

**STANDING COMMITTEE ON  
ENVIRONMENT AND PUBLIC AFFAIRS**

**PETITION 79 — HIGH ROAD HOTEL, PARKWOOD**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 17 JUNE 2015**

**Members**

**Hon Simon O'Brien (Chairman)  
Hon Stephen Dawson (Deputy Chairman)  
Hon Brian Ellis  
Hon Paul Brown  
Hon Samantha Rowe**

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**Hearing commenced at 11.09 am****Mr BARRY SARGEANT****Director General, Department of Racing, Gaming and Liquor, examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to our meeting. You will have signed a document entitled “Information for Witnesses”. Did you read and understand the document?

**Mr Sargeant:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. If you quote from any document during the course of the hearing, please provide its full title for the record. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Sargeant, I think you are aware of a petition that the Parliament received in respect of the High Road Hotel, Parkwood. Are there any opening remarks you could offer the committee about your agency’s involvement in those processes?

**Mr Sargeant:** Yes, I can, thank you, Chairman. The first I was aware of this particular petition was as a result of the letter from this committee to appear. I did check that this petition had not been forwarded to my department for any consideration at all. With respect to High Road, we have received an application from the owners to licence a liquor store on that particular location on the condition that if the liquor store is granted, the hotel licence will be surrendered. I understand that as part of that proposal they also then want to what we call re-move—which is actually move the liquor store they currently have to another location very close by. Under the act it is possible for the owners of a hotel or a tavern or any licence to surrender a licence if they so wish. Whilst we have some obligations in regard to interested persons in that licence, such as owners of property, people to do with leases, there is no application process per se and there are no grounds on which we can say no. It is quite possible for any organisation to surrender a licence. In this case the owners could have taken the path of rather than making an application for a liquor store and, on the condition it was granted, surrender the hotel licence, they could actually surrender the hotel licence first and then apply for a liquor store licence.

**The CHAIRMAN:** Can you clarify that: the owners have not surrendered their licence or are not intending to surrender their licence before they get a guarantee that they will get a new liquor store licence?

**Mr Sargeant:** No; that is correct.

**The CHAIRMAN:** Thank you.

**Mr Sargeant:** If they were to continue to operate with an expanded liquor outlet for packaged liquor on their licence, we would still require them to maintain an on-premise consumption area because that is the nature of the licence. Until 2007, all hoteliers and tavern owners, the same group of people, had to actually receive people like you and I onto the premises. That was changed in

2007. They can actually close their premises for certain periods of time and they can close them for private functions et cetera. The way in which the act is structured, they cannot close them permanently. We would require them to open it for a reasonable period of time to provide an on-consumption service for customers if they were to have a tavern licence. If they move to a liquor store licence per se, there is no authority for them to sell any liquor for consumption on the premises; therefore, that is one of the reasons why I think they want to move from having the responsibility of a tavern or a hotel purely to having a liquor store outlet. A hotel licence is probably the best sort of licence you can get. That enables you to sell both packaged liquor and liquor for consumption on the premises, whereas once you move away from that class of licence, they are more restricted in what they can and cannot do. I have had a similar situation in other locations where patrons have argued that the hotel should not be closed because of the service it provides but, when we look at it, we look at what services are generally available in the area anyway. As I said, it ultimately comes back to the point that the hotelier could, if they wanted to, surrender the licence anyway. There is always that room. If we said, "We believe it should continue to operate", in the circumstances they could always come up and say, "No, we don't want to continue with it" and surrender it. It is one that nobody has any ability to object to because there is not an application process to surrender a licence, whereas an application for a licence is subject to advertising and people can object. Interestingly, what we do take into account whenever a new hotel licence or a new liquor store licence is to be granted is what impact that might have on the services generally available in an area. In some cases it could mean a detriment; another service is provided. It is not an easy one to determine at times but we can take that into account.

**The CHAIRMAN:** Thanks for that. I think that has provided a lot of clarification for members.

**Hon STEPHEN DAWSON:** Mr Sargeant, where are Coles in their application to get a licence for a liquor store? Where are they in the process?

**Mr Sargeant:** It is at the decision-making process. I think that all the exchange of documentation has been concluded. From what I understand, the decision-maker is actually turning his mind to it right now. It could be finally determined sometime this week, I suspect.

