what you have to weigh and balance. The objects of the act clearly state that the responsibility is to regulate the supply and consumption of alcohol. There are two particular primary objects. One is the minimisation of harm and the other is catering for requirements. Generally, people do have a demand for liquor services; that is part of our culture. We have to weigh and balance that harm against that demand, and that is done on the evidence that is presented.

The difficulty is that it is far easier to present data that demonstrates, through questionnaires and surveys, that you and I as citizens will use the facilities. The difficulty is bringing to bear health research on that particular application. With a particular application, you have to ask, “How does that research data relate specifically to that particular application?” That is when it becomes difficult to weigh and balance them. To give an example, there was an application for a tavern licence in Carramar. There was a residential community around it and some people were within 20 metres of that particular premises. Fundamentally, the applicant was saying that, with licensed premises, people have to expect to experience a certain degree of harm and antisocial behaviour. In that community there was a low level of antisocial behaviour related to alcohol, and, therefore, the licensing authority—in that case it was me—should grant the licence application because the harm would be no greater than anywhere else in Western Australia. I did not accept that argument and I declined; I refused the application. The applicant appealed my decision to the commission. The commission upheld my decision but for different reasons. I am not sure from the commission’s point of view whether my reasoning was appropriate. The applicant has now appealed that to the Supreme Court. We are waiting to see what the outcome is. I cannot give you a hard and fast rule on how you do it, but ultimately it is how the Executive Director of Public Health or the police can relate the data back to that specific application. There is a case precedent to indicate that, as long as the criteria are applied as per the act, an applicant can expect a licence to be granted. That is the fundamental thing.

You have talked about density. If you say that you cannot put more than X number in an area, immediately that creates a bonus or a premium for existing licensees. Invariably, there are examples of why this should be varied. It is not easy to apply a density rule to an application. I understand that in Victoria they are trying to address it more through the local planning laws rather than by relying on the liquor licensing legislation to control it; in that way, planning laws should address the percentage of certain types of retail, licensed premises and residential areas you would want there. Perhaps that is more of an answer than trying to get it at the end result, which is under the Liquor Control Act.

[11.40 am]

There are calls from some people that the liquor licensing authority should put out its criteria for how it assesses each application in relation to what is in the public interest. The meaning of “public interest” is set out in the act. I have no say in that. The criteria are set out in sections 5 and 38. From one application to another they are totally different. Even within the metropolitan area, the circumstances are particular to the application at hand. The act is quite clear that we have to look at each application on its merits and if we do not, my decision will be overturned by the commission or, alternatively, the commission will have the decision overturned by the Supreme Court on the basis that we acted contrary to the law. I would not suggest that saying there was only one hotel or one liquor store would necessarily be the answer. I am not aware of any jurisdiction in Australia that actually has a density rule in place.

The DEPUTY CHAIRMAN: I refer to the change that you pointed out between the needs test previously and now the public interest test. How has that change impacted on your agency’s workload?

Mr Sargeant: It has encouraged a different sort of submission from people. It has encouraged the Executive Director of Public Health to intervene more and there is no doubt that the police are also intervening more.

As per the second reading speech, which I would have helped the minister to draft for presentation to Parliament, generally I believe that it is a fairer test. It is not necessarily an easier test. For instance, and it is on the public record in relation to an application for a liquor store in the Kalamunda area, under the needs test that application would have got over the line, but under the

public interest test I decided to decline it. It has also been appealed to the commission. It is the normal process and that is their right, but it is a fairer one.

With the workload I do not know whether you are responding to criticism of the agency by people who say that it takes time to get licences through. I tell people that I am not a Hungry Jack's, nor am I there to tick boxes. It does take time and I do not resile from that. I suggest that whenever we have had a complaint about why an application is taking so long, I could probably find examples that a file sat on somebody's desk for a bit longer or somebody went on leave and did not bring it forward. We could say that we can attribute one or two weeks to the delay, but in the main most of the time it is because we are waiting for information from the applicant, waiting for information from the police or something else. Sometimes when I make a decision, I am reasonably busy, but to give it genuine consideration I have to give myself time to read it through. I did not bring it with me, but when I was appearing before another committee relating to fees and charges I had a stack of files this high for liquor licence applications to go through. That is the time frame. The workload is constant. Not only do we have new applications for new liquor licences, but also people expect us to have the infrastructure available to transfer licences and to vary licences or to move them. We have people applying for occasional licences. Licensees want to vary their applications. We have people who want to come in and go out of the industry, and that has to be approved. There are a range of matters that we have to approve under the Liquor Control Act.