**The CHAIRMAN:** Who is the decision-maker?

**Mr Sargeant:** One of my staff. The Director of Liquor Licensing is in my name; I delegate that authority to a range of people so I do not do them all myself.

**The CHAIRMAN:** If that bottle shop or package liquor licence is given the tick, presumably we can expect Coles to surrender their existing hotel licence, which covers the whole site including the existing bottle shop, forthwith.

**Mr Sargeant:** I do not know whether it will be forthwith, but it will be very soon. Once they do surrender that hotel licence, we issue a new licence. They cannot have two licences covering the same area—they either have one or the other. They would surrender it and technically we would probably then issue the new licence for the packaged liquor virtually straightaway. Then they can only sell packaged liquor; there will be no on-site consumption at all.

**Hon STEPHEN DAWSON:** Is there a statutory time line set around the application process for a liquor store?

**Mr Sargeant:** No, there is not. We get criticised probably for not doing them quick enough. People argue we take too long with all hotel applications and liquor store applications, but we go through a process. This particular application was advertised. People get an opportunity to make submissions in relation to objecting to it. Then we go through assessing what those objections are, but bearing in mind procedural fairness must be afforded to both applicants and to objectors and interveners. They then go through a process and put their case to the decision-maker. Anybody who is part of that process and is not happy with that can appeal the decision to the Liquor Commission, who in turn can appeal to the Supreme Court a decision of the Liquor Commission. There are areas

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of appeal, should they be dissatisfied with a decision. This particular store has a fairly prominent packaged liquor outlet. The current application is basically to replicate that same size, but of course when they move it, they want to move it to a much, much bigger outlet.

**The CHAIRMAN:** So it will be the same size?

**Mr Sargeant:** As the application is right now, yes.

**The CHAIRMAN:** It is actually a massive bottle shop, so I am told!

**Hon STEPHEN DAWSON:** In the correspondence we have received from Coles recently, they suggest that the liquor store will have a significantly reduced licensed area from the current 4 500 square metres to 850 square metres.

**The CHAIRMAN:** I am not sure; perhaps Mr Sargeant might be aware: is the 4 500 metres the size of the existing liquor store or is it the entire licensed area which would include the hotel?

**Mr Sargeant:** I would have to confirm that, but logic tells me that that is what it is. They are reducing the licensed area; yes, that is correct.

**The CHAIRMAN:** By way of information for members who are not familiar with the site, and I am, the existing liquor store is large but it is not several acres or anything of floor space.

[11.20 am]

**Mr Sargeant:** We do not allow hotels or taverns to use the words “liquor store”, particularly in the case of a hotel licence; that is why we use the words “bottle shops”. Whilst they will use a trade name, you will find that we do not allow them to say the particular liquor store, unless it is a stand-alone liquor store with a liquor store licence.

**The CHAIRMAN:** They are applying for a liquor store licence now because at the moment they are operating a bottle shop under the hotel or tavern licence.

**Mr Sargeant:** That is correct.

**The CHAIRMAN:** That is a subtle distinction, but thanks for making it. What considerations are taken into account by your authority when making decisions about approving a liquor licence, such as in this situation?

**Mr Sargeant:** We are required to look at the evidence, but the evidence must be based around the public interest that is set down in the objects of the act. There are two components of the act, one called the primary objects. Section 5 of the Liquor Control Act outlines the objects of the act; that is, to regulate the sale and supply of liquor, to minimise the harm aspects of the consumption of liquor, and then to cater for the requirements for liquor and related services with reference to hospitality, tourism and other industries within Western Australia. Then there are some sub-objects which talk about the diversity of facilities as well. They can build their case around that. Normally, it boils down to harm versus catering for the requirements, sort of the decision-making which we have to look at. But we would not grant a licence without the approval from the local authority, and in this case the approval has come through from the local authority so it complies with their town planning schemes et cetera.

**The CHAIRMAN:** It complies with town planning even if they are not happy with it.

**Mr Sargeant:** We have had examples in the past where local authorities have approved something under their own legislative requirements in respect of town planning and then have lodged an objection before us.

**The CHAIRMAN:** Based on their community views or something?

**Mr Sargeant:** Yes, based on their community concerns. They will say, “We can’t do anything, but we don’t like it,” so then it comes up. Our authority is quite distinctly different from what the local

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authority must address, and we cannot just rubber stamp planning; we have to look at it from our own perspective.