Mr P. ABETZ: What is the priority of section 5(1)(b) of the act, which states —

to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;

Mr Sargeant: They have equal priority. The Supreme Court has made that quite clear. You have to weigh and balance them. Section 5 of the Liquor Control Act is the actual section. In 2007 the act was amended by removing the needs test and making the only test the public interest test. We also made the distinction between the primary and secondary objects quite clear. We made it that the primary objects prevail. If there is a conflict between primary and secondary, primary prevails. Previously that was not necessary. It was a matter of weighing and balancing them. Section 5 of the act states —

- (1) The primary objects of this Act are —
 - (a) to regulate the sale, supply and consumption of liquor;

In doing that one must be cognisant of paragraph (b), which states —

- (b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;

Mr Abetz referred to that. Paragraph (c) states —

- (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

Some people say that I am paid big bucks to do that.

The DEPUTY CHAIRMAN: How do you work that out?

Mr Sargeant: It is a matter of sitting down and looking at the evidence before you. You have to look at the sort of case that is being presented and how clear it is. The Supreme Court made it clear in relation to the Lily Creek decision, which involved an application for a tavern licence in Kununurra, that you have to weigh and balance those competing interests. That is the nature of the beast. The licensing authority, depending on the harm that is already there, may still grant a licence knowing that it will contribute to harm, but it is not significant enough to say no to the licence. That is the exercise.

What happens, of course, is that if you look at this glass of water, you might say it is half empty and I might say it is half full. Whenever one looks at an application, the unsuccessful party would disagree with my reasoning. You get letters of support from the successful party when you give them the answer they want. The unsuccessful party has the right of appeal. The unfortunate thing is that the appealing is normally done by the applicants who have the resources to take it through the system. It is very hard for an individual who objects to take it on board. In the case of Lily Creek decision in Kununurra, that was objected to by the Executive Director of Public Health. It went back to the Supreme Court twice to overturn the decision of the judge in that regard. It was the public sector side of the equation that actually took that through to its full extent.

The DEPUTY CHAIRMAN: Barry, do you have any figures available that show a historic perspective over the number of liquor licences that were granted a few years before the changes and up to now?

Mr Sargeant: I have that with me.

The DEPUTY CHAIRMAN: Would you be prepared to table that?

Mr Sargeant: I have to find it and I will do it at the end of the hearing.

The DEPUTY CHAIRMAN: Thank you.

Mr Sargeant: It is public information. All I have done is extracted the information from annual reports over a number of years. The only proviso I will place there is that for 1999 it shows that we approved 175 producers licences. The question would be why. Prior to that amendment we used to have producers and exempt producers. We did away with exempt producers and said that they must get a producers licence. There is a blip in the statistics in that regard. I will provide that information to you.

The DEPUTY CHAIRMAN: We have a few general questions, which are more specific in some respects. I refer to drinking in hotels. If the government wanted to have the glass bans put in place, how would it go about doing that?

Mr Sargeant: The government could do it by amending the legislation to impose it. I will put some context to this. I have had discussions with the liquor industry, particularly Western Australian Nightclub Association, the Australian Hotels Association and a group of licensees in Northbridge called the Big N group. We are progressing that to see what can be done in the long term. There is nothing before me that shows that it is not a systemic problem in licensed premises. It is isolated and people do harm people with glass. It is an unfortunate fact. The prohibition orders that I have issued recently involve a number of glassings. I would not say that using those vessels to harm people is not a systemic problem. There was one girl who has, I think, been charged for causing harm with the heel of her shoe. What has brought this issue about is what is happening in New South Wales. New South Wales has identified some of the 48 licensed premises there that have problems overall. One of the things they have decided to do is impose a provision to deal with the glassing situation. After midnight licensees cannot sell liquor in a glass container and they have to actually collect the glasses. Queensland recently amended its legislation to give their equivalent of me the authority to do that. I already have that authority to do that under section 64. I could impose it. I have been talking to the licensees. I have said I would prefer not to use that method, but if it becomes an issue, then I have the power to do it. The thing to bear in mind is there are plus sides to the licensees in the sense that they can get a glass that will not break. They are willing to look at a phased changeover, depending on the cost effectiveness. Again, you are looking at penalising the majority for the minority. It has to be put in the context of what is the harm. It is unfortunate for people who have been the recipients of some of those prohibition orders for glassing. There is a fair bit of publicity out that if you glass, the police will take action and the licensing authority will ban you from going to those premises. That is my answer to the glassing issue.

[11.50 am]

Mr P. ABETZ: Obviously the more people drink, the more they tend to become violent and aggressive and all that sort of thing. I seem to recall that the police reports on the Northbridge situation indicate that it is between 11.00 pm and 2.00 am that 80 per cent of the violent acts take place. In terms of dealing with the violence associated with excessive alcohol consumption, what are your thoughts about the hours for which licensed premises are allowed to open? Do you have any thoughts about reducing the undesirable antisocial behaviour that goes with longer drink hours?