**The CHAIRMAN:** I think you will find that the local authority, Mr Sargeant, has a similar cleft-stick position here as well. There is a community view that council is obviously aware of, but under the planning arrangements it is this committee's understanding that it is quite clear that the use contemplated is provided for by a fairly recent change in the zoning, so their course is quite clear: they would approve it. There is no point having consultations with all sorts of people and inciting anticipation that it may or may not succeed when the application is bound to succeed.

**Mr Sargeant:** It is a good point: to raise an expectation when the chances of something will not happen. In this particular case, the fact that there already is a very large packaged liquor outlet makes it that much harder to say no to a standalone packaged liquor outlet.

**The CHAIRMAN:** The only way that you could, for example, is if one does refer to subsection (1) of section 5 of your act, it is clear you are regulating the sale, supply and consumption of liquor. I think you have just dealt with the question of minimising harm by pointing out there is an existing large outlet on the site. But section 5(1)(c) refers to a primary object being 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. How is that object addressed by your operations, generally?

**Mr Sargeant:** If you are taking an example of a brand-new licence, what you are expecting the applicant to do is demonstrate in effect that there are people who want this service, so they have to produce evidence to that effect. In the case of someone like the application for this liquor store, it would concentrate on the service it currently provides, and no doubt it enhances people wanting a bigger range of the service that they provide. As I indicated to you, when it comes to the other aspect, whilst people might have a particular need or request for that service in that location, you cannot say that there are not readily available onsite consumption venues in the locality that people can go to. Whilst one could give some credit to the fact that if we grant this licence application, we know the hotel licence is going to be surrendered, and there are certain people who would then not have that service, the question is what evidence is there that those who do not want it got to say they cannot get that service in the locality. As I did point out to you earlier, the overriding consideration is that even if we turned around and said no to it on that basis, they could on the very next day surrender their licence and then apply for a liquor store licence again on the basis that there is no service at all. An object of the act talks about us not being too technical. You have to look at it and say do we put them through those sorts of hoops when obviously that is the course of action open to them, and if they know that we are very pro the liquor store side of it but we are concerned about the loss of service, they just might take the service away, and they will say, "Look, there is no service here now." You only have to concentrate on that one aspect. So in a sense you have to look at the overall structure of the act and how it operates.

**The CHAIRMAN:** This interpretation of this particular clause is interesting because anecdotally—there is a lot of reporting about liquor licensing issues in the community, as you know—it is sometimes seen that in order to meet this object that we are discussing, the licensing authority requires prospective venue licensees to jump through hoops to provide extra services like accommodation and meals and things that they do not want to do. Yet you are almost telling us that in fact it is the other way around; that prospective licensees offer these things in support of their application for the liquor licence.

**Mr Sargeant:** I can assure you we do not put people through hoops to provide that; that is part of their justification for their application. In the case of a tavern licensee, they do not need to provide any accommodation. In the case of a hotel, then that is part of the argument, because a hotel licence requires them to have accommodation. Until recently, hotels had to provide facilities for breakfast. We had a number of country hoteliers, and one of them put a case to the then minister who then

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amended the act to give them the flexibility. They said, “It is too costly for us to maintain a kitchen. We would rather engage the services of a local restaurant to provide that service.” So that particular amendment was made as well to give them that flexibility so that they did not have to provide the service themselves in a hotel; they could rely on somewhere else.

**The CHAIRMAN:** It is probably going back a bit in history now, but you have got a fairly long association with the authority. When the Riverton Hotel was initially established I think it was part of a golf links or something.

**Mr Sargeant:** It was before my time, I can assure you. I can remember as a young person though.

**The CHAIRMAN:** I think it was back in the 1960s or so.

**Mr Sargeant:** I was young then.

**The CHAIRMAN:** Indeed! Would it have been the case then that perhaps they would have been required to provide some of the services that they provided—motel units and so on.

**Mr Sargeant:** Most definitely. In those days they would not have had a tavern licence; I would suspect most of it was just built around a hotel. If you look through the history of hotels and taverns in the sense that there was even a requirement that if someone arrived, they had to receive them, you can understand why. If a person who had been on horseback for a few hours was seeking a room, if the hotel had the room, they had to actually provide that room to them. As I said, it was only in the last round, about 2007, we took that requirement where they had to be open to provide services for people, which meant they could never close their facilities for a private function. They always had to have some aspect of it open for activity. Up until 1998 we actually had certain hours they had to open, and that was done under Hon Max Evans when he was the minister, who actually took that requirement away that they had to remain open at certain hours of the day which would give you that flexibility.

**The CHAIRMAN:** Whether you had clients or not?

**Mr Sargeant:** Yes; you had to open. So there has been a progression, and if you look at the way the liquor industry has progressed—as a young man I can remember that if my father wanted to buy any packaged liquor from other than a hotel, he had to buy it by the gallon. That was the minimum; that is why they were called gallon licences to start with—you had to buy liquor in a minimum amount. Many of us would remember no Sunday trading, or if there was, it was limited, even to the extent at one stage if you wanted to buy packaged liquor on a Sunday, you could only get two bottles per outlet, so people would drive around to different outlets; so there has been a progression.

[11.30 am]

**The CHAIRMAN:** In the 1950s, a very distinguished member for Murchison was involved in bringing in that provision so that miners could have access to two bottles of beer on a Sunday. The member was then known as “Two-bottle Bill”. I know that, because that man was my father! It was a modest contribution.

**Mr Sargeant:** It is an interesting debate about how things have progressed and even the extent of the most recent development with respect to small bars, there has been a change in the way people present the product. Until 2007 liquor stores in the metropolitan area could not open on Sundays. That was changed in 2007, so it has been a progression of facilities that has looked at the overall objects of what the act is trying to achieve. I can assure you that at times it is not an easy decision because you know that certain people do not want something and certain other people do want something. We clearly look at the way in which the law presents itself. I have brought with me a copy of a Supreme Court, Court of Appeal decision. In 2013 Woolworths appealed to the Court of Appeal on a decision. The Liquor Commission had declined an application in Bicton for a Dan Murphy’s store and the case was appealed before the Supreme Court before a single judge.

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He supported the commission's decision and Woolworths appealed the decision in the Court of Appeal and the decision was overturned. I have extracted a couple of pages to give you some idea of what the licensing authority is supposed to do. For members' interest, I will provide copies of the extract of that court case.

**The CHAIRMAN:** We will receive that paper as tabled.

**Hon BRIAN ELLIS:** Barry, this is all very interesting because you have given us some clarification about the process. I am just looking at the petition. The complaint about leaving no community meeting place is not part of your process at all and is no consideration when considering whether or not to grant a licence.

**Mr Sargeant:** It would be part of our process in a small country town, perhaps, where the hotel provides a service. Let us say that there is an application for a liquor store in a country town in which the hotel is the only service; we could take that into account. But the uniqueness about this one is that it is a hotel or a tavern that could be surrendered. If it was an application in a country town, such as Wickepin, and someone wanted to open a liquor store and there is a hotel in Wickepin, the argument might be that if the liquor store opens, the hotel might close. As a result of the close of the hotel, the community will lose that service and we will balance it and say that we think it is in the public interest to not grant the liquor store licence because of the impact on that particular hotel in that community. It can come into play, but it depends on the circumstances. It is much harder in the metropolitan area to pursue that line than it is in a small country town. I do not know what the situation is in Wickepin at all; I am not picking it on for any reason other than I used to live nearby when I was a young boy.

**Hon BRIAN ELLIS:** I have lived in a very small country town too. I suppose it could be a meeting place. The other part of the petition asks that the legislation be changed for more adequate consultation, but that is not your concern. That consultation I thought is more with the local government.

**Mr Sargeant:** It is, and I can assure you ours has. We advertise it in the newspaper and do a letter drop within a couple of hundred metres of the area as well and place signs on the premises as to what they apply for to ensure people participation in the process.

**The CHAIRMAN:** Mr Sargeant, on behalf of my colleagues we appreciate you coming in to give us the benefit of your experience and advice. Thank you for being available to the committee in this matter. We look forward to dealing with you on other occasions if the need arises, but, for now, I will say thank you once again and good morning.

**Mr Sargeant:** Thank you. Good morning.

**Hearing concluded at 11.34 am**

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