Mr Sargeant: The actual policing of it, as you would appreciate, is more the responsibility of the police than me. Again, it is a matter of weighing and balancing the fact that there are premises that by law are able to trade until midnight. They are entitled to apply to extend those hours with extended trading permits so that they can trade past midnight. If there is a problem, then we can do something about it. For instance, I did remove an extended trading permit from a hotel tavern in West Perth only recently because of the antisocial behaviour. So the issue is that if a particular licensed premise is shown to be quite a significant cause of antisocial behaviour because of the way it is managed, we have the power to take the permit from it. In the case of special facility licences—there are four of them—I have to use section 64 to amend their hours. I can use section 64 to also address some of the nightclubs that trade until five o'clock or six o'clock during the week. But, again, it is weighing and balancing. The evidence that quite often is presented is about Northbridge in general. Sometimes we have to watch some of the data that we get. This is not a criticism of the police, but if a licensee is doing the right thing, they might call the police to address a situation. The licensee is being proactive. That is nothing to worry about. But that may be shown as a negative against the licensee, because they have had an incident in their premises, but in actual fact they have managed it quite correctly. So it is not an easy thing to say that this is where the most hospitalisations occur. Of course the harm from the police point of view is not just about hospitalisations. In the case of hospitalisations, I accept the fact that a lot of it can be attributed to people who may have been in Northbridge, but the people who frequent that hospital are not limited just to those who have come from Northbridge. So it is not always a black and white case. I can assure you that if someone had the easy answer, I would be commissioning them straightaway to come and work for me!

The DEPUTY CHAIRMAN: What do you think about the age checks for customers going into hotels and nightclubs? Do you think they are adequate? Do you have any comments about that?

Mr Sargeant: Some of them have been imposed in particular in Northbridge—they have a safe key exercise. That is not something that I mandate. It is something that I neither endorse nor support. It is a matter of them managing their licensed premises. People do have concerns about the fact that they have to show their details. My answer to that is if you do not like it, do not go. That is your choice. Some of the licensed premises say that people like it, because they feel comfortable in knowing that somebody has checked who is going in there. So there are two sides to the story. Fundamentally, we say to the licensee that they have got—it is just like any organisation—the civil right to say no to anybody. Under the liquor licensing act, we used to have a requirement that they had to receive people into their premises. That has been removed from the act, so a licensee can now say no to anyone that they so wish, so long as they do not contravene any other laws. There is no requirement for them to actually receive people.

The DEPUTY CHAIRMAN: In relation to the negative social impact that alcohol has in the community, can you make any observation or comment about whether, in the last 10 years, it has stayed the same, it has become better or it has become worse?

Mr Sargeant: I would not say it has become worse, but it is probably reported more, the police have better statistics, and the reporting mechanisms of the hospitals are much more geared to try to identify the cause of people coming into hospital, so we have available much more data. The media is more interested in it. I would suggest, just as a general community person, that we probably believe there is more violence, but how much it has increased relative to the size of the population

is another matter. There were some studies done about the impacts of extended trading permits and the harm that may occur. The logic of that argument is fine. But bear in mind that people only go to the popular premises. So, naturally, the more people you get at a premises, there is going to be issues. Human beings, unfortunately, do interact in a negative manner, and alcohol does contribute to some of that. I am the sort of person—not that I have done it for many, many years—who would probably go to sleep before I got violent. But other people go the other way. That is an unfortunate fact. In fact, I would not get that far, because I would slur in my speech before I did anything else! It is there. But I think we have got the recording mechanisms in place. The downside to some of that recording is that it depends very much on the person who is actually collecting the data. If you have a police officer there who is under enormous pressure to try to address a situation, and he has to go back and ask the person when did he have his last drink, he may not get as robust data as he can. But they do a great job. It is the same as the hospital people. They try to identify what may be the root cause. I think that we do have far better recording mechanisms to indicate that we do have harm, and that that can flow through, and how we can address that. But for the majority of people, they thoroughly enjoy themselves when they go to licensed premises. The vast majority of licensed premises are run very, very well. No licensees want a situation where they are causing harm to people. They want to have people come back and for that to be a very enjoyable experience. But that does not happen in all cases, I am afraid. As I said, if you have got the answer, then please let me know.

Mr P. ABETZ: Just on that issue of answers, if money was not an obstacle, and if you could impose one initiative—just one—to best minimise the harm or ill-health associated with alcohol, what would it be?

Mr Sargeant: Can I preface this by saying that I am speaking as Barry Sargeant, a personal person, and I am not speaking in my position; but of course I will be criticised for saying it. I would address the extent of liquor advertising in the newspapers.

The DEPUTY CHAIRMAN: I think that is where we needed to go with the questions, Barry, so I will read the closing statement. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you very much indeed, Barry, for attending today. It has been very helpful.

Mr Sargeant: Thank you.

Hearing concluded at 11.57 